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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS–2016–0085]

#### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)–022 Electronic Visa Update System (EVUS) System of Records

**AGENCY:** Privacy Office, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled, “Department of Homeland Security U.S. Customs and Border Protection (DHS/CBP)–022 Electronic Visa Update System (EVUS) System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the “Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)–022 Electronic Visa Update System (EVUS) System of Records” from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

**DATES:** This final rule is effective November 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: Debra L. Danisek (202–344–1610), CBP Privacy Officer, Privacy and Diversity Office, 1300 Pennsylvania Ave. NW., Washington, DC 20229. For privacy issues please contact: Jonathan R. Cantor (202–343–1717), Acting Chief Privacy Officer, Privacy Office,

Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) published a notice of proposed rulemaking in the *Federal Register* (81 FR 60297, September 1, 2016) proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. DHS issued the “DHS/CBP–022 Electronic Visa Update System (EVUS) System of Records” in the *Federal Register* at 81 FR 60371 on September 1, 2016, to provide notice to the public that DHS/CBP will collect and maintain records on nonimmigrant aliens who hold a passport that was issued by an identified country approved for inclusion in the EVUS program and have been issued a U.S. nonimmigrant visa of a designated category seeking to travel to the United States. The system of records will also cover records of other persons, including U.S. citizens and lawful permanent residents, whose names are provided to DHS as part of a nonimmigrant alien’s EVUS enrollment. Requiring aliens holding passports of identified countries containing U.S. nonimmigrant visas of a designated category with multiple year validity will allow DHS/CBP to collect updated information. The system is used to ensure a visa holder’s information remains current. The information is also used to separately determine whether any admissibility issues may need to be addressed outside the EVUS enrollment process by vetting the information against selected security and law enforcement databases at DHS, including the use of CBP’s TECS (not an acronym) (DHS/CBP–011 U.S. Customs and Border Protection TECS, December 19, 2008, 73 FR 77778) and the Automated Targeting System (ATS) (DHS/CBP–006 Automated Targeting System, May 22, 2012, 77 FR 30297).

DHS/CBP invited comments on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

##### II. Public Comments

DHS received no comments on the NPRM and one positive comment on the SORN for the DHS/CBP–022 EVUS System of Records. After consideration of the public comment, DHS will implement the rulemaking as proposed.

##### List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS amends chapter I of title 6, Code of Federal Regulations, as follows:

#### PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

**Authority:** Public Law 107–296, 116 Stat. 2135; (6 U.S.C. 101 *et seq.*); 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Amend appendix C to part 5 by adding paragraph 74 to read as follows:

#### Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

\* \* \* \* \*

74. The DHS/CBP–022 Electronic Visa Update System (EVUS) System of Records consists of electronic and paper records and will be used by DHS and its components. EVUS is a repository of information held by DHS/CBP in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. EVUS contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (e)(8), and (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2) has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation

and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(c) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: November 17, 2016.

**Jonathan R. Cantor,**

*Acting Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2016-28288 Filed 11-23-16; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS-2016-0087]

### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/U.S. Immigration and Customs Enforcement-015 LeadTrac System of Records

**AGENCY:** Privacy Office, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled, "Department of Homeland Security (DHS)/U.S. Immigration and Customs Enforcement (ICE)-015 LeadTrac System of Records" from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the "DHS/ICE-015 LeadTrac System of Records" from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

**DATES:** This final rule is effective November 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** For general questions, please contact: Amber Smith, Privacy Officer, (202-732-3300), U.S. Immigration and

Customs Enforcement, 500 12th Street SW., Mail Stop 5004, Washington, DC 20536, email: [ICEPrivacy@ice.dhs.gov](mailto:ICEPrivacy@ice.dhs.gov). For privacy issues, please contact: Jonathan R. Cantor (202-1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

##### Background

DHS/ICE published a notice of proposed rulemaking in the **Federal Register**, 81 FR 153, August 9, 2016, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/ICE-015 LeadTrac System of Records. The DHS/ICE-015 LeadTrac System of Records Notice was published concurrently in the **Federal Register**, 81 FR 153, August 9, 2016, and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

##### Public Comments

DHS received no comments on the NPRM and no comments on the SORN.

Because DHS received no public comments, the Department will implement the rulemaking as proposed.

##### List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS proposes to amend chapter I of title 6, Code of Federal Regulations, as follows:

#### PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

**Authority:** Pub. L. 107-296, 116 Stat. 2135; (6 U.S.C. 101 *et seq.*); 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add paragraph 75 to appendix C to part 5 to read as follows:

##### Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

\* \* \* \* \*

75. The DHS/ICE-015 LeadTrac System of Records consists of electronic and paper records and will be used by ICE investigative and homeland security personnel. The DHS/ICE-015 LeadTrac System of Records is a repository of information held by ICE for analytical and investigative purposes. The system is used to conduct research supporting the production of law enforcement activities; provide lead information for investigative inquiry and follow-up; assist in the conduct of ICE criminal and administrative investigations;

assist in the disruption of terrorist or other criminal activity; and discover previously unknown connections among existing ICE investigations. The DHS/ICE-015 LeadTrac System of Records contains aggregated data from ICE and DHS law enforcement and homeland security IT systems, as well as data uploaded by ICE personnel for analysis from various public, private, and commercial sources during the course of an investigation or analytical project. The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); (f); and (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). When a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2) or (k)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. Disclosure of corrections or notations of dispute may impede investigations by requiring DHS to inform each witness or individual contacted during the investigation of each correction or notation pertaining to information provided them during the investigation.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition,

permitting access and amendment to such information could disclose classified and other security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise establishing procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: November 17, 2016.

**Jonathan Cantor,**

*Acting Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2016-28289 Filed 11-23-16; 8:45 am]

**BILLING CODE 9111-28-P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 932**

[Doc. No. AMS-SC-16-0031; SC16-932-1 FIR]

**Olives Grown in California;  
Suspension and Revision of Incoming  
Size-Grade Requirements**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that suspended the incoming size-grade authority under the California olive marketing order, which regulates the handling of olives in California. The rule, which was recommended by the California Olive Committee (Committee), also made conforming changes to the corresponding size-grade requirements in the order's rules and regulations and two Committee forms. The Committee locally administers the order and is comprised of producers and handlers of olives operating within the area of production. The interim rule suspended the incoming size-grade authority of the marketing order and revised the corresponding size-grade requirements in the order's rules and regulations. The change is expected to benefit handlers because the current size-grading requirements hinder handler operations and flexibility, increase costs, and diminish their competitiveness.

**DATES:** Effective November 28, 2016.

**FOR FURTHER INFORMATION CONTACT:** Peter Sommers, Marketing Specialist, or Jeffrey Smutny, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or Email: [PeterR.Sommers@ams.usda.gov](mailto:PeterR.Sommers@ams.usda.gov) or [Jeffrey.Smutny@ams.usda.gov](mailto:Jeffrey.Smutny@ams.usda.gov).

Small businesses may obtain information on complying with this and other marketing order and agreement regulations by viewing a guide at the following Web site: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>; or by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202)

720-8938, or Email: [Richard.Lower@ams.usda.gov](mailto:Richard.Lower@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Marketing Order No. 932, both as amended (7 CFR part 905), regulating the handling of olives grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

Prior to this change, the size requirements were based on count ranges, mid-points and average counts per pound, while new technology sizes olives using mass and volume. Thus, the size-grading requirements and the more advanced sizing technology available now are incompatible and hinder handler operations and flexibility, increase costs, and diminish handler competitiveness. Suspending the incoming size-grading requirements will provide an opportunity for the industry to develop new requirements applicable both to currently-available technology and future needs.

In an interim rule published in the **Federal Register** on July 18, 2016, and effective on July 19, 2016, (81 FR 46567, Doc. No. AMS-SC-16-0031, SC16-932-1 IR), paragraphs (a)(1)(ii) through (a)(5) in § 932.51 were suspended indefinitely. In addition, the rule revised language in § 932.151, bringing that section into conformity with the intent of the rule, and necessitated minor conforming changes to two Committee forms, the Weight & Grade Report (COC-3c) and Report of Limited and Undersize and Cull Olives Inspection and Disposition (COC-5).

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are two California olive handlers subject to regulation under the marketing order and about 1,000 olive producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000 (13 CFR 121.201). Based upon information from the Committee and the National Agricultural Statistics Service (NASS), the average producer price for the 2013–14 crop year (the last year information was available) was \$1,150 per ton of canning-size olives and \$385 per ton for limited-use size olives. The total assessable volume was 85,668 tons. Canning sizes represented 88 percent of the assessable olive volume, while limited-use sizes represented 12 percent of the assessable olive volume. Based on production, producer prices, and the total number of California olive producers, the average annual producer revenue is less than \$750,000. Thus, the majority of olive producers may be classified as small entities. Both of the handlers may be classified as large entities.

This rule continues in effect the suspension of the incoming size-grading regulations in § 932.51, beginning with the 2016–17 crop year. It also continues in effect the revision of regulations in § 932.151, bringing the rules and regulations into conformity with the rule and its intent. In addition, the rule continues in effect conforming changes made to the Committee forms, COC–3c and COC–5.

This action is expected to result in increased handler flexibility and competitiveness, while reducing some of the costs associated with size-grading. In addition, this action will allow the Committee time to develop new requirements that address advancing technology and equipment.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178. Minor conforming changes to those requirements were necessary as a result of this action. AMS submitted a request to OMB to make minor conforming changes to forms COC–3c and COC–5.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and

duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the February 17, 2016, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before September 16, 2016. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: <https://www.gpo.gov/fdsys/pkg/FR-2016-07-18/pdf/2016-16704.pdf>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (81 FR 46567, July 18, 2016) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

■ Accordingly, the interim rule that amended 7 CFR part 932 and that was published at 81 FR 46567 on July 18, 2016, is adopted as a final rule, without change.

Dated: November 18, 2016.

**Bruce Summers,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2016–28254 Filed 11–23–16; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 948

[Doc. No. AMS–SC–16–0042; SC16–948–1 FR]

#### Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the Colorado Potato Administrative Committee, Area No. 2 (Committee) to revise the grade requirement currently prescribed for 1½-inch minimum to 2¼-inch maximum diameter (Size B) potatoes under the Colorado potato marketing order (order). The Committee locally administers the order and is comprised of producers and handlers of potatoes operating within the area of production. This rule relaxes the current minimum grade requirement for Size B red potatoes from U.S. Commercial grade or better to U.S. No. 2 grade or better. Relaxing this grade requirement will allow area handlers to supply new markets with U.S. No. 2 grade Size B red potatoes and is expected to benefit producers, handlers, and consumers.

**DATES:** Effective November 28, 2016.

**FOR FURTHER INFORMATION CONTACT:** Sue Coleman, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: [Sue.Coleman@ams.usda.gov](mailto:Sue.Coleman@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: [Richard.Lower@ams.usda.gov](mailto:Richard.Lower@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the grade requirement currently prescribed for Size B potatoes under the order. This rule relaxes the current minimum grade requirement for Size B red potatoes from U.S. Commercial grade to U.S. No. 2 grade. This change was unanimously recommended by the Committee at a meeting held on March 17, 2016.

Section 948.22 of the order authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the order's production area. Section 948.21 authorizes the modification, suspension, or termination of regulations issued pursuant to § 948.22.

Under the Colorado potato marketing order, the State of Colorado is divided into three areas of regulation for marketing order purposes. These include: Area 1, commonly known as the Western Slope; Area 2, commonly known as San Luis Valley; and Area 3, which consists of the remaining producing areas within the State of Colorado not included in the definitions of Area 1 or Area 2. Currently, the order only regulates the handling of potatoes produced in Area 2 and Area 3. Regulation for Area 1 has been suspended.

The grade, size, and maturity requirements specific to the handling of potatoes grown in Area 2 are contained in § 948.386 of the order. The current handling regulation requires that, for all varieties, Size B potatoes (1½-inch minimum to 2¼-inch maximum

diameter, as designated in the U.S. Standards for Grades of Potatoes) may be handled under the order, if such potatoes meet or exceed the requirements of the U.S. Commercial grade.

At the March 17, 2016, Committee meeting, industry participants indicated to the Committee that there is demand in several markets, including the food service market, for Size B, U.S. No. 2 grade red potatoes. They further stated that the order's current grade requirement for Size B potatoes (U.S. Commercial grade or better) precludes handlers from supplying this growing and profitable market. Relaxing the grade requirement for Size B red potatoes will allow area handlers to compete with other domestic potato producing regions. This change will effectively lower the allowable grade for red varieties of Size B potatoes from U.S. Commercial grade or better to U.S. No. 2 grade or better.

Relaxing the grade requirement to allow shipments of U.S. No. 2 grade Size B red potatoes should make more potatoes available to consumers and should allow Area 2 handlers to move more of the area's potato production into the fresh market. This change is expected to benefit producers, handlers, and consumers of potatoes.

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 66 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 150 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

During the 2014–2015 marketing year, the most recent full marketing year for

which statistics are available, 14,075,876 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on information reported by USDA's Market News Service, the average f.o.b. shipping point price for the 2014–2015 Colorado potato crop was \$8.60 per hundredweight. Multiplying \$8.60 by the shipment quantity of 14,075,876 hundredweight yields an annual crop revenue estimate of \$121,052,534. The average annual fresh potato revenue for each of the 66 handlers is therefore calculated to be \$1,834,129 (\$121,052,534 divided by 66), which is less than the SBA threshold of \$7,500,000. Consequently, on average, most of the Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for the 2014 Colorado fall potato crop was \$8.25 per hundredweight. Multiplying \$8.25 by the shipment quantity of 14,075,876 hundredweight yields an annual crop revenue estimate of \$116,125,977. The average annual fresh potato revenue for each of the 150 Colorado Area No. 2 potato producers is therefore calculated to be approximately \$774,173 (\$116,125,977 divided by 150), which is greater than the SBA threshold of \$750,000. Consequently, on average, many of the Area No. 2 Colorado potato producers may not be classified as small entities.

This final rule relaxes the minimum grade requirement prescribed for 1½-inch minimum diameter to 2¼-inch maximum diameter (Size B) red potatoes under the order. Currently, the handling of Size B potatoes is allowed if the potatoes otherwise meet or exceed the requirements of the U.S. Commercial grade standard. This change will effectively lower the minimum grade requirement for Size B red potatoes from U.S. Commercial grade or better to U.S. No. 2 grade or better. Relaxing the grade requirement will allow Colorado Area 2 handlers to supply markets with U.S. No. 2 grade Size B red potatoes and enable them to better compete with the other domestic potato producing regions. This change in the handling regulations is expected to benefit producers, handlers, and consumers. All other requirements in the order's handling regulations would remain unchanged. Authority for this action is contained in §§ 948.21 and 948.22 of the order.

This relaxation is expected to benefit producers, handlers, and consumers of Colorado Area 2 potatoes by allowing a greater quantity of potatoes from the

production area to enter the fresh market. The anticipated increase in volume is expected to translate into greater returns for handlers and producers, and more purchasing options for consumers.

After discussing possible alternatives to this change, the Committee determined that a relaxation in the grade requirement for Size B red potatoes should meet the industry's current needs while maintaining the integrity of the order's quality objectives. During its deliberations, the Committee considered making no changes to the handling regulation, as well as relaxing the grade requirement for all Size B potatoes. The Committee believes that a relaxation in the handling regulation for Size B red potatoes is necessary to allow handlers to pursue new markets, but lowering the grade requirement for all other types and varieties of Size B potatoes to U.S. No. 2 grade or better could erode the quality reputation of the area's production. Therefore, the Committee found that there were no other viable alternatives to the proposal as recommended.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, (Generic Vegetable and Specialty Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule relaxes the minimum grade requirements under the Colorado Area 2 potato marketing order. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Committee's meeting was widely publicized throughout the

Colorado potato industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 17, 2016, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on August 1, 2016 (81 FR 50406). Copies of the rule were made available to all interested Colorado potato producers and handlers. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending September 30, 2016, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping potatoes from the 2016 crop, and handlers want to take advantage of the relaxation as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule.

#### List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

#### **PART 948—IRISH POTATOES GROWN IN COLORADO**

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. In § 948.386, paragraph (a)(3) is revised to read as follows:

#### **§ 948.386 Handling regulation.**

\* \* \* \* \*

(a) \* \* \*  
(3) *1 1/2-inch minimum to 2 1/4-inch maximum diameter (Size B).* U.S. Commercial grade or better, except that red varieties may be U.S. No. 2 grade or better.

\* \* \* \* \*

Dated: November 18, 2016.

**Bruce Summers,**  
*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2016-28252 Filed 11-23-16; 8:45 am]

**BILLING CODE 3410-02-P**

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **12 CFR Part 705**

**RIN 3133-AE58**

### **Community Development Revolving Loan Fund**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board (Board) is finalizing a rule to make several technical amendments to NCUA's rule governing the Community Development Revolving Loan Fund (CDRLF). The amendments will make the rule more succinct and improve its transparency, organization, and ease of use by credit unions.

**DATES:** This rule is effective December 27, 2016.

**FOR FURTHER INFORMATION CONTACT:** Geetha Valiyil, Manager, Grants and Loans, Office of Small Credit Union Initiatives, or Justin Anderson, Senior Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone (703) 518-6645 (Ms. Valiyil) or (703) 518-6540 (Mr. Anderson).

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

In June 2016, the Board issued a proposed rule to amend NCUA's CDRLF rule.<sup>1</sup> The proposed amendments were largely technical in nature or clarified NCUA's practices with respect to disbursing money from the CDRLF.

##### **B. Summary of Comments**

NCUA received three comments on the proposed rule, all of which were generally supportive of the rule. One commenter, however, did request additional changes and clarifications.

<sup>1</sup> 81 FR 40197 (June 21, 2016).

These comments are addressed in the section-by-section analysis below.

### C. Section-by-Section Analysis

As the Board did not receive any comments on the amendments to §§ 705.1, 705.6, and 705.9, which relate to the authority and purpose of the part, terms for grants, and reporting, the Board is finalizing these amendments as proposed.

**§ 705.2 Definitions.** This section provides definitions used throughout the rule. The proposed rule removed unnecessary and duplicative definitions. One commenter requested that the Board reconsider the removal of the definition of “Fund.” The commenter stated that this term is specifically relevant to the CDRLF rule and should remain. As noted in the preamble, this term is already defined in § 705.1. The Board continues to believe a second definition of “Fund” is unnecessary and is, therefore, finalizing the amendments to this section as proposed.

**§ 705.5 Terms and Conditions.** This section outlines the terms and conditions for CDRLF loans. Currently, this section has an aggregate loan limit of \$300,000, which prevents NCUA from making loans that exceed this amount. As noted in the proposal, the Board sought to remove this limit to allow NCUA to grant loans in excess of \$300,000 and to provide more flexibility for the agency to meet changing loan demands. One commenter believed that the proposed removal of the aggregate loan limit from the rule could lead to NCUA instituting lower aggregate limits, which could harm credit unions. This commenter suggested including language in the rule that explicitly instructs that there is no aggregate limit for loans or technical assistance grants.

As noted in the preamble to the proposed rule, the Board proposed eliminating the aggregate loan limit to help credit unions. As the current aggregate loan limit is an upper limit, NCUA is currently free to set a lower amount for CDRLF loans but cannot offer a higher amount. The proposed removal of this limit will allow NCUA to offer higher loan amounts. As the proposed removal of the limit will help, rather than harm credit unions, the Board is adopting this change as proposed. Further, as there is currently no aggregate limit for technical assistance grants and the grant amounts vary each year, the Board does not believe it is necessary to add the additional language suggested by this commenter.

This commenter also requested more substantive terms and conditions for

technical assistance grants. While the commenter did not specify what additional terms and conditions the Board should add, the commenter did suggest that the terms and conditions for grants are “scarce in comparison” to those for loans. The Board notes that as grants are not required to be repaid, unlike loans made under the CDRLF program, there is no need for more comprehensive terms and conditions. Further, the Board’s goal in proposing amendments to the CDRLF rule was to make the rule more user friendly and simpler; adding additional terms and conditions where they are not needed would frustrate that purpose. Finally, as noted in the proposed rule, any additional terms and conditions for loans or grants will be specified in the Notice of Funding Opportunity and not in the regulatory text.

**Current § 705.6. Application and award processes.** This section specifies the procedures a credit union must follow to apply for a loan or grant from the CDRLF. The Board sought to make this section clearer and more accurate by proposing amendments that made this section easier to follow and more reflective of NCUA’s current practices. One commenter requested clarification on whether a credit union is required to obtain approval from the applicable regional director before submitting an application. NCUA has never required such prior approval in the past, and the Board clarifies it is not doing so now.

**§ 705.10 Appeals.** The Board proposed to add this new section to contain all applicable appeals language in one section, which would make the rule more user friendly. One commenter requested clarification on the appeal rights in proposed § 705.10(a). Specifically, this commenter believes that this section could be interpreted as only applying to loans and not to grants. In relevant portion, proposed § 705.10(a) reads as follows: “Appeals of Non-Qualification. A Qualifying Credit Union whose application for a loan or technical assistance grant has been denied, under § 705.7(f) of this part, for failure of a qualification may appeal that decision to the NCUA Board in accordance with the following . . .”

The Board believes this section clearly applies to both loans and technical assistance grants. Conversely subsection (b) of this proposed section states that it only applies to technical assistance grants. The Board is adopting the amendments to this section as proposed.

### Regulatory Procedures

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than \$100 million in assets to be small for purposes of RFA. The revisions to part 705 are designed to update and streamline the rule, thereby reducing the burden for credit unions that are seeking financial awards, whether in the form of a technical assistance grant or a loan. NCUA has determined and certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden or increases an existing burden. For purposes of the PRA, a paperwork burden may take the form of a reporting or recordkeeping requirement, both referred to as information collections. The changes in this rule are technical in nature and will not create new paperwork burdens or modify any existing paperwork burdens.

#### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

#### *The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 705

Community programs, Credit unions, Grants, Loans, Low income, Revolving fund.

By the National Credit Union Administration Board on November 17, 2016. Gerard Poliquin, Secretary of the Board.

For the reasons stated above, NCUA amends 12 CFR part 705 as follows:

PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN FUND FOR CREDIT UNIONS

1. The authority citation for part 705 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

2. Amend § 705.1 by revising paragraphs (c) through (e) to read as follows:

§ 705.1 Authority, purpose, and scope.

\* \* \* \* \*

(c) NCUA's policy is to revolve the loan funds to credit unions as often as practical in order to achieve maximum economic impact on as many credit unions as possible.

(d) The financial awards provided to credit unions through the Fund will better enable them to support the communities in which they operate; provide basic financial services to low-income residents of these communities, and result in more opportunities for the residents of those communities to improve their financial circumstances.

(e) The Fund is intended to support the efforts of credit unions through loans and technical assistance grants needed for:

- (1) Providing basic financial and related services to residents in their communities;
(2) Enhancing their capacity to better serve their members and the communities in which they operate; and
(3) Responding to emergencies.

3. Revise § 705.2 to read as follows:

§ 705.2 Definitions.

For purposes of this part, the following terms shall have the meanings assigned to them in this section.

Application means a form supplied by the NCUA by which a Qualifying Credit Union may apply for a loan or a technical assistance grant from the Fund.

Loan is an award in the form of an extension of credit from the Fund to a Participating Credit Union that must be repaid, with interest.

Low-income Members are those members defined in § 701.34 of this chapter.

Notice of Funding Opportunity means the Notice NCUA publishes describing one or more loan or technical assistance grant programs or initiatives currently being supported by the Fund and inviting Qualifying Credit Unions to submit applications to participate in the program(s) or initiative(s).

Participating Credit Union refers to a Qualifying Credit Union that has submitted an application for a loan or a technical assistance grant from the Fund which has been approved by NCUA. A Participating Credit Union shall not be deemed to be an agency, department, or instrumentality of the United States because of its receipt of a financial award from the Fund.

Program means the Community Development Revolving Loan Fund Program under which NCUA makes loans and technical assistance grants available to credit unions.

Qualifying Credit Union means a credit union that may be, or has agreed to be, examined by NCUA, with a current low-income designation pursuant to § 701.34(a)(1) or § 741.204 of this chapter or, in the case of a non-federally insured, state-chartered credit union, a low-income designation from a state regulator, made under appropriate state standards with the concurrence of NCUA. Services to low-income members must include, at a minimum, offering share accounts and loans.

Technical Assistance Grant means an award of money from the Fund to a Participating Credit Union that does not have to be repaid.

- 4. Amend § 705.5 as follows:
a. Revise the section heading.
b. Revise paragraph (b).
c. Amend paragraph (h) by adding the words "security agreements (if any)," between the words "repayment obligations," and "and covenants,".

The revisions read as follows:

§ 705.5 Terms and conditions for loans.

\* \* \* \* \*

(b) Funding Limits. NCUA will publish any applicable loan funding limits in the applicable Notice of Funding Opportunity.

\* \* \* \* \*

§ 705.8 [Removed]

5. Remove § 705.8.

§§ 705.6 and 705.7 [Redesignated as §§ 705.7 and 705.8]

- 6. Redesignate §§ 705.6 and 705.7 as §§ 705.7 and 705.8, respectively;
7. Add new § 705.6 to read as follows:

§ 705.6 Terms and conditions for technical assistance grants.

(a) Participating Credit Unions must comply with the terms and conditions for technical assistance grants specified for each funding opportunity offered under a Notice of Funding Opportunity.

(b) NCUA will establish applicable funding limits for technical assistance grants in the Notice of Funding Opportunity.

8. Amend redesignated § 705.7 as follows:

- a. Revise paragraph (a).
b. Revise paragraph (c)(4).
c. Revise paragraphs (f) and (g).

The revisions read as follows:

§ 705.7 Application and award processes.

(a) Notice of Funding Opportunity. NCUA will publish a Notice of Funding Opportunity in the Federal Register and on its Web site. The Notice of Funding Opportunity will describe the loan and technical assistance grant programs for the period in which funds are available. It also will announce special initiatives, the amount of funds available, funding priorities, permissible uses of funds, funding limits, deadlines, and other pertinent details. The Notice of Funding Opportunity will also advise potential applicants on how to obtain an Application and related materials. NCUA may supplement the information contained in the Notice of Funding Opportunity through such other media as it determines appropriate, including Letters to Credit Unions, press releases, direct notices to Qualifying Credit Unions, and announcements on its Web site.

\* \* \* \* \*

(c) \* \* \*

(4) Examination Information and Applicable Concurrence. In evaluating a Qualifying Credit Union, NCUA will consider all information provided by NCUA staff or state supervisory authority staff that performed the Qualifying Credit Union's most recent examination. In addition:

- (i) NCUA will only provide a loan to a qualifying federal credit union with the concurrence of that credit union's supervising Regional Director; and
(ii) NCUA will only provide a loan to a qualifying state-chartered credit union with the written concurrence of the applicable Regional Director and the credit union's state supervisory authority. A qualifying state-chartered credit union should notify its state supervisory authority that it is applying for a loan from the Fund before submitting its application to NCUA. However, a qualifying state-chartered credit union is not required to obtain

concurrence before applying for a loan. NCUA will obtain the concurrence directly from the state supervisory authority rather than through the qualifying state-chartered credit union. Additionally, before NCUA will provide a loan to a qualifying state-chartered credit union the credit union must make copies of its state examination reports available to NCUA and agree to examination by NCUA.

\* \* \* \* \*

(f) *Notice of Award.* NCUA will determine whether an application meets NCUA's standards established by this part and the related Notice of Funding Opportunity. NCUA will provide written notice to a Qualifying Credit Union as to whether or not it has qualified for a loan or technical assistance grant under this part. A Qualifying Credit Union whose application has been denied for failure of a qualification may appeal that decision in accordance with § 705.10 of this part.

(g) *Disbursement—(1) Loans.* Before NCUA will disburse a loan, the Participating Credit Union must sign the loan agreement, promissory note, and any other loan related documents. NCUA may, in its discretion, choose not to disburse the entire amount of the loan at once.

(2) *Technical Assistance Grants.* NCUA will disburse technical assistance grants in such amounts, and in accordance with such terms and conditions, as NCUA may establish. In general, technical assistance grants are provided on a reimbursement basis, to cover expenditures approved in advance by NCUA and supported by receipts evidencing payment by the Participating Credit Union.

■ 9. Revise § 705.9(b) to read as follows:

**§ 705.9 Reporting and monitoring.**

\* \* \* \* \*

(b) *Reporting—(1) Reporting to NCUA.* A Participating Credit Union must complete and submit to NCUA all required reports, at such times and in such formats as NCUA will direct. Such reports must describe how the Participating Credit Union has used the loan or technical assistance grant proceeds and the results it has obtained, in relation to the programs, policies, or initiatives identified by the Participating Credit Union in its application. NCUA may request additional information as it determines appropriate.

(2) *Reporting to Members—(i) Loans.* A Participating Credit Union that receives a loan under this part must report on the progress of providing needed community services to the

Participating Credit Union's members once a year, either at the annual meeting or in a written report sent to all members. The Participating Credit Union must also submit to NCUA the written report or a summary of the report provided to members.

(ii) *Technical Assistance Grants.* A Participating Credit Union that receives a technical assistance grant under this part should report on the progress of providing needed community services to the Participating Credit Union's members once a year, either at the annual meeting or in a written report sent to all members.

\* \* \* \* \*

■ 10. Revise § 705.10 to read as follows:

**§ 705.10 Appeals.**

(a) *Appeals of non-qualification.* A Qualifying Credit Union whose application for a loan or technical assistance grant has been denied, under § 705.7(f), for failure of a qualification may appeal that decision to the NCUA Board in accordance with the following:

(1) Within thirty days of its receipt of a notice of non-qualification, a credit union may appeal the decision to the NCUA Board. The scope of the NCUA Board's review is limited to the threshold question of qualification and not the issue of whether, among qualified applicants, a particular loan or technical assistance grant is funded.

(2) The foregoing procedure shall apply only with respect to Applications received by NCUA during an open period in which funds are available and NCUA has called for Applications. Any Application submitted by an applicant during a period in which NCUA has not called for Applications will be rejected, except for those Applications submitted under § 705.8. Any such rejection shall not be subject to appeal or review by the NCUA Board.

(b) *Appeals of technical assistance grant reimbursement denials.* Pursuant to NCUA Interpretative Ruling and Policy Statement 11-1, any Participating Credit Union may appeal a denial of a technical assistance grant reimbursement to NCUA's Supervisory Review Committee. All appeals of technical assistance grant reimbursements must be submitted to the Supervisory Review Committee within 30 days from the date of the denial. The decisions of the Supervisory Review Committee are final and may not be appealed to the NCUA Board.

[FR Doc. 2016-28229 Filed 11-23-16; 8:45 am]

**BILLING CODE 7535-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2016-5597; Directorate Identifier 2016-NM-009-AD; Amendment 39-18715; AD 2016-23-08]

RIN 2120-AA64

**Airworthiness Directives; The Boeing Company Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 737-400 series airplanes. This AD was prompted by reports of cracks in the upper chord of the overwing stub beams at body station (STA) 578 emanating from the rivet location common to the crease beam inner chord and the overwing stub beam upper chord. This AD requires repetitive inspections for cracking, and related investigative and corrective actions if necessary. We are issuing this AD to prevent the unsafe condition on these products.

**DATES:** This AD is effective December 30, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 30, 2016.

**ADDRESSES:** For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-5597.

**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-2016-5597; 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 by adding an AD that would apply to all The Boeing Company Model 737-400 series airplanes. The NPRM published in the **Federal Register** on April 28, 2016 (81 FR 25360) (“the NPRM”). The NPRM was prompted by reports of cracks in the upper chord of the overwing stub beams at STA 578 emanating from the rivet location common to the crease beam inner chord and the overwing stub beam upper chord. The NPRM proposed to require repetitive inspections for cracking, and related investigative and corrective actions if necessary. Replacement of the overwing stub beam terminates the repetitive inspections for cracking at the replacement location only, and post-replacement inspections are required if the replacement is done. We are issuing this AD to detect and correct cracking in the upper chord of the overwing stub beam caused by high flight-cycle fatigue stresses from both pressurization and maneuver loads. Cracking of the overwing stub beam could adversely

affect the fuselage structural integrity and result in possible decompression 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.

**Request To Clarify Unsafe Condition Statement in the “Discussion” Section**

Boeing requested that, in the “Discussion” section of the NPRM, that we clarify the cause of cracking in the overwing stub beams is from high flight-cycle fatigue stresses. Boeing submitted suggested wording.

We agree to clarify the unsafe condition. The unsafe condition statement in the **SUMMARY** section of the NPRM and paragraph (e) of the proposed AD already specified that the cracking in the upper chord of the overwing stub beam is caused by high flight-cycle fatigue stresses from both pressurization and maneuver loads. However, the “Discussion” section of the NPRM is not restated in this final rule. Therefore, we have not revised this final rule in this regard.

**Request To Revise Paragraph (i) of the NPRM**

Boeing requested that we revise paragraph (i) of the proposed AD to specify that the actions in that paragraph are required on airplanes that have had an overwing stub beam replaced at STA 578 as specified in Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737-53A1347, Original Issue, dated December 9, 2015 (“ASB 737-53A1347 Original Issue”), and not replaced with any other method. Boeing stated that the post-replacement inspection requirements specified in table 2 of paragraph 1.E., “Compliance,” of ASB

737-53A1347 Original Issue are applicable only to a STA 578 stub beam replacement accomplished as specified in Part 4 of the Accomplishment Instructions of ASB 737-53A1347 Original Issue.

We agree with Boeing’s request. We have revised paragraph (i) of this AD 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 or 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 ASB 737-53A1347 Original Issue. The service information describes procedures for doing a surface high frequency eddy current inspection for cracking in the overwing stub beam upper chord at STA 559, STA 578, and STA 601, and repairs and replacement. 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 93 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 .....	24 work-hours × \$85 per hour = \$2,040 per inspection cycle.	\$0	\$2,040 per inspection cycle.	\$189,720 per inspection cycle.

We estimate the following costs to do any necessary inspections/replacements 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 inspections/replacements:

**ON-CONDITION COSTS**

Action	Labor cost	Parts cost	Cost per product
Related investigative inspection .....	9 work-hours × \$85 per hour = \$765 per side	\$0 .....	\$765 per side.

## ON-CONDITION COSTS—Continued

Action	Labor cost	Parts cost	Cost per product
STA 578 Replacement .....	41 work-hours × \$85 per hour = \$3,485 per side.	\$41,500 per side .....	\$44,985 per side.
STA 578 Post-replacement inspection .....	1 work-hour × \$85 per hour = \$85 per side .....	\$0 .....	\$85 per side.

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

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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):

**2016–23–08 The Boeing Company:**  
Amendment 39–18715; Docket No. FAA–2016–5597; Directorate Identifier 2016–NM–009–AD.

##### (a) Effective Date

This AD is effective December 30, 2016.

##### (b) Affected ADs

None.

##### (c) Applicability

This AD applies to all the Boeing Company Model 737–400 series airplanes, certificated in any category.

##### (d) Subject

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

##### (e) Unsafe Condition

This AD was prompted by reports of cracks in the upper chord of the overwing stub beams at body station (STA) 578 emanating from the rivet location common to the crease beam inner chord and the overwing stub beam upper chord. We are issuing this AD to detect and correct cracking in the upper chord of the overwing stub beam caused by high flight-cycle fatigue stresses from both pressurization and maneuver loads. Cracking of the overwing stub beam could adversely affect the fuselage structural integrity and result in possible decompression of the airplane.

##### (f) Compliance

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

##### (g) Inspections, Related Investigative Actions, and Corrective Actions

At the applicable time specified in table 1 in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1347, Original Issue, dated December 9, 2015 ("ASB 737–53A1347 Original Issue"), except as required

by paragraphs (j)(1) and (j)(2) of this AD: Do a surface high frequency eddy current (HFEC) inspection for any cracking in the overwing stub beam upper chord at STA 559, STA 578, and STA 601; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of ASB 737–53A1347 Original Issue, except as specified in paragraph (j)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the HFEC inspection thereafter at the applicable intervals specified in ASB 737–53A1347 Original Issue.

**Note 1 to paragraph (g) of this AD:** Deviation from the actions specified in ASB 737–53A1347 Original Issue may affect compliance with the fuel tank ignition prevention requirements specified in Critical Design Configuration Control Limitation 28–AWL–11 of Document D6–38278–CMR.

##### (h) Terminating Action

Replacement of the overwing stub beam, in accordance with Part 4 of the Accomplishment Instructions of ASB 737–53A1347 Original Issue, terminates the repetitive inspections required by paragraph (g) of this AD at the STA 578 replacement location only. The post-replacement inspections required by paragraph (i) of this AD are still required at the STA 578 replacement location.

##### (i) Post-Replacement Inspections and Corrective Action

For airplanes on which an overwing stub beam has been replaced at STA 578, in accordance with Part 4 of the Accomplishment Instructions of ASB 737–53A1347 Original Issue: At the applicable time specified in table 2 in paragraph 1.E., "Compliance," of ASB 737–53A1347 Original Issue, do a surface HFEC inspection for any cracking in the overwing stub beam upper chord at STA 578, in accordance with the Accomplishment Instructions of ASB 737–53A1347 Original Issue. Repeat the HFEC inspection thereafter at the applicable intervals specified in ASB 737–53A1347 Original Issue. If any cracking is found during any inspection required by this paragraph, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (j)(3) of this AD.

##### (j) Exceptions to Service Information

(1) Where ASB 737–53A1347 Original Issue, specifies a compliance time after the "original issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) The Condition column of paragraph 1.E., "Compliance," of ASB 737–53A1347

Original Issue, refers to airplanes with specified total flight-cycles "at the original issue date of this service bulletin." This AD, however, applies to the airplanes with the specified total flight-cycles as of the effective date of this AD.

(3) If any cracking is found during any inspection required by this AD, and ASB 737-53A1347 Original Issue specifies to contact Boeing for appropriate action: Before further flight, repair the cracking or replace the stub beam, using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

#### (k) No Economic Inspection Required

This AD does not require the "Recommended Economic Inspection" specified in paragraph 3.B.3. of the Accomplishment Instructions of ASB 737-53A1347 Original Issue.

#### (l) 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 (m) of this AD. Information may be emailed to: [9-ANM-LAACO-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-LAACO-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, 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) Except as required by paragraph (j)(3) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (l)(4)(i) and (l)(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. If a step or substep is labeled "RC Exempt," then the RC requirement is removed from that step or substep. 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.

#### (m) Related Information

For more information about this AD, 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](mailto:galib.abumeri@faa.gov).

#### (n) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 737-53A1347, Original Issue, dated December 9, 2015.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; Internet <https://www.myboeingfleet.com>.

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

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

Issued in Renton, Washington, on November 8, 2016.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016-27640 Filed 11-23-16; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2016-5044; Directorate Identifier 2014-NM-166-AD; Amendment 39-18718; AD 2016-24-01]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Bombardier, Inc. Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain

Bombardier, Inc. Model DHC-8-102, -103, and -106 airplanes; and Model DHC-8-200 and -300 series airplanes. This AD was prompted by a report of heat damage found on a nacelle firewall after an unsuccessful engine ground start and several events of heat damage found on direct current starter/generator terminal block assemblies. This AD requires an inspection to detect damage on the nacelle firewalls and the terminal block assemblies and to make sure the insulating sleeves are installed and have no damage, and corrective action if necessary. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective December 30, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 30, 2016.

**ADDRESSES:** For service information identified in this final rule, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email [thd.qseries@aero.bombardier.com](mailto:thd.qseries@aero.bombardier.com); Internet <http://www.bombardier.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-5044.

#### **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-2016-5044; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (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:** Assata Dessaline, Aerospace Engineer, Avionics and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY

11590; telephone 516-228-7301; fax 516-794-5531.

#### 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 Bombardier, Inc. Model DHC-8-102, -103, and -106 airplanes; and Model DHC-8-200 and -300 series airplanes. The NPRM published in the **Federal Register** on April 12, 2016 (81 FR 21495) (“the NPRM”).

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2014-03R1, dated July 24, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Bombardier, Inc. Model DHC-8-102, -103, and -106 airplanes; and Model DHC-8-200 and -300 series airplanes. The MCAI states:

There has been one in-service report of heat damage on a nacelle firewall found after an unsuccessful engine ground start. There have also been several reports of heat damage found on Direct Current Starter/Generator terminal block assemblies, part number (P/N) 82450075-001.

The investigation determined that in all cases, the heat damage was caused by arcing between the firewall and terminal blocks with missing insulating sleeves on the conductive bushings. The insulating sleeves may have been inadvertently omitted during the incorporation of Modsum 8/1926, or during the installation of terminal blocks P/N 82450075-001.

Arcing with the firewall becomes an ignition source, creating a potential fire hazard when combined with a fuel or hydraulic fluid leak.

The original issue of this [Canadian] AD mandated the [detailed visual] inspection [for damage to the nacelle firewalls and to make sure the insulating sleeves are installed and have no damage] and rectification [corrective actions such as installing or replacing insulating sleeves, or replacing a terminal block], as required, of the nacelle firewall and terminal block assembly P/N 82450075-001 installed with Modsum 8/1926.

Revision 1 of this [Canadian] AD is issued to revise the Applicability to ensure that the terminal blocks have the insulating sleeves installed.

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-2016-5044.

##### Comments

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

##### Request To Reduce the Compliance Time

The Air Line Pilots Association, International requested that, due to the nature of the AD, the proposed 14-month compliance time be reduced to 10 months.

We do not agree to reduce the compliance time. The 14-month compliance time was developed by TCCA in coordination with Bombardier, Inc., and we concur that it is an appropriate compliance time. However, if we receive data to justify a shorter compliance time, we may consider further rulemaking on this issue. We have not changed this AD in this regard.

##### Conclusion

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

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

##### Related Service Information Under 14 CFR Part 51

We reviewed Bombardier Service Bulletin 8-24-92, Revision A, dated April 11, 2014. The service information describes procedures for an inspection to detect damage on the nacelle firewalls and the terminal block assemblies and to make sure the insulating sleeves are installed and have no damage, and corrective action. 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 75 airplanes of U.S. registry.

We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be \$12,750, or \$170 per product.

In addition, we estimate that any necessary follow-on actions will take about 1 work-hour and require parts costing \$551, for a cost of \$636 per product. We have no way of determining the number of aircraft that might need these actions.

##### Authority for This Rulemaking

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

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

##### Regulatory Findings

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

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

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

##### List of Subjects in 14 CFR Part 39

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

##### Adoption of the Amendment

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

##### PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2016–24–01 Bombardier, Inc.:** Amendment 39–18718; Docket No. FAA–2016–5044; Directorate Identifier 2014–NM–166–AD.

**(a) Effective Date**

This AD is effective December 30, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Bombardier, Inc. airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, serial numbers 003 through 672 inclusive, on which terminal block part number 82450075–001 is installed.

(1) Model DHC–8–102, –103, and –106 airplanes.

(2) Model DHC–8–201 and –202 airplanes.

(3) Model DHC–8–301, –311, and –315 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 24, Electrical Power.

**(e) Reason**

This AD was prompted by a report of heat damage found on a nacelle firewall after an unsuccessful engine ground start and several events of heat damage found on direct current starter/generator terminal block assemblies. We are issuing this AD to prevent arcing between the firewall and terminal blocks that are missing insulating sleeves on the conductive bushings, which could, in combination with a fuel or hydraulic fluid leak, be an ignition source for a fire.

**(f) Compliance**

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

**(g) Inspection and Corrective Action**

Within 2,500 flight cycles or 14 months after the effective date of this AD, whichever occurs first, perform a detailed visual inspection of the right-hand side and left-hand side nacelle firewalls and terminal block assemblies, as defined in Bombardier Service Bulletin 8–24–92, Revision A, dated April 11, 2014, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–24–92, Revision A, dated April 11, 2014.

(1) If the inspection finds no damage on the engine firewalls and the terminal blocks, and that undamaged insulating sleeves are installed on both terminal blocks, no further action is required by this AD.

(2) If the inspection finds that no insulating sleeves are installed, or the existing sleeves are damaged, and there is no damage to the nacelle firewall and terminal block, before further flight, install the replacement insulating sleeves, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–24–92, Revision A, dated April 11, 2014.

(3) If the inspection finds that no insulating sleeves are installed, or any existing sleeve is damaged, and there is no damage to the nacelle firewall, but there is damage to the terminal block, before further flight, replace the terminal block assembly (which includes insulating sleeves), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–24–92, Revision A, dated April 11, 2014.

(4) If the inspection finds that no insulating sleeves are installed and there is damage to the nacelle firewall and the terminal block, repair the damage using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

**(h) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–24–92, dated September 25, 2013.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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.

(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, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

**(j) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–03R1, dated July 24, 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–2016–5044.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

**(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 this AD specifies otherwise.

(i) Bombardier Service Bulletin 8–24–92, Revision A, dated April 11, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email [thd.qseries@aero.bombardier.com](mailto:thd.qseries@aero.bombardier.com); Internet <http://www.bombardier.com>.

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

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

Issued in Renton, Washington, on November 10, 2016.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–28054 Filed 11–23–16; 8:45 am]

**BILLING CODE 4910–13–P**

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

**[Docket No. FAA–2016–5041; Directorate Identifier 2015–NM–102–AD; Amendment 39–18719; AD 2016–24–02]**

**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 747–8 and 747–8F series airplanes. This AD was prompted by a report that static strength analysis has shown that the aluminum transmission aft bearing plate assemblies have inadequate structural strength for one or more of the required load cases. This AD requires removing aluminum transmission aft bearing plate assemblies from the flap track and installing titanium transmission aft bearing plate assemblies to the flap track. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective December 30, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 30, 2016.

**ADDRESSES:** For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-5041.

#### 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-2016-5041; 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:** Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6432; fax: 425-917-6590; email: [bill.ashforth@faa.gov](mailto:bill.ashforth@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 747-8 and 747-8F series airplanes. The NPRM published in the **Federal Register** on April 5, 2016 (81 FR 19514) (“the NPRM”). The NPRM was prompted by a report that static strength analysis has shown that the aluminum transmission aft bearing plate assemblies have inadequate structural strength for one or more of the required load cases, including cases for drive

system jam, flap skew, and structural damage tolerance. Inadequate structural strength can result in damage to the transmission aft bearing plate assemblies. The NPRM proposed to require removing aluminum transmission aft bearing plate assemblies from the flap track and installing titanium transmission aft bearing plate assemblies to the flap track. We are issuing this AD to prevent inadequate structural strength of transmission aft bearing plate assemblies. This condition could result in damaged transmission aft bearing plate assemblies, which could result in incorrect operation and departure of the flap from the airplane and consequent loss of controllability of the airplane.

#### Comments

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

#### Request To Use the Latest Service Information

Boeing requested that we revise the NPRM to refer to Boeing Alert Service Bulletin 747-57A2348, Revision 1, dated February 26, 2016. Boeing stated that Boeing Alert Service Bulletin 747-57A2348, dated June 12, 2015, erroneously included three airplanes, line numbers 1435, 1506, and 1509, which were delivered with the terminating action already incorporated. Boeing stated that the airplane effectivity in paragraph 1.A.1. of Boeing Alert Service Bulletin 747-57A2348, Revision 1, dated February 26, 2016, is listed correctly; however, airplane line numbers 1435, 1506, and 1509 were still erroneously included in the table that lists the airplane groups by line numbers. Boeing noted that Boeing Alert Service Bulletin 747-57A2348, Revision 1, dated February 26, 2016, also contains corrections to the access requirements, part quantities, and part numbers.

We agree with the commenter’s request for the reasons provided. We have updated this final rule accordingly. Since the table in paragraph 1.A.1. of Boeing Alert Service Bulletin 747-57A2348, Revision 1, dated February 26, 2016, is not accurate, we have also revised paragraph (c) of this AD to state that the AD is applicable to Model 747-8 and 747-8F series airplanes, except for line numbers 1435, 1506, and 1509, which were delivered with the terminating action already incorporated. We have also added a new paragraph (h) to this AD, which provides credit for actions completed before the effective

date of this AD using Boeing Alert Service Bulletin 747-57A2348, dated June 12, 2015. We have redesignated subsequent paragraphs accordingly.

#### Request To Revise the Costs of Compliance

Boeing requested that we update the Costs of Compliance section of the NPRM with the latest information in Boeing Alert Service Bulletin 747-57A2348, Revision 1, dated February 26, 2016. Boeing stated that the work hours and parts costs have been updated with the new service information.

We agree with the commenter’s request for the reason provided. We have updated this final rule accordingly.

#### Request for Credit for Previous Actions

Boeing requested that we add a statement to the NPRM to indicate that no further work is required on airplanes that have completed the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2348, dated June 12, 2015. Boeing stated that Boeing Alert Service Bulletin 747-57A2348, Revision 1, dated February 26, 2016, has no effect on airplanes that have incorporated Boeing Alert Service Bulletin 747-57A2348, dated June 12, 2015.

We agree with the commenter’s request for the reason provided. As stated previously, we have revised this AD to provide credit for actions completed before the effective date of this AD using Boeing Alert Service Bulletin 747-57A2348, dated June 12, 2015.

#### 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 14 CFR Part 51

We reviewed Boeing Alert Service Bulletin 747-57A2348, Revision 1, dated February 26, 2016. The service information describes procedures for removing the aluminum transmission aft bearing plate assembly from the flap

track and installing a new titanium transmission aft bearing plate assembly to the flap track. 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 11 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
Replacement .....	136 work-hours × \$85 per hour = \$11,560 ...	\$43,787	\$55,347	\$608,817

According to the manufacturer, all 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):

**2016–24–02 The Boeing Company:**  
Amendment 39–18719; Docket No. FAA–2016–5041; Directorate Identifier 2015–NM–102–AD.

**(a) Effective Date**

This AD is effective December 30, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 747–8 and 747–8F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–57A2348, Revision 1, dated February 26, 2016; except for line numbers 1435, 1506, and 1509, which were delivered with the terminating action already incorporated and are not affected by this AD.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by a report that static strength analysis has shown that the aluminum transmission aft bearing plate assemblies have inadequate structural strength for one or more of the required load

cases, including cases for drive system jam, flap skew, and structural damage tolerance. Inadequate structural strength can result in damage to the transmission aft bearing plate assemblies. We are issuing this AD to prevent inadequate structural strength of transmission aft bearing plate assemblies. This condition could result in damaged transmission aft bearing plate assemblies, which could result in incorrect operation and departure of the flap from the airplane and consequent loss of controllability of the airplane.

**(f) Compliance**

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

**(g) Replacement**

Within 48 months after the effective date of this AD: Remove aluminum transmission aft bearing plate assemblies from the flap track and install new titanium transmission aft bearing plate assemblies to the flap track, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2348, Revision 1, dated February 26, 2016.

**(h) Credit for Previous Actions**

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–57A2348, dated June 12, 2015.

**(i) 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 (j)(1) of this AD. Information may be emailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto: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 (i)(4)(i) and (i)(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. If a step or substep is labeled "RC Exempt," then the RC requirement is removed from that step or substep. 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.

#### (j) Related Information

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6432; fax: 425-917-6590; email: [bill.ashforth@faa.gov](mailto:bill.ashforth@faa.gov).

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

#### (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.

(i) Boeing Alert Service Bulletin 747-57A2348, Revision 1, dated February 26, 2016.

(ii) Reserved.

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

(4) You may view this 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.

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

Issued in Renton, Washington, on November 10, 2016.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016-28059 Filed 11-23-16; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2016-7427; Directorate Identifier 2016-NM-041-AD; Amendment 39-18714; AD 2016-23-07]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Bombardier, Inc. Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding Airworthiness Directive (AD) 2013-02-08 for all Bombardier, Inc. Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes. AD 2013-02-08 required inspection of the trunnions and upper and lower pins of the horizontal stabilizer trim actuator (HSTA), and replacement or re-identification if necessary; and revision of the maintenance program to include safe life limits and inspection requirements for the HSTA. This new AD requires certain actions related to the trunnions and pins for the HSTA, revising the maintenance or inspection program, and removing certain airplanes from the applicability. This AD was prompted by a determination that not all affected attachment pins and trunnions were included in the inspections required by AD 2016-02-08, and that incorrect attachment hardware may have been used in replacements on certain airplanes. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective December 30, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 30, 2016.

**ADDRESSES:** For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; email [thd.crj@aero.bombardier.com](mailto:thd.crj@aero.bombardier.com); Internet <http://www.bombardier.com>. You may view

this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-7427.

#### **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-2016-7427; 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:**

Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228-7318; fax (516) 794-5531.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013-02-08, Amendment 39-17329 (78 FR 7647, February 4, 2013) ("AD 2013-02-08"). AD 2013-02-08 applied to all Bombardier, Inc. Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes. The NPRM published in the **Federal Register** on July 15, 2016 (81 FR 45992). The NPRM was prompted by a determination that not all affected attachment pins and trunnions were included in the required inspections. In addition, for certain airplanes on which the replacement in AD 2013-02-08 was done, incorrect attachment hardware may have been used. The NPRM proposed to require measuring the diameter of certain bolts and attach holes, and, as applicable, measuring the diameter of the attach holes in the trunnions and pins; doing detailed visual inspections of the trunnions, pins, and spacers; doing corrective actions; and re-identifying trunnions and pins. The NPRM also proposed to

require revising the maintenance or inspection program, and to remove certain airplanes from the applicability. We are issuing this AD to prevent failure of the attachment pins and trunnions of the HSTA. This condition could result in separation of the horizontal stabilizer, and consequent loss of control of the airplane.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2016-08, effective March 30, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes. The MCAI states:

After the issuance of [Canadian] AD CF-2011-45, it was discovered that the [Canadian] AD did not address all affected Horizontal Stabilizer Trim Actuator (HSTA) attachment pins and trunnions. In addition, it is possible that aeroplanes having incorporated the Initial issue or Revision A, of Bombardier Service Bulletin (SB) 601R-27-160 used incorrect attachment hardware to re-install the HSTA attachment pins or trunnions.

This [Canadian] AD mandates the inspection and rectification, as required, and the re-identification, as required, of the HSTA pins and trunnions and incorporation of a revised Airworthiness Limitation task.

The required actions include measuring the diameter of certain bolts and attach holes, and, as applicable, measuring the diameter of the attach holes in the trunnions and pins; doing detailed visual inspections of the trunnions, pins, and spacers; doing corrective actions; and re-identifying trunnions and pins. Corrective actions include replacing bolts, trunnions, pins, and spacers; increasing the diameter of the attach holes; and repairing trunnions and pins.

The required actions also include revising the maintenance or inspection program.

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-2016-7427.

#### Comments

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

#### Request for Acknowledgement of Previously Approved Method for Part Marking

Air Wisconsin Airlines (Air Wisconsin) requested that the

previously approved alternative method of compliance (AMOC) for part marking (re-identifying trunnions and pins) be acknowledged and approved for accomplishing the proposed re-identification of trunnions and pins. Air Wisconsin indicated that it has already performed the inspection and part marking on the parts as required by AD 2013-02-08 and marked the parts using a method approved by an AMOC.

We do not agree with the request. This AD does not retain the requirements of AD 2013-02-08 and instead requires new actions (measurements, inspections, corrective actions, and re-identification of parts). The new actions address all affected HSTA pins and trunnions and ensure that the correct attachment hardware is used for the re-installation of pins and trunnions. Existing AMOCs, including those that have part marking procedures, might not be acceptable for compliance with the requirements of this AD. We have made no changes to this final rule regarding this issue. However, under the provisions of paragraph (l)(1) of this AD, we may approve requests for alternative procedures if data are submitted to substantiate that those procedures would provide an acceptable level of safety.

#### Conclusion

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

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

#### Related Service Information Under 1 CFR Part 51

We reviewed the following service information:

- Bombardier Service Bulletin 601R-27-160, Revision D, dated October 22, 2015. The service information describes procedures for measuring the diameter of certain bolts and attach holes, and, as applicable, measuring the diameter of the attach holes in the trunnions and pins; doing detailed visual inspections of the trunnions, pins, and spacers; doing corrective actions; and re-identifying trunnions and pins.
- Bombardier CL-600-2B19 Airworthiness Requirements Temporary Revision 2B-2245, dated September 16, 2014. The service information describes

safe life limits for the HSTA trunnion support and attaching hardware.

- Bombardier CL-600-2B19 Airworthiness Requirements Temporary Revision 2B-2186, dated August 8, 2011. The service information describes an inspection of the upper and lower installation pins of the horizontal stabilizer pitch trim actuator.

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 489 airplanes of U.S. registry.

We estimate that it takes about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be \$332,520, or \$680 per product.

In addition, we estimate that any necessary follow-on actions take about 20 work-hours and require parts costing \$4,391, for a cost of \$6,091 per product. We have no way of determining the number of products that may need these actions.

#### 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) 2013–02–08, Amendment 39–17329 (78 FR 7647, February 4, 2013), and adding the following new AD:

**2016–23–07 Bombardier, Inc.:** Amendment 39–18714; Docket No. FAA–2016–7427; Directorate Identifier 2016–NM–041–AD.

#### (a) Effective Date

This AD is effective December 30, 2016

#### (b) Affected ADs

This AD replaces AD 2013–02–08, Amendment 39–17329 (78 FR 7647, February 4, 2013) (“AD 2013–02–08”).

#### (c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 through 8113 inclusive.

#### (d) Subject

Air Transport Association (ATA) of America Code 27: Flight controls.

#### (e) Reason

This AD was prompted by a determination that not all affected attachment pins and trunnions were included in the inspections required by AD 2013–02–08, and that incorrect attachment hardware may have been used in replacements on certain airplanes. We are issuing this AD to prevent failure of the attachment pins and trunnions of the horizontal stabilizer trim actuator (HSTA), which could result in separation of

the horizontal stabilizer, and consequent loss of control of the airplane.

#### (f) Compliance

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

#### (g) Inspection

(1) For airplanes on which the detailed inspection specified in Bombardier Service Bulletin 601R–27–160, dated September 29, 2011; or Bombardier Service Bulletin 601R–27–160, Revision A, dated October 3, 2012; has not been done as of the effective date of this AD: At the earliest of the times specified in paragraphs (g)(1)(i), (g)(1)(ii), and (g)(1)(iii) of this AD, measure the diameter of the bolts that attach the trunnions and pins; measure the diameter of the attach holes in the airplane structure, and, as applicable, measure the diameter of the attach holes in the trunnions and pins; do detailed visual inspections for gouges, scratches, and corrosion of the trunnions and pins; do detailed visual inspections for damage of the spacers; do corrective actions; and re-identify trunnions and pins; in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–160, Revision D, dated October 22, 2015; except as required by paragraph (h) of this AD. Do all applicable corrective actions before further flight.

(i) Within 5,000 flight hours after March 11, 2013 (the effective date of AD 2013–02–08).

(ii) Within 60 months after March 11, 2013 (the effective date of AD 2013–02–08).

(iii) Before the accumulation of 40,000 total flight cycles, or within 60 days after March 11, 2013 (the effective date of AD 2013–02–08), whichever occurs later.

(2) For airplanes on which the detailed inspection specified in Bombardier Service Bulletin 601R–27–160, dated September 29, 2011; or Bombardier Service Bulletin 601R–27–160, Revision A, dated October 3, 2012; has been done as of the effective date of this AD: Within 9,600 flight hours or 60 months after the effective date of this AD, whichever occurs first, measure the diameter of the bolts that attach the trunnions and pins; measure the diameter of the attach holes in the airplane structure, and, as applicable, measure the diameter of the attach holes in the trunnions and pins; do detailed visual inspections for gouges, scratches, and corrosion of the trunnions and pins; do detailed visual inspections for damage of the spacers; do corrective actions; and re-identify trunnions and pins; in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–160, Revision D, dated October 22, 2015, except as required by paragraph (h) of this AD. Do all applicable corrective actions before further flight.

#### (h) Exception to Service Information

Where Bombardier Service Bulletin 601R–27–160, Revision D, dated October 22, 2015, specifies to contact Bombardier for disposition, before further flight, repair in accordance with the requirements of paragraph (l)(2) of this AD.

#### (i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information identified in paragraphs (i)(1) and (i)(2) of this AD.

(1) Bombardier Service Bulletin 601R–27–160, Revision B, dated February 20, 2015.

(2) Bombardier Service Bulletin 601R–27–160, Revision C, dated May 3, 2015.

#### (j) Revision of Maintenance or Inspection Program

(1) Within 30 days after March 11, 2013 (the effective date of AD 2013–02–08), revise the maintenance or inspection program, as applicable, to incorporate the information specified in Bombardier CL–600–2B19 Airworthiness Requirements Temporary Revision 2B–2186, dated August 8, 2011. The compliance time for doing the initial inspection of the upper and lower installation pins of the horizontal stabilizer pitch trim actuator is before the accumulation of 40,000 landings or within 60 days after March 11, 2013, whichever occurs later.

(2) Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Bombardier CL–600–2B19 Airworthiness Requirements Temporary Revision 2B–2245, dated September 16, 2014. The compliance time for doing the initial replacement for the HSTA trunnion support and attaching hardware is before the accumulation of 80,000 landings or within 60 days after the effective date of this AD, whichever occurs later.

#### (k) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (j) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

#### (l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO, ANE-170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

#### (m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF-2016-08, effective March 30, 2016, 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-2016-7427.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(3) and (n)(4) of this AD.

#### (n) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 601R-27-160, Revision D, dated October 22, 2015.

(ii) Bombardier CL-600-2B19 Airworthiness Requirements Temporary Revision 2B-2245, dated September 16, 2014.

(iii) Bombardier CL-600-2B19 Airworthiness Requirements Temporary Revision 2B-2186, dated August 8, 2011.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; email [thd.crj@aero.bombardier.com](mailto:thd.crj@aero.bombardier.com); Internet <http://www.bombardier.com>.

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

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

Issued in Renton, Washington, on November 8, 2016.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016-27643 Filed 11-23-16; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2016-9281; Directorate Identifier 2016-SW-033-AD; Amendment 39-18717; AD 2016-23-10]

RIN 2120-AA64

#### Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for Sikorsky Aircraft Corporation Model S-76D helicopters. This AD requires revising the rotorcraft flight manual (RFM) to prohibit Barometric Altitude Hold (ALT) mode beyond a certain rate of climb or descent. This AD is prompted by a report of the autopilot being unable to maintain level flight during certain flight conditions. The actions specified by this AD are intended to prevent a significant pilot workload increase, pilot disorientation, and subsequent loss of control of the helicopter.

**DATES:** This AD becomes effective December 12, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of December 12, 2016.

We must receive comments on this AD by January 24, 2017.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.

- *Fax:* 202-493-2251.

- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### 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-2016-9281; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. The AD docket contains this AD, any incorporated-by-reference service information, the economic 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 service information identified in this final rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1-800-Winged-S or 203-416-4299; email: [wcs\\_cust\\_service\\_eng.gr-sik@lmco.com](mailto:wcs_cust_service_eng.gr-sik@lmco.com). You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-9281.

**FOR FURTHER INFORMATION CONTACT:** John Coffey, Flight Test Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238-7173; email [john.coffey@faa.gov](mailto:john.coffey@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, 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 them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

## Discussion

We are adopting a new AD for Sikorsky Aircraft Corporation Model S-76D helicopters. This AD requires revising the “Automatic Flight Control System” section of the RFM Limitations by inserting a limitation prohibiting the use of the ALT mode during a rate of climb or descent greater than 1,000 feet/minute (fpm). This AD is prompted by a report of the autopilot being unable to maintain level flight in certain flight conditions. To explore the report further, the FAA conducted additional flight tests, which revealed that when the helicopter is at density altitudes greater than 13,000 feet and the autopilot is commanding either a climb or descent at rates greater than 1,000 fpm, and the ALT HOLD mode is then engaged, the autopilot is unable to maintain level flight when large collective inputs are applied. These conditions saturate the stability augmentation system (SAS) actuators, subsequently providing insufficient control response during the collective input. As a result, the helicopter may experience a dynamic response with roll excursions greater than 50 degrees of bank angle and yaw excursions greater than 70 degrees of heading. This condition could result in a significant increase in pilot workload, pilot disorientation, and loss of control of the helicopter.

## FAA’s Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other helicopters of this same type design.

## Related Service Information Under 14 CFR Part 51

Sikorsky issued S-76D RFM SA S76D-RFM-000, Temporary Revision No. 7, approved May 19, 2016, which revises the Limitations section by prohibiting ALT mode during a rate of climb or descent greater than 1,000 fpm.

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.

## AD Requirements

This AD requires, within 10 hours time-in-service (TIS), revising the Limitations section of the RFM by inserting a limitation stating that ALT mode shall not be engaged with a rate of climb or descent greater than 1,000 fpm.

## Interim Action

We consider this AD to be an interim action. The design approval holder is planning to develop a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

## Costs of Compliance

We estimate that this AD will affect 12 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of \$85 per work-hour, revising the RFM will require 0.5 work-hour, for cost of about \$43 per helicopter and \$516 for the U.S. fleet.

## FAA’s Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the unsafe condition can adversely affect control of the helicopter, and the required corrective actions must be accomplished within 10 hours TIS.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days.

## 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, I certify that this AD:

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2016-23-10 Sikorsky Aircraft Corporation:**  
Amendment 39-18717; Docket No. FAA-2016-9281; Directorate Identifier 2016-SW-033-AD.

#### (a) Applicability

This AD applies to Model S-76D helicopters, certificated in any category.

#### (b) Unsafe Condition

This AD defines the unsafe condition as an inability of the autopilot to maintain level flight. This condition could result in a significant increase in pilot workload, pilot disorientation, and subsequent loss of control of the helicopter.

**(c) Effective Date**

This AD becomes effective December 12, 2016.

**(d) Compliance**

You are responsible for performing each action required by this AD within the

specified compliance time unless it has already been accomplished prior to that time.

**(e) Required Actions**

Within 10 hours time-in-service, revise Section 1 Limitations, "Automatic Flight Control System" section, of the Rotorcraft Flight Manual by one of the following methods:

(1) Insert Sikorsky S-76D SA S76D-RFM-000, Temporary Revision No. 7, approved May 19, 2016; or

(2) Insert a copy of this AD; or

(3) Make pen-and-ink changes to add the information in Figure 1 to paragraph (e) of this AD.

Barometric Altitude Hold (ALT) mode shall not be engaged with a rate of climb or descent greater than 1,000 fpm.

Figure 1 to Paragraph (e)

**(f) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: John Coffey, Flight Test Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238-7173; email [john.coffey@faa.gov](mailto:john.coffey@faa.gov).

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

**(g) Subject**

Joint Aircraft Service Component (JASC) Code: 2210, Autopilot System.

**(h) Material Incorporated by Reference**

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

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

(i) Sikorsky S-76D SA S76D-RFM-000, Temporary Revision No. 7, approved May 19, 2016.

(ii) Reserved.

(3) For Sikorsky service information identified in this AD, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1-800-Winged-S or 203-416-4299; email: [wcs\\_cust\\_service\\_eng\\_gr-sik@lmco.com](mailto:wcs_cust_service_eng_gr-sik@lmco.com).

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

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

Issued in Fort Worth, Texas, on November 4, 2016.

**Lance T. Gant,**

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016-27771 Filed 11-23-16; 8:45 am]

**BILLING CODE 4910-13-P**

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

[Docket No. FAA-2016-9396; Directorate Identifier 2016-SW-034-AD; Amendment 39-18712; AD 2016-23-05]

**RIN 2120-AA64**

**Airworthiness Directives; Airbus Helicopters (Previously Eurocopter France) Helicopters**

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are superseding Airworthiness Directive (AD) 2007-25-08 for Eurocopter France (now Airbus Helicopters) Model SA-365N1, AS-365N2, AS 365 N3, SA-366G1, EC 155B, and EC155B1 helicopters. AD 2007-25-08 required checking the tail rotor gearbox (TGB) oil, inspecting the magnetic plug, and either replacing the TGB or performing additional

inspections. This AD was prompted by reports of new occurrences of loss of yaw control due to failure of the control rod bearing. This AD requires checking the TGB oil level and replacing the bearing with a new part-numbered bearing. These actions are intended to detect and prevent damage to the bearing resulting in end play, loss of tail rotor pitch control, and subsequent loss of control of the helicopter.

**DATES:** This AD becomes effective December 12, 2016.

We must receive comments on this AD by January 24, 2017.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.
- *Fax:* 202-493-2251.

- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**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-2016-9396; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, the economic 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 service information identified in this final rule, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at <http://www.airbushelicopters.com/techpub>. You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, Texas 76177.

**FOR FURTHER INFORMATION CONTACT:**

David Hatfield, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5116; email [david.hatfield@faa.gov](mailto:david.hatfield@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, 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 them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

**Discussion**

On November 27, 2007, we issued AD 2007-25-08, Amendment 39-15290 (72 FR 69604, December 10, 2007) for Eurocopter France (now Airbus Helicopters) Model SA-365 N1, AS-365 N2, AS 365 N3, SA-366G1, EC 155B, and EC155B1 helicopters. AD 2007-25-08 required repetitively checking the TGB oil level to ensure it is at the maximum level. AD 2007-25-08 also

required repetitively inspecting the magnetic plug for chips, and depending on the quantity of chips found, either replacing the TGB or further inspecting for axial play in the spider. If axial play is found in the spider, AD 2007-25-08 required replacing the bearing. AD 2007-25-08 was prompted by AD No. 2006-0258R1-E, dated August 29, 2006, issued by EASA, which is the Technical Agent for the Member States of the European Union, as well as the finding that metal chips were not detected on the magnetic plug due to insufficient oil flow because the oil in the TGB was being maintained at the minimum level. The actions of AD 2007-25-08 were intended to detect metal chips on the magnetic plug and to prevent damage to the bearing resulting in end play, loss of tail rotor pitch control, and subsequent loss of control of the helicopter.

**Actions Since AD 2007-25-08 Was Issued**

After we issued AD 2007-25-08, we received reports of new occurrences of loss of yaw control due to failure of the control rod bearing and EASA superseded AD No. 2006-0258R1-E with several ADs, including AD No. 2012-0170R2, dated June 20, 2014, to correct an unsafe condition for these model helicopters. Therefore, we issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by removing AD 2007-25-08 and adding a new AD. The NPRM published in the **Federal Register** on September 2, 2015 (80 FR 53024). The NPRM proposed to retain the pilot checks of the TGB oil level and the magnetic plug inspections of AD 2007-25-08. The NPRM also proposed to revise the inspections for play in the double bearing to improve the detection of play, require replacing the TGB control shaft guide bushes, clarify the criteria concerning particle detection, and change the inspection for play in the double bearing after the guide bushes have been replaced.

On May 23, 2016, EASA issued Emergency AD No. 2016-0097-E, which superseded AD No. 2012 0170R2. EASA Emergency AD No. 2016-0097-E was subsequently revised by EASA AD No. 2016-0097R1, dated May 25, 2016, to correct a paragraph reference. EASA AD No. 2016-0097R1 advises that after AD No. 2012-0170R2 was issued, a technical investigation of an AS 365 N3 accident revealed a damaged TGB bearing. EASA further states that the affected control rod had been repetitively inspected as required by EASA AD 2012-0170R2, and that the investigation is still ongoing to determine the root cause of the damage and why the damage was not discovered

during previous inspections. EASA AD No. 2016-0097R1 requires repetitive inspections of the TGB oil level and magnetic chip detector. EASA AD No. 2016-0097R1 also requires replacing bearing part number (P/N) 704A33-651-093 or P/N 704A33-651-104, with an improved bearing, P/N 704A33-651-245 or 704A33-651-246, which is terminating action for the repetitive inspections of the magnetic chip detector but not of the oil level. The EASA AD also describes an alternative repetitive inspection for play that would defer replacing the bearing for an additional 110 hours TIS. Lastly, the EASA AD requires that helicopters with an improved bearing P/N 704A33-651-245 or 704A33-651-246 (identified as post-modification 07 65B57 configuration) replace the bearing at intervals not to exceed 500 hours TIS.

In light of EASA AD No. 2016-0097R1 and the corrective actions required by this final rule, we are issuing a separate action to withdraw the NPRM (80 FR 53024, September 2, 2015).

**FAA's Determination**

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are issuing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

**Related Service Information**

We reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS365-01.00.67, Revision 0, dated May 4, 2016, for FAA type-certificated Model SA-365N1, AS-365N2, and AS 365 N3 helicopters and for non-FAA type-certificated Model AS365F, Fi, and K helicopters; ASB No. EC155-04A014, Revision 0, dated May 4, 2016, for FAA type-certificated Model EC 155B and EC155B1 helicopters; and ASB No. SA366-01.29, Revision 0, dated May 4, 2016, for FAA type-certificated Model SA-366G1 and non-FAA type-certificated Model SA-366GA helicopters. Each ASB describes procedures for ensuring the TGB oil level is at maximum capacity; reducing the inspection interval for the TGB magnetic plug pending initial replacement of the bearing; removing the control rod assembly to inspect the bearing; and periodically replacing the bearing.

## AD Requirements

This AD applies to the affected model helicopters with bearing P/N 704A33-651-093 or P/N 704A33-651-104 and requires:

- Checking the TGB oil level at specified intervals. An owner/operator (pilot) may perform this visual check and must enter compliance into the helicopter maintenance records in accordance with 14 CFR 43.9(a)(1) through (4) and 91.417(a)(2)(v). A pilot may perform this check because it involves only a visual check for the oil level in the TGB and can be performed equally well by a pilot or a mechanic. This check is an exception to our standard maintenance regulations.
- Replacing the bearing part number (P/N) 704A33-651-093 or P/N 704A33-651-104 with a bearing, P/N 704A33-651-245 or 704A33-651-246.

This AD also prohibits installing bearing P/N 704A33-651-093 or P/N 704A33-651-104 on any helicopter.

## Differences Between This AD and the EASA AD

The EASA AD requires replacing bearing P/N 704A33-651-093 and P/N 704A33-651-104 that have 335 or more hours TIS within 15 hours TIS; this AD requires replacing these bearings within 15 hours TIS regardless of the amount of time the bearing has accumulated. The EASA AD requires a repetitive TGB magnetic chip detector inspection, while this AD does not. The EASA AD allows an alternative repetitive inspection for play to defer replacing the bearing for an additional 110 hours TIS, while this AD does not. Lastly, the EASA AD requires replacing the improved bearing at intervals of 500 hours TIS; an AD for this action is not necessary because it is specified in the manufacturer's Instructions for Continued Airworthiness, and therefore mandated by other regulatory requirements.

## Costs of Compliance

We estimate that this AD affects 43 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of \$85, checking the TGB oil level will require about 0.5 work-hour, for a cost per helicopter of \$43 and a total cost of \$1,849 for the fleet, per inspection cycle. Replacing the bearing will require 16 work-hours and parts costing \$1,125, for a total cost of \$2,485 per helicopter and \$106,855 for the fleet.

## FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the initial inspections required by this AD must be accomplished before further flight, and the bearings must be replaced within 15 hours TIS, a very short interval for these model helicopters.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in less than 30 days.

## 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, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2007-25-08, Amendment 39-15290 (72 FR 69604, December 10, 2007), and adding the following new airworthiness directive (AD):

**2016-23-05 Airbus Helicopters (Previously Eurocopter France):** Amendment 39-18712; Docket No. FAA-2016-9396; Directorate Identifier 2016-SW-034-AD.

### (a) Applicability

This AD applies to Model SA-365N1, AS-365N2, AS 365 N3, SA-366G1, EC 155B, and EC155B1 helicopters with a tail rotor gearbox (TGB) pitch control rod assembly double bearing (bearing) part number (P/N) 704A33-651-093 or P/N 704A33-651-104 installed, certificated in any category.

### (b) Unsafe Condition

This AD defines the unsafe condition as damage to the bearing, which could result in end play, loss of tail rotor pitch control, and subsequent loss of control of the helicopter.

### (c) Affected ADs

This AD supersedes AD 2007-25-08, Amendment 39-15290 (72 FR 69604, December 10, 2007).

### (d) Effective Date

This AD becomes effective December 12, 2016.

### (e) Compliance

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

**(f) Required Actions**

(1) Before further flight and thereafter at the following intervals, check the TGB oil level:

(i) For Model SA-365N1, AS-365N2, and AS 365 N3 helicopters, at intervals not to exceed 10 hours time-in-service (TIS).

(ii) For Model SA366G1 helicopters, before the first flight of each day.

(iii) For Model EC 155B and EC155B1 helicopters, at intervals not to exceed 15 hours TIS.

(iv) The actions required by paragraph (f)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 (a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(2) If the oil level is not at maximum, before further flight, a qualified mechanic must fill it to the maximum level.

(3) Within 15 hours TIS, replace the bearing P/N 704A33-651-093 or P/N 704A33-651-104 with a bearing P/N 704A33-651-245 or P/N 704A33-651-246.

(4) Do not install bearing P/N 704A33-651-093 or P/N 704A33-651-104 on any helicopter.

**(g) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: David Hatfield, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5116; email [9-ASW-FTW-AMOC-Requests@faa.gov](mailto:9-ASW-FTW-AMOC-Requests@faa.gov).

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

**(h) Additional Information**

(1) Airbus Helicopters Alert Service Bulletin No. AS365-01.00.67, No. EC155-04A014, and No. SA366-01.29, each Revision 0 and dated May 4, 2016, which are not incorporated by reference, contain additional information about the subject of this final rule. For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at <http://www.airbushelicopters.com/techpub>. You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N-321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2016-0097R1, dated May 25, 2016. You may view the EASA AD on the Internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA-2016-9396.

**(i) Subject**

Joint Aircraft Service Component (JASC)  
Code: 6520 Tail Rotor Gearbox.

Issued in Fort Worth, Texas, on November 2, 2016.

**Lance T. Gant,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2016-27638 Filed 11-23-16; 8:45 am]

**BILLING CODE 4910-13-P**

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

**[Docket No. FAA-2015-5809; Directorate Identifier 2015-NM-055-AD; Amendment 39-18709; AD 2016-23-02]**

**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) 2006-19-12 for certain The Boeing Company Model 777-200 and -300 series airplanes. AD 2006-19-12 required inspecting the lower web of the aft fairing of the engine struts for any discoloration, and doing related investigative and corrective actions if necessary; inspecting the heat shield castings for any damage and doing corrective action if necessary; installing gap cover strips; and replacing insulation blankets with new insulation blankets. This new AD retains those requirements and also requires, depending on airplane configuration, one-time or repetitive detailed inspections for cracking and deformation, as applicable, of the aft fairing lower structure, and one-time or repetitive conductivity inspections of the aft fairing lower structure, and related investigative and corrective actions if necessary. This new AD also adds airplanes to the applicability. This AD was prompted by a report that an aft fairing lower spar web exceeded the allowable conductivity limits. We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective December 30, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 30, 2016.

The Director of the Federal Register approved the incorporation by reference

of a certain other publication listed in this AD as of October 30, 2006 (71 FR 55727, September 25, 2006).

**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-2015-5809.

**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-2015-5809; 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; telephone: 425-917-6438; fax: 425-917-6590; email: [suzanne.lucier@faa.gov](mailto:suzanne.lucier@faa.gov).

**SUPPLEMENTARY INFORMATION:****Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2006-19-12, Amendment 39-14769 (71 FR 55727, September 25, 2006) ("AD 2006-19-12"). AD 2006-19-12 applied to certain Boeing Model 777-200 and -300 series airplanes. The NPRM published in the **Federal Register** on November 20, 2015 (80 FR 72621) ("the NPRM"). The NPRM was prompted by a report that an aft fairing lower spar web exceeded the allowable conductivity limits. The NPRM proposed to continue to require inspecting the lower web of the aft fairing of the engine struts for any

discoloration, and doing related investigative and corrective actions if necessary; inspecting the heat shield castings for any damage and doing corrective action if necessary; installing gap cover strips; and replacing insulation blankets with new insulation blankets. The NPRM also proposed to require, depending on airplane configuration, one-time or repetitive detailed inspections for cracking and deformation, as applicable, of the aft fairing lower structure; one-time or repetitive conductivity inspections of the aft fairing lower structure; and related investigative and corrective actions if necessary. The NPRM also added airplanes to the applicability. We are issuing this AD to detect and correct degradation of the aft fairing lower web, which could lead to cracking of the web and could allow flammable fluids to leak into the heat shield pan castings, and increase the risk of an uncontained fire and subsequent structural damage.

#### 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 Exclude a Certain Line Number From the Applicability

Boeing requested that we exclude line number (L/N) 940 from the applicability of the proposed AD. Boeing stated that the effectivity of Boeing Service Bulletin 777-54-0026, Revision 2, dated January 5, 2012; and Boeing Special Attention Service Bulletin 777-54-0038, dated March 6, 2015; erroneously included L/N 940.

Boeing commented that a modification (installation of new gap cover strip fillers, new Velcro strips, and improved aft fairing insulation blankets) was introduced in production starting on L/N 940. Boeing noted that Boeing Service Bulletin 777-54-0026, Revision 2, dated January 5, 2012, which is an optional terminating action in the proposed AD, specifies procedures for that modification. Boeing stated that, therefore, the proposed AD would mandate that the service information be accomplished for L/N 940 even though the optional terminating action was already incorporated in production. Boeing commented that since the terminating action was incorporated in production for L/N 940, the unsafe condition stated in the proposed AD does not exist and the one-time inspection using Boeing Special Attention Service Bulletin 777-54-0038, dated March 6, 2015, is not required for that airplane.

We agree with the commenter's request. Since L/N 940 already has the terminating action incorporated during the airplane's production, we have excluded L/N 940 from the applicability in paragraph (c) of this AD.

#### Request To Change the Compliance Time

Boeing requested that we change the compliance time in paragraph (j) of the proposed AD from "24 months after the effective date of this AD" to "750 days after the effective date of this AD." Boeing stated that the compliance time of 750 days aligns with the proposed compliance time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777-54-0038, dated March 6, 2015.

We disagree with the commenter's request. The compliance time is expressed in months for ease of compliance time awareness. We converted days to months, and 750 days is equivalent to 24 months. We have not changed this AD in this regard.

#### Request To Revise Inspection Language for Clarity

Boeing requested that we revise paragraph (j) of the proposed AD to clarify that the detailed inspections of the aft fairing lower structure are intended to detect cracks and deformation, and the conductivity inspections of the aft fairing lower structure are intended to detect thermal degradation of the structure.

We agree with the commenter's request. We have revised paragraph (j) of this AD accordingly.

#### Request To Address and Clarify Compliance for Certain Airplane Groups

Air New Zealand requested that we clearly address compliance for certain airplane groups. Air New Zealand commented that we have not clearly addressed compliance in the proposed AD for Group 1, Configurations 2 and 4, airplanes; and Group 2, Configuration 2, airplanes. Air New Zealand stated it has airplanes that have accomplished the actions in Boeing Service Bulletin 777-54-0026, dated March 29, 2011; and Boeing Service Bulletin 777-54-0026, Revision 1, dated August 23, 2011; but have yet to accomplish the actions in Boeing Special Attention Service Bulletin 777-54-0038, dated March 6, 2015. Air New Zealand stated that if Boeing Service Bulletin 777-54-0026, dated March 29, 2011; Boeing Service Bulletin 777-54-0026, Revision 1, dated August 23, 2011; or Boeing Service Bulletin 777-54-0026, Revision 2, dated January 5, 2012; have been

accomplished, the terminating action in paragraph (k) of the proposed AD is achieved by accomplishing Boeing Special Attention Service Bulletin 777-54-0038, dated March 6, 2015.

We partially agree with the commenter. We agree to clarify the airplane configurations to make the compliance requirements in paragraphs (j) and (k) of this AD easier to understand and follow.

Although paragraph (j) of the proposed AD did not explicitly state the various configurations and groups for the initial inspection, it was intended that the initial inspection would be done for all airplanes and that the repetitive inspections would apply only to the configurations identified in paragraph (j) of the proposed AD in the sentence that specifies to do repetitive inspections.

In paragraph (j)(1) of this AD, we have specified that the initial detailed inspections must be done for all configurations, including associated groups, within 24 months after the effective date of this AD. In paragraph (j)(2) of this AD, we have specified that repetitive inspections must be done (until the terminating action specified in paragraph (k) of this AD is done) for airplanes that belong to Group 1, Configurations 1 and 3, and for Group 2, Configuration 1, airplanes identified in Boeing Special Attention Service Bulletin 777-54-0038, dated March 6, 2015.

For Group 1, Configurations 2 and 4, airplanes, and Group 2, Configuration 2, airplanes identified in Boeing Special Attention Service Bulletin 777-54-0038, dated March 6, 2015, operators do not need to do the repetitive inspections on those airplanes. For those airplanes, the actions specified in Boeing Service Bulletin 777-54-0026 would have already been done and only the initial inspection required by paragraph (j)(1) of this AD would need to be done. Note that those airplanes are listed in table 2 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777-54-0038, dated March 6, 2015, which does not specify repetitive inspections.

We have modified paragraph (j) of this AD to clarify the airplane configurations by identifying which groups are affected. We have also modified paragraph (k) of this AD to accommodate the changes in paragraph (j) of this AD.

#### Request To Use Boeing Information Notice

Air New Zealand requested that we add Boeing Information Notice (IN) 777-54-0038, IN 01, dated December

10, 2015 (“Boeing IN 777–54–0038”), to paragraph (j) of the proposed AD. Air New Zealand stated that the information notice shows the required parts needed to accomplish Boeing Special Attention Service Bulletin 777–54–0038, dated March 6, 2015.

We acknowledge the intent of the commenter’s request. However, the parts identified in Boeing IN 777–54–0038 do not affect the unsafe condition or the requirements of this AD as Boeing IN 777–54–0038 contains interchangeability information and the alternate parts are not required. Therefore, operators can comply with paragraph (j) of this AD by accomplishing the actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–54–0038, dated March 6, 2015. In addition, it is not appropriate to cite Boeing INs as sources of service information in ADs because INs are not FAA-approved documents. We have not changed this final rule in this regard.

**Request To Clarify Required Actions**

Air New Zealand requested that we clarify the required actions in the proposed AD. Air New Zealand stated that it has airplanes on which the actions in Boeing Service Bulletin 777–54–0026, dated March 29, 2011; Boeing Service Bulletin 777–54–0026, Revision 1, dated August 23, 2011; or Boeing Service Bulletin 777–54–0026, Revision 2, dated January 5, 2012; has been accomplished, but the actions in Boeing Special Attention Service Bulletin 777–54–0038, dated March 6, 2015, have not been accomplished. Air New Zealand stated that it thinks if Boeing Service Bulletin 777–54–0026 has been previously complied with, terminating action is achieved once Boeing Special Attention Service Bulletin 777–54–0038, dated March 6, 2015, is accomplished.

We agree to clarify the actions in this AD. We infer Air New Zealand is

requesting credit for having done Boeing Service Bulletin 777–54–0026, dated March 29, 2011; or Boeing Service Bulletin 777–54–0026, Revision 1, dated August 23, 2011. Paragraph (k) of this AD describes terminating action for paragraph (j)(2) of this AD and refers to Boeing Service Bulletin 777–54–0026, Revision 2, dated January 5, 2012. We have added a new paragraph (l) to this AD to give credit for prior accomplishment of the actions in Boeing Service Bulletin 777–54–0026, dated March 29, 2011; and Boeing Service Bulletin 777–54–0026, Revision 1, dated August 23, 2011. We have redesignated the subsequent paragraphs accordingly.

**Request To Clarify the Word “New” in the Proposed AD**

Boeing requested that we revise the Related Service Information under 1 CFR part 51 paragraph of the NPRM and paragraph (k) of the proposed AD to replace the words “new aft fairing insulation blankets” with “improved aft fairing insulation blankets with new batting material.” Boeing stated that the insulation blankets specified in Boeing Service Bulletin 777–54–0026, Revision 2, dated January 5, 2012, have improved thermal protection properties to the insulation blankets, as specified in Boeing Special Attention Service Bulletin 777–54–0021, Revision 1, dated March 16, 2006, due to being made from different materials. Boeing stated that, therefore, to avoid confusion between paragraphs (g)(4) and (k) of the proposed AD when referring to “new” insulation blankets, the distinction needs to be made.

We agree with the commenter’s request. We have changed this final rule 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 Service Bulletin 777–54–0026, Revision 2, dated January 5, 2012. The service information describes procedures for a detailed inspection of the gap cover strips and heat shield pan castings for damage, corrective actions, and installation of new gap cover strip fillers, new Velcro strips, and improved aft fairing insulation blankets with new batting material.

We also reviewed Boeing Special Attention Service Bulletin 777–54–0038, dated March 6, 2015. The service information describes procedures for one-time and repetitive detailed inspections for any cracking and deformation, as applicable, of the aft fairing lower structure; conductivity inspections of the aft fairing lower structure; 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 99 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 and other actions [retained actions from AD 2006–19–12].	Up to 11 work-hours × \$85 per hour = \$935, depending on airplane configuration.	Up to \$16,179, depending on airplane configuration.	Up to \$17,114, depending on airplane configuration.	Up to \$1,694,286, depending on airplane configuration.
Inspections [new action]	Up to 24 work-hours × \$85 per hour = \$2,040, depending on airplane configuration.	\$0 .....	Up to \$2,040, depending on airplane configuration.	Up to \$201,960, depending on airplane configuration.

We estimate the following costs to do any necessary related investigative and corrective actions that will be required

based on the results of the inspection. We have no way of determining the

number of aircraft that might need these inspections and replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Related investigative actions ...	Up to 36 work-hours × \$85 per hour = \$3,060, depending on airplane configuration.	\$0	Up to \$3,060, depending on airplane configuration.
Corrective actions .....	Up to 38 work-hours × \$85 per hour = \$3,230, depending on airplane configuration.	\$0	Up to \$3,230, depending on airplane configuration.

According to the manufacturer, all 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**

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) 2006–19–12, Amendment 39–14769 (71 FR 55727, September 25, 2006), and adding the following new AD:

**2016–23–02 The Boeing Company:**  
Amendment 39–18709; Docket No. FAA–2015–5809; Directorate Identifier 2015–NM–055–AD.

**(a) Effective Date**

This AD is effective December 30, 2016.

**(b) Affected ADs**

This AD replaces AD 2006–19–12, Amendment 39–14769 (71 FR 55727, September 25, 2006) (“AD 2006–19–12”).

**(c) Applicability**

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certified in any category, as identified in Boeing Special Attention Service Bulletin 777–54–0038, dated March 6, 2015; except for line number 940.

**(d) Subject**

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

**(e) Unsafe Condition**

This AD was prompted by a report that an aft fairing lower spar web exceeded the allowable conductivity limits. An investigation concluded that wear to the pan casting and gap cover strips allowed increased heat into the aft fairing heat shield cavity. We are issuing this AD to detect and correct degradation of the aft fairing lower web, which could lead to cracking of the web and could allow flammable fluids to leak into

the heat shield pan castings, and increase the risk of an uncontained fire and subsequent structural damage.

**(f) Compliance**

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

**(g) Retained Inspection, Installation, and Replacement Actions, With No Changes**

This paragraph restates the actions required by paragraph (f) of AD 2006–19–12, with no changes. For Model 777–200 and –300 series airplanes identified in Boeing Special Attention Service Bulletin 777–54–0021, Revision 1, dated March 16, 2006: Except as provided by paragraph (h) of this AD, within 12 months after October 30, 2006 (the effective date of AD 2006–19–12), do the actions specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–54–0021, Revision 1, dated March 16, 2006.

(1) Do a general visual inspection of the lower web of the aft fairing for any discoloration and do any related investigative action.

(2) Do a general visual inspection of the heat shield castings for any damage (crack(s), dent(s), gouge(s), warpage, fretting, or missing/loose nutplates).

(3) Install gap cover strips on the heat shield pans.

(4) Replace insulation blankets on the heat shield pans with new insulation blankets.

**(h) Retained Repair Instructions, With No Changes**

This paragraph restates the actions required by paragraph (g) of AD 2006–19–12, with no changes. If any damage, discoloration, heat damage, or crack is found during any inspection required by paragraph (g) of this AD: Before further flight, do all applicable corrective actions, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–54–0021, Revision 1, dated March 16, 2006.

**(i) Retained Credit for Previous Actions, With Revised Format**

This paragraph restates the credit provided by paragraph (h) of AD 2006–19–12, with a revised format. This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before October 30, 2006 (the effective date of AD 2006–19–12), using Boeing Special

Attention Service Bulletin 777-54-0021, dated June 23, 2005, except where Boeing Special Attention Service Bulletin 777-54-0021, dated June 23, 2005, does not provide an international annealed copper standard (IACS) value for determining the results of the inspection for heat damage, the maximum acceptable IACS value is 42 percent.

**(j) New Requirements: Detailed and Conductivity Inspections and Related Investigative and Corrective Actions (Repetitive Inspections for Certain Airplanes)**

(1) For Group 1, Configurations 1, 2, 3, and 4, airplanes; and Group 2, Configurations 1 and 2, airplanes; identified in Boeing Special Attention Service Bulletin 777-54-0038, dated March 6, 2015: Within 24 months after the effective date of this AD, do a detailed inspection of the aft fairing lower structure for any cracking and deformation, and do a conductivity inspection of the aft fairing lower structure for the IACS value (thermal degradation indication), as applicable, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-54-0038, dated March 6, 2015. Do all applicable related investigative and corrective actions before further flight.

(2) For Group 1, Configurations 1 and 3, airplanes, and Group 2, Configuration 1, airplanes, identified in Boeing Special Attention Service Bulletin 777-54-0038, dated March 6, 2015: Repeat the inspections specified in paragraph (j)(1) of this AD thereafter at intervals not to exceed 24 months until the terminating action specified in paragraph (k) of this AD is done.

**(k) Optional Terminating Action**

Accomplishing a detailed inspection of the gap cover strips and heat shield pan castings for damage and applicable corrective actions, and installation of new gap cover strip fillers, new Velcro strips, and improved aft fairing insulation blankets with new batting material, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777-54-0026, Revision 2, dated January 5, 2012, prior to or concurrently with accomplishing detailed and conductivity inspections and all applicable related investigative and corrective actions required by paragraph (j)(1) of this AD, terminates the repetitive inspections specified in paragraph (j)(2) of this AD; except, where Boeing Service Bulletin 777-54-0026, Revision 2, dated January 5, 2012, specifies to contact the manufacturer, repair using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

**(l) Credit for Previous Actions**

This paragraph provides credit for the actions specified in paragraph (k) of this AD that are identified in Boeing Service Bulletin 777-54-0026, Revision 2, dated January 5, 2012, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 777-54-0026, dated March 29, 2011; or Boeing Service Bulletin 777-54-0026, Revision 1, dated August 23, 2011.

**(m) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (n)(1) of this AD. Information may be emailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto: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 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. For a repair method to be approved, the repair must meet the certification basis of airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2006-19-12 are approved as AMOCs for the corresponding provisions of paragraphs (g), (h), and (i) of this AD.

(5) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (m)(5)(i) and (m)(5)(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. If a step or substep is labeled "RC Exempt," then the RC requirement is removed from that step or substep. 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.

**(n) 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; telephone: 425-917-6438; fax: 425-917-6590; email: [suzanne.lucier@faa.gov](mailto:suzanne.lucier@faa.gov).

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

**(o) 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 December 30, 2016.

(i) Boeing Service Bulletin 777-54-0026, Revision 2, dated January 5, 2012.

(ii) Boeing Special Attention Service Bulletin 777-54-0038, dated March 6, 2015.

(4) The following service information was approved for IBR on October 30, 2006, Amendment 39-14769 (71 FR 55727, September 25, 2006).

(i) Boeing Special Attention Service Bulletin 777-54-0021, Revision 1, dated March 16, 2006.

(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 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 October 28, 2016.

**Dionne Palermo,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016-26809 Filed 11-23-16; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA-2016-6413; Airspace Docket No. 16-AWP-11]**

**Establishment of Class E Airspace, Silver Springs, NV**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace extending upward from 700 feet above the surface at Silver Springs Airport, Silver Springs, NV. The FAA found establishment of airspace necessary for the safety and management of Instrument Flight Rules (IFR) operations under new Area Navigation (RNAV) Standard Instrument Approach Procedures at the airport.

**DATES:** Effective 0901 UTC, March 2, 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 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at [http://www.faa.gov/air\\_traffic/publications/](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 this material at NARA, call 202-741-6030, or go to [http://www.archives.gov/federal-register/code\\_of\\_federal-regulations/ibr\\_locations.html](http://www.archives.gov/federal-register/code_of_federal-regulations/ibr_locations.html).

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**FOR FURTHER INFORMATION CONTACT:** Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203-4511.

**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 establishes controlled airspace at Silver Springs Airport, Silver Springs, NV.

**History**

On August 25, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at Silver Springs Municipal Airport, Silver Springs, NV (81 FR 58416) Docket No. FAA-2016-6413. 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 7400.11A, dated August 3, 2016, and effective September 15, 2016, 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 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A 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 establishes Class E airspace extending upward from 700 feet above the surface within a 2-mile radius of Silver Springs Airport, Silver Springs, NV, with segments extending from the 2-mile radius to 9 miles northeast, and 7.5 miles northeast of the airport. This airspace is established to accommodate new RNAV (GPS) standard instrument approach procedures developed for the airport.

**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 5-6.5a. 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 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

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

\* \* \* \* \*

**AWP NV E5 Silver Springs, NV [New]**

Silver Springs Airport, NV (Lat. 39°24'11" N., long. 119°15'04" W.)

That airspace extending upward from 700 feet above the surface within a 2-mile radius of Silver Springs Airport, and that airspace 2 miles either side of the 69° bearing from the 2-mile radius to 9 miles northeast of the airport, and that airspace 1.5 miles either side of the 60° bearing from the 2-mile radius to 7.5 miles northeast of the airport.

Issued in Seattle, Washington, on November 16, 2016.

**Tracey Johnson,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2016-28277 Filed 11-23-16; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2016–8827; Airspace  
Docket No. 16–ASW–12]

**Amendment of Amendment of Class D  
and E Airspace for the Following Texas  
Towns; Georgetown, TX; Corpus  
Christi, TX; Dallas/Fort Worth, TX;  
Gainesville, TX; Graford, TX;  
Hebbronville, TX; and Jasper, TX**

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class D airspace at Georgetown Municipal Airport, Georgetown, TX, and Class E airspace extending upward from 700 feet above the surface at Rockport Aransas County Airport, Corpus Christi, TX; Lancaster Airport, Dallas/Fort Worth, TX; Gainesville Municipal Airport, Gainesville, TX; Georgetown Municipal Airport, Georgetown, TX; (Hebbronville, TX) O.S. Wyatt Airport, Realitos, TX; and Jasper County-Bell Field, Jasper, TX. Decommissioning of non-directional radio beacons (NDB), cancellation of NDB approaches, and implementation of area navigation (RNAV) procedures have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above airports. This action also updates the geographic coordinates for Corpus Christi International Airport; the Corpus Christi VORTAC; Aransas County Airport, Rockport, TX; Nueces County Airport, Robstown, TX; Dallas/Fort Worth International Airport, Dallas/Fort Worth, TX; McKinney National Airport, McKinney, TX; Lancaster Airport; Bourland Field Airport, Fort Worth, TX; Jasper County-Bell Field; and Alfred C. ‘Bubba’ Thomas (formerly San Patricio County Airport), Sinton, TX, to coincide with the FAA’s aeronautical database. Also, the names of McCampbell-Porter Airport (formerly T.P. McCampbell Airport); McKinney National Airport (formerly Collin County Regional Airport); Ralph M. Hall/Rockwall Municipal Airport (formerly Rockwall Municipal Airport); and Alfred C. ‘Bubba’ Thomas (formerly San Patricio County Airport) are being updated to coincide with the FAA’s aeronautical database.

**DATES:** Effective 0901 UTC, March 2, 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 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](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 7400.11A at NARA, call 202–741–6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

FAA Order 7400.11A, 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 modifies Class D airspace at Georgetown Municipal Airport, Georgetown, TX; and modifies Class E airspace extending upward from 700 feet above the surface at Rockport Aransas County Airport, Corpus Christi, TX; Lancaster Airport, Dallas/Fort Worth, TX; Gainesville Municipal Airport, Gainesville, TX; Georgetown Municipal Airport, Georgetown, TX; O.S. Wyatt Airport, Realitos, TX; Jasper County-Bell Field, Jasper, TX.

**History**

On September 8, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM),

(81 FR 62041) Docket No. FAA–2016–8827, to modify Class D airspace at Georgetown Municipal Airport, Georgetown, TX; and Class E airspace extending upward from 700 feet above the surface at Rockport Aransas County Airport, Corpus Christi, TX; Lancaster Airport, Dallas/Fort Worth, TX; Gainesville Municipal Airport, Gainesville, TX; Georgetown Municipal Airport, Georgetown, TX; O.S. Wyatt Airport, Realitos, TX; Jasper County-Bell Field, Jasper, TX.

Subsequent to publication, the FAA discovered that the geographic coordinates for and name of San Patricio County Airport, Sinton, TX, were updated to Alfred C. ‘Bubba’ Thomas Airport, Sinton, TX. Also updated subsequent to publication were the geographic coordinates for Corpus Christi International Airport, Corpus Christi, TX. These have been updated in this action to coincide with the FAA’s aeronautical database.

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 D and E airspace designations are published in paragraph 5000, 6002, 6003, and 6005, respectively, of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class D and 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 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A 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 D airspace within a 4.1-mile radius (reduced from a 5-mile radius) of Georgetown Municipal Airport, Georgetown, TX;

Class E airspace extending upward from 700 feet above the surface at Corpus Christi, TX;

Within a 6.6-mile radius (reduced from a 7.6-mile radius) of Aransas County Airport, Rockport, TX, with

extensions to the north of the airport from the 6.6-mile radius to 10 miles, to the southeast of the airport from the 6.6-mile radius to 10 miles, to the south of the airport from the 6.6-mile radius to 10 miles, and to the northwest of the airport from the 6.6-mile radius to 10 miles, and updating the geographic coordinates of Corpus Christi International Airport (also located in Class E extension airspace), Nueces County Airport, Robstown, TX, and the name of McCampbell-Porter Airport (formerly T.P. McCampbell Airport) to coincide with the FAA's aeronautical database. The geographic coordinates for the Corpus Christi VORTAC, and the geographic coordinates and name of Alfred C. 'Bubba' Thomas (formerly San Patricio County Airport), listed for Sinton, TX, are also updated to coincide with the FAA's aeronautical database.

Class E airspace extending upward from 700 feet above the surface at Dallas/Fort Worth, TX;

Within a 6.6-mile radius (increased from a 6.5-mile radius) of the Lancaster Airport, Lancaster, TX, with an extension southeast of the airport from the 6.6-mile radius to 9.2 miles and updating the geographic coordinates of the airport;

By updating the geographic coordinates of Dallas/Fort Worth International Airport, McKinney National Airport, and Bourland Field Airport, and the names of McKinney National Airport (formerly Collin County Regional Airport) and Ralph M. Hall/Rockwall Municipal Airport (formerly Rockwall Municipal Airport) to coincide with the FAA's aeronautical database;

By removing the 10.4-mile segment extending from the 6.6-mile radius of Gainesville Municipal Airport, Gainesville, TX;

Within a 6.6-mile radius (increased from a 6.5-mile radius) of Georgetown Municipal Airport, Georgetown, TX, with extensions to the northwest of the airport from the 6.6-mile radius to 9.8 miles, and to the north of the airport from the 6.6-mile radius to 10.4 miles.

Class E airspace extending upward from 700 feet above the surface at Hebronville, TX; Within a 6.5-mile radius (reduced from a 6.9-mile radius) of O.S. Wyatt Airport, Realitos, TX;

And within a 6.6-mile radius (increased from a 6.5-mile radius) of Jasper County-Bell Field, Jasper, TX, with an extension to the north of the airport from the 6.6-mile radius to 6.7 miles, and updating the geographic

coordinates of the airport to coincide with the FAA's aeronautical database.

Airspace reconfiguration is necessary due to the decommissioning of NDBs, cancellation of NDB approaches, and implementation of RNAV procedures at these airports 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 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

*Paragraph 5000 Class D Airspace*  
\* \* \* \* \*

**ASW TX D Georgetown, TX [Amended]**

Georgetown Municipal Airport, Texas (Lat. 30°40'44" N., long. 97°40'46" W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.1-mile radius of Georgetown Municipal Airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

\* \* \* \* \*

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*  
\* \* \* \* \*

**ASW TX E2 Rockport, TX [Amended]**

Aransas County Airport, TX (Lat. 28°05'10" N., long. 97°02'37" W.)

That airspace extending upward from the surface within a 4.1-mile radius of Aransas County Airport.

\* \* \* \* \*

*Paragraph 6003 Class E Airspace Areas Designated as an Extension.*  
\* \* \* \* \*

**ASW TX E3 Corpus Christi, TX [Amended]**

Corpus Christi International Airport, TX (Lat. 27°46'20" N., long. 97°30'09" W.)

Corpus Christi VORTAC (Lat. 27°54'14" N., long. 97°26'42" W.)

That airspace extending upward from the surface within 1.3 miles each side of the 200° radial of the Corpus Christi VORTAC extending from a 5-mile radius of Corpus Christi International Airport to 6.4 miles north of the airport.

\* \* \* \* \*

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

**ASW TX E5 Corpus Christi, TX [Amended]**

Corpus Christi International Airport, TX (Lat. 27°46'20" N., long. 97°30'09" W.)

Corpus Christi NAS/Truax Field, TX (Lat. 27°41'34" N., long. 97°17'25" W.)

Port Aransas, Mustang Beach Airport, TX (Lat. 27°48'43" N., long. 97°05'20" W.)

Rockport, San Jose Island Airport, TX (Lat. 27°56'40" N., long. 96°59'06" W.)

Rockport, Aransas County Airport, TX (Lat. 28°05'10" N., long. 97°02'37" W.)

Ingleside, McCampbell-Porter Airport, TX (Lat. 27°54'47" N., long. 97°12'41" W.)

Robstown, Nueces County Airport, TX (Lat. 27°46'41" N., long. 97°41'24" W.)

## Corpus Christi VORTAC, TX

(Lat. 27°54'14" N., long. 97°26'42" W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Corpus Christi International Airport and within 1.4 miles each side of the 200° radial of the Corpus Christi VORTAC extending from the 7.5-mile radius to 8.5 miles north of the airport, and within 1.5 miles each side of the 316° bearing from Corpus Christi International Airport extending from the 7.5-mile radius to 10.1 miles northwest of the airport, and within 2 miles each side of the 179° bearing from Corpus Christi International Airport extending from the 7.5-mile radius to 14 miles south of the airport, and within an 8.8-mile radius of Corpus Christi NAS/Truax Field, and within a 6.3-mile radius of Mustang Beach Airport, and within a 6.4-mile radius of McCampbell-Porter Airport, and within a 6.3-mile radius of Nueces County Airport, and within a 6.6-mile radius of Aransas County Airport, and within 2 miles each side of the 010° bearing from the Aransas County Airport extending from the 6.6-mile radius to 10 miles north of the airport, and within 2 miles each side of the 145° bearing from the Aransas County Airport extending from the 6.6-mile radius to 10 miles southeast of the airport, and within 2 miles each side of the 190° bearing from the Aransas County Airport extending from the 6.6-mile radius to 10 miles south of the airport, and within 2 miles each side of the 325° bearing from the Aransas County Airport extending from the 6.6-mile radius to 10 miles northwest of the airport, and within a 6.5-mile radius of San Jose Island Airport, and within 8 miles west and 4 miles east of the 327° bearing from the San Jose Island Airport extending from the airport to 20 miles northwest of the airport, and within 8 miles east and 4 miles west of the 147° bearing from San Jose Island Airport extending from the airport to 16 miles southeast of the airport, excluding that portion more than 12 miles from and parallel to the shoreline.

\* \* \* \* \*

**ASW TX E5 Dallas/Fort Worth, TX [Amended]**

Dallas/Fort Worth International Airport, TX

(Lat. 32°53'50" N., long. 97°02'16" W.)

McKinney, McKinney National Airport, TX

(Lat. 33°10'37" N., long. 96°35'20" W.)

Rockwall, Ralph M. Hall/Rockwall Municipal Airport, TX

(Lat. 32°55'50" N., long. 96°26'08" W.)

Mesquite, Mesquite Metro Airport, TX

(Lat. 32°44'49" N., long. 96°31'50" W.)

Mesquite NDB

(Lat. 32°48'34" N., long. 96°31'45" W.)

Mesquite Metro ILS Localizer

(Lat. 32°44'03" N., long. 96°31'50" W.)

Lancaster, Lancaster Airport, TX

(Lat. 32°34'39" N., long. 96°43'03" W.)

Point of Origin

(Lat. 32°51'57" N., long. 97°01'41" W.)

Fort Worth, Fort Worth Spinks Airport, TX

(Lat. 32°33'55" N., long. 97°18'29" W.)

Clebune, Clebune Regional Airport, TX

(Lat. 32°21'14" N., long. 97°26'02" W.)

Fort Worth, Bourland Field Airport, TX

(Lat. 32°34'55" N., long. 97°35'27" W.)

Granbury, Granbury Regional Airport, TX

(Lat. 32°26'40" N., long. 97°49'01" W.)

Weatherford, Parker County Airport, TX

(Lat. 32°44'47" N., long. 97°40'57" W.)

Bridgeport, Bridgeport Municipal Airport, TX

(Lat. 33°10'31" N., long. 97°49'42" W.)

Decatur, Decatur Municipal Airport, TX

(Lat. 33°15'15" N., long. 97°34'50" W.)

That airspace extending upward from 700 feet above the surface within a 30-mile radius of Dallas-Fort Worth International Airport, and within a 6.6-mile radius of McKinney National Airport, and within 1.8 miles each side of the 002° bearing from McKinney National Airport extending from the 6.6-mile radius to 9.2 miles north of the airport, and within a 6.3-mile radius of Ralph M. Hall/Rockwall Municipal Airport, and within 1.6 miles each side of the 010° bearing from Ralph M. Hall/Rockwall Municipal Airport extending from the 6.3-mile radius to 10.8 miles north of the airport, and within a 6.5-mile radius of Mesquite Metro Airport, and within 8 miles east and 4 miles west of the 001° bearing from Mesquite NDB extending from the 6.5-mile radius to 19.7 miles north of the airport, and within 1.7 miles each side of the Mesquite Metro ILS Localizer south course extending from the 6.5-mile radius to 11.1 miles south of the airport, and within a 6.6-mile radius of Lancaster Airport, and within 1.9 miles each side of the 140° bearing from Lancaster Airport from the 6.6-mile radius to 9.2 miles southeast of the airport, and within 8 miles northeast and 4 miles southwest of the 144° bearing from the Point of Origin extending from the 30-mile radius of Dallas/Fort Worth International Airport to 35 miles southeast of the Point of Origin, and within a 6.5-mile radius of Fort Worth Spinks Airport, and within 8 miles east and 4 miles west of the 178° bearing from Fort Worth Spinks Airport extending from the 6.5-mile radius to 21 miles south of the airport, and within a 6.9-mile radius of Cleburne Regional Airport, and within 3.6 miles each side of the 292° bearing from the airport extending from the 6.9-mile radius to 12.2 miles northwest of Cleburne Regional Airport, and within a 6.5-mile radius of Fort Worth's Bourland Field Airport, and within a 6.3-mile radius of Granbury Regional Airport, and within a 6.3-mile radius of Weatherford's Parker County Airport, and within 8 miles east and 4 miles west of the 177° bearing from Parker County Airport extending from the 6.3-mile radius to 21.4 miles south of the airport, and within a 6.3-mile radius of Bridgeport Municipal Airport, and within 1.6 miles each side of the 040° bearing from Bridgeport Municipal Airport extending from the 6.3-mile radius to 10.6 miles northeast of the airport, and within 4 miles each side of the 001° bearing from Bridgeport Municipal Airport extending from the 6.3-mile radius to 10.7 miles north of the airport, and within a 6.3-mile radius of Decatur Municipal Airport, and within 1.5 miles each side of the 263° bearing from Decatur Municipal Airport extending from the 6.3-mile radius to 9.2 miles west of the airport.

\* \* \* \* \*

**ASW TX E5 Gainesville, TX [Amended]**

Gainesville Municipal Airport, TX

(Lat. 33°39'08" N., long. 97°11'50" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Gainesville Municipal Airport.

\* \* \* \* \*

**ASW TX E5 Georgetown, TX [Amended]**

Georgetown Municipal Airport, TX

(Lat. 30°40'44" N., long. 97°40'46" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Georgetown Municipal Airport, and within 2.0 miles each side of the 301° bearing from the airport extending from the 6.6-mile radius to 9.8 miles northwest of the airport, and within 2 miles each side of the 004° bearing from the airport extending from the 6.6-mile radius to 10.4 miles north of the airport.

\* \* \* \* \*

**ASW TX E5 Hebronville, TX [Amended]**

Hebronville, Jim Hogg County Airport, TX

(Lat. 27°20'58" N., long. 98°44'13" W.)

Realitos, O.S. Wyatt Airport, TX

(Lat. 27°25'18" N., long. 98°36'16" W.)

Hebronville NDB

(Lat. 27°21'14" N., long. 98°44'39" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Jim Hogg County Airport and within 2.5 miles each side of the 325° bearing from the Hebronville NDB extending from the 6.5-mile radius to 7.5 miles northwest of the airport and within a 6.5-mile radius of O.S. Wyatt Airport.

\* \* \* \* \*

**ASW TX E5 Jasper, TX [Amended]**

Jasper, Jasper County-Bell Field, TX

(Lat. 30°53'09" N., long. 94°02'06" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Jasper County-Bell Field and within 1.6 miles each side of the 001° bearing from the airport from the 6.6-mile radius to 6.7 miles north of the airport.

\* \* \* \* \*

**ASW TX E5 Sinton, TX [Amended]**

Alfred C. 'Bubba' Thomas Airport, TX

(Lat. 28°02'19" N., long. 97°32'33" W.)

Corpus Christi VORTAC

(Lat. 27°54'14" N., long. 97°26'42" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Alfred C. 'Bubba' Thomas Airport and within 1.3 miles each side of the 328° radial of the Corpus Christi VORTAC extending from the 6.4-mile radius to 9.6 miles southeast of the airport.

Issued in Fort Worth, Texas, on November 16, 2016.

**Walter Tweedy,**

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

[FR Doc. 2016-28284 Filed 11-23-16; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 133**

[Docket No. 1529; Amdt. No. 133-9A]

**Rotorcraft External-Load Operations; Technical Amendment****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Final rule; technical amendment.

**SUMMARY:** The FAA is correcting two regulatory cross-references. The pertinent section was not amended to reflect changes that were implemented in the final rule dated November 7, 1986 (Doc. No. 24550, 51 FR 40692, 40708).

**DATES:** This action becomes effective on November 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Raymond T. Plessinger, General Aviation and Commercial Divisions, AFS-820, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-1100; email: [Raymond.Plessinger@faa.gov](mailto:Raymond.Plessinger@faa.gov).

**SUPPLEMENTARY INFORMATION:****Good Cause for Immediate Adoption Without Prior Notice**

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

Section 553(d)(3) of the Administrative Procedure Act requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.

This document is correcting an error that is in 14 CFR part 133. This correction will not impose any additional restrictions on the persons affected by these regulations. Furthermore, any additional delay in making the regulations correct would be contrary to the public interest. Accordingly, the FAA finds that (i) public comment on these standards prior to promulgation is unnecessary, and (ii) good cause exists to make this rule effective in less than 30 days.

**Background**

On November 7, 1986, the FAA published a final rule (Doc. No. 24550, 51 FR 40692, 40708) that amended and updated the operations and maintenance requirements pertaining to rotorcraft and established a new Class D rotorcraft-load combination. The final rule created a new § 133.35, Carriage of persons. With the creation of § 133.35, the occupancy limitations cross-referenced in § 133.49(a) were moved from § 133.45(a) to § 133.35(a). The cross-reference in § 133.49(a) was not amended to reflect this change.

The final rule also amended § 133.45, Operating limitations, by removing paragraph (a). This resulted in paragraphs (b), (c), (d), and (e) to be redesignated as paragraphs (a), (b), (c), and (d), respectively. The cross-reference in § 133.49(b) was not amended to reflect these changes. In this final rule, the FAA failed to update the regulatory cross-references in § 133.49(a) and (b), based on the changes previously described. This technical amendment updates the cross-references in § 133.49(a) and (b), based on the 1986 final rule.

**Technical Amendment**

This technical amendment will correct the noted cross-references currently in § 133.49(a) and (b). Because this action results in no substantive change to part 133, we find good cause exists under 5 U.S.C. 553(d)(3) to make this technical amendment effective in less than 30 days and upon its publication in the **Federal Register**.

**List of Subjects in 14 CFR Part 133**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

**The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

**PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS**

- 1. The authority citation for part 133 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701-44702.

- 2. Revise § 133.49 to read as follows:

**§ 133.49 Markings and placards.**

The following markings and placards must be displayed conspicuously and must be such that they cannot be easily erased, disfigured, or obscured:

(a) A placard (displayed in the cockpit or cabin) stating the class of rotorcraft-

load combination for which the rotorcraft has been approved and the occupancy limitation prescribed in § 133.35(a).

(b) A placard, marking, or instruction (displayed next to the external-load attaching means) stating the maximum external load prescribed as an operating limitation in § 133.45(b).

Issued under authority of 49 U.S.C. 106(g), 40113, 44701-44702 in Washington, DC, on November 16, 2016.

**Dale Bouffiou,***Acting Director, Office of Rulemaking.*

[FR Doc. 2016-28399 Filed 11-23-16; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF COMMERCE****Bureau of Industry and Security****15 CFR Parts 738, 742, 744, 748, and 774**

[Docket No. 160718621-6621-01]

RIN 0694-AH04

**Commerce Control List: Removal of Certain Nuclear Nonproliferation (NP) Column 2 Controls****AGENCY:** Bureau of Industry and Security, Commerce.**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) publishes this final rule to amend the Export Administration Regulations (EAR) to remove nuclear nonproliferation (NP) Column 2 license requirements from certain pressure tubes, pipes, fittings, pipe valves, pumps, numerically controlled machine tools, oscilloscopes, and transient recorders on the Commerce Control List (CCL). These changes are intended to revise the EAR controls on these items by making them more consistent with the export controls of other countries that manufacture these items and that, together with the United States, are participating countries in the Nuclear Suppliers Group (NSG). As a result of the changes made by this rule, some of these items are no longer listed under an Export Control Classification Number (ECCN) on the CCL. However, such items remain subject to the EAR under the designation EAR99. This rule also creates four new ECCNs to maintain anti-terrorism (AT) controls on certain affected commodities and related “software” and “technology.” All items subject to the EAR, regardless of whether they are listed on the CCL, may require a license for reasons described elsewhere in the EAR (*e.g.*, license requirements based on end-user/end-use

controls, embargoes, or other special controls).

**DATES:** This rule is effective November 25, 2016. However, “software” “specially designed” for the “development,” “production,” or “use” of items previously controlled under ECCN 3A292 will continue to be classified and licensed by BIS under the designation EAR99 through January 31, 2017. As of February 1, 2017, such “software” will be classified and licensed by BIS under ECCN 3D991.

**FOR FURTHER INFORMATION CONTACT:** Steven Clagett, Director, Nuclear and Missile Technology Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482-1641.

**SUPPLEMENTARY INFORMATION:** The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to make the controls that apply to certain pressure tubes, pipes, fittings, pipe valves, pumps, numerically controlled machine tools, oscilloscopes, and transient recorders on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) more consistent with the export controls of other supplier countries that, together with the United States, are participating countries in the Nuclear Suppliers Group (NSG). The NSG is a multilateral export control forum that currently consists of 48 participating countries. The NSG maintains a list of dual-use items that could be used for nuclear proliferation activities. The list is maintained in the Annex to the NSG’s “Guidelines for Transfers of Nuclear Related Dual-Use Equipment, Materials, Software, and Related Technology” (hereinafter the “NSG Annex”). NSG participating countries share a commitment to prevent nuclear proliferation and the development of nuclear-related weapons of mass destruction. In furtherance of that commitment, they have agreed to impose export controls on listed items. The NSG Guidelines and the Annex thereto are designed to ensure that nuclear trade for peaceful purposes does not contribute to the proliferation of nuclear weapons or related proliferation activities.

The amendments made by this final rule are based on a review by BIS of items controlled for nuclear nonproliferation (NP) reasons to destinations indicated under NP Column 2 on the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR). These amendments are designed to revise the NP controls in the EAR to be more consistent with the controls maintained by other NSG

participating countries, in accordance with the NSG Guidelines and the Annex thereto. As a result of the amendments made by this rule, exports, reexports, or transfers (in-country) of the following items no longer require a license for NP reasons to destinations indicated under NP Column 2 on the Commerce Country Chart: (1) Pressure tubes, pipes, fittings, and pipe valves previously controlled under ECCN 2A292; (2) pumps previously controlled under ECCN 2A293; (3) numerically controlled machine tools previously controlled under ECCN 2B290; and (4) oscilloscopes and transient recorders previously controlled under ECCN 3A292. The removal of NP controls from these items by BIS is consistent with the nuclear nonproliferation requirements of other NSG participating countries, none of which currently require a license for such items (for nuclear nonproliferation reasons), because the items are not listed in the NSG Annex.

Certain items continue to require a license for NP reasons to destinations indicated under NP Column 2 on the Commerce Country Chart (e.g., items controlled under ECCN 1A290, 1C298, 2A290 and 2A291, including related “software” and “technology” controls described elsewhere on the CCL). BIS believes that retaining NP Column 2 controls on these items is helpful in maintaining our commitments with respect to NSG Trigger List items and in clarifying questions of licensing jurisdiction with respect to the export controls administered by the Nuclear Regulatory Commission (NRC). Furthermore, BIS intends to periodically review the controls on these items to ensure that, to the extent practicable (i.e., within the limitations of U.S. foreign policy and nonproliferation objectives), they are consistent with the controls maintained by other NSG participating countries.

#### **Removal of ECCNs 2A292, 2A293, 2B290, and 3A292 From the CCL**

This final rule amends the EAR to reflect the controls currently described in the NSG Annex by removing ECCNs 2A292, 2A293, 2B290, and 3A292 from the CCL. Certain items previously controlled under ECCN 2B290 are no longer listed on the CCL and are designated as EAR99 (i.e., subject to the EAR, as described in Section 734.3(a), but not listed on the CCL). However, most of the items previously controlled by these ECCNs continue to be listed on the CCL under ECCNs that require a license for anti-terrorism (AT) reasons and, in one instance, for chemical/biological (CB) reasons, as well. Specifically, valves previously

controlled under ECCN 2A292.b that meet or exceed the technical parameters described in ECCN 2B350.g are now controlled under ECCN 2B350. These valves continue to require a license for CB reasons to destinations indicated under CB Column 2 on the Commerce Country Chart and for AT reasons to destinations indicated under AT Column 1 on the Commerce Country Chart. All other items previously controlled under ECCN 2A292 and all items previously controlled under ECCN 2A293 are now controlled under new ECCN 2A992 or 2A993, respectively, for AT reasons and continue to require a license to destinations indicated under AT Column 1 on the Commerce Country Chart.

Turning machines or combination turning/milling machines previously controlled under ECCN 2B290 that meet or exceed the technical parameters described in ECCN 2B991.d.1 are now controlled under ECCN 2B991 and continue to require a license for AT reasons to destinations indicated under AT Column 1 on the Commerce Country Chart. All other items previously controlled under ECCN 2B290 are now designated as EAR99 and, as such, no longer require a license for NP or AT reasons. However, any item that is subject to the EAR, whether or not it is listed on the CCL, may require a license for reasons described elsewhere in the EAR (e.g., the end-user/end-use controls described in part 744 of the EAR or the embargoes and other special controls described in part 746 of the EAR).

Oscilloscopes and transient recorders previously controlled under ECCN 3A292 are now controlled under new paragraphs .d through .g in ECCN 3A992. Although these items no longer require a license for NP reasons, they continue to require a license for AT reasons to destinations indicated under AT Column 1 on the Commerce Country Chart.

Prior to the removal of ECCNs 2A292, 2A293, 2B290 and 3A292 from the CCL, the items controlled thereunder required a license for NP and/or AT reasons to nine countries (i.e., Cuba, Iran, Iraq, Israel, Libya, North Korea, Pakistan, Sudan, and Syria). Currently, in addition to the license requirements that apply to most of these items under ECCN 2A992, 2A993, 2B350.g, 2B991.d.1, or 3A992 (as described above), a license from BIS continues to be required for exports, reexports, or transfers (in-country) involving any of these items to Cuba, North Korea, or Syria (see the embargoes and other special controls in part 746 of the EAR; also see Section 742.9 of the EAR with respect to AT controls on Syria). A

license from BIS also continues to be required for exports, reexports, or transfers (in-country) involving any of these items that are not designated as EAR99 to Iran (see Sections 742.8 and 746.7 of the EAR) or Sudan (see Section 742.10 of the EAR with respect to AT controls on Sudan). In addition, the Treasury Department's Office of Foreign Assets Control (OFAC) administers comprehensive trade and investment embargoes against Iran, Sudan, and Syria that include prohibitions on exports and certain reexport transactions involving these countries. Therefore, as a practical matter, the amendments made by this rule are likely to have a significant impact on license requirements only with respect to exports, reexports, or transfers (in-country) of items previously controlled under ECCN 2B290 and now classified as EAR99, or items now controlled on the CCL under new ECCN 2A992, new ECCN 2A993, ECCN 2B991, or ECCN 3A992 for AT reasons only, that involve the following destinations: Iraq, Israel, Libya, or Pakistan. In this regard, note that the EAR require a license to export or reexport to Iraq, or to transfer within Iraq, any item subject to the EAR if, at the time of the export, reexport or transfer, you know, have reason to know, or have been informed by BIS that the item will be, or is intended to be, used for a "military end-use" or by a "military end-user" (see Section 746.3(a)(4) of the EAR). Furthermore, as indicated above, a license is required under the EAR whenever a transaction is subject to any of the end-user/end-use controls described in part 744 of the EAR.

#### Conforming Amendments to the CCL

This final rule also amends the EAR to make several conforming changes to the CCL consistent with the removal of ECCNs 2A292, 2A293, 2B290 and 3A292, as described above. Specifically, this rule revises the Related Controls paragraph in ECCN 2A226 to reflect the removal of ECCN 2A292 from the CCL. This rule also revises the Technical Notes heading under CCL Category 2 subheading B ("Test," "Inspection" and "Production Equipment") and the Related Controls paragraphs in ECCNs 2B001, 2B201, and 2B991 to reflect the removal of ECCN 2B290 from the CCL. In addition, ECCN 2B350 is amended by revising the ECCN heading to reflect the removal of ECCN 2A292 from the CCL and by revising the Related Controls paragraph in ECCN 2B350 to reflect the removal of ECCNs 2A292 and 2A293 from the CCL (*i.e.*, by removing the references to ECCN 2A292 and 2A293 and referencing new ECCNs 2A992 and

2A993, respectively). As indicated above, the effect of removing the reference to ECCN 2A292 from the heading of ECCN 2B350, in conjunction with the removal of ECCN 2A292 from the CCL, is that valves previously controlled under ECCN 2A292.b that meet or exceed the technical parameters described in ECCN 2B350.g are now controlled under ECCN 2B350 and are subject to the license requirements described therein (*i.e.*, although NP controls no longer apply, a license continues to be required for these valves to destinations indicated under CB Column 2 and/or AT Column 1 on the Commerce Country Chart). Consistent with these changes, new ECCN 2A992 controls all items previously controlled by ECCN 2A292, except for valves that meet or exceed the technical parameters described in ECCN 2B350.g, which are specifically excluded from control under ECCN 2A992.b.

This rule also revises the heading of ECCN 2D290 by removing the references to ECCNs 2A292, 2A293 and 2B290 to reflect the removal of these ECCNs from the CCL. However, ECCN 2D290 continues to control "software" for the "development," "production," or "use" of items controlled by ECCN 2A290 or 2A291. As result of these changes, new ECCN 2D993 controls "software" for the "development," "production," or "use" of items that were previously controlled by ECCN 2A292 (except for valves that meet or exceed the technical parameters described in ECCN 2B350.g) or by ECCN 2A293 (these items are now controlled by new ECCNs 2A992 and 2A993, respectively). New ECCN 2D993 requires a license for AT reasons, only, to destinations indicated under AT Column 1 on the Commerce Country Chart. "Software" for the "development," "production," or "use" of valves previously controlled under ECCN 2A292.b, but now controlled under ECCN 2B350.g, is designated as EAR99. In addition, "software" "specially designed" or modified for the "development," "production," or "use" of items previously controlled by ECCN 2B290 is now designated as EAR99, except for "software" "specially designed" for the "development," "production," or "use" of turning machines or combination turning/milling machines previously controlled under ECCN 2B290.a that meet or exceed the technical parameters in 2B991.d.1. The latter is now controlled under ECCN 2D991 and continues to require a license to destinations indicated under AT Column 1 on the Commerce Country Chart.

This rule also revises the NP Column 2 and CB Column 2 controls paragraphs

in the License Requirements sections of ECCNs 2E001 and 2E002 by removing the references to ECCNs 2A292, 2A293, and 2B290 from the NP Column 2 controls paragraph and the reference to ECCN 2A292 from the CB Column 2 controls paragraph, to reflect the removal of ECCNs 2A292, 2A293, and 2B290 from the CCL. The effect of these changes, coupled with the addition of new ECCNs 2A992 and 2A993 to control items previously controlled under ECCN 2A292 or 2A293, respectively (except for valves previously controlled under ECCN 2A292.b that are now controlled under ECCN 2B350.g), is that "technology" for the "development" (ECCN 2E001) or "production" (ECCN 2E002) of equipment previously controlled under ECCN 2A292 or 2A293 continues to be controlled under ECCN 2E001 or 2E002, but for AT reasons only (*i.e.*, NP reasons for control no longer apply to this "technology"). "Technology" for the "development" or "production" of valves previously controlled under ECCN 2A292.b that meet or exceed the technical parameters described in ECCN 2B350.g continues to be controlled under ECCNs 2E001 and 2E002, respectively, for CB and AT reasons, but NP reasons for control no longer apply. In addition, "technology" for the "development" of "software" previously controlled by ECCN 2D290 that is "specially designed" or modified for the "development," "production," or "use" of items previously controlled by ECCN 2A292 or 2A293 (and now controlled by new ECCN 2A992 or 2A993, except for certain valves, as specified above) continues to be controlled under ECCN 2E001, but for AT reasons only (*i.e.*, NP reasons for control no longer apply to this "technology").

As a result of the aforementioned amendments to ECCNs 2E001 and 2E002, "technology" for the "development" (ECCN 2E001) or "production" (ECCN 2E002) of equipment previously controlled under ECCN 2B290 is now designated as EAR99. In addition, "technology" for the "development" of "software" previously controlled by ECCN 2D290 that is "specially designed" or modified for the "development," "production," or "use" of items previously controlled by ECCN 2B290 is now designated as EAR99.

ECCN 2E001 continues to control "technology" for the "development" of ECCN 2D290 "software" that is "specially designed" or modified for the "development," "production," or "use" of items controlled by ECCN 2A290 or 2A291, as well as "technology" for the "development" of equipment controlled

by ECCN 2A290 or 2A291. In addition, ECCN 2E002 continues to control “technology” for the “production” of equipment controlled by ECCN 2A290 or 2A291. This ECCN 2E001 and 2E002 “technology” continues to require a license to destinations indicated under NP Column 2 and/or AT Column 1 on the Commerce Country Chart.

This rule amends ECCN 2E290 by revising the heading of the ECCN to remove the references to ECCNs 2A292, 2A293 and 2B290 to reflect the removal of these ECCNs from the CCL and by revising the License Requirements section of the ECCN to remove the CB Column 2 controls paragraph that applied to valves controlled under former ECCN 2A292 that met or exceeded the technical parameters in ECCN 2B350.g. The effect of these changes, coupled with the addition of new ECCNs 2A992 and 2A993 to control items previously controlled under ECCN 2A292 or 2A293, respectively (except for valves previously controlled under ECCN 2A292.b that are now controlled under ECCN 2B350.g), is that “technology” for the “use” of equipment previously controlled under ECCN 2A292 or 2A293 is now controlled under new ECCN 2E993 for AT reasons only (*i.e.*, NP reasons for control no longer apply to this “technology”). “Technology” for the “use” of valves previously controlled under ECCN 2A292.b that meet or exceed the technical parameters described in ECCN 2B350.g is now controlled under ECCN 2E301 and requires a license to destinations indicated under CB Column 2 or AT Column 1 on the Commerce Country Chart.

As a result of the aforementioned amendments to ECCN 2E290, “technology” for the “use” of equipment previously controlled by ECCN 2B290 is now designated as EAR99, except for “technology” for the “use” of turning machines or combination turning/milling machines previously controlled under ECCN 2B290.a that meet or exceed the parameters in ECCN 2B991.d.1, which is now controlled under ECCN 2E991 and requires a license to destinations indicated under AT Column 1 on the Commerce Country Chart.

ECCN 2E290 continues to control “technology” for the “use” of

equipment controlled by ECCN 2A290 or 2A291. This ECCN 2E290 “technology” continues to require a license to destinations indicated under NP Column 2 and/or AT Column 1 on the Commerce Country Chart.

This rule also makes certain conforming changes in CCL Category 3 (Electronics) to reflect the removal from the CCL of ECCN 3A292 (oscilloscopes and transient recorders other than those controlled by ECCN 3A002.a.7 or .h), as described above. Specifically, this rule revises the Related Controls paragraph in ECCN 3A002 by removing the reference to ECCN 3A292 to reflect the removal of this ECCN from the CCL. The Related Controls paragraph in ECCN 3A002 continues to reference ECCN 3A992, which is amended by this rule to add new paragraphs .d through .g to control oscilloscopes and transient recorders previously controlled under ECCN 3A292.a through .d, respectively.

This rule also amends the heading of ECCN 3E001 by removing the reference to ECCN 3A292 (which is removed from the CCL by this rule) from the parenthetical list of CCL Category 3A ECCNs that are excluded from the scope of the “technology” controls described in ECCN 3E001. This change does not affect the scope of the controls described in ECCN 3E001, because ECCN 3A992, which is amended by adding new paragraphs .d through .g to control the oscilloscopes and transient recorders previously controlled under ECCN 3A292, continues to be excluded from the scope of ECCN 3E001 (CCL Category 3A ECCNs that are excluded from the “technology” controls in ECCN 3E001 are identified in the parenthetical immediately following the reference to Category 3A in the heading of ECCN 3E001).

Prior to the publication of this rule, “technology” for the “development,” “production,” or “use” of equipment controlled by ECCN 3A292 was controlled under ECCN 3E292. This rule removes ECCN 3E292 from the CCL, thereby eliminating the NP Column 2 license requirements that previously applied to the “technology” controlled under this ECCN. However, because this rule amends ECCN 3A992 by adding the oscilloscopes and transient recorders previously controlled under ECCN 3A292 in new paragraphs 3A992.d through .g (as described above),

“technology” for the “development,” “production,” or “use” of the items described in new 3A992.d through .g is now controlled under ECCN 3E991. Therefore, although NP Column 2 license requirements no longer apply to such “technology,” it continues to require a license for AT Column 1 reasons under ECCN 3E991.

Another consequence of the amendment of ECCN 3A992 to add certain oscilloscopes and transient recorders under new paragraphs 3A992.d through .g, is that ECCN 3D991, which includes certain “software” for general purpose electronic equipment described in ECCN 3A992, will also control “software” for the “development,” “production,” or “use” of oscilloscopes and transient recorders described in new 3A992.d through .g. However, such “software” will continue to be classified and licensed by BIS under the designation EAR99 through January 31, 2017. Effective February 1, 2017, such “software” will be classified and licensed by BIS under ECCN 3D991 and will require a license to destinations indicated under AT Column 1 on the Commerce Country Chart. This pending modification in the application of foreign policy controls under the EAR will be addressed in BIS’s “2017 Report on Foreign Policy-Based Export Controls,” which will be submitted to the Congress in January 2017.

The following table identifies the items (*i.e.*, commodities, “software,” and “technology”) and the corresponding ECCNs on the CCL (where applicable) that were affected by the amendments contained in this final rule, as described above. The removal of several ECCNs by this rule resulted in the designation of certain items as EAR99 (*i.e.*, subject to the EAR, but not listed on the CCL). In addition, other items were moved from ECCNs having both NP and AT controls to ECCNs controlled for AT reasons only. Items that previously were subject to both CB and AT controls, as well as NP controls, continue to be controlled on the CCL for both CB and AT reasons, but are no longer subject to NP controls. In one instance noted above, and in the table below, certain “software” previously designated as EAR99 will become subject to AT controls.

Items affected by this Rule	Previous EAR designation	Current EAR designation
Pressure tube, pipe, and fittings of 200 mm or more inside diameter suitable for operation at pressures of 3.4 MPa or greater.	ECCN 2A292.a	ECCN 2A992.

Items affected by this Rule	Previous EAR designation	Current EAR designation
Pipe valves: (1) Having a pipe size connection of 200 mm or more inside diameter; and (2) rated at 10.3 MPa.	ECCN 2A292.b	ECCN 2B350.g—Valves previously controlled under ECCN 2A292.b that meet or exceed the technical parameters described in ECCN 2B350.g.
Pumps designed to move molten metals by electromagnetic forces.	ECCN 2A293	ECCN 2A992—Valves previously controlled under ECCN 2A292.b that do <i>not</i> meet or exceed the parameters in 2B350.g. ECCN 2A993.
Turning machines or combination turning/milling machines, not controlled by 2B001 or 2B201, capable of machining diameters greater than 2.5 meters.	ECCN 2B290.a	ECCN 2B991.d.1—Turning machines or combination turning/milling machines previously controlled under ECCN 2B290.a that meet or exceed the parameters in ECCN 2B991.d.1.
“Software” “specially designed” or modified for “development,” “production,” or “use” of items controlled by 2A292, 2A293, or 2B290.	ECCN 2D290	EAR99—Turning machines or combination turning/milling machines previously controlled under ECCN 2B290.a that do <i>not</i> meet or exceed the parameters in 2B991.d.1. ECCN 2D290—“Software” “specially designed” or modified for “development,” “production,” or “use” of items controlled by 2A290 or 2A291 continues to be controlled under this ECCN.
		ECCN 2D991—“Software” “specially designed” for the “development,” “production,” or “use” of turning machines or combination turning/milling machines previously controlled under ECCN 2B290.a that meet or exceed the parameters in ECCN 2B991.d.1.
		ECCN 2D993—“Software” “specially designed” or modified for “development,” “production,” or “use” of items previously controlled by 2A292 or 2A293 (now controlled by 2A992 and 2A993, respectively), except “software” for valves previously controlled under ECCN 2A292.b that meet or exceed the technical parameters described in ECCN 2B350.g, as indicated below.
		EAR99—“Software” “specially designed” or modified for “development,” “production,” or “use” of the following:
		(1) Valves previously controlled under ECCN 2A292.b, and now controlled under ECCN 2B350, that meet or exceed the technical parameters described in ECCN 2B350.g;
		(2) Items previously controlled by 2B290 (except as specified above for former 2B290.a machines that meet or exceed the parameters in ECCN 2B991.d.1).
“Technology” for the “development” of equipment controlled by 2A292, 2A293, or 2B290 or “software” controlled by 2D290.	ECCN 2E001	ECCN 2E001—“Technology” for the “development” of the following:
		(1) Valves previously controlled under ECCN 2A292.b that meet or exceed the technical parameters described in ECCN 2B350.g;
		(2) Other equipment previously controlled by 2A292 or 2A293 (now controlled by 2A992 or 2A993, respectively);
		(3) Equipment controlled by 2A290 or 2A291;
		(4) 2D290 “software” “specially designed” or modified for the “development,” “production,” or “use” of items controlled by 2A290 or 2A291;
		(5) 2D993 “software” “specially designed” or modified for the “development,” “production,” or “use” of items previously controlled by 2A292 or 2A293 (now controlled by 2A992 or 2A993, respectively).
		EAR99—“Technology” for the “development” of the following:
		(1) Equipment previously controlled by 2B290;
		(2) “Software” previously controlled by 2D290 “specially designed” or modified for the “development,” “production,” or “use” of items controlled by 2B290.
“Technology” for the “production” of equipment controlled by 2A292, 2A293, or 2B290.	ECCN 2E002	ECCN 2E002—“Technology” for the “production” of the following:
		(1) Valves previously controlled under ECCN 2A292.b that meet or exceed the technical parameters described in ECCN 2B350.g;
		(2) Other equipment previously controlled by 2A292 or 2A293 (now controlled by 2A992 or 2A993, respectively).
		EAR99—“Technology” for the “production” of equipment previously controlled by 2B290.
“Technology” for the “use” of equipment controlled by 2A292, 2A293, or 2B290.	ECCN 2E290	ECCN 2E290—“Technology” for the “use” of items controlled by 2A290 or 2A291 continues to be controlled under this ECCN.
		ECCN 2E301—“Technology” for the “use” of valves previously controlled under ECCN 2A292.b that meet or exceed the technical parameters described in ECCN 2B350.g.
		ECCN 2E991—“Technology” for the “use” of turning machines or combination turning/milling machines previously controlled under ECCN 2B290.a that meet or exceed the parameters in ECCN 2B991.d.1.
		ECCN 2E993—“Technology” for the “use” of equipment previously controlled by 2A292 or 2A293 and now controlled by 2A992 or 2A993, respectively (except as specified above for certain former 2A292.b valves).

Items affected by this Rule	Previous EAR designation	Current EAR designation
Oscilloscopes and transient recorders other than those controlled by 3A002.a.7 or 3A002.h. “Software” for the “development,” “production,” or “use” of equipment previously controlled under ECCN 3A292. “Technology” for the “development,” “production,” or “use” of equipment controlled by 3A292.	.....	EAR99—“Technology” for the “use” of equipment previously controlled by 2B290 (except as specified above for certain former 2B290.a turning machines or combination turning/milling machines). 3A992.d through .g—Equipment previously controlled by 3A292.
	ECCN 3A292	
	EAR99	ECCN 3D991—“Software” for the “development,” “production,” or “use” of equipment previously controlled under 3A292 (now controlled under 3A992.d through .g, as described above).
	ECCN 3E292	3E991—“Technology” for the “development,” “production,” or “use” of equipment previously controlled under 3A292 (now controlled under 3A992.d through .g, as described above).

**Conforming Amendments Elsewhere in the EAR**

In addition to the conforming amendments to the CCL described above, this rule makes conforming amendments to other EAR provisions to reflect the removal of ECCNs 2A292, 2A293, 2B290, and 3A292. In Section 738.2 (Commerce Control List Structure), this rule amends the parenthetical in the third sentence of paragraph (d)(1)(ii) by removing the reference to ECCN 2A292 and replacing it with a reference to ECCN 2A290. This rule also amends Section 738.2 by removing the reference to ECCN 3A292 from the fourth sentence of paragraph (d)(2)(iv)(C)(3). In Section 742.2 (Chemical/Biological License Requirements), this rule removes references to ECCN 2A292 from paragraphs (a)(2)(vi), (a)(2)(x)(B), and (a)(2)(xi). This rule amends Supplement No. 2 to part 744 (List of Items Subject to the Military End-Use Requirement in § 744.17) by removing the references to ECCN 3A292.d from paragraphs (3)(i) and (3)(iii) and replacing them with references to ECCN 3A992.g. In addition, the reference to ECCN 3E292 in paragraph (3)(iii) of the Supplement is replaced with a reference to ECCN 3E991. These changes maintain the continuity of the EAR military end-use controls on the digital oscilloscopes and transient recorders affected by the amendments contained in this rule.

Finally, this rule amends Supplement No. 7 to part 748 (Validated End-User List) by removing two references to ECCN 2A292 from the People’s Republic of China entry for Intel Semiconductor (Dalian) Ltd.

**Effect of This Rule on the Scope of Certain EAR Controls**

The changes made by this rule only marginally affect the scope of the EAR controls on the items previously controlled under ECCN 2A292, 2A293, 2B290, or 3A292 (and any related “software” and “technology” therefor), as described above. Prior to the

publication of this rule, these items required a license for NP and/or AT reasons to nine countries (*i.e.*, Cuba, Iran, Iraq, Israel, Libya, North Korea, Pakistan, Sudan, and Syria). However, as indicated above, license requirements continue to apply to most of these items under ECCN 2A992 or 2A993 (AT Column 1 destinations), ECCN 2B350.g (CB Column 1 and AT Column 1 destinations) or under ECCN 2B991.d.1 or 3A992.d through .g (AT Column 1 destinations). Also, a license from BIS continues to be required for exports, reexports, or transfers (in-country) involving any of these items to Cuba, North Korea, or Syria or any of these items that are not classified as EAR99 to Iran or Sudan. In addition to these EAR license requirements, the Treasury Department’s Office of Foreign Assets Control (OFAC) administers comprehensive trade and investment embargoes against Iran, Sudan, and Syria that include prohibitions on exports and certain reexport transactions involving these countries.

Therefore, as a result of the controls described above, the amendments made by this rule are likely to have a noticeable impact on license requirements only with respect to exports, reexports, or transfers (in-country) of those items previously controlled under ECCN 2A292, 2A293, 2B290 or 3A292 (and any related “software” and “technology” therefor) that are now classified as EAR99, or are currently controlled on the CCL for AT reasons only (*i.e.*, under ECCN 2A992, 2A993, 2B991, 2D991, 2D993, 2E991, 2E993, 3A992, 3D991, or 3E991), and involve the following destinations: Iraq, Israel, Libya, or Pakistan. In this regard, note that the EAR maintain license requirements on exports or reexports to Iraq, or transfers within Iraq, of items subject to the EAR (including EAR99 items, as well as items listed on the CCL) that are destined for a military end-user and/or a military end-use. In addition, a license is required under the EAR if a transaction is subject to any of

the end-user/end-use controls described in part 744 of the EAR.

In light of the above, this rule is expected to have the most significant impact with respect to exports, reexports, or transfers (in-country) of certain digital oscilloscopes to Israel. The effect of this rule on exports, reexports, or transfers (in-country) of any of these items to other destinations is expected to be insignificant.

*Export Administration Act*

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 4, 2016 (81 FR 52587 (Aug. 8, 2016)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

*Rulemaking Requirements*

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, consistent with Executive Order 12866. Accordingly, the rule has been reviewed

by the Office of Management and Budget.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Sehra, Office of Management and Budget, by email to [Jasmeet.K.Sehra@omb.eop.gov](mailto:Jasmeet.K.Sehra@omb.eop.gov), or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue NW., Room 2705, Washington, DC 20230 or by email to [RPD2@bis.doc.gov](mailto:RPD2@bis.doc.gov).

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (See 5 U.S.C. 553(a)(1)). Immediate implementation of these amendments is non-discretionary and fulfills the United States' international obligation to administer controls on specified items consistent with the Guidelines, and the Annex thereto, maintained by the Nuclear Suppliers Group (NSG). The NSG contributes to international security and regional stability through the harmonization of export controls and seeks to ensure that exports do not contribute to the development of nuclear weapons. The NSG consists of 48 member countries that act on a consensus basis and the amendments set forth in this rule revise the scope of nuclear nonproliferation controls in the EAR to more fully reflect the controls implemented by other NSG participating countries, in accordance with the NSG Guidelines and the Annex thereto. Because the United States is a significant exporter of the items

addressed in this rule, immediate implementation of these regulatory provisions is necessary in order for the NSG to continue to meet its objectives. Any delay in implementation will create a disruption in the movement of affected items globally because of disharmony between the export controls maintained by the United States and the export control measures implemented by other NSG members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely and coordinated manner.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

#### List of Subjects

##### 15 CFR Part 738

Exports.

##### 15 CFR Part 742

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

##### 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

##### 15 CFR Part 748

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

##### 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 738, 742, 744, 748, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

#### PART 738—[AMENDED]

■ 1. The authority citation for 15 CFR part 738 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3

CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

#### § 738.2 [Amended]

■ 2. Section 738.2 is amended:

- a. By removing “2A292” from the parenthetical in the third sentence of paragraph (d)(1)(ii) and adding “2A290” in its place; and
- b. By removing “3A292,” from the fourth sentence of paragraph (d)(2)(iv)(C)(3).

#### PART 742—[AMENDED]

■ 3. The authority citation for 15 CFR part 742 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

#### § 742.2 [Amended]

■ 4. Section 742.2 is amended:

- a. By removing the phrase “or ECCN 2A292” from paragraph (a)(2)(vi);
- b. By removing the phrase “or 2A292” from paragraph (a)(2)(x)(B); and
- c. By removing the phrase “or 2A292” from paragraph (a)(2)(xi).

#### PART 744—[AMENDED]

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

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

#### Supplement No. 2 to Part 744—[Amended]

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

- a. By removing “3A292.d” from paragraph (3)(i) and paragraph (3)(iii) and adding “3A992.g” in its place; and
- b. By removing “3E292” from paragraph (3)(iii) and adding “3E991” in its place.

**PART 748—[AMENDED]**

- 7. The authority citation for 15 CFR part 748 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

**Supplement No. 7 to Part 748—[Amended]**

- 8. Supplement No. 7 to part 748 is amended under the China (People’s Republic of) Validated End-User entry for Intel Semiconductor (Dalian) Ltd.:
  - a. By removing “2A292,” wherever it appears; and
  - c. By adding “81 FR [INSERT Federal Register PAGE NUMBER], November 25, 2016” in chronological order, under the column heading “Federal Register citation”, for this Validated End-User entry.

**PART 774—[AMENDED]**

- 9. The authority citation for 15 CFR part 774 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

**Supplement No. 1 to Part 774—[Amended]**

- 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2A226 is amended, under the “List of Items Controlled” section, by removing “2A292,” from the second entry of the “Related Controls” paragraph and adding “2A992,” in its place.
- 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCNs 2A292 and 2A293 are removed.
- 12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, add ECCNs 2A992 and 2A993 between ECCNs 2A991 and 2A994 to read as follows:  
**2A992 Piping, fittings and valves made of, or lined with stainless, copper-nickel**

**alloy or other alloy steel containing 10% or more nickel and/or chromium.**

**License Requirements**

*Reason for Control:* AT

<i>Control(s)</i>	<i>Country chart (see supp. No. 1 to part 738)</i>
-------------------	--

AT applies to entire entry. AT Column 1

**List Based License Exceptions (See part 740 for a Description of All License Exceptions)**

*LVS:* N/A  
*GBS:* N/A  
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* (1) See ECCN 2D993 for software for items controlled under this entry. (2) See ECCNs 2E001 (“development”), 2E002 (“production”), and 2E993 (“use”) for technology for items controlled under this entry. (3) Also see ECCNs 2A226, 2B350 and 2B999.

*Related Definitions:* N/A

*Items:*

- a. Pressure tube, pipe, and fittings of 200 mm (8 in.) or more inside diameter, and suitable for operation at pressures of 3.4 MPa (500 psi) or greater;
- b. Pipe valves having all of the following characteristics that are not controlled by ECCN 2B350.g:
  - b.1. A pipe size connection of 200 mm (8 in.) or more inside diameter; and
  - b.2. Rated at 10.3 MPa (1,500 psi) or more.

**2A993 Pumps designed to move molten metals by electromagnetic forces.**

**License Requirements**

*Reason for Control:* AT

<i>Control(s)</i>	<i>Country chart (see supp. No. 1 to part 738)</i>
-------------------	--

AT applies to entire entry. AT Column 1

**List Based License Exceptions (See part 740 for a description of all license exceptions)**

*LVS:* N/A  
*GBS:* N/A  
*CIV:* N/A

**List of Items Controlled**

*Related Controls:* (1) See ECCN 2D993 for software for items controlled under this entry. (2) See ECCNs 2E001 (“development”), 2E002 (“production”), and 2E993 (“use”) for technology for items controlled under this entry. (3) Pumps for use in liquid-metal-cooled reactors are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

*Related Definitions:* N/A

*Items:* The list of items controlled is contained in the ECCN heading.

- 13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, immediately following the Category 2 subheading B

that applies to “Test,” “Inspection” and “Production Equipment,” revise the “Technical Notes” heading to read as follows:

**B. “Test,” “Inspection” and “Production Equipment”**

**Technical Notes for 2B001 to 2B009, 2B201, and 2B991 to 2B999: \* \* \***

\* \* \* \* \*

- 14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B001 is amended, under the “List of Items Controlled” section, by removing the phrase “2B201, 2B290, and 2B991” from the fourth entry of the “Related Controls” paragraph and adding the phrase “2B201 and 2B991” in its place.

- 15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B201 is amended, under the “List of Items Controlled” section, by removing the phrase “2B001, 2B290, and 2B991” from the third entry of the “Related Controls” paragraph and adding the phrase “2B001 and 2B991” in its place.

- 16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B290 is removed.

- 17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B350 is amended by revising the “Related Controls” paragraph, under the “List of Items Controlled” section, to read as follows:

**2B350 Chemical manufacturing facilities and equipment, except valves controlled by 2A226, as follows (see List of Items Controlled).**

\* \* \* \* \*

**List of Items Controlled**

*Related Controls:* See also ECCNs 2A226, 2A992, 2A993, 2B231, and 2B999.

\* \* \* \* \*

- 18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B991 is amended by revising the “Related Controls” paragraph, under the “List of Items Controlled” section, to read as follows:

**2B991 Numerical control units for machine tools and “numerically controlled” machine tools, n.e.s. (see List of Items Controlled).**

\* \* \* \* \*

**List of Items Controlled**

*Related Controls:* See also ECCNs 2B001 and 2B201.

\* \* \* \* \*

- 19. In Supplement No. 1 to part 774 (the Commerce Control List), Category

2—Materials Processing, ECCN 2B999 is amended, under the “List of Items Controlled” section, by removing “2A293,” from the first entry of the “Related Controls” paragraph and adding “2A992, 2A993,” in its place.

■ 20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2D290 is amended by revising the ECCN heading to read as follows:

**2D290 “Software” “specially designed” or modified for the “development,” “production,” or “use” of items controlled by 2A290 or 2A291.**

\* \* \* \* \*

■ 21. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, add ECCN 2D993 between ECCNs 2D992 and 2D994 to read as follows:

**2D993 “Software” “specially designed” or modified for the “development,” “production,” or “use” of items controlled by 2A992 or 2A993.**

**License Requirements**

*Reason for Control:* AT

<i>Control(s)</i>	<i>Country chart (see supp. No. 1 to part 738)</i>
-------------------	--

AT applies to entire entry. AT Column 1

**List Based License Exceptions (See part 740 for a Description of All License Exceptions)**

*CIV:* N/A  
*TSR:* N/A

**List of Items Controlled**

*Related Controls:* See ECCN 2E001 (“development”) for “technology” for “software” controlled under this entry.

*Related Definitions:* N/A

*Items:* The list of items controlled is contained in the ECCN heading.

■ 22. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E001 is amended by revising, in the License Requirements section, the fourth and fifth entries in the table (which contain the Control(s) language for Country Chart NP Column 2 and Country Chart CB Column 2, respectively) to read as follows:

**2E001 “Technology” according to the General Technology Note for the “development” of equipment or “software” controlled by 2A (except 2A983, 2A984, 2A991, or 2A994), 2B (except 2B991, 2B993, 2B996, 2B997, 2B998, or 2B999), or 2D (except 2D983, 2D984, 2D991, 2D992, or 2D994).**

**License Requirements**

*Reason for Control:* \* \* \*

<i>Control(s)</i>	<i>Country chart (see supp. No. 1 to part 738)</i>
-------------------	--

\* \* \* \* \*  
NP applies to “technology” for items controlled by 2A290, 2A291, or 2D290 for NP reasons.

NP Column 2

CB applies to “technology” for equipment controlled by 2B350 to 2B352, valves controlled by 2A226 having the characteristics of those controlled by 2B350.g, and software controlled by 2D351.

CB Column 2

\* \* \* \* \*

■ 23. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E002 is amended by revising, in the License Requirements section, the fourth and fifth entries in the table (which contain the Control(s) language for Country Chart NP Column 2 and Country Chart CB Column 2, respectively), to read as follows:

**2E002 “Technology” according to the General Technology Note for the “production” of equipment controlled by 2A (except 2A983, 2A984, 2A991, or 2A994) or 2B (except 2B991, 2B993, 2B996, 2B997, 2B998, or 2B999).**

**License Requirements**

*Reason for Control:* \* \* \*

<i>Control(s)</i>	<i>Country chart (see supp. No. 1 to part 738)</i>
-------------------	--

\* \* \* \* \*  
NP applies to “technology” for equipment controlled by 2A290 or 2A291 for NP reasons.

NP Column 2

CB applies to “technology” for equipment controlled by 2B350 to 2B352 and for valves controlled by 2A226 having the characteristics of those controlled by 2B350.g.

CB Column 2

\* \* \* \* \*

■ 24. In Supplement No. 1 to part 774 (the Commerce Control List), Category

2—Materials Processing, ECCN 2E290 is amended by revising the ECCN heading and by revising the License Requirements section to read as follows:

**2E290 “Technology” according to the General Technology Note for the “use” of equipment controlled by 2A290 or 2A291.**

**License Requirements**

*Reason for Control:* NP, AT

<i>Control(s)</i>	<i>Country chart (see supp. No. 1 to part 738)</i>
-------------------	--

NP applies to entire entry.

NP Column 2

AT applies to entire entry.

AT Column 1

\* \* \* \* \*

■ 25. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, add ECCN 2E993 between ECCNs 2E991 and 2E994 to read as follows:

**2E993 “Technology” according to the General Technology Note for the “use” of equipment controlled by 2A992 or 2A993.**

**License Requirements**

*Reason for Control:* AT

<i>Control(s)</i>	<i>Country chart (see supp. No. 1 to part 738)</i>
-------------------	--

AT applies to entire entry. AT Column 1

**List Based License Exceptions (See part 740 for a Description of All License Exceptions)**

*CIV:* N/A  
*TSR:* N/A

**List of Items Controlled**

*Related Controls:* N/A

*Related Definitions:* N/A

*Items:* The list of items controlled is contained in the ECCN heading.

■ 26. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, ECCN 3A002 is amended by revising the “Related Controls” paragraph, under the “List of Items Controlled” section, to read as follows:

**3A002 General purpose “electronic assemblies,” modules and equipment, as follows (see List of Items Controlled).**

\* \* \* \* \*

**List of Items Controlled**

*Related Controls:* See Category XV(e)(9) of the USML for certain “space-qualified” atomic frequency standards “subject to the ITAR” (see 22 CFR parts 120 through 130). See also 3A101, 3A992 and 9A515.x.

\* \* \* \* \*

■ 27. In Supplement No. 1 to part 774 (the Commerce Control List), Category

3—Electronics, ECCN 3A292 is removed.

■ 28. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, ECCN 3A992 is amended in the “Items” paragraph, under the “List of Items Controlled” section, by adding paragraphs .d through .g and by adding a Note at the end of ECCN to read as follows:

**3A992 General purpose electronic equipment not controlled by 3A002.**

\* \* \* \* \*

**List of Items Controlled**

\* \* \* \* \*

Items:

\* \* \* \* \*

- d. Non-modular analog oscilloscopes having a bandwidth of 1 GHz or greater;
- e. Modular analog oscilloscope systems having either of the following characteristics:
  - e.1. A mainframe with a bandwidth of 1 GHz or greater; or
  - e.2. Plug-in modules with an individual bandwidth of 4 GHz or greater;
- f. Analog sampling oscilloscopes for the analysis of recurring phenomena with an effective bandwidth greater than 4 GHz;
- g. Digital oscilloscopes and transient recorders, using analog-to-digital conversion techniques, capable of storing transients by sequentially sampling single-shot inputs at successive intervals of less than 1 ns (greater than 1 giga-sample per second), digitizing to 8 bits or greater resolution and storing 256 or more samples.

**Note:** This ECCN controls the following “specially designed” “parts” and “components” for analog oscilloscopes:

1. Plug-in units;
2. External amplifiers;
3. Pre-amplifiers;
4. Sampling devices;
5. Cathode ray tubes.

■ 29. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 3E001 is amended by revising the ECCN heading to read as follows:

**3E001 “Technology” according to the General Technology Note for the “development” or “production” of equipment or materials controlled by 3A (except 3A980, 3A981, 3A991 3A992, or 3A999), 3B (except 3B991 or 3B992) or 3C (except 3C992).**

\* \* \* \* \*

■ 30. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, ECCN 3E292 is removed.

Dated: November 15, 2016.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2016–28039 Filed 11–23–16; 8:45 am]

**BILLING CODE 3510–33–P**

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 4**

**RIN 3038–AE47**

**Commodity Pool Operator Financial Reports**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is amending certain of its regulations applicable to the financial reports that each person registered or required to be registered as a commodity pool operator (CPO) must provide for each commodity pool that it operates. These amendments: Permit the use of additional alternative generally accepted accounting principles, standards or practices; provide relief from the Annual Report audit requirement under certain circumstances; and make clear that an audited Annual Report must be distributed and submitted at least once during the life of a pool.

**DATES:** Effective December 27, 2016.

**FOR FURTHER INFORMATION CONTACT:** Christopher W. Cummings, Special Counsel, 202–418–5445, [ccummings@cftc.gov](mailto:ccummings@cftc.gov), or Barbara S. Gold, Associate Director, 202–418–5441, [bgold@cftc.gov](mailto:bgold@cftc.gov), Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Part 4 of the Commission’s Regulations*

Part 4 of the Commission’s regulations governs the operations and activities of CPOs.<sup>1</sup> It requires each CPO registered or required to be registered with the Commission: To deliver to each participant in its commodity pool a Disclosure Document for the pool containing specified information (Regulations 4.21, 4.24, 4.25 and 4.26); to distribute to each participant periodic unaudited Account Statements for the pool (Regulation 4.22(a)) and an audited

<sup>1</sup> Section 1a(11) of the Commodity Exchange Act (Act or CEA) defines the term “commodity pool operator” and CEA Section 4m(1) generally requires each person who comes within the CPO definition to register as a CPO with the Commission. The Act is found at 7 U.S.C. 1 *et seq.* (2012). The Commission’s regulations are found at 17 CFR Ch. I (2016). Both the Act and the Commission’s regulations are accessible through the Commission’s Web site, <http://www.cftc.gov>.

Annual Report for the pool (Regulation 4.22(c)); to file certain additional financial reports for the pool (Regulation 4.27); and to make and keep specified books and records (Regulation 4.23). Additionally, part 4 prohibits certain activities on the part of all CPOs (Regulations 4.20 and 4.41) and provides for various CPO definitional exclusions (Regulation 4.5), CPO registration exemptions (Regulation 4.13), and compliance exemptions from otherwise applicable CPO requirements (Regulations 4.7, 4.12(b), and 4.12(c)).

*B. The Proposal and the Amendments*

Over the years, and pursuant to authority delegated to it by Regulation 140.93, Commission staff has provided exemptive relief from specific part 4 requirements on a case-by-case basis.<sup>2</sup> On August 5, 2016, the Commission proposed to codify certain of these exemptions as applicable to the Annual Report (Proposal).<sup>3</sup> In response to the comments received, the Commission is adopting as proposed certain amendments to its regulations applicable to the Annual Report audit requirement. Additionally, in response to the comments, the Commission is adopting various other amendments to its regulations applicable to the Annual Report and other CPO financial reports. Each of these amendments (collectively, the Amendments), is intended to provide relief to CPOs, under specified standards, from otherwise applicable requirements.

As is discussed more fully below, these Amendments provide for the use of certain additional alternative generally accepted accounting principles, practices or standards (each an Additional Alternative GAAP) in Annual Reports and periodic Account Statements—whether distributed pursuant to Regulation 4.22 or Regulation 4.7—and in Form CPO–PQR. The Amendments provide for relief

<sup>2</sup> These letters were issued by the Commission’s Division of Swap Dealer and Intermediary Oversight (DSIO) and its predecessors, the Division of Clearing and Intermediary Oversight and the Division of Trading and Markets.

Regulation 140.93 currently delegates to the Director of DSIO “all functions reserved to the Commission” in Regulation 4.12(a)—which provides that the Commission may exempt any person or any class or classes of persons from any provision of part 4 if it finds that the exemption is not contrary to the public interest and the purposes of the provisions from which the exemption is sought and, further, that the Commission may grant the exemption subject to such terms and conditions as it may find appropriate.

<sup>3</sup> 81 FR 51828. Part 4 contains many similar provisions applicable to commodity trading advisors (CTAs). The Proposal did not also pertain to CTAs, however, because CPOs are required to distribute Annual Reports and CTAs are not subject to any such requirement.

from the Annual Report audit requirement where: (1) The pool's first fiscal year is four months or less, as measured by the date on which the CPO first receives funds, securities or other property from a person who is not a pool "insider;" (2) no more than 15 participants in the pool during its first fiscal year are persons who are not pool insiders, and their aggregate gross capital contributions to the pool during that time do not exceed \$3 million; (3) a pool insider includes, among others, the pool's CPO, the pool's CTA, any person controlling, controlled by, or under common control with the CPO or CTA, and any principal of the foregoing; (4) the CPO obtains from each participant other than the insiders listed in (3) above a waiver of their right to timely receive an audited Annual Report for the pool's first fiscal year (which waiver the CPO may obtain in advance from a pool participant by including the waiver in the pool's subscription agreement or other agreement between the participant and the pool, and which waiver must be in a form substantially as set forth in the applicable regulation); and (5) the CPO distributes an audited Annual Report for the combined time period of the short first fiscal year plus the subsequent first twelve-month fiscal year. Additionally, the Amendments provide that a CPO is not required to distribute an audited Annual Report for any year where the pool had as participants only the insiders listed in (3) above, provided the CPO obtains a waiver of their right to receive an audited Annual Report from each such insider participant. Finally, and notwithstanding the availability of any of the foregoing relief from the audit requirement of the Annual Report, the Amendments make clear that regardless of the situation—*i.e.*, whether the pool is comprised solely of insiders who have a close relationship with the CPO, it has other insiders as participants, or it has one or more participants who are not an insider—and regardless of whether the CPO has previously qualified for relief from the Annual Report audit requirement, the CPO must distribute an audited Annual Report at least once during the life of the pool.

### C. Additional Relief

In adopting the standards set forth in these amendments, the Commission has endeavored to balance the needs of pool participants—particularly those who are not closely involved with the pool's operation—for accurate and reliable financial information with the expense of converting non-United States (U.S.) financial statements to U.S. generally accepted accounting principles (U.S.

GAAP) or the expense of obtaining an audit of an Annual Report by an independent public accountant for a relatively short period of time. Thus, although CPOs may continue to request from staff exemptive relief from financial reporting requirements, the Commission intends that staff restrict the issuance of any such relief from the standards it is adopting today to exceptional circumstances involving unique situations.<sup>4</sup>

## II. Comments and Responses

### A. In General

The Commission received five comment letters on the Proposal, as follows: One from a person registered as a CTA and an investment adviser; one from a registered futures association; two from organizations that represent the global alternative investment industry; and one from a law firm that represents CPOs and CTAs.<sup>5</sup> On the whole, the commenters supported the Proposal. Additionally, commenters recommended further relief from Annual Report requirements, and from other CPO financial reporting requirements.<sup>6</sup> For the reasons provided below, the Commission has included certain of these recommendations in the amendments being published today but has declined to include certain other recommendations.

<sup>4</sup> Regulation 140.99 governs requests for staff exemptive, no-action and interpretative letters.

<sup>5</sup> See, respectively, the following: Letter dated September 19, 2016, from Ellen Needham, President, SSGA Funds Management, Inc. (SSGA); Letter dated September 20, 2016, from Thomas W. Sexton III, Senior Vice President, General Counsel and Secretary, National Futures Association (NFA); Letter dated September 16, 2016, from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association (MFA); Letter dated September 20, 2016, from Jiri Krol, Deputy Chief Executive Officer and Global Head of Government Affairs, Alternative Investment Management Association (AIMA); and Letter dated September 20, 2016, from Rita M. Molesworth, Esq., Willkie Farr & Gallagher LLP (Willkie Farr). These comment letters currently are available on the Commission's Web site at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1725>.

The Proposal as initially published required comments to be received by the Commission on or before September 6, 2016. The Commission subsequently extended the comment period to September 20, 2016. See 81 FR 61147 (Sep. 6, 2016).

<sup>6</sup> Moreover, one of the commenters recommended including in the regulations at issue various amendments relative to fund of funds' operations and to situations where a pool invests in illiquid assets—for example, providing additional time for the CPO of a fund of funds to distribute periodic Account Statements. See Willkie Farr comment letter. However, comments relative to fund of funds' operations or to situations where a pool invests in illiquid assets are outside the scope of this rulemaking, and as such, the Commission is not addressing them in this rulemaking.

*B. Regulation 4.22(d)(2): Use of Additional Alternative Generally Accepted Accounting Principles, Practices or Standards*

### 1. In General

The Commission proposed to amend Regulation 4.22(d)(2) to permit the CPO of a pool organized outside the U.S. in a jurisdiction that uses the accounting principles, standards or practices followed in the United Kingdom, Ireland, Luxembourg or Canada to present and compute the financial statements in the Annual Report for the CPO's pool in accordance with the accounting principles, standards or practices of the jurisdiction in which the pool was organized. The proposed provision was an expansion of the provision in Regulation 4.22(d)(2) pursuant to which a CPO of a pool organized outside the U.S. could use International Financial Reporting Standards (IFRS). As the Commission explained, this proposed amendment was supported by its staff's experience in providing relief to use an Additional Alternative GAAP on a case-by-case basis.<sup>7</sup> The Commission received fully supportive comments on this proposed amendment to Regulation 4.22(d)(2)<sup>8</sup> and, accordingly, is adopting the amendment as proposed.

### 2. Use of an Additional Alternative GAAP in Other Required CPO Financial Reports

The Commission also received several comments urging that the Additional Alternative GAAPs be available for use in other CPO financial reports,<sup>9</sup> specifically, in Regulation 4.7(b)(2) account statements and in Form CPO-PQR. Regulation 4.7 provides certain relief to the CPO of a commodity pool in which the participants are exclusively "qualified eligible persons," as that term is defined in the regulation. For example, Regulation 4.7(b)(2) provides relief from certain of the requirements of Regulations 4.22(a) and (b) regarding periodic Account Statements and Regulation 4.7(b)(3) provides relief from certain of the requirements of Regulation 4.22(c) regarding Annual Reports. One of the persons commenting on the Proposal recommended that the Commission amend Regulation 4.7(b)(2) so as to permit a CPO that has elected an Additional Alternative GAAP to be able to use that Additional Alternative GAAP in presenting and computing the

<sup>7</sup> See 81 FR at 51829.

<sup>8</sup> See MFA and SSGA comment letters.

<sup>9</sup> See MFA, NFA and Willkie Farr comment letters.

periodic statements of a pool for which a CPO has claimed relief under Regulation 4.7(b).<sup>10</sup> As this commenter noted, Regulation 4.7(b)(2) requires the use of U.S. GAAP in presenting and computing periodic statements, and Regulation 4.7(b)(2)(v) specifically permits a CPO that has elected pursuant to Regulation 4.22(d)(2) to use IFRS for its Annual Report to present and compute periodic statements in accordance with IFRS. Accordingly, absent the requested amendment, a CPO that had claimed relief under Regulation 4.7 and that also elected to use an Additional Alternative GAAP would not be able to prepare and compute the financial statements in its pool's Annual Report and its pool's periodic statements in a consistent manner (the Annual Report would be in accordance with an Additional Alternative GAAP, while the periodic statements could only be in accordance with U.S. GAAP or IFRS).<sup>11</sup> The Commission agrees with this recommendation, because it will enable CPOs to maintain consistent books and records and should facilitate review of the pool's operations by both participants and regulators. Accordingly, the Commission, has amended Regulation 4.7(b)(2)(v) to permit the use of an Additional Alternative GAAP for periodic financial statements prepared and distributed for a pool for which the CPO has claimed relief under Regulation 4.7(b). In this regard, the Commission notes that Regulation 4.22(d)(2)(i) permits the CPO of a pool that meets the criteria specified therein to use IFRS (and following adoption of the amendments to Regulation 4.22(d)(2), any Additional Alternative GAAP) to present and compute the pool's Annual Report, whether the CPO is distributing the Annual Report pursuant to Regulation 4.22(c) or Regulation 4.7(b)(3). Accordingly, it has not been necessary to amend Regulation 4.7 to permit a CPO claiming relief under Regulation 4.7 and under Regulation 4.22(d)(2) to use an Additional Alternative GAAP to present and compute Annual Reports.

The same commenter and two other commenters recommended that a CPO electing to use an Additional Alternative GAAP should be able to also use that Additional Alternative GAAP

<sup>10</sup> See NFA comment letter.

<sup>11</sup> Where, however, a CPO has not claimed exemption under Regulation 4.7, Regulation 4.22(a)(6) already provides that if the CPO meets the conditions of Regulation 4.22(d)(2)(i) and files the required notice, the CPO may follow the same accounting treatment with respect to the computation and presentation of the account statement. Accordingly, the issue raised by the commenter only arises in the context of Regulation 4.7.

in connection with the preparation of the CPO's Form CPO-PQR (Quarterly Report for Commodity Pool Operators).<sup>12</sup> The Commission also agrees with this recommendation, as it similarly will facilitate computation of, and comparison among, CPO financial reports. Accordingly, the Commission is amending Regulation 4.27(c)(2) to provide that a CPO who has elected to use Alternative Additional GAAP for its pool's Annual Report may also use that Alternative Additional GAAP in connection with reporting financial information on Form CPO-PQR.<sup>13</sup>

### *C. Regulation 4.22(g)(2): Audit Requirement for a Pool's First Fiscal Year*

#### 1. In General

The Commission proposed to amend Regulation 4.22(g)(2) by making an exemption from the requirement to have the first fiscal year Annual Report audited available thereunder for the CPO of a pool for which the first fiscal year was three months or less and where the participants and their contributions meet certain limits, discussed below. Referencing prior staff relief, the Commission explained that "where there are a limited number of participants in the pool and a limited amount of funds have been committed . . . the cost of an audit for the short period of time of the pool's operation would likely be unduly burdensome."<sup>14</sup> As proposed, an unaudited Annual Report for the short first fiscal year would be distributed, and the subsequent audited Annual Report for the first twelve-month fiscal year would also cover that first short fiscal year. Most of the comments that the Commission received on the Proposal addressed this provision, and though generally favorable, some raised additional issues. In response to these comments, the Commission is adopting

<sup>12</sup> See NFA, MFA and Willkie Farr comment letters.

<sup>13</sup> Form CPO-PQR currently provides at Item 9 of the Instructions that All financial statements in this Report must be presented and computed in accordance with U.S. GAAP consistently applied. The Commission intends to begin the process of amending Form CPO-PQR and its instructions upon publication of this **Federal Register** release. In this regard, and as amended, Regulation 4.27(c)(2) provides that notwithstanding anything in the Form CPO-PQR or its instructions to the contrary, a CPO that meets the conditions to use an Additional Alternative GAAP and has filed notice to use it may use that Additional Alternative GAAP in its Form CPO-PQR.

<sup>14</sup> See 81 FR at 51829. The Commission notes that none of the commenters on the Proposal offered any empirical data regarding the cost of an audit for a three-month fiscal year or the difference, if any, in the cost for other partial-year periods.

the amendments to Regulation 4.22(g)(2) it proposed, with certain modifications.

#### 2. Stub Period

The Commission proposed to measure the pool's first fiscal year, for purposes of determining whether it met the proposed three-month criterion, from the date of formation of the pool (the stub period).<sup>15</sup> The Commission explained that it had proposed this date "to ensure that all CPOs and their pool participants are on a level playing field with respect to both what information the Annual Report must contain for the pool's first fiscal year, and the requirement that such information be audited."<sup>16</sup>

One commenter asked the Commission to consider whether using this date would unduly restrict a CPO's ability to avail itself of the relief.<sup>17</sup> Another commenter stated that the stub period should be expanded to six months, and that it be measured from the day that the pool began trading.<sup>18</sup> Still another commenter recommended either measuring the stub period from the day the pool began trading or expanding the stub period to six months from the date on which the pool first received subscription amounts from non-insiders (*i.e.*, from those persons whose participation and capital contributions would be counted for purposes of determining eligibility for the exemption).<sup>19</sup> The Commission believes that pool participants should have access to audited financial information about the pool as promptly as practical, but that insiders such as the CPO, the pool's CTA and their principals and affiliates (who may have direct access to the pool's books and trading records) have less pressing need for audited financial statements or to have them quickly. Moreover, a pool may hold participant money for a substantial period of time before it enters its first trade, and its participants should be able to know to what use their money has, in the meantime, been put. Thus, in response to the foregoing comments, the Commission has decided to adopt a four-month stub period and to calculate the stub period from the day on which the CPO first receives funds,

<sup>15</sup> Regulation 4.22(g)(1) provides that a pool is deemed to be formed as of the date the pool operator first receives funds, securities or other property for the purchase of an interest in the pool.

<sup>16</sup> See 81 FR at 51830.

<sup>17</sup> See NFA comment letter.

<sup>18</sup> See AIMA comment letter; *see also*, NFA comment letter.

<sup>19</sup> See MFA comment letter. Pool insiders are discussed below, at Paragraph C.4 of this section.

securities or other property from a person who is not a pool insider.

### 3. Size of the Pool

The Commission had also proposed that in order to be eligible for the audit requirement exemption, the CPO may have accepted no more than \$1,500,000 in aggregate gross capital contributions from non-insiders. One commenter urged the Commission to ignore the size of the pool.<sup>20</sup> Another recommended that the Commission *either* ignore the size of the pool, *or* increase the maximum aggregate gross capital contribution amount to \$6 million and require that the pool satisfy either the proposed 15-participant non-insider limit or the \$6 million capital contribution amount.<sup>21</sup> After considering these comments, the Commission has determined to increase the aggregate gross capital contribution limit from non-insiders to \$3 million, and to maintain as proposed the requirement that the pool meet both the participant and the (now \$3 million) aggregate gross capital contribution limits (from non-insiders). Based on staff's experience in this area, and in the absence of any data required by the Commission or provided by the commenters regarding capital collected during the first four months of a pool's operation, the Commission believes that this amount (\$3 million) strikes a reasonable balance between the amounts advanced in the Proposal and in the comments thereon, and that this amount will satisfy the needs of CPOs for stub period relief in the future.

Another commenter asked for clarification as to whether the term "aggregate gross capital contributions" as used in the Proposal has the same meaning as "aggregate gross capital subscriptions" as used in Regulation 4.25(a)(i)(1)(D).<sup>22</sup> The Commission confirms that both terms include all capital contributed to the pool, notwithstanding any subsequent withdrawals.

### 4. Insiders

The Proposal included a list of persons who would not be counted as participants and whose contributions would not be counted in determining whether the aggregate gross capital contributions received by the CPO for the pool would exceed the criteria for eligibility for the proposed audit requirement exemption. As the Commission explained, those insiders were the same persons whose

contributions are not counted in determining a CPO's eligibility for the registration exemption for the operator of a family, club or small pool in Regulation 4.13(a)(2).<sup>23</sup> Two commenters urged that the list be expanded—for example, to include any entity that controls, is controlled by or is under common control with any of the listed persons.<sup>24</sup> One of these commenters further suggested that for an exempt pool under Regulation 4.7, the Commission include among the list of insiders "knowledgeable employees" and certain other qualified eligible persons.<sup>25</sup> Upon further consideration of the purpose of this amendment to Regulation 4.22(g), and in response to these comments, the Commission has added to the list of insiders any person controlling, controlled by, or under common control with the pool's CPO or CTA, along with any principal of the foregoing. As one of the commenters noted, this augmentation is consistent with the Commission's inclusion of such persons in other Annual Report regulations.<sup>26</sup>

### 5. Waivers

Under the Proposal, before a CPO could claim relief from the audit requirement for the pool's stub period under Regulation 4.22(g)(2), the CPO would be required to obtain written waivers of the right to receive an audited Annual Report from each participant who would have been entitled to receive an audited Annual Report. One commenter made several recommendations concerning the proposed waiver requirement.<sup>27</sup> The first was to permit waivers to be obtained ahead of time by including them in the subscription agreement for the pool or other agreement with the participant. The Commission believes that this is a useful suggestion, and has included it in the regulation as adopted. However, to ensure that the waiver is not obscured or overlooked, the regulation provides that the waiver must constitute a page separate from any other text in the agreement, and that the participant must separately sign and date it. The second recommendation was to eliminate the proposed prescribed language for the waiver, in favor of simply stating the information that must be included. In response to this comment, although the regulation as adopted retains the specified

language, it now provides that the written waiver be in a form substantially similar to the text. The third recommendation was to not require a waiver from any person whose participation and contribution were excluded from the limits of the stub period relief. The Commission agrees that a waiver should not be required of those participants who have a particularly close relationship to the pool, and as adopted, Regulation 4.22(g)(2)(ii)(c)(1) provides that waivers need not be obtained from the pool's CPO, the pool's CTA, any person controlling, controlled by, or under common control with the pool's CPO or the pool's CTA, or any principal of the foregoing.

### 6. Case-by-Case Relief

Finally, two commenters asked the Commission to confirm that the staff will continue to entertain case-by-case requests for relief from the audit requirement with respect to stub period Annual Reports.<sup>28</sup> As stated, above, the Commission intends that staff restrict the issuance of any such relief from the standards it is adopting today to exceptional circumstances involving unique situations.

#### *D. Regulation 4.22(c)(7): Unavailability of Audit Requirement Exemption*

In order to ensure that an audit is conducted at least once during the life of a commodity pool, the Commission proposed to amend Regulation 4.22(c)(7)(iii) to make the audit requirement exemption for the final report upon liquidation of a pool unavailable where the CPO has not previously distributed an audited Annual Report.<sup>29</sup> Thus, if a CPO claimed the stub period relief under amended Regulation 4.22(g)(2), the CPO could not subsequently claim the relief under Regulation 4.22(c)(7)(iii) for the final report upon liquidation unless in the intervening time the CPO had distributed at least one audited Annual Report for the pool. The Commission received one comment on this proposed amendment, urging it to require instead that the required waiver include an acknowledgment that the pool participant will not be receiving any audited Annual Report.<sup>30</sup> The Commission has not adopted this recommendation, because it does not believe that the suggested alternative is consistent with the customer protection goal of the Annual Report audit requirement—*i.e.*, to promote greater

<sup>23</sup> See 81 FR at 51830.

<sup>24</sup> See MFA and SSGA comment letters.

<sup>25</sup> See MFA comment letter.

<sup>26</sup> See MFA comment letter, referring to Regulation 4.22(c)(8).

<sup>27</sup> See *id.*

<sup>28</sup> See AIMA and MFA comment letters.

<sup>29</sup> See 81 FR at 51830.

<sup>30</sup> See MFA comment letter.

<sup>20</sup> See AIMA comment letter.

<sup>21</sup> See MFA comment letter.

<sup>22</sup> See Willkie Farr comment letter.

accuracy in financial statements and provide an independent review of the pool's activities.<sup>31</sup>

Additionally, the Commission received comments urging it generally not to require a CPO to obtain waivers from insiders. The Commission believes that such a position would not be inconsistent with the purpose of the Annual Report requirement (stated above). Accordingly, the Commission has determined to amend Regulation 4.22(c)(7) to provide that a CPO seeking to claim relief from the audit requirement with respect to a final report upon liquidation of a pool need not obtain waivers from persons who have a particularly close relationship with the operation of the pool (the pool's CPO, its CTA, any person controlling, controlled by, or under common control with the pool's CPO or the pool's CTA, or any principal of the foregoing).<sup>32</sup>

#### E. Specific Requests for Comments

The Commission posed several specific questions in the Proposal seeking public input on particular issues. The following is the only question that elicited a response:

Should the Commission adopt a provision whereby a CPO could claim relief from the Annual Report audit requirement for a pool in which the only participants were the CPO and one or more other 'insiders' (*i.e.*, the persons identified in proposed Regulation 4.22(g)(2)(ii)), regardless of the amount of capital contributed to the pool? What other criteria, if any, should be required?<sup>33</sup>

The sole commenter responding to this question recommended that the Commission adopt such an exemption, and that the range of insiders include not only the persons listed in proposed Regulation 4.22(g)(2)(ii), but also any entity that wholly owns or is under common ownership with the pool's CPO, the pool's CTA or any principal of the CPO or CTA.<sup>34</sup> The commenter further recommended that: Insiders should include trusts beneficially owned and controlled by principals of the CPO or CTA, or their respective

parents, spouses, siblings or children; such an exemption should impose no limit on capital contributions or on the number of participants; and the pool's organizational or offering documents should disclose "that no audited annual report will be provided so long as only insiders are permitted investors." The Commission agrees in part with this commenter's suggestions, and is adopting a further amendment to Regulation 4.22(d)(1) to provide that the requirement that a pool Annual Report be audited does not apply for any fiscal year during which the only participants in the pool are one or more of the following: The pool's CPO; its CTA; any person controlling, controlled by or under common control with the CPO or CTA; or any principal of the foregoing, provided that the CPO: (1) Obtains written waivers from the participants of their right to receive an audited Annual Report for that fiscal year; (2) keeps those waivers as records pursuant to Regulation 4.23; and (3) distributes an audited Annual Report at least once during the life of the pool.

### III. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. In the Proposal, the Commission explained that previously it had established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the requirements of the RFA and that, with respect to CPOs, a CPO was a small entity for the purpose of the RFA if it met the criteria for an exemption from registration under Regulation 4.13(a)(2).<sup>35</sup> Thus, because the Proposal applied to persons registered or required to be registered as a CPO, the Commission determined that the RFA was not applicable to it.<sup>36</sup> The Commission did not receive any comments on this determination.

The amendments to its regulations that the Commission is publishing today continue to apply solely to CPOs registered or required to be registered with the Commission. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the amendments to its

regulations being published by this **Federal Register** release will not have a significant economic impact on a substantial number of small entities.

#### B. Paperwork Reduction Act

##### 1. Overview

The Paperwork Reduction Act of 1995 (PRA)<sup>37</sup> imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any collection of information as defined by the PRA.

As discussed in the Proposal, the Amendments contain collections of information for which the Commission has previously received control numbers from the Office of Management and Budget (OMB). The title for these collections of information is "Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants,"<sup>38</sup> OMB control number 3038-0005."

The responses to these collections of information are mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by OMB.

The collections of information in the Amendments provide to eligible CPOs: (1) An optional alternative to complying with the requirement to compute and present the financial statements in a pool Annual Report in accordance with U.S. GAAP (or in accordance with IFRS); and (2) an optional alternative to complying with the audit requirement for the Annual Report for a pool's first fiscal year, all as described above. In each case, eligible persons have the option to elect the alternative, but no obligation to do so. For this reason, except to the extent that the Commission has amended the subject OMB control number for PRA purposes to reflect these alternatives, the Amendments are not expected to impose any new burdens on CPOs. Rather, to the extent that the Amendments provide alternative means to comply with existing requirements, and an alternative is elected by a CPO, it is reasonable for the Commission to infer that the alternative is less burdensome to such CPO.

<sup>37</sup> 44 U.S.C. 3501 *et seq.*

<sup>38</sup> Subsequent to the publication of the Proposal, the Commission changed the title of the collection to more accurately reflect the matters covered by the subject collections of information.

<sup>31</sup> 44 FR 1918, 1922 (Jan. 8, 1979).

<sup>32</sup> To reflect these amendments, paragraph (c)(7)(iii) of Regulation 4.22 is now divided into subparagraphs (A) and (B).

As is stated in the preceding paragraph, the CPO must have distributed an audited Annual Report at least once during the life of the pool.

<sup>33</sup> 81 FR at 52830. The Commission also asked whether any information that would be included in the Annual Report under U.S. GAAP would not be included under any of the Additional Alternative GAAPs, and if so whether such information should be separately included, or if a reconciliation should be provided. Finally, the Commission asked for any other issues relevant to the Proposal that the Commission should consider. *See id.*

<sup>34</sup> *See* AIMA comment letter.

<sup>35</sup> *See* 81 FR 51828 at 51830.

<sup>36</sup> *Id.*

## 2. Revisions to Collection 3038–0005

Collection 3038–0005 is currently in force with its control number having been provided by OMB. As discussed above, the Amendments add a new exemption to permit a CPO to use accounting principles, standards or practices established in the U.K., Ireland, Luxembourg or Canada. In order to qualify for this exemption, an eligible CPO must take the steps stated in the Amendments, including providing appropriate notification in the pool's Disclosure Document and submitting the required notice to NFA. The Amendments further add a new exemption to permit a CPO to distribute and submit an unaudited Annual Report for its pool's first (partial) fiscal year and an audited Annual Report for the combined period covered by the pool's first (partial) fiscal year plus the pool's first twelve-month fiscal year. In order to qualify for this exemption, an eligible CPO must take the steps stated in the Amendments, including obtaining waivers from pool participants, submitting the required notice and certification to NFA, providing appropriate notification in the Annual Report, and maintaining the waivers as records. Requiring such actions on the part of an eligible CPO requires revisions to collection 3038–0005. Therefore, the Commission submitted a request to amend collection 3038–0005 to OMB and invited public comment on its paperwork burdens in the Proposal. In particular, as further described in the Proposal, the Commission estimates that CPOs will submit approximately 10 notices per year to take advantage of the alternative to permit the use of accounting principles, standards or practices established in the U.K., Ireland, Luxembourg or Canada, and that CPOs will submit approximately 12 notices per year to take advantage of the alternative to permit distribution and submission of an unaudited Annual Report for a pool's first (partial) fiscal year. Accordingly, the Commission estimates the additional hour burden for collection 3038–0005 to be 34 hours as calculated below.

a. Estimated Additional Hour Burden for Collection 3038–0005 Due to Alternative To Complying With Requirement To Present and Compute a Pool's Financial Statements According to U.S. GAAP

*Anticipated number of claimants:* 10.  
*Frequency of collection:* As needed (initial filing and subsequent compliance).

*Estimated annual responses per claimant:* 1.

*Estimated aggregate number of annual responses:* 10.

*Estimated annual hour burden per registrant:* 1 hr.

*Estimated aggregate annual hour burden:* 10 (10 claimants × 1 hour per claimant).

b. Estimated Additional Hour Burden for Collection 3038–0005 Due to Alternative To Complying With Requirement To Distribute and Submit an Audited Annual Report for a Pool's First Fiscal Year

*Number of claimants:* 12.  
*Frequency of collection:* As needed (initial filing and subsequent compliance and recordkeeping).

*Estimated annual responses per claimant:* 1.

*Estimated aggregate number of annual responses:* 12.

*Estimated annual hour burden per claimant:* 2.<sup>39</sup>

*Estimated aggregate annual hour burden:* 24 (12 claimants × 2 hours per claimant).

## 3. Information Collection Comments

In the Proposal, the Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed above. The Commission did not receive any such comments.

### C. Cost-Benefit Considerations

Section 15(a) of the Act<sup>40</sup> requires the Commission to consider the costs and benefits of its actions before promulgating a regulation or issuing certain orders under the Act. Section 15(a) further requires the Commission to evaluate the costs and benefits of any such proposed action in light of five specified areas of consideration, discussed below. The baseline against which the Commission compares the costs and benefits of this final rule is Regulations 4.22(c)(7), 4.22(d)(2) and 4.22(g) as they are currently in effect.

#### 1. Background

As proposed and as adopted, a CPO must make a notice filing in order to be able either to use alternative accounting principles, standards or practices other than U.S. GAAP or IFRS, or to distribute and submit an unaudited Annual Report for its pool's first (partial-year) fiscal year and an audited Annual Report that combines information for the pool's first (partial-year) fiscal year with information for the following, first twelve-month fiscal year. In either case,

<sup>39</sup> This figure for annual hour burden per claimant includes one hour for reporting and one hour for recordkeeping.

<sup>40</sup> 7 U.S.C. 19(a).

the required filing is patterned after the notice required by existing Regulation 4.22(d)(2) that a CPO must submit in order to use IFRS. Thus, the notice contains such information as the CPO's name, address and telephone number, the NFA identification numbers of the CPO and the pool, and representations that the CPO complies with the requisite criteria. Additionally, in the second case, the notice includes a certification that the CPO has obtained written waivers from pool participants (other than the pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, or any principal of the foregoing) of their right to receive an audited Annual Report for the pool's first (partial-year) fiscal year. A notice filing is not required for relief from the Annual Report audit requirement for a fiscal year in which the pool has no participants other than its CPO, its CTA, any person controlling, controlled by, or controlling the CPO or CTA, or any principal of the foregoing. Finally, and as proposed, the Amendments make unavailable the audit requirement exemption in Regulation 4.22(c)(7) for the final report upon liquidation of a pool where the CPO has not previously distributed an audited Annual Report. Thus, for example, if a CPO has claimed the stub period relief under amended Regulation 4.22(g)(2), the CPO cannot subsequently claim the relief under Regulation 4.22(c)(7)(iii) for the final report upon liquidation unless in the intervening time the CPO has distributed at least one audited Annual Report for the pool.

#### 2. Costs

The Commission continues to believe that the differences in the costs of compliance with the Amendments and Regulations 4.22(d)(2) and 4.22(g) as they existed before the Amendments will be small, because the notice filing is designed to mimic the relevant features of existing Regulation 4.22(d)(2). Moreover, the Commission believes that the Amendments will lower costs to CPOs relative to a case-by-case staff-issued exemption, because the Amendments provide a standardized approach to alternative compliance. In addition, due to the unavailability of the audit requirement exemption, there is a cost to the CPO of a pool that is closed without previously having distributed an audited Annual Report, because the CPO now must distribute and submit an audited Annual Report for the pool.

There may also be some cost savings if the conditions of the exemption are

met, because a CPO who operated a pool that met those conditions may distribute to pool participants and submit to NFA an unaudited Annual Report for the pool's first (partial-year) fiscal year and an audited Annual Report that combines information for the pool's first (partial-year) fiscal year with information for the following, first twelve-month fiscal year. These costs savings would be due to the independent public accountant only needing to conduct an audit of the pool once and only issuing one opinion on the pool's financial statements. In the case of audit requirement relief for a pool in which during a given fiscal year the participants are exclusively one or more of the pool's CPO, its CTA, any person controlling, controlled by, or under common control with the pool's CPO or CTA, or any principal of the foregoing, there would also be a cost saving.

In the Proposal, the Commission sought comment concerning whether or not the Proposal would reduce costs for CPO relative to existing Regulations 4.22(d)(2) and 4.22(g). One comment letter addressed the request and stated that "the notice filings required under the proposed rules would result in more timely relief being provided [to CPOs] and decrease the cost of obtaining such relief."<sup>41</sup>

### 3. Benefits

As the Commission explained in the Proposal, an advantage of a notice filing over a Commission staff-processed exemption is timeliness. Thus, a CPO that files a notice under the Amendments will not have to wait for Commission staff to process a request for an individual exemption letter. As the Commission further explained, there is also the benefit that pool participants will receive financial statements for the pool's first fiscal year.

The Commission continues to believe there will be no net benefit from the Amendments as compared to Regulations 4.22(d)(2) and 4.22(g) prior to the Amendments with respect to financial disclosures. By codifying exemptions previously provided by Commission staff on a case-by-case basis, the Amendments continue to assist pool participants by providing them the information necessary to assess the overall trading performance and financial condition of their pool, but with a lower overall burden to certain CPOs. Pool participants are knowledgeable enough to evaluate financial statements prepared under principles, standards or practices established in the U.K., Ireland,

Luxembourg or Canada, provided that the relevant accounting principles, standards or practices are properly disclosed to them. While the Commission sought public comment concerning whether or not use of the specified different systems of accounting principles, standards and practices might lead to material differences in financial statements that pool participants might not be able to understand, the Commission did not receive any comments in response. Nor did the Commission receive any comments responding to its belief that, if it were to adopt the Proposal, there would be minimal loss in the level of confidence of pool participants in their pool's financial statements, because an independent public accountant will still have to issue an opinion on an audited Annual Report that combines information for the pool's first (partial-year) fiscal year with information for the following, first twelve-month fiscal year.

### 4. Section 15(a) Factors

As noted above, Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation or issuing certain orders. As also noted above, CEA Section 15(a) further specifies that the Commission shall evaluate the costs and benefits of its actions in light of five specific concerns. Those concerns relate to: (i) Protection of market participants and the public; (ii) efficiency, competitiveness, and financial integrity of futures markets; (iii) price discovery; (iv) sound risk management practices; and (v) other public interest considerations.

#### i. Protection of Market Participants and the Public

The Commission believes that the Amendments will provide the same level of protection to commodity pool participants through the disclosure of financial statements as do existing Regulations 4.22(d)(2) and 4.22(g). The Commission believes that pool participants are knowledgeable enough to evaluate financial statements prepared under accounting principles, standards and practices established in the U.K., Ireland, Luxembourg or Canada, provided that the relevant accounting principles, standards and practices are properly disclosed to them. By codifying exemptions previously provided by Commission staff on a case-by-case basis, the Amendments continue to assist pool participants by providing them the information necessary to assess the overall trading performance and financial condition of their pool, but with a lower overall

burden to certain CPOs. Additionally, the Commission believes that there will be minimal loss in the level of confidence of pool participants in their pool's financial statements, because an independent public accountant will still have to issue an opinion on the financial statements included in an Annual Report that combines information for the pool's first (partial-year) fiscal year with information for the following, first twelve-month fiscal year. Relief from the audit requirement where all pool participants are insiders is balanced by the close relationship between those insiders and the operation of the pool.

#### ii. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission does not believe there are any significant impacts that the Amendments will have on efficiency, competitiveness, and financial integrity of markets.

#### iii. Price Discovery

The Commission does not believe there are any significant impacts that the Amendments will have on price discovery.

#### iv. Sound Risk Management Practices

The Commission does not believe there are any significant impacts that the Amendments will have on sound risk management practices.

#### v. Other Public Interest Considerations

The Commission has not identified any impact on any other public interest considerations that the Amendments will have.

### 5. Summary of Comments

The Commission invited public comment on its cost-benefit considerations, including the Section 15(a) factors described above. Commenters were invited to submit with their comment letters any data or other information that they had that quantified or qualified the costs and benefits of the Proposal. None of the persons who commented on the Proposal submitted any data or other information that quantified or qualified the costs and benefits of the Proposal, nor did they otherwise comment on the cost-benefit considerations as stated in the Proposal.

#### List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

<sup>41</sup> See MFA comment letter.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission hereby amends 17 CFR part 4 as follows:

**PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS**

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

**Authority:** 7 U.S.C. 1a, 2, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

■ 2. Amend § 4.7 by revising paragraph (b)(2)(v) to read as follows:

**§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.**

\* \* \* \* \*

(b) \* \* \*  
(2) \* \* \*

(v) A commodity pool operator of a pool that meets the conditions specified in § 4.22(d)(2)(i) to present and compute the commodity pool's financial statements contained in the Annual Report other than in accordance with generally accepted accounting principles and has filed notice pursuant to § 4.22(d)(2)(iii) may also use the alternative accounting principles, standards or practices identified in the notice with respect to the computation and presentation of the account statement.

\* \* \* \* \*

■ 3. Amend § 4.22 as follows:

- a. Revise paragraphs (a)(6), (c)(7)(iii), (d)(1) introductory text, and (d)(2);
- b. Revise paragraph (g)(2).

The revisions to read as follows:

**§ 4.22 Reporting to pool participants.**

\* \* \* \* \*

(a) \* \* \*

(6) A commodity pool operator of a pool that meets the conditions specified in paragraph (d)(2)(i) of this section and has filed notice pursuant to paragraph (d)(2)(iii) of this section may elect to follow the same accounting treatment with respect to the computation and presentation of the account statement.

\* \* \* \* \*

(c) \* \* \*  
(7) \* \* \*

(iii) A report filed pursuant to paragraph (c)(7) of this section that would otherwise be required by paragraph (c) of this section is not required to be audited in accordance with paragraph (d) of this section if the commodity pool operator:

(A) Obtains a written waiver of their right to receive an audited Annual

Report from each participant other than the pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, and any principal of the foregoing; and

(B) At the time of filing the Annual Report with the National Futures Association, certifies that it has received a written waiver from each participant from whom it is required to obtain a waiver to qualify for the relief available under this paragraph (c)(7). The commodity pool operator must maintain the waivers in accordance with § 4.23 and must make the waivers available to the Commission or National Futures Association upon request. Notwithstanding the provisions of paragraph (g)(2)(ii) of this section, the relief made available by this paragraph (c)(7)(iii) will not be available where the commodity pool operator has not previously distributed an audited Annual Report to pool participants and submitted an audited Annual Report to the National Futures Association.

\* \* \* \* \*

(d)(1) Subject to the provisions of paragraphs (d)(2) and (g)(2) of this section, the financial statements in the Annual Report required by this section or by § 4.7(b)(3) must be presented and computed in accordance with United States generally accepted accounting principles consistently applied and must be audited by an independent public accountant; *Provided, however*, and subject to the exception in paragraph (c)(7)(iii)(B) of this section, that the requirement that the Annual Report be audited by an independent public accountant does not apply for any fiscal year during which the only participants in the pool are one or more of the pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, and any principal of the foregoing; and *Provided further*, that the CPO obtains a written waiver from each such pool participant of their right to receive an audited Annual Report for such fiscal year, maintains such waivers in accordance with § 4.23, and makes such waivers available to the Commission or National Futures Association upon request. The requirements of § 1.16(g) of this chapter shall apply with respect to the engagement of such independent public accountants, except that any related notifications to be made may be made solely to the National Futures Association, and the certification must be in accordance with § 1.16 of this

chapter, except that the following requirements of that section shall not apply:

\* \* \* \* \*

(2)(i) Where a commodity pool is organized in a jurisdiction other than the United States, the financial statements in the Annual Report required by this section or by § 4.7(b)(3) may be presented and computed in accordance with the generally accepted accounting principles, standards or practices followed in such other jurisdiction; *Provided, That:*

(A) The other jurisdiction follows accounting principles, standards or practices set forth in paragraph (d)(2)(ii) of this section and the Annual Report presents and computes the financial statements of the pool in accordance with the applicable accounting principles, standards or practices followed by such other jurisdiction;

(B) The Annual Report includes a condensed schedule of investments, or, if required by the applicable accounting principles, standards or practices followed by such other jurisdiction, a full schedule of investments;

(C) The Annual Report reports special allocations of ownership equity in accordance with paragraph (e)(2) of this section;

(D) The Disclosure Document or offering memorandum for the pool identifies the accounting principles, standards or practices of the other jurisdiction pursuant to which the Annual Report presents and computes the financial statements of the pool; and

(E) Where the accounting principles, standards or practices of the other jurisdiction require consolidated financial statements for the pool, such as a feeder fund consolidating with its master fund, all applicable disclosures required by United States generally accepted accounting principles for the feeder fund must be presented with the reporting pool's consolidated financial statements.

(ii) For purposes of paragraph (d)(2)(i) of this section, the following alternative accounting principles, standards or practices may be employed in the preparation and computation of the financial statements in the Annual Report of the commodity pool; *Provided, That* any such alternative accounting principles, standards or practices so employed are those followed by the jurisdiction other than the United States in which the commodity pool is organized:

(A) International Financial Reporting Standards;

(B) Generally Accepted Accounting Practice in the United Kingdom;

(C) New Irish Generally Accepted Accounting Practice;

(D) Luxembourg Generally Accepted Accounting Principles; or

(E) Canadian Generally Accepted Accounting Principles.

(iii) To claim the relief available under this paragraph (d)(2), a commodity pool operator must file a notice with the National Futures Association within 90 calendar days after the end of the pool's first fiscal year.

(A) The notice must contain: The name, main business address, main telephone number and National Futures Association registration identification number of the commodity pool operator; the name and identification number of the commodity pool for which the pool operator is claiming relief; and the alternative accounting principles, standards or practices pursuant to which the financial statements in the Annual Report will be presented and computed;

(B) The notice must include a representation that the commodity pool operator complies with each of the conditions specified in paragraphs (d)(2)(i)(A) through (D) of this section and, if applicable, paragraph (d)(2)(i)(E) of this section; and

(C) The notice must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

\* \* \* \* \*

(g) \* \* \*

(2)(i) If a commodity pool operator elects a fiscal year other than the calendar year, it must give written notice of the election to all participants and must file the notice with the National Futures Association within 90 calendar days after the date of the pool's formation. If this notice is not given, the pool operator will be deemed to have elected the calendar year as the pool's fiscal year.

(ii) For purposes of this paragraph (g)(2), the time period from the date on which the commodity pool operator first receives funds, securities or other property from a participant in the pool that is not a person listed in paragraphs (g)(2)(ii)(A)(1) through (g)(2)(ii)(A)(5) of this section to the end of the pool's first fiscal year is the stub period of the pool. Where the stub period is four months or less, the first Annual Report for the pool may be unaudited; *Provided, however*, That:

(A) Throughout the stub period, the pool had no more than fifteen participants and no more than \$3,000,000 in aggregate gross capital contributions. For the purpose of satisfying these criteria, the commodity

pool operator may exclude the following persons and their contributions:

(1) The pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, and any principal of the foregoing;

(2) A child, sibling, or parent of any of these participants;

(3) The spouse of any participant specified in paragraph (g)(2)(ii)(A)(1) or (2) of this section;

(4) Any relative of a participant specified in paragraph (g)(2)(ii)(A)(1), (2) or (3) of this section, their spouse or a relative of their spouse, who has the same principal residence as such participant; and

(5) An entity that is wholly-owned by one or more participants specified in paragraph (g)(2)(ii)(A)(1), (2), (3) or (4) of this section; and

(B) The next Annual Report for the pool is audited and covers the stub period plus the pool's first 12-month fiscal year.

(C) To claim the relief available under paragraph (g)(2)(ii) of this section, a commodity pool operator must:

(1) Prior to the date upon which it is required to distribute and submit an audited Annual Report for the pool's first fiscal year, obtain a written waiver of the pool participant's right to receive an audited Annual Report for the pool's first fiscal year from each participant other than a participant who is the pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, or any principal of the foregoing. The waiver may be included in the subscription agreement for the pool or other agreement with the participant; *Provided, however*, That the waiver is a separate page in the agreement and the pool operator requires the participant to separately sign and date it. The waiver must be in a form substantially as follows: "[Name of participant], a participant in [Name of pool], voluntarily waives the right under CFTC Regulation 4.22(d) to receive an audited Annual Report for the fiscal year ended [end date of the pool's first fiscal year] and will accept in lieu thereof an unaudited Annual Report covering [the stub period] and an audited Annual Report covering [the start date of the stub period] through [the end date of the pool's first twelve-month fiscal year]."; and

(2) On or before the date upon which it is required to distribute and submit the Annual Report for the pool's first fiscal year, file a notice with the National Futures Association, along

with a certification that it has received the required written waiver from each participant who is not the pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, or any principal of the foregoing, and who has been a participant in the pool for its first fiscal year.

(i) The notice must contain: The name, main business address, main telephone number and National Futures Association registration identification number of the commodity pool operator; the name and identification number of the commodity pool for which the pool operator is claiming relief; and the beginning and end dates of the stub period of the pool;

(ii) The notice must include a representation that the commodity pool operator meets the criteria of paragraph (g)(2)(ii)(A) of this section and that it will comply with the condition of paragraph (g)(2)(ii)(B) of this section; and

(iii) The notice must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

(D)(1) Each unaudited Annual Report for which the relief available under paragraph (g)(2)(ii) of this section has been claimed must prominently disclose on the cover page thereof: "Pursuant to an exemption from the Commodity Futures Trading Commission, this unaudited Annual Report covers the period from [beginning date of the stub period of the pool] to the end of the pool's first fiscal year, a period of [number] months."

(2) The next Annual Report for the pool must prominently disclose on the cover page thereof: "Pursuant to an exemption from the Commodity Futures Trading Commission, this audited Annual Report covers the period from [beginning date of the stub period of the pool] to the end of the pool's first 12-month fiscal year, a period of [number] months."

(E) The commodity pool operator must maintain in accordance with § 4.23 of this chapter each waiver it has obtained to claim the relief available under paragraph (g)(2)(ii) of this section.

\* \* \* \* \*

\* \* \* \* \*

■ 4. Amend § 4.27 by revising paragraph (c)(2) to read as follows:

**§ 4.27 Additional reporting by advisors of certain commodity pools.**

\* \* \* \* \*

(c) \* \* \*

(2) All financial information shall be reported in accordance with generally

accepted accounting principles consistently applied. Notwithstanding the foregoing, or anything in the instructions to appendix A of this part to the contrary, a commodity pool operator of a pool that meets the conditions specified in § 4.22(d)(2)(i) to present and compute the commodity pool's financial statements contained in the Annual Report other than in accordance with United States generally accepted accounting principles and has filed notice pursuant to § 4.22(d)(2)(iii) may also use the alternative accounting principles, standards or practices identified in the notice in reporting information required to be reported pursuant to paragraph (c)(1) of this section.

\* \* \* \* \*

Issued in Washington, DC, on November 21, 2016, by the Commission.

**Robert N. Sidman,**

*Deputy Secretary of the Commission.*

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

#### Appendix to Commodity Pool Operator Financial Reports—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2016-28388 Filed 11-23-16; 8:45 am]

BILLING CODE 6351-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 101

[Docket No. FDA-2000-N-0011]

#### Uniform Compliance Date for Food Labeling Regulations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA or we) is establishing January 1, 2020, as the uniform compliance date for food labeling regulations that are issued between January 1, 2017, and December 31, 2018. We periodically announce uniform compliance dates for new food labeling requirements to minimize the economic impact of label changes.

**DATES:** This rule is effective November 25, 2016. Submit electronic or written comments by January 24, 2017.

**ADDRESSES:** You may submit comments as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://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 <https://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-2000-N-0011 for "Uniform Compliance Date for Food Labeling Regulations." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://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 <https://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 <https://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:** Philip L. Chao, Center for Food Safety and Applied Nutrition (HFS-24), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2112.

**SUPPLEMENTARY INFORMATION:** We periodically issue regulations requiring changes in the labeling of food. If the effective dates of these labeling changes were not coordinated, the cumulative economic impact on the food industry of having to respond separately to each change would be substantial. Therefore, we periodically have announced uniform compliance dates for new food labeling requirements (see, e.g., the **Federal Register** of October 19, 1984 (49 FR 41019); December 24, 1996 (61 FR 67710); December 27, 1996 (61 FR 68145); December 23, 1998 (63 FR 71015); November 20, 2000 (65 FR 69666); December 31, 2002 (67 FR 79851); December 21, 2006 (71 FR 76599); December 8, 2008 (73 FR 74349); December 15, 2010 (75 FR 78155); November 28, 2012 (77 FR

70885); and December 10, 2014 (79 FR 73201)). Use of a uniform compliance date provides for an orderly and economical industry adjustment to new labeling requirements by allowing sufficient lead time to plan for the use of existing label inventories and the development of new labeling materials.

We have determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is not a significant regulatory action under Executive Order 12866.

The establishment of a uniform compliance date does not in itself lead to costs or benefits. We will assess the costs and benefits of the uniform compliance date in the regulatory impact analyses of the labeling rules that take effect at that date.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. Because the final rule does not impose compliance costs on small entities, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$146

million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. We do not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies 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. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

This action is not intended to change existing requirements for compliance dates contained in final rules published before January 1, 2017. Therefore, all final rules published by FDA in the **Federal Register** before January 1, 2017, will still go into effect on the date stated in the respective final rule. We generally encourage industry to comply with new labeling regulations as quickly as feasible, however. Thus, when industry members voluntarily change their labels, it is appropriate that they incorporate any new requirements that have been published as final regulations up to that time.

In rulemaking that began with publication of a proposed rule on April 15, 1996 (61 FR 16422), and ended with a final rule on December 24, 1996, we provided notice and an opportunity for comment on the practice of establishing uniform compliance dates by issuance of a final rule announcing the date. Receiving no comments objecting to this practice, FDA finds any further advance notice and opportunity for comment or delayed effective date unnecessary for establishment of the uniform compliance date. Nonetheless, under 21 CFR 10.40(e)(1), we are providing an opportunity for comment on whether the uniform compliance date established by this final rule should be modified or revoked. Interested parties will have an opportunity to comment on the compliance date for each individual food labeling regulation as part of the rulemaking process for that regulation.

The new uniform compliance date will apply only to final FDA food labeling regulations that require changes in the labeling of food products and that publish after January 1, 2017, and before December 31, 2018. Those regulations will specifically identify January 1,

2020, as their compliance date. All food products subject to the January 1, 2020, compliance date must comply with the appropriate regulations when initially introduced into interstate commerce on or after January 1, 2020. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 2020, we will determine for that regulation an appropriate compliance date, which will be specified when the final regulation is published.

Dated: November 18, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016–28333 Filed 11–23–16; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 110

[Docket Number USCG–2016–0110]

RIN 1625–AA01

#### **Anchorage Grounds; Delaware Bay and River, Philadelphia, PA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is revising the anchorage regulations for the Delaware Bay and River. The Coast Guard conducted a review of the Delaware Bay and River anchorage grounds to support increased traffic and vessel size. The changes to this regulation will eliminate unusable anchorage grounds and provide additional usable grounds to support current and future port demands and enhance the overall navigation safety of this critical component of the maritime transportation system.

**DATES:** This rule is effective December 27, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2016–0110 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Tiffany Johnson, U.S. Coast Guard, Fifth Coast Guard District, Waterways Management Branch, telephone (757) 398–6516, email [Tiffany.A.Johnson@uscg.mil](mailto:Tiffany.A.Johnson@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

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

## II. Background Information and Regulatory History

On July 15, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Anchorage Grounds; Delaware Bay and River, Philadelphia, PA (81 FR 46026). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to these anchorage regulations for Delaware Bay and River. During the comment period that ended August 15, 2016, we received two comments.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The purpose of this rule is to eliminate unusable anchorage grounds and maximize usable anchorage grounds within the anchorage boundaries while continuing to safely support current and future port demands.

## IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our NPRM published July 15, 2016. One comment was in favor of the proposed changes. The second comment requested that the Coast Guard define the boundaries of the anchorages using coordinates instead of bearings and distances. As a result, the regulatory text of this rule has been changed to use coordinates to define the anchorages covered by this rule, with the exception of the western boundary of Anchorage 12 between Gloucester and Camden, 33 CFR 110.157(a)(13), for which it is impracticable to define using coordinates.

This rule makes changes to seven of the Delaware Bay and River anchorages in order to eliminate unusable anchorage grounds and maximize usable anchorage grounds within the anchorage boundaries while continuing to safely support current and future port demands.

The Delaware Bay and River anchorage grounds are largely used by commercial vessel traffic. General regulations covering the anchorage of vessels in the port are set out in 33 CFR 110.157. In 1992, the Delaware River Main Channel Deepening project was authorized for construction by Public Law 102-580, Section 101 (6) of the

Water Resources Development Act (WRDA) 1992; modified by Public Law 106-53, Section 308 of WRDA 1999 and further modified by Public Law 106-541, Section 306 of WRDA 2000. This project includes deepening the existing Delaware River Federal Navigation Channel from 40 to 45 feet from Philadelphia, Pennsylvania, and Camden, New Jersey to the mouth of the Delaware Bay. The Army Corps of Engineers (USACE) along with the non-Federal sponsor, the Philadelphia Regional Port Authority (PRPA), commenced dredging for this project in 2010. This project, once completed, will allow for deeper draft vessels within the port and increase overall traffic, and anchorage usage. Due to this anticipated increase in marine traffic a review of the current Delaware Bay and River anchorage grounds was conducted by the Waterways Management Division Sector Delaware Bay, Philadelphia, PA. Upon review, it was determined that multiple anchorage grounds in 33 CFR 110.157 were unusable for some larger vessels due to lack of depth needed to safely anchor. Other anchorage grounds were deemed unusable because they spanned underneath bridges where it would be impractical for vessels to anchor, and posed an increased and unnecessary safety risk of bridge allision.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of 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 rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This rule is not a significant regulatory action because it will not interfere with existing maritime activity on the Delaware River. Rather, it will enhance navigational safety along the Delaware River by providing safer locations for vessels to anchor,

improving navigation safety near bridges and reducing the potential for disruption to maritime traffic by anchored vessels potentially within the federal channel. Vessels may navigate in, around, and through the modified anchorages.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 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 received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule may affect owners and operators of vessels wishing to anchor in the Delaware Bay and River anchorages. Boundaries of some of the current anchorages have been modified, reduced, or increased depending on the water depth and relation of the anchorage to bridges along the Delaware Bay and River. The impact of the rule will be minimal because the changes increase usable anchorage grounds and enable vessels to safely anchor in the anchorage boundaries.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule will 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** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain

about this rule or any policy or action of the Coast Guard.

**C. Collection of Information**

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**D. Federalism and Indian Tribal Governments**

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

**E. Unfunded Mandates Reform Act**

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

**F. Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves

establishing, disestablishing, and modifying anchorage grounds. It is categorically excluded from further review under paragraph 34(f) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.  
For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

**PART 110—ANCHORAGE REGULATIONS**

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

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.157 by revising paragraphs (a)(2), (4), (7), (9), and (12) through (14) to read as follows:

**§ 110.157 Delaware Bay and River.**

(a) \* \* \*  
(2) *Anchorage 1 off Bombay Hook Point.* On the southwest side of the channel along Liston Range, in the waters bounded by a line connecting the following points:

Latitude	Longitude
39°17'14.0" N	075°22'21.0" W
39°16'55.2" N	075°22'50.5" W
39°20'34.1" N	075°26'56.8" W
39°20'53.5" N	075°26'28.0" W

(DATUM: NAD 83)  
\* \* \* \* \*

(4) *Anchorage 3 southeast of Reedy Point.* Southeast of the entrance to the Chesapeake and Delaware Canal at Reedy Point, in the waters bounded by a line connecting the following points:

Latitude	Longitude
39°33'09.0" N	075°32'38.0" W
39°32'34.6" N	075°32'38.2" W
39°31'29.0" N	075°33'01.0" W
39°31'31.8" N	075°33'16.2" W
39°32'14.6" N	075°33'08.3" W
39°33'09.0" N	075°33'10.0" W

(DATUM: NAD 83)  
\* \* \* \* \*

(7) *Anchorage 6 off Deepwater Point.* East of the entrance to Christina River, in the waters bounded by a line connecting the following points:

Latitude	Longitude
39°43'00.0" N	075°30'20.0" W
39°42'51.5" N	075°29'44.9" W
39°42'05.4" N	075°30'25.2" W
39°41'47.3" N	075°30'37.5" W
39°41'34.7" N	075°30'39.9" W
39°41'36.6" N	075°30'51.1" W

(DATUM: NAD 83)  
\* \* \* \* \*

(9) *Anchorage 8 off Thompson Point.* On the south side of the channel along Tincum Range, between Thompson Point and the east side of Crab Point, in the waters bounded by a line connecting the following points:

Latitude	Longitude
39°50'52.0" N	075°18'23.0" W
39°50'51.1" N	075°17'41.0" W
39°50'44.5" N	075°17'41.6" W
39°50'46.0" N	075°18'23.0" W

(DATUM: NAD 83)  
\* \* \* \* \*

(12) *Anchorage 11 at Gloucester.* (i) East of the channel south of the Walt Whitman Bridge at Gloucester, in the waters bounded by a line connecting the following points:

Latitude	Longitude
39°54'10.0" N	075°07'45.0" W
39°54'09.4" N	075°07'43.0" W
39°54'03.0" N	075°07'41.0" W
39°53'30.5" N	075°07'57.7" W
39°53'09.6" N	075°08'17.0" W
39°53'36.6" N	075°08'00.6" W

(DATUM: NAD 83)

(ii) The area between Pier 124 S and 122 S, along the west side of the Delaware River, is restricted to facilitate vessel movements. The areas adjacent to working piers are restricted to facilitate the movement of vessels to and from these piers. Should the anchorage become so congested that vessels are compelled to anchor in these restricted areas, they must move immediately when another berth is available.

(13) *Anchorage 12 between Gloucester and Camden.* (i) East of the channel beginning north of the Walt Whitman Bridge at Gloucester and ending south of the Benjamin Franklin Bridge at Camden, bounded as follows: Beginning at a point at latitude 39°54'26.0" N, longitude 75°07'41" W, bounded on the west by a line perpendicular to the channel, 210 yards from the east edge of the channel, 5,536 yards north to a point at latitude 39°57'05.0" N, longitude 75°08'04.2" W, and then bounded by a line connecting the following points, connecting to the point of beginning:

Latitude	Longitude
39°57'04.3" N	075°07'57.3" W
39°56'51.7" N	075°08'01.3" W
39°56'35.5" N	075°08'03.1" W
39°56'02.8" N	075°08'02.0" W
39°55'34.7" N	075°07'54.5" W
39°54'45.7" N	075°07'32.5" W
39°54'33.8" N	075°07'32.9" W
39°54'25.2" N	075°07'36.1" W

(DATUM: NAD 83)

(ii) The area between No. 2 Broadway pier and No. 1 Broadway pier is restricted to facilitate vessel movements. The areas adjacent to working piers are restricted to facilitate the movement of vessels to and from these piers. Should the anchorage become so congested that vessels are compelled to anchor in these restricted areas, they must move immediately when another berth is available.

(14) *Anchorage 13 at Camden.* East of the channel, north of the Benjamin Franklin Bridge to Cooper Point, Camden, NJ, in the waters bounded by a line connecting the following points:

Latitude	Longitude
39°57'17.0" N	075°07'58.0" W
39°57'22.3" N	075°07'55.9" W
39°57'32.0" N	075°07'49.4" W
39°57'39.2" N	075°07'39.7" W
39°57'34.9" N	075°07'34.7" W
39°57'21.2" N	075°07'49.8" W
39°57'15.1" N	075°07'52.7" W

(DATUM: NAD 83)

\* \* \* \* \*

Dated: November 7, 2016.

**Meredith L. Austin,**  
Admiral, U.S. Coast Guard, Commander,  
Fifth Coast Guard District.  
[FR Doc. 2016-28405 Filed 11-23-16; 8:45 am]  
BILLING CODE 9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG-2016-1029]

**Drawbridge Operation Regulation; Northeast Cape Fear River, Wilmington, NC**

**AGENCY:** Coast Guard, DHS.  
**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the CSX Hilton Railroad Bridge across the Northeast Cape Fear River, mile 1.5, at

Wilmington, NC. This deviation is necessary to manually operate the bridge and perform emergency bridge repairs. This deviation allows the bridge to remain in the closed-to-navigation position.

**DATES:** This deviation is effective without actual notice from November 25, 2016 through 6 p.m. on December 9, 2016. For the purposes of enforcement, actual notice will be used from November 18, 2016 at 3:45 p.m., until November 25, 2016.

**ADDRESSES:** The docket for this deviation, [USCG-2016-1029] is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757-398-6222, email [Hal.R.Pitts@uscg.mil](mailto:Hal.R.Pitts@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The CSX Corporation, owner and operator of the CSX Hilton Railroad Bridge across the Northeast Cape Fear River, mile 1.5, in Wilmington, NC, has requested a temporary deviation from the current operating regulations due to an electrical casualty to the submarine cable and electrical components caused by Hurricane Matthew. The bridge is limited to manual operation, which requires personnel to manually operate components of the bridge in locations where additional safety measures are required, limiting the bridge to daylight operations. The bridge is a bascule draw bridge and has a vertical clearance in the closed position of 4 feet above mean high water.

The current operating schedule is set out in 33 CFR 117.829(b). Under this temporary deviation, the bridge will remain in the closed-to-navigation position and open on signal during daylight hours, if at least 3 hours notice is given.

The Northeast Cape Fear River is used by a variety of vessels including small commercial fishing vessels, recreational vessels and tugs and barges. The Coast Guard has carefully coordinated the restrictions with waterway users.

Vessels able to safely pass through the bridge in the closed position may do so at any time. 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 also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can

arrange their transit to minimize any impact caused by the temporary deviation.

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

Dated: November 18, 2016.

**Hal R. Pitts,**  
Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016-28331 Filed 11-23-16; 8:45 am]

BILLING CODE 9110-04-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R10-OAR-2016-0591; FRL-9955-48-Region 10]

**Air Plan Approval: AK; Permitting Fees Revision**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve state implementation plan (SIP) revisions submitted by the State of Alaska (state) Department of Environmental Conservation on February 1, 2016. The revisions implement changes to permit administration and compliance fees based on the state's fee study results. Changes include: The addition of definitions, restructuring of fee categories, rearranging and renumbering of certain fee rules, and updating cross references to align with the restructured fee rules.

**DATES:** This rule is effective on January 24, 2017, without further notice, unless the EPA receives adverse comment by December 27, 2016. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2016-0591 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:** Randall Ruddick at (206) 553-1999, or [randdick.randall@epa.gov](mailto:randdick.randall@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

**Table of Contents**

- I. Background
- II. Analysis of Rule Updates
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

**I. Background**

Section 110 of the Clean Air Act (CAA) governs the process by which a state submits air quality requirements to the EPA for approval into the State Implementation Plan (SIP). The SIP is a state’s plan to implement, maintain and enforce the National Ambient Air Quality Standards (NAAQS) set by the EPA. CAA section 110(a)(2)(L) requires SIPs to contain provisions that require payment of certain fees to the permitting authority for costs associated with permitting as well as implementing and enforcing the terms and conditions of permits issued. Alaska’s air quality regulations, including provisions addressing the fee requirements in CAA section 110(a)(2)(L), are set forth in Alaska Administrative Code (AAC) Title 18 Environmental Conservation, Chapter 50 Air Quality Control (18 AAC 50) and many of these provisions are incorporated into Alaska’s SIP. Alaska routinely submits revisions to the EPA to ensure the SIP reflects current administrative code and statutes in accordance with the CAA. On February 1, 2016, Alaska Department of Environmental Conservation (ADEC) submitted such an update to incorporate recently revised portions of 18 AAC 50 dealing with air quality permit administration fees, emission fees, and negotiated service agreements. These

regulation changes are based on results of the state’s 2014 Fee Study Report.

**II. Analysis of Rule Updates**

Most recently, on September 19, 2014, we approved into the Alaska SIP, portions of 18 AAC 50.400 that relate to the CAA requirements of section 110(a)(2)(L) (79 FR 56268). Specifically, we approved paragraphs (e), (g), (h), (i), and portions of (j)—requiring new source review permit fees and SIP-approved open burning program fees. In the revisions submitted on February 1, 2016, Alaska repealed 18 AAC 50.400 and then updated, reorganized and readopted the provision. The state requests approval of 18 AAC 50.400(d), (e), (f), (g), and (h), in general the provisions that correspond to the fee provisions previously approved in the Alaska SIP. We have reviewed the changes and approve the portions of the readopted version of 18 AAC 50.400 that contain the requirements for sources to pay new source review permit fees and SIP-approved open burning program fees. Alaska also requested approval of revisions to 18 AAC 50.230(c)(1)(I) and 18 AAC 50.260(p). We are approving these revisions because they consist solely of correcting cross references to 18 AAC 50.400 as necessary due to the reorganization and readopting of 18 AAC 50.400 mentioned above.

**III. Final Action**

We are approving, and incorporating by reference, into the Alaska SIP the following revised provisions, state effective September 26, 2015: 18 AAC 50.400 (except (a), (b), (c), and (i)); 18 AAC 50.230(c)(1)(I), and 18 AAC 50.260(p).

**IV. Incorporation by Reference**

In this rule, the EPA is approving regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are incorporating by reference the provisions described above in Section III. Final Action. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and/or at the EPA Region 10 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

**V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations.

42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide 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 substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 24, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

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

Dated: November 14, 2016.

**Dennis J. McLerran,**  
Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart C—Alaska**

■ 2. In § 52.70, the table in paragraph (c) is amended by revising entries 18 AAC 50.230, 18 AAC 50.260, and 18 AAC 50.400 to read as follows:

**§ 52.70 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED ALASKA REGULATIONS AND STATUTES**

State citation	Title/subject	State effective date	EPA approval date	Explanations
<b>Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50 Air Quality Control (18 AAC 50)</b>				
18 AAC 50.230	Preapproved Emission Limits	9/26/15; 1/29/05	11/25/16, [Insert <b>Federal Register</b> citation]; 8/14/07, 72 FR 45378.	except (d).
18 AAC 50.260	Guidelines for Best Available Retrofit Technology Under the Regional Haze Rule.	9/26/15; 10/6/13	11/25/16, [Insert <b>Federal Register</b> citation]; 5/27/15, 80 FR 30161.	
18 AAC 50.400	Permit Administration Fees	9/26/15	11/25/16, [Insert <b>Federal Register</b> citation].	except (a), (b), (c), and (i).

\* \* \* \* \*  
[FR Doc. 2016-28272 Filed 11-23-16; 8:45 am]  
**BILLING CODE 6560-50-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

**RIN 0648-XE284**

**Pacific Island Pelagic Fisheries; 2016 U.S. Territorial Longline Bigeye Tuna Catch Limits for the Territory of Guam**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Announcement of a valid specified fishing agreement.

**SUMMARY:** NMFS announces a valid specified fishing agreement that allocates 1,000 mt of the 2016 bigeye tuna limit for the Territory of Guam to U.S. longline fishing vessels. The agreement supports the long-term sustainability of fishery resources of the U.S. Pacific Islands, and fisheries development in Guam.

**DATES:** November 21, 2016.

**ADDRESSES:** Copies of a 2015 environmental assessment (EA), a 2016 supplemental EA (2016 SEA), and a finding of no significant impact,

identified by NOAA-NMFS-2015-0140, are available from [www.regulations.gov](http://www.regulations.gov), or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Copies of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (Pelagic FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. 808-522-8220, fax 808-522-8226, or [www.wpcouncil.org](http://www.wpcouncil.org).

**FOR FURTHER INFORMATION CONTACT:** Ariel Jacobs, NMFS PIRO Sustainable Fisheries, 808-725-5182.

**SUPPLEMENTARY INFORMATION:** In a final rule published on September 14, 2016,

NMFS specified a 2016 limit of 2,000 metric tons (mt) of longline-caught bigeye tuna for the U.S. Pacific Island territories of American Samoa, Guam and the Commonwealth of the Northern Mariana Islands (CNMI) (81 FR 63145). Of the 2,000 mt limit, NMFS allows each territory to allocate up to 1,000 mt to U.S. longline fishing vessels identified in a valid specified fishing agreement.

On October 5, 2016, NMFS received from the Council, a completed specified fishing agreement between Guam and Quota Management, Inc. In the transmittal memorandum, the Council's Executive Director noted that the specified fishing agreement was

consistent with the criteria set forth in 50 CFR 665.819(c)(1). NMFS reviewed the agreement and determined that it is consistent with the Pelagic FEP, the Magnuson-Stevens Fishery Conservation and Management Act, implementing regulations, and other applicable laws.

In accordance with 50 CFR 300.224(d) and 50 CFR 665.819(c)(9), vessels identified in the agreement may retain and land bigeye tuna in the western and central Pacific Ocean under the Guam limit.

NMFS will begin attributing bigeye tuna caught by vessels identified in the agreement to Guam starting on November 24, 2016. This date is seven

days before December 1, 2016, which is the date NMFS forecasted that the fishery would reach the CNMI bigeye tuna allocation. If NMFS determines the fishery will reach the 1,000 mt Guam bigeye tuna attribution limit, we would restrict the retention of bigeye tuna caught by vessels identified in the agreement, and publish a notification to that effect in the **Federal Register**.

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

Dated: November 18, 2016.

**Emily H. Menashes,**

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

[FR Doc. 2016-28317 Filed 11-21-16; 11:15 am]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 81, No. 227

Friday, November 25, 2016

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 51

[Document Number AMS–SC–16–0005, SC–16–331]

#### U.S. Standards for Grades of Shelled Walnuts and Walnuts in the Shell

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) proposes to revise the U.S. Standards for Grades of Shelled Walnuts and the U.S. Standards for Grades of Walnuts in the Shell. AMS proposes to include red colored walnuts. In addition, AMS proposes to remove the “Unclassified” section. The changes will modernize the standards, and meet growing consumer demand by providing greater marketing flexibility.

**DATES:** Comments must be submitted on or before January 24, 2017.

**ADDRESSES:** Interested persons are invited to submit comments to the Standardization Branch, Specialty Crops Inspection Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406; fax: (540) 361–1199, or on the Web at: [www.regulations.gov](http://www.regulations.gov). Comments should reference the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. All comments submitted in response to this rule will be included in the public record and will be made available to the public and can be viewed as submitted, including any personal information that you provide, on the Internet via <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Contact David G. Horner at the address

above, or at phone (540) 361–1120; fax (540) 361–1199; or, email [Dave.Horner@ams.usda.gov](mailto:Dave.Horner@ams.usda.gov). Copies of the proposed U.S. Standards for Grades of Shelled Walnuts and Walnuts in the Shell are available on the Internet at <http://www.regulations.gov>. Copies of the current U.S. Standards for Grades of Shelled Walnuts and U.S. Standards for Walnuts in the Shell are available on the Specialty Crops Inspection Division Web site at <https://www.ams.usda.gov/grades-standards/nuts>.

#### SUPPLEMENTARY INFORMATION:

The proposed changes permit grade certification of the red variety. These revisions also affect the grade requirements under the marketing order, 7 CFR parts 984, issued under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674) and applicable imports.

#### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

#### Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

#### Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impacts of the revisions to the U.S. Standards for Grades of Shelled Walnuts and the U.S. Standards for Grades of Walnuts in the Shell. The purpose of the RFA is to structure regulatory actions such that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The current U.S. walnut standards have four color classifications: Extra Light, Light, Light Amber, and Amber. Product that does not meet these color standards cannot be certified to a U.S. grade. AMS proposes to revise these standards to include certification of red color. In addition, AMS proposes eliminating the “Unclassified” section. The proposed revision modernizes the current grading standards by allowing the industry to meet the growing consumer demand for red colored walnuts and by promoting better market information and greater marketing flexibility within the industry.

The process of grading improves the functioning of a commodity market. Assigning different prices to different product characteristics and levels of quality increases opportunities for profitable trade. Adding red color to the walnut grading standards will facilitate additional market opportunities for walnut producers and other participants in the supply chain. The proposed revision will result in a minor change to the current standards with the only modification being to the color requirements. AMS anticipates that there will be little or no additional cost to implement this revision. The proposed change applies uniformly to all market participants and will not result in disproportionate additional costs being borne by small walnut producers or other small businesses.

To determine the proportion of walnut producers that would be considered small, AMS conducted the analysis that follows. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000 (13 CFR 121.601).

AMS used crop value per acre to determine the number of bearing acres

required to generate annual sales of \$750,000 or more, and came to 136 bearing acres. To reach this number, AMS divided the total crop value measured in dollars by the total utilized production measured in tons. Using annual National Agricultural Statistics Service (NASS) data for the years 2010 to 2014, the five-year average crop value was \$1,507,478,000; utilized production was 504,800 tons; and grower price was \$2,982 per ton. AMS multiplied the price by yield to find the crop value per acre of \$5,670 on average over five years. Finally, AMS divided the SBA-defined annual sales threshold of \$750,000 by value per acre, which resulted in 136 acres.

The NASS Agricultural Census is conducted every five years and in 2012 showed that 87 percent of walnut farming operations in the U.S. fell into its Census category of “under 100 bearing acres” of walnuts. AMS estimates that the proportion of walnut growers that qualify as small businesses under the SBA definition is likely to be close to 90 percent, given the probable exclusion in the “under 100 bearing acres” Census category of walnut producers with bearing acreage between 100 and 136. These small growers will not be disproportionately affected by the proposed rule as all changes to the standards will be applied uniformly to all market participants.

In August 2015, the Grades and Standards Committee of the California Walnut Board and Commission voted unanimously to revise the U.S. walnut standards to include non-amber cultivars such as red colored varieties. More than 99 percent of U.S. walnuts are produced in California. Addition of an expanded color certification grade will encourage greater revenue to flow into the industry due to greater marketing opportunities for red colored nuts. Revising the current grading standards to include red walnuts will come at a minimal cost to the industry. The benefits of modernized grading standards, which include better market information and greater marketing flexibility, exceed the minor costs to market participants of implementing this revision to the U.S. standards for walnuts.

### Background

The current U.S. walnut standards only permit the following four colors: Extra Light, Light, Light Amber, and Amber. However, consumer demand is growing for red walnuts in the U.S. In China, the Livermore variety (a red colored walnut) is very desirable. U.S. growers and companies expect sales to continue rising domestically and in

China, especially once red walnuts are permitted grade certification.

To address anticipated consumer needs, the Grades and Standards Committee of the California Walnut Board and Commission voted unanimously in August 2015 to revise the U.S. walnut standards to include non-amber cultivars, beginning with the Livermore variety. Later, the California Walnut Board and Commission sent an official letter to the AMS administrator formally requesting the addition of red colored varieties.

Therefore, AMS proposes to make the following revisions in the U.S. Standards for Grades of Shelled Walnuts:

- § 51.2276 Color chart: Removed and reserved. The information in this section regarding the U.S.D.A. Walnut Color Chart is obsolete.

- § 51.2277 U.S. No. 1(a): Revised to include red walnuts.

- § 51.2278 U.S. Commercial (a): Revised to include red walnuts.

- § 51.2279 Unclassified: Removed and reserved. AMS is removing this section in all standards as they are revised, as it is no longer considered necessary.

- § 51.2281 Color classifications: The section is reorganized into subparts (a) and (b) to include red walnuts.

- § 51.2282 Table II: Revised to include red walnuts.

- § 51.2283 Off color: Revised to include red walnuts.

In addition, AMS proposes to make the following revisions in the U.S. Standards for Grades of Walnuts in the Shell:

- § 51.2946 Color chart: Removed and reserved. This section is now redundant and no longer needed.

- § 51.2948 U.S. No. 1 (a), § 51.2949 U.S. No. 2 (a), and § 51.2950 U.S. No. 3 (a): Subpart (1) was added to subpart (a) in each section to accommodate red walnuts.

- § 51.2951 Unclassified: Removed and reserved. AMS is removing this section in all standards as they are revised, as it is no longer considered necessary.

- § 51.2954 Tolerances for grade defects: Revised to include red walnuts.

The proposed rule provides a 60-day period during which interested parties may comment on the revisions to the standards.

### List of Subjects in 7 CFR Part 51

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is proposed to be amended as follows:

### PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

#### § 51.2276 [Removed and Reserved]

■ 2. In § 51.2276 is removed and reserved:

■ 3. In § 51.2277, paragraph (a) is revised to read as follows:

#### § 51.2277 U.S. No. 1.

\* \* \* \* \*

(a) Color shall be specified in connection with this grade in terms of “extra light,” “light,” “light amber,” or “amber” from the USDA Walnut Color Chart or in terms of “red” color. The color classifications in the USDA Walnut Color Chart shall not apply to “red” color. Furthermore, “red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. (See § 51.2281 and § 51.2282.)

\* \* \* \* \*

■ 4. In § 51.2278, paragraph (a) is revised to read as follows:

#### § 51.2278 U.S. Commercial.

\* \* \* \* \*

(a) Color of walnuts based on the USDA Walnut Color Chart shall be not darker than the “amber” classification. There are no color requirements for “red” walnuts. Color may be specified in connection with the grade in terms of one of the color classifications in the USDA Walnut Color Chart or “red” color. “Red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. (See § 51.2281 and § 51.2282.)

\* \* \* \* \*

#### § 51.2279 [Removed and Reserved]

■ 5. In § 51.2279 is removed and reserved:

■ 6. Revise § 51.2281 to read as follows:

#### § 51.2281 Color classifications.

The following classifications are provided to describe the color of any lot:

(a) “Extra light,” “light,” “light amber,” and “amber:” The portions of kernels in the lot shall be not darker than the darkest color permitted in the specified classification as shown on the USDA Walnut Color Chart.

(b) “Red:” There are no color requirements.

■ 7. In § 51.2282, Table II is amended by adding an entry for “Red” to read as follows:

§ 51.2282 Tolerances for color.

\* \* \* \* \*

TABLE II

Color classification	Darker than extra light <sup>1</sup>	Darker than light <sup>1</sup>	Darker than light amber <sup>1</sup>	Darker than amber <sup>1</sup>
Red	*	*	*	*

<sup>1</sup> See illustration of this term on USDA Walnut Color Chart.

\* \* \* \* \*

■ 8. Revise § 51.2283 to read as follows:

§ 51.2283 Off color.

The term “off color” is not a color classification, but shall be applied to any lot which fails to meet the requirements of the “amber” classification when applying the color classifications in the USDA Walnut Color Chart. Off color shall not be used for “red” color.

§ 51.2946 [Removed and reserved].

- 9. In § 51.2946 is removed and reserved.
- 10. In § 51.2948, paragraphs (a) is revised to read as follows:

§ 51.2948 U.S. No. 1.

\* \* \* \* \*

(a) Kernel color shall be specified in connection with this grade in terms of “extra light,” “light,” “light amber,” or “amber” from the USDA Walnut Color Chart or in terms of “red” color. The color classifications in the USDA Walnut Color Chart shall not apply to “red” color. Furthermore, “red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. When kernel color is based on the color classifications from the USDA Walnut Color Chart, at least 70 percent, by count, of the walnuts have kernels which are not darker than “light amber,” and which are free from grade defects: *Provided*, That at least four-sevenths of the above amount, or 40

percent of the walnuts have kernels which are not darker than “light.” Higher percentages of nuts with kernels not darker than “light amber” which are free from grade defects and/or higher percentages with kernels not darker than “light” which are free from grade defects, may be specified in accordance with the facts. (See § 51.2954 of this part)

■ 11. In § 51.2949, paragraphs (a) is revised to read as follows:

§ 51.2949 U.S. No. 2.

\* \* \* \* \*

(a) Kernel color shall be specified in connection with this grade either in terms of “extra light,” “light,” “light amber,” or “amber” from the USDA Walnut Color Chart or in terms of “red” color. The color classifications in the USDA Walnut Color Chart shall not apply to “red” color. Furthermore, “red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. When kernel color is based on the color classifications from the USDA Walnut Color Chart, at least 60 percent, by count, of the walnuts have kernels which are not darker than “light amber,” and which are free from grade defects. Higher percentages of nuts with kernels not darker than “light amber” which are free from grade defects, and/or percentages with kernels not darker than “light” which are free from grade defects, may be specified in accordance with the facts. (See § 51.2954 of this part)

■ 12. In § 2950, paragraphs (a) is revised to read as follows:

§ 51.2950 U.S. No. 3.

\* \* \* \* \*

(a) Kernel color may be specified in connection with this grade either in terms of “light amber” or “light” from the USDA Walnut Color Chart or in terms of “red” color. The color classifications in the USDA Walnut Color Chart shall not apply to “red” color. Furthermore, “red” color shall not be mixed with “extra light,” “light,” “light amber,” or “amber” colors. When kernel color is based on the color classifications from the USDA Walnut Color Chart, there is no requirement in this grade for the percentage of walnuts having kernels which are “light amber” or “light.” However, the percentage, by count, of nuts with kernels not darker than “light amber” which are free from grade defects and/or the percentage with kernels not darker than “light” which are free from grade defects, may be specified in accordance with the facts. (See § 51.2954 of this part)

§ 51.2951 [Removed and reserved].

- 13. In § 51.2951 is removed and reserved.
- 14. In § 51.2954 revise the table to read as follows:

§ 51.2954 Tolerances for Grade Defects.

\* \* \* \* \*

TOLERANCES FOR GRADE DEFECTS

Grade	External (shell) defects	Internal (kernel) defects	Kernel color based on USDA Walnut Color Chart	Kernel color based on red
U.S. No. 1	10%, by count, for splits. 5%, by count, for other shell defects, including not more than 3% seriously damaged.	10% total, by count, including not more than 6% which are damaged by mold or insects or seriously damaged by other means, of which not more than 5% or 5% may be damaged by insects, but no part of any tolerance shall be allowed for walnuts containing live insects.	No tolerance to reduce the required 70% of “light amber” kernels or the required 40% of “light” kernels or any larger percentage of “light amber” or “light” kernels specified.	.....

TOLERANCES FOR GRADE DEFECTS—Continued

Grade	External (shell) defects	Internal (kernel) defects	Kernel color based on USDA Walnut Color Chart	Kernel color based on red
U.S. No. 2 .....	10%, by count, for splits. 10%, by count, for other shell defects, including not more than 5% serious damage by adhering hulls.	15% total, by count, including not more than 8% which are damaged by mold or insects or seriously damaged by other means, of which not more than 5/8 or 5% may be damaged by insects, but no part of any tolerance shall be allowed for walnuts containing live insects.	No tolerance to reduce the required 60% or any specified larger percentage of "light amber" kernels, or any specified percentage of "light" kernels.	.....
U.S. No. 3 .....	Same as above tolerance for U.S. No. 2.	Same as above tolerance for U.S. No. 2.	No tolerance to reduce any percentage of "light amber" or "light" kernel specified.	.....

Dated: November 18, 2016.

**Elanor Starmer,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2016-28253 Filed 11-23-16; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 927**

[Doc. No. AMS-SC-16-0090; SC16-927-1 CR]

**Pears Grown in Oregon and Washington; Continuance Referendum**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Referendum order.

**SUMMARY:** This document directs that a referendum be conducted among eligible Oregon and Washington pear growers to determine whether they favor continuance of the marketing order regulating the handling of pears grown in Oregon and Washington.

**DATES:** The referendum will be conducted from February 15 through March 1, 2017. Only current growers of pears within the designated production area in Oregon and Washington that have grown pears during the period July 1, 2015, through June 30, 2016, are eligible to vote in this referendum.

**ADDRESSES:** Copies of the marketing order may be obtained from the Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724; the Office of the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; or Internet: <http://www.ecfr.gov/cgi-bin/text-idx?SID=>

*1aaabcfe0d44b8af50dc165366358d74&mc=true&node=pt7.8.927&rgn=div5.*

**FOR FURTHER INFORMATION CONTACT:**

Teresa Hutchinson or Gary D. Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or Email: [Teresa.Hutchinson@ams.usda.gov](mailto:Teresa.Hutchinson@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to Marketing Order No. 927 (7 CFR part 927), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted from February 15 through March 1, 2017, among eligible Oregon and Washington pear growers. Only current growers that were also engaged in the production of pears in Oregon or Washington during the period of July 1, 2015, through June 30, 2016, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor the continuation of marketing order programs. USDA would consider termination of the order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of Oregon and Washington pears represented in the referendum favor continuance of their program. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information regarding operation of the order and relative benefits and disadvantages to growers, handlers, and

consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0189, Generic Fruit Crops. It has been estimated that it will take an average of 20 minutes for each of the approximately 1600 Oregon-Washington pear growers to cast a ballot. Participation is voluntary. Ballots postmarked after March 1, 2017, will not be included in the vote tabulation.

Teresa Hutchinson and Gary D. Olson of the Northwest Marketing Field Office, Specialty Crops Program, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400-900.407).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents or from their appointees.

**List of Subjects in 7 CFR Part 927**

Marketing agreements, Pears, Reporting and recordkeeping requirements.

**Authority:** 7 U.S.C. 601-674.

Dated: November 18, 2016.

**Bruce Summers,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2016-28256 Filed 11-23-16; 8:45 am]

**BILLING CODE 3410-02-P**

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

[Docket No. FAA-2015-3657; Directorate Identifier 2012-SW-069-AD]

RIN 2120-AA64

**Airworthiness Directives; Airbus Helicopters (Previously Eurocopter France) Helicopters**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The FAA is withdrawing a notice of proposed rulemaking (NPRM). The NPRM proposed to supersede airworthiness directive (AD) 2007-25-08 for Eurocopter France (now Airbus Helicopters) Model SA-365N1, AS-365N2, AS 365 N3, SA-366G1, EC 155B, and EC155B1 helicopters. The proposed actions were intended to prevent damage to the tail gearbox (TGB) control shaft and rod assembly bearing resulting in end play, loss of tail rotor pitch control, and subsequent loss of control of the helicopter. Since we issued the NPRM, we have received reports of new occurrences of loss of yaw control due to failure of the control rod bearing and determined that different actions at shorter time intervals are necessary to correct the unsafe condition. Accordingly, we withdraw the proposed rule.

**DATES:** As of November 25, 2016, the proposed rule to amend 14 CFR part 39 published September 2, 2015 (80 FR 53024) is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** David Hatfield, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5116; email [david.hatfield@faa.gov](mailto:david.hatfield@faa.gov).

**SUPPLEMENTARY INFORMATION:** On August 21, 2015, the FAA issued an NPRM that proposed to amend 14 CFR part 39 to remove AD 2007-25-08 (72 FR 69604, December 10, 2007) and add a new AD for Airbus Helicopters (previously Eurocopter France) Model SA 365N1, AS-365N2, AS 365 N3, SA-366G1, EC 155B, and EC155B1 helicopters. The NPRM published in the **Federal Register** on September 2, 2015 (80 FR 53024). The NPRM proposed to require, at specified intervals, checking the TGB oil level and inspecting the TGB magnetic plug for chips at specified intervals. The NPRM also proposed replacing the TGB guide bushes, inspecting the bearing of the TGB

control shaft and rod assembly for M50 type particles, and performing measurements of play in the TGB control shaft and rod assembly. Finally, after replacing the guide bush, the NPRM proposed repetitively performing measurements for play in the TGB control shaft and rod assembly. The NPRM did not apply to helicopters with TGB part number (P/N) 365A33-6005-09 installed, which Airbus Helicopters refers to as Modification 07 65B63. At the time the NPRM was published, we had received new reports of loss of yaw control due to failure of the control rod bearing. The proposed actions were intended to prevent damage to the bearing resulting in end play, loss of tail rotor pitch control, and subsequent loss of control of the helicopter.

**Actions Since the NPRM Was Issued**

Since we issued the NPRM (80 FR 53024, September 2, 2015), EASA issued Emergency AD No. 2016-0097-E, dated May 23, 2016, which was subsequently revised by AD No. 2016-0097R1, dated May 25, 2016, to correct a paragraph reference. EASA AD No. 2016-0097R1 advises that a technical investigation of an AS 365 N3 accident revealed a damaged TGB bearing. EASA further states that the affected control rod had been repetitively inspected as required by a previous AD, EASA AD No. 2012-0170R2, dated June 20, 2014, and that the investigation is still ongoing to determine the root cause of the damage and why the damage was not discovered during the inspections. EASA AD No. 2016-0097R1 requires repetitive inspections of the TGB oil level and magnetic chip detector. EASA AD No. 2016-0097R1 also requires replacing bearing P/N 704A33-651-093 or P/N 704A33-651-104 with an improved bearing P/N 704A33-651-245 or 704A33-651-246, which is terminating action for the repetitive inspections of the magnetic chip detector but not of the oil level. The EASA AD also describes an alternative repetitive inspection for play that would defer replacing the bearing for an additional 110 hours time-in-service.

In light of this latest information, we are issuing a separate action to supersede AD 2007-25-08 (72 FR 69604, December 10, 2007) with immediately effective requirements. Accordingly, we are withdrawing the NPRM.

**Comments**

After our NPRM (80 FR 53024, September 2, 2015) was published, we received two comments from one commenter.

**Request**

Airbus Helicopters requested that the applicability be changed to exclude helicopters with MOD 07 65B63 (which installs TGB P/N 365A33 6005-09) instead of those with TGB P/N 365A33 6005-09. When asked for additional information to support this comment, Airbus Helicopters stated that by excluding only helicopters with TGB P/N 365A33 6005-09, the NPRM would apply to helicopters with a new (future) TGB P/N that would not be subject to the unsafe condition. If instead the NPRM were to exclude helicopters with MOD 07 65B63, it would also exclude future TGB P/Ns. MOD 07 65B63 would be required before any future MOD that may install a new part-numbered TGB.

We agree with the commenter's concern. However, because we are withdrawing the NPRM and issuing a separate action with different corrective requirements, the commenter's request is no longer necessary.

Airbus Helicopters also requested that the compliance intervals for performing the measurements for play include the longer interval allowed for helicopters with MOD 07 65B57.

We agree that the longer inspection intervals are acceptable for helicopters with MOD 07 65B57. However, because we are withdrawing the NPRM and issuing a separate action with different corrective requirements, the commenter's request is no longer necessary.

Withdrawal of the NPRM constitutes only such action and does not preclude the agency from issuing another notice in the future nor does it commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule; therefore, it is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

**List of Subjects in 14 CFR Part 39**

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

**The Withdrawal**

Accordingly, the notice of proposed rulemaking, Docket No. FAA-2015-3657; Directorate Identifier 2012-SW-069-AD, published in the **Federal Register** on September 2, 2015 (80 FR 53024), is withdrawn.

Issued in Fort Worth, Texas, on November 2, 2016.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016-27639 Filed 11-23-16; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2016-9386; Directorate Identifier 2016-NM-056-AD]

RIN 2120-AA64

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

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Airbus Defense and Space S.A. Model CN-235, CN 235-100, CN 235-200, and CN 235-300 airplanes, and Model C-295 airplanes. This proposed AD was prompted by leakage of a motorized cross-feed fuel valve. This proposed AD would require an inspection of the affected fuel valves and, depending on findings, applicable corrective action(s). We are proposing this AD to detect and correct leaks in a motorized cross-feed fuel valve, which could lead to failure of the fuel valve and consequent improper fuel system functioning or, in case of the presence of an ignition source, an airplane fire.

**DATES:** We must receive comments on this proposed AD by January 9, 2017.

**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 Airbus Defense and Space, Services/Engineering Support,

Avenida de Aragón 404, 28022 Madrid, Spain; fax +34 91 585 31 27; email [MTA.TechnicalService@airbus.com](mailto:MTA.TechnicalService@airbus.com). You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

#### 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-2016-9386; 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:** 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:

##### 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-2016-9386; Directorate Identifier 2016-NM-056-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 Airworthiness Directive 2016-0071, dated April 11, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Airbus

Defense and Space S.A. Model CN-235, CN-235-100, CN-235-200, and CN-235-300 airplanes, and Model C-295 airplanes. The MCAI states:

Leakage of a motorised cross-feed fuel valve Part Number (P/N) 7923227F was reported on a CN-235-100M aeroplane. The leakage was observed through the valve electrical connectors and detected during accomplishment of a functional check in accordance with the CN-235 aeroplane Maintenance Review Board Report (MRB-PV01M), task 28.007. Identical motorised fuel valves are installed on CN-235 and C-295 aeroplanes, corresponding to civil type design, as cross-feed, shut-off and defueling valves, as applicable to aeroplane model and configuration.

This condition, if not detected and corrected, could lead to failure of a motorised fuel valve and consequent improper fuel system functioning or, in case of the presence of an ignition source, possibly resulting in an aeroplane fire.

To address this potentially unsafe condition, Airbus Defense & Space (D&S) issued Alert Operators Transmission (AOT)-CN235-28-0001 and AOT-C295-28-0001 to provide inspection instructions.

For the reasons described above, this [EASA] AD requires an inspection of the affected motorised fuel valves and, depending on findings, accomplishment of applicable corrective action(s) [(valve replacement)].

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-2016-9386.

#### Related Service Information Under 14 CFR Part 51

Airbus Defense and Space S.A. has issued AOT-CN235-28-0001, dated February 19, 2016; and AOT-C295-28-0001, dated February 19, 2016. The service information describes procedures for inspecting and replacing the motorized fuel valves. The service information also describes procedures for reporting inspection findings. These documents are distinct since they apply to different airplane models. 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 designs.

**Costs of Compliance**

We estimate that this proposed AD affects 14 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection .....	2 work-hours × \$85 per hour = \$170 .....	\$0	\$170	\$2,380
Reporting .....	1 work-hour × \$85 per hour = \$85 .....	0	85	1,190

We estimate the following costs to do any necessary replacements that would

be required based on the results of the proposed inspection. We have no way of

determining the number of airplanes that might need these replacements:

**ON-CONDITION COSTS**

Action	Labor cost	Parts cost	Cost per product
Replacement .....	5 work-hours × \$85 per hour = \$425 .....	\$38,448	\$38,873

**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):

**Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.):** Docket No. FAA–2016–9386; Directorate Identifier 2016–NM–056–AD.

**(a) Comments Due Date**

We must receive comments by January 9, 2017.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.) Model CN–235, CN–235–100, CN–235–200, and CN–235–300 airplanes, and Model C–295 airplanes, certificated in any category, all manufacturer serial numbers.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by leakage of a motorized cross-feed fuel valve, which was detected during accomplishment of a functional check. We are issuing this AD to detect and correct leaks in a motorized cross-feed fuel valve, which could lead to failure of the fuel valve and consequent improper

fuel system functioning or, in case of the presence of an ignition source, an airplane fire.

#### (f) Compliance

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

#### (g) Inspection of Motorized Fuel Valves

Within the compliance time defined in paragraph (g)(1) or (g)(2) of this AD, as applicable, do a general visual inspection of each motorized fuel valve having part number (P/N) 7923227F for the presence of fuel on the electrical connectors and inside the receptacles, as specified in, and in accordance with the instructions of Airbus Defense and Space Alert Operators Transmission (AOT) AOT-CN235-28-0001 or Airbus Defense and Space AOT-C295-28-0001, both dated February 19, 2016, as applicable.

(1) For airplanes that, as of the effective date of this AD, have accumulated 6,000 flight cycles or more since first flight: Do the inspection within 30 flight cycles or 30 days after the effective date of this AD, whichever occurs first.

(2) For airplanes that, as of the effective date of this AD, have accumulated fewer than 6,000 flight cycles since first flight: Do the inspection within 400 flight hours after the effective date of this AD.

#### (h) Replacement of Affected Parts

If, during the inspection required by paragraph (g) of this AD, any leaking of a motorized fuel valve having P/N 7923227F is detected: Before the next flight, replace the affected fuel valve with a serviceable part, in accordance with the instructions of Airbus Defense and Space AOT-CN235-28-0001 or Airbus Defense and Space AOT-C295-28-0001, both dated February 19, 2016, as applicable. A serviceable part is defined as a part that is not defective; it could be a used or brand new part.

#### (i) Parts Installation Limitation

As of the effective date of this AD, replacement of a motorized fuel valve having P/N 7923227F with a serviceable used part on an airplane is allowed, provided that, within 30 flight cycles or 30 days, whichever occurs first after installation, the part passes an inspection done in accordance with the instructions of Airbus Defense and Space AOT-CN235-28-0001 or AOT-C295-28-0001, both dated February 19, 2016, as applicable.

#### (j) Reporting Requirement

At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD, report the inspection results (both positive and negative) to Airbus DS Technical Assistance Center (AMTAC); telephone +34 91 600 79 99; email [mta.technicalservice@airbus.com](mailto:mta.technicalservice@airbus.com). The report must include the inspection results, a description of any discrepancies found, operator name, the airplane model and serial number, valve part number and serial number, and the number of landings and flight hours on the airplane.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 60 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 60 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: 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. 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 European Aviation Safety Agency (EASA); or Airbus Defense and Space S.A.'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) Airworthiness Directive 2016-0071, dated April 11, 2016, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov>

searching for and locating Docket No. FAA-2016-9386.

(2) For service information identified in this AD, contact Airbus Defense and Space, Technical Services/Engineering Support, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 31 0527; email [MTA.TechnicalService@airbus.com](mailto:MTA.TechnicalService@airbus.com). You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on November 2, 2016.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016-27307 Filed 11-23-16; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2016-9138; Airspace Docket No. 16-AWP-13]

#### Proposed Amendment of Class E Airspace, Willows, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Willows-Glenn County Airport, Willows, CA. Decommissioning of the Maxwell VHF Omni-directional Range/Tactical Air Navigation (VORTAC) navigation aid and cancellation of associated approaches has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. The airport's geographic coordinates also would be adjusted to match the current FAA aeronautical database.

**DATES:** Comments must be received on or before January 9, 2017.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590; telephone: 1-800-647-5527, or (202) 366-9826. You must identify FAA Docket No. FAA-2016-9138; Airspace Docket No. 16-AWP-13, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the

proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](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 7400.11A at NARA, call 202-741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**FOR FURTHER INFORMATION CONTACT:** Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203-4511.

**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 Willows-Glenn County Airport, Willows, CA.

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic,

environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2016-9138; Airspace Docket No. 16-AWP-13." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at [http://www.faa.gov/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

**Availability and Summary of Documents Proposed for Incorporation by Reference**

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations

(14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Willows-Glenn County Airport, Willows, CA. This action would remove the segment extending from the 6.4-mile radius of the airport to 3 miles north of the Maxwell VORTAC as the Maxwell VORTAC navigation aid, was decommissioned and removed from service on May 31, 2016. This modification is necessary to ensure the safety and management of IFR operations at the airport, with a minimum degree of airspace restriction. Additionally, the airport's geographic coordinates would be updated to match the current FAA aeronautical database.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, 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.

**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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal

Aviation Administration proposes to amend 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 14 CFR 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 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

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

\* \* \* \* \*

**AWP CA E5 Willows, CA [Modified]**

Willows-Glenn County Airport, CA  
(Lat. 39°30'57" N., long. 122°13'02" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Willows-Glenn County Airport.

Issued in Seattle, Washington, on November 8, 2016.

**Tracey Johnson,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2016–28292 Filed 11–23–16; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 11**

[Docket No. RM16–19–000]

**Annual Charges for Use of Government Lands in Alaska**

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Notice of Inquiry.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is inviting comments on a narrow question related to its current methodology for calculating annual charges for the use of government lands under Part 11 of the Commission's regulations—whether regional per-acre land values based on data published in the National Agricultural Statistics Service (NASS) Census result in reasonably accurate land valuations for hydropower lands in Alaska. This Notice of Inquiry (NOI)

will assist the Commission in evaluating an alternative proposal raised in a petition for rulemaking, which requests that the Commission use a statewide average per-acre land value for the purposes of calculating annual charges for use of government lands for hydropower projects in Alaska.

**DATES:** Comments on this NOI are due January 24, 2017.

**ADDRESSES:** Comments, identified by Docket No. RM16–19–000 may be filed in the following ways:

- **Electronic Filing through *http://www.ferc.gov*.** Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

- **Mail/Hand Delivery:** Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

**Instructions:** For detailed instructions on submitting comments see the Comment Procedures section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Tara DiJohn (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8671, *tara.dijohn@ferc.gov*.

Norman Richardson (Technical Information), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6219, *norman.richardson@ferc.gov*.

**SUPPLEMENTARY INFORMATION:**

1. The Federal Power Act (FPA) requires hydropower licensees that use federal lands to compensate the United States for the use, occupancy, and enjoyment of its lands.<sup>1</sup> Since 2013, the Federal Energy Regulatory Commission (Commission) has used a fee schedule, based on the U.S. Bureau of Land Management's (BLM) methodology for calculating rental rates for linear rights of way, to calculate annual charges for use of federal lands. The Commission's fee schedule identifies a fee for each county or geographic area, which is the product of four components: A per-acre land value, an encumbrance factor, a rate of return, and an annual adjustment factor. The per-acre land value for a particular county or geographic area is determined using the average per-acre land values published in the National

Agricultural Statistics Service (NASS) Census.

2. The Commission is issuing this Notice of Inquiry (NOI) to seek public and agency comment on a narrow question—whether regional per-acre land values based on data published in the NASS Census result in reasonably accurate land valuations for hydropower lands in Alaska. In particular, the Commission is interested in receiving input on whether, for the state of Alaska, the use of a statewide average per-acre land value or the use of regional per-acre land values (as is currently used) would be preferable to the use of county or geographic area land values.

**I. Background**

3. Section 10(e)(1) of the Federal Power Act (FPA) requires Commission hydropower licensees using federal lands to:

pay to the United States reasonable annual charges in an amount to be fixed by the Commission . . . for recompensing [the United States] for the use, occupancy, and enjoyment of its lands or other property . . . and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require . . .<sup>2</sup>

In other words, licensees that use and occupy federal lands for project purposes must compensate the United States through payment of an annual fee, to be established by the Commission.<sup>3</sup>

4. The Commission has adopted various methods over the years to accomplish this statutory directive.<sup>4</sup> Currently, the Commission uses a fee schedule method to calculate annual charges for use of government lands. The Commission adopted this approach

<sup>2</sup> 16 U.S.C. 803(e)(1) (2012) (emphasis added). Section 10(e)(1) also requires licensees to reimburse the United States for the costs of administering Part I of the FPA. Those charges are calculated and billed separately from the land use charges, and are not the subject of this NOI.

<sup>3</sup> Pursuant to FPA section 17(a), 16 U.S.C. 810(a) (2012), the fees collected for use of government lands are allocated as follows: 12.5 percent is paid into the Treasury of the United States, 50 percent is paid into the federal reclamation fund, and 37.5 percent is paid into the treasuries of the states in which particular projects are located. No part of the fees discussed in this NOI is used to fund the Commission's operations.

<sup>4</sup> See *Annual Charges for Use of Government Lands*, Order No. 774, FERC Stats. & Regs. ¶ 31,341, at PP 3–20 (2013) (cross-referenced at 142 FERC ¶ 61,045) (examining the myriad methodologies the Commission has used or considered for assessing annual charges for the use of government lands since 1937) (Order No. 774).

<sup>1</sup> 16 U.S.C. 803(e)(1) (2012).

in a final rule issued on January 12, 2013.<sup>5</sup>

#### A. Order No. 774

5. In Order No. 774, the Commission adopted a new fee schedule method for calculating annual charges for use of government lands, based on BLM's methodology for calculating rental rates for linear rights of way. Pursuant to section 11.2 of our regulations, the Commission publishes a fee schedule annually, which identifies per-acre rental fees by county or geographic area.<sup>6</sup> To calculate a licensee's annual charge for use of government lands, the Commission multiplies the applicable county or geographic area fee identified in the fee schedule by the number of federal acres reported by that licensee.

6. The fee schedule identifies a per-acre rental fee broken down by county or geographic area. The per-acre rental fee for a particular county or geographic area is calculated by multiplying four components: (1) An adjusted per-acre land value; (2) an encumbrance factor; (3) a rate of return; and (4) an annual adjustment factor.

#### 1. Per-Acre Land Value

7. The first component—the adjusted per-acre land value—is based on average per-acre land values published in the NASS Census. Specifically, the per-acre land value is determined by the applicable county or geographic area “land and buildings” category<sup>7</sup> from the NASS Census. This per-acre value is then adjusted downward using a state-specific reduction to remove the value of irrigated lands, plus a seven percent reduction to remove the value of buildings or other improvements. The end result being the adjusted per-acre land value.

8. The NASS Census is conducted every five years, with an 18-month delay before NASS publishes the Census data. The Commission incorporates another 18-month delay to account for revisions, consistent with BLM's implementation of its 2008 rule. The Commission's 2011–2015 fee schedules were based on data from the 2007 NASS Census. The Commission's 2016–2020 fee schedules will be based on data from the 2012 NASS Census, the 2021–2025 fee schedules will be based on data from

the 2017 NASS Census, the 2026–2030 fee schedules will be based on data from the 2022 NASS Census, and so on. State-specific adjustments to the per-acre land value are performed in the first year that data from a new NASS Census are used, and will remain the same until the subsequent NASS Census data.

#### 2. Per-Acre Land Values for Alaska

9. Order No. 774 explained that the final rule would adopt BLM's approach to Alaska per-acre land values by designating lands in Alaska as part of one of the five NASS Census geographic area identifiers: the Aleutian Islands Area, the Anchorage Area, the Fairbanks Area, the Juneau Area, and the Kenai Peninsula Area. Several commenters asserted that a per-acre statewide value, a category also reported by the NASS Census, should be assessed for Alaska lands.

10. Order No. 774 considered the arguments raised in support of a statewide per-acre value. In particular, several commenters asserted that regional values for Alaska are inappropriate because Alaska does not use county designations, the number of farms surveyed for the NASS Census in the entire state of Alaska is less than the number of farms surveyed in most counties in the lower-48 states, and certain per-acre land values near Anchorage and Juneau are very high, resulting in a substantial increase in annual charges for the use of government lands by hydropower licensees in these areas. However, the Commission ultimately concluded that the commenters had not advanced sufficient explanation for why it was more appropriate to use a statewide value for Alaska, rather than the smallest NASS Census defined area for Alaska—the geographic area identifier. Although the Commission rejected the use of a statewide per-acre land value for Alaska in Order No. 774, the Commission clarified that it would not use the Anchorage Area and the Juneau Area to assess annual charges for the use of government lands “because these high, urban-based rates would not reasonably reflect the value of government lands on which hydropower projects are located.”<sup>8</sup> Instead, for purposes of determining a per-acre land value, the Commission decided to assess the Kenai Peninsula Area per-acre land value for projects located in the Anchorage Area or the Juneau Area.

#### B. Fiscal Year 2016 Fee Schedule

11. The Commission used the 2012 NASS Census data to calculate its fee schedule for the first time in Fiscal Year (FY) 2016. Due to per-acre land value increases in the 2012 NASS Census data, land rates for hydropower projects located in certain geographic areas in Alaska experienced a significant increase when compared to the rates assessed in FY 2015.

#### C. Petition for Rulemaking

12. On June 6, 2016, the Alaska Federal Land Fees Group, comprised of six hydroelectric licensees with projects in Alaska (Alaska Group),<sup>9</sup> petitioned the Commission to conduct a rulemaking to revise the Commission's method of calculating federal land use charges for hydropower projects in Alaska.<sup>10</sup> The Alaska Group's petition focuses solely on the first component of the Commission's fee schedule—the adjusted per-acre land value—and requests that the Commission: (1) Calculate an adjusted statewide average per-acre land value for Alaska; and (2) apply this adjusted statewide fee to all projects in Alaska, except those located in the Aleutian Islands area.<sup>11</sup>

13. In support of this proposal, the Alaska Group states that due to the small number of farms (and associated acreage) that contribute to the data compiled in the NASS Census, there is insufficient data in any individual Alaska area (with the exception of the Aleutian Islands)<sup>12</sup> to produce a fair estimate of land values within that area. Because there are so few farms outside

<sup>9</sup> Alaska Electric Light and Power, Bradley Lake Project Management Committee (on behalf of licensee Alaska Energy Authority), Chugach Electric Association, the Ketchikan Public Utilities, Copper Valley Electric Association, and Southeast Alaska Power Agency.

<sup>10</sup> The Commission issued its 2016 federal land use bills on April 21, 2016. In accordance with section 11.20 of the Commission's regulations, 18 CFR 11.20 (2016), the members of the Alaska Group paid their bills under protest, and filed a timely appeal. On June 9, 2016, Commission staff denied the appeal. The Alaska Group requested rehearing of the denial. Concurrent with the issuance of this NOI, the Commission is issuing a separate order denying the Alaska Group's rehearing request.

<sup>11</sup> The Alaska Group requests that any project located in the Aleutian Islands Area would continue to be assessed annual charges for use of government lands based on a regional per-acre land value.

<sup>12</sup> The Alaska Group contends that because the Aleutian Islands area contains the greatest amount of farmland in the state (668,016 acres), the NASS Census data for the Aleutian Islands area is “robust, reliable, and an accurate estimate of fair market value.” Alaska Group June 6, 2016 Petition for Rulemaking at 18. Therefore, the Alaska Group requests that the proposed adjusted statewide average be applied to all hydropower projects in Alaska, except those projects located in the Aleutian Islands Area.

<sup>5</sup> See generally, Order No. 774.

<sup>6</sup> 18 CFR 11.2 (2016). The fee schedule is published annually as part of Appendix A to Part 11 of the Commission's regulations.

<sup>7</sup> The “land and buildings” category is a combination of all land use categories in the NASS Census, including croplands (irrigated and non-irrigated), pastureland/rangeland, woodland, and “other” (roads, ponds, wasteland, and land encumbered by non-commercial/non-residential buildings).

<sup>8</sup> Order No. 774 at P 45.

of the Aleutian Islands area, the per-acre land values in the other four areas of Alaska are extremely sensitive to any changes in the voluntary, self-reported farm data compiled by the NASS Census.

14. For these reasons, the Alaska Group recommends that an adjusted statewide average would better reflect the diverse topography of the state and insulate against land value fluctuations caused by individual changes in farm data, resulting in a more accurate estimate of fair market value of federal lands in Alaska.

## II. Subject of the Notice of Inquiry

15. The Commission has employed various methodologies over the course of its history to determine annual charges for the use of government lands by hydropower projects. As we previously explained, the touchstone has been to find an administratively practical methodology, which results in reasonably accurate land valuations. In seeking this goal, the methodology has been modified on occasion in response to concerns such as the cost of administering the methodology (*e.g.*, rejecting individual appraisals), the administrative burden on the Commission (*e.g.*, rejecting creation of our own index), and the accurate collection of fair market value (*e.g.*, implementing updates in response to the contention that Commission had been under-collecting). As noted, the Commission currently calculates annual federal land use charges based on a fee schedule that uses per-acre land values published in the NASS Census. By doing so, the Commission avoids the extreme administrative burden of creating its own index of county and geographic area per-acre land values.

16. In response to the petition for rulemaking, the Commission is seeking input on a narrow question related to its current methodology for calculating annual charges for the use of government lands—whether regional per-acre land values based on data published in the NASS Census “land and buildings category” result in reasonably accurate land valuations for hydropower lands in Alaska. Specifically, the Commission seeks comments on the alternative proposal advanced in the Alaska Group’s petition for rulemaking by posing the following questions: (1) For the purposes of calculating an adjusted per-acre value for lands in Alaska, should the Commission use a statewide average per-acre land value rather than a regional per-acre land value; (2) if a statewide average per-acre value is preferred, should the statewide value be

applied to (i) all projects in Alaska, or (ii) all projects in Alaska except those located in the Aleutian Islands Area; and (3) based on the response to question (2), which of the five geographic regions of Alaska (the Aleutian Islands Area, the Anchorage Area, the Fairbanks Area, the Juneau Area, and the Kenai Peninsula Area) should be included in the calculation of the adjusted statewide average. Finally, commenters may also submit alternative proposals for determining a reasonably accurate per-acre value for hydropower lands in Alaska for our consideration, as long as the proposed calculation is based on data published in the NASS Census.

17. In addition to the views of entities subject to annual charge assessments, and other interested stakeholders, the Commission invites comments by the federal agencies that manage the lands at issue as to how they would view reductions in annual charges for lands that they administer.

18. During the notice and comment rulemaking that culminated in Order No. 774, the Commission outlined several major objectives that guided our consideration of a new annual charges methodology. These objectives, albeit narrowed in scope to only those hydropower projects in Alaska, continue to guide our consideration during this process.

### A. Uniform Applicability

19. Any proposed methodology should be uniformly applicable to all hydropower licensees. This means that the Executive Director should be able to take the information in the Commission’s files showing federal acreage occupied by individual projects, apply the adopted methodology, and create an annual charge for the use of government lands for each licensed project.

### B. Cost of Administering Collection of Annual Charges

20. The administration of any proposed methodology must not impose exorbitant costs on the Commission. Collection of annual charges and application of the ultimate methodology should be an annual, routine ministerial process that requires reasonable, but not overly burdensome, staff effort.

### C. Methodology Not Subject to Review on an Individual Basis

21. Any proposed methodology, once adopted, should not be subject to review on an individual case-by-case basis. Licensees will have the opportunity to challenge computational errors by the Executive Director in calculating the

annual charge or the relevant county land acreage, but case-by-case challenges to the methodology would add significantly to the administrative cost and burden of collecting annual charges.

### D. Fair Market Value

22. At times in the Commission’s history, it has been determined that the Commission had not been collecting fair market value for the use of government lands, which resulted in a substantial under-collection.<sup>13</sup> To ensure that the Commission recovers “reasonable annual charges,” any proposed methodology must reflect reasonably accurate land valuations.

### E. Avoid Increasing Price to Consumers of Power

23. In fixing annual charges, we must seek to avoid increasing the price to consumers of power by such charges. Therefore, any proposed methodology should provide reasonable, but not excessive, compensation to the United States for the use of its lands.

## III. Comment Procedures

24. The Commission invites interested persons to submit comments and other information on the matters, issues, and specific questions identified in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due January 24, 2017. Comments must refer to Docket No. RM16–19–000, and must include the commenter’s name, the organization it represents, if applicable, and its address.

25. To facilitate the Commission’s review of the comments, commenters are requested to provide an executive summary of their position. Commenters are requested to identify each specific question posed by the Notice of Inquiry that their discussion addresses and to use appropriate headings. Additional issues the commenters wish to raise should be identified separately. The commenters should double-space their comments.

26. The Commission encourages comments to be filed electronically via the eFiling link on the Commission’s Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF

<sup>13</sup> See *Assessment of Charges under the Hydroelectric Program*, DOE/IG Report No. 0219 (September 3, 1986); see also *More Efforts Needed to Recover Costs and Increase Hydropower Charges*, U.S. General Accounting Office Report No. RCED–87–12 (November 1986).

format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

27. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

28. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters are not required to serve copies of their comments on other commenters.

#### IV. Document Availability

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

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

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

By direction of the Commission.

Issued: November 17, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016-28193 Filed 11-23-16; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 35

[Docket No. RM16-6-000]

#### Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations to require all newly interconnecting large and small generating facilities, both synchronous and non-synchronous, to install and enable primary frequency response capability as a condition of interconnection. To implement these requirements, the Commission proposes to revise the *pro forma* Large Generator Interconnection Agreement (LGIA) and the *pro forma* Small Generator Interconnection Agreement (SGIA). The proposed changes are designed to address the increasing impact of the evolving generation resource mix and to ensure that the relevant provisions of the *pro forma* LGIA and *pro forma* SGIA are just, reasonable, and not unduly discriminatory or preferential. The Commission also seeks comment on whether its proposals in this Notice of Proposed Rulemaking are sufficient at this time to ensure adequate levels of primary frequency response, or whether additional reforms are needed.

**DATES:** Comments are due January 24, 2017.

**ADDRESSES:** Comments, identified by docket number, may be filed in the following ways:

- **Electronic Filing** through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

- **Mail/Hand Delivery:** Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

**Instructions:** For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Jomo Richardson (Technical Information), Office of Electric

Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-6281, [Jomo.Richardson@ferc.gov](mailto:Jomo.Richardson@ferc.gov). Mark Bennett (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8524, [Mark.Bennett@ferc.gov](mailto:Mark.Bennett@ferc.gov).

#### SUPPLEMENTARY INFORMATION:

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes to modify the *pro forma* Large Generator Interconnection Agreement (LGIA) and the *pro forma* Small Generator Interconnection Agreement (SGIA), pursuant to its authority under section 206 of the Federal Power Act (FPA) to ensure that rates, terms and conditions of jurisdictional service remain just and reasonable and not unduly discriminatory or preferential.<sup>1</sup> The proposed modifications would require all new large and small generating facilities, including both synchronous and non-synchronous, interconnecting with a LGIA or SGIA to install, maintain and operate equipment capable of providing primary frequency response as a condition of interconnection. The Commission also proposes to establish certain operating requirements, including maximum droop and deadband parameters in the *pro forma* LGIA and *pro forma* SGIA. The Commission does not propose to apply these requirements to generating facilities regulated by the Nuclear Regulatory Commission. In addition, the Commission does not propose in these reforms to impose a headroom requirement for new generating facilities. The Commission also does not propose to mandate that new generating facilities receive any compensation for complying with the proposed requirements in this NOPR.

2. The proposed revisions address the Commission's concerns that the existing *pro forma* LGIA contains limited primary frequency response requirements that apply only to synchronous generating facilities and do not account for recent technological advancements that have enabled new non-synchronous generating facilities to now have primary frequency response capabilities. Further, the Commission believes that it may be unduly discriminatory or preferential to impose primary frequency response requirements only on new large generating facilities but not on new small generating facilities, and the reforms proposed here would impose

<sup>1</sup> 16 U.S.C. 824e (2012).

comparable primary frequency response requirements on both new large and small generating facilities.

3. In addition, and as discussed below in paragraph 57, the Commission also seeks comment on whether its proposals in this NOPR are sufficient at this time to ensure adequate levels of primary frequency response, or whether additional reforms are needed.

4. The Commission seeks comment on the proposed reforms and requests for comment sixty (60) days after publication of this NOPR in the **Federal Register**.

## I. Background

### A. Frequency Response

5. Reliable operation of an Interconnection<sup>2</sup> depends on maintaining frequency within predetermined boundaries above and below a scheduled value, which is 60 Hertz (Hz) in North America. Changes in frequency are caused by changes in the balance between load and generation, such as the sudden loss of a large generator or a large amount of load. If frequency deviates too far above or below its scheduled value, it could potentially result in under frequency load shedding (UFLS), generation tripping, or cascading outages.<sup>3</sup>

6. Mitigation of frequency deviations after the sudden loss of generation or load is driven by three primary factors: inertial response, primary frequency response, and secondary frequency response.<sup>4</sup> Primary frequency response actions begin within seconds after system frequency changes and are mostly provided by the automatic and autonomous actions (*i.e.*, outside of system operator control) of turbine-

governors, while some response is provided by frequency responsive loads.<sup>5</sup> Primary frequency response actions are intended to arrest abnormal frequency deviations and ensure that system frequency remains within acceptable bounds. An important goal for system planners and operators is for the frequency nadir,<sup>6</sup> during large disturbances, to remain above the first stage of UFLS set points within an Interconnection.

7. Frequency response is a measure of an Interconnection's ability to arrest and stabilize frequency deviations following the sudden loss of generation or load, and is affected by the collective responses of generation and load throughout the Interconnection. When considered in aggregate, the primary frequency response provided by generators within an Interconnection has a significant impact on the overall frequency response. NERC Reliability Standard BAL-003-1.1 defines the amount of frequency response needed from balancing authorities<sup>7</sup> to maintain Interconnection frequency within predefined bounds and includes requirements for the measurement and provision of frequency response.<sup>8</sup> While NERC Reliability Standard BAL-003-1.1 establishes requirements for balancing authorities, it does not include any requirements for individual generator owners or operators.<sup>9</sup>

<sup>5</sup> NOI, 154 FERC ¶ 61,117 at P 6. The Commission also noted that regulation service is different than primary frequency response because generating facilities that provide regulation respond to automatic generation control signals and regulation service is centrally coordinated by the system operator, whereas primary frequency response service, in contrast, is autonomous and is not centrally coordinated. Schedule 3 of the *pro forma* Open Access Transmission Tariff (OATT) bundles these different services together, despite their differences. *See Id.* n.66.

<sup>6</sup> The point at which the frequency decline is arrested (following the sudden loss of generation) is called the frequency nadir, and represents the point at which the net primary frequency response (real power) output from all generating units and the decrease in power consumed by the load within an Interconnection matches the net initial loss of generation (in megawatts (MW)).

<sup>7</sup> NERC's Glossary of Terms defines a balancing authority as "(t)he responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a balancing authority area, and supports Interconnection frequency in real time."

<sup>8</sup> *Frequency Response and Frequency Bias Setting Reliability Standard*, Order No. 794, 146 FERC ¶ 61,024 (2014).

<sup>9</sup> The Commission has also accepted Regional Reliability Standard BAL-001-TRE-01 (Primary Frequency Response in the ERCOT Region) as mandatory and enforceable, which does establish requirements for generator owners and operators with respect to governor control settings and the provision of primary frequency response within the Electric Reliability Council of Texas (ERCOT) region. *North American Electric Reliability Corporation*, 146 FERC ¶ 61,025 (2014).

8. Unless otherwise required by tariffs or interconnection agreements, generator owners and operators can independently decide whether units are configured to provide primary frequency response.<sup>10</sup> The magnitude and duration of a generator's response to frequency deviations is generally determined by the settings of the unit's governor<sup>11</sup> (or equivalent controls) and other plant level (*e.g.*, "outer-loop") control systems. In particular, the governor's droop and deadband settings have a significant impact on the unit's provision of primary frequency response. In addition, plant-level or "outer-loop" controls, unless properly configured, can override or nullify a generator's governor response and return the unit to operate at a scheduled pre-disturbance megawatt set-point.<sup>12</sup> In 2010, NERC conducted a survey of generator owners and operators and found that only approximately 30 percent of generators in the Eastern Interconnection provided primary frequency response, and that only approximately 10 percent of generators provided sustained primary frequency response.<sup>13</sup> This suggests that many generators within the Interconnection disable or otherwise set their governors or outer-loop controls such that they provide little to no primary frequency response.<sup>14</sup>

9. Declining frequency response performance has been an industry concern for many years. NERC, in conjunction with EPRI, initiated its first examination of declining frequency response and governor response in 1991.<sup>15</sup> More recently, as noted in the

<sup>10</sup> *See* NOI, 154 FERC ¶ 61,117 at PP 18–19.

<sup>11</sup> A governor is an electronic or mechanical device that implements primary frequency response on a generator via a droop parameter. Droop refers to the variation in real power (MW) output due to variations in system frequency and is typically expressed as a percentage (*e.g.*, 5 percent droop). Droop reflects the amount of frequency change from nominal (*e.g.*, 5 percent of 60 Hz is 3 Hz) that is necessary to cause the main prime mover control mechanism of a generating facility to move from fully closed to fully open. A governor also has a deadband parameter which establishes a minimum frequency deviation (*e.g.*,  $\pm 0.036$  Hz) from nominal that must be exceeded in order for the governor to act.

<sup>12</sup> For more discussion on "premature withdrawal" of primary frequency response, *see* NOI, 154 FERC ¶ 61,117 at PP 49–50.

<sup>13</sup> *See* NERC *Frequency Response Initiative Report: The Reliability Role of Frequency Response* (Oct. 2012), [http://www.nerc.com/docs/pc/FRI\\_Report\\_10-30-12\\_Master\\_w-appendices.pdf](http://www.nerc.com/docs/pc/FRI_Report_10-30-12_Master_w-appendices.pdf) (NERC Frequency Response Initiative Report) at 95.

<sup>14</sup> However, as noted below, some commenters note that nuclear generating units are restricted by their U.S. Nuclear Regulatory Commission operating licenses regarding the provision of primary frequency response.

<sup>15</sup> NERC Frequency Response Initiative Report at 22.

<sup>2</sup> An Interconnection is a geographic area in which the operation of the electric system is synchronized. In the continental United States, there are three Interconnections, namely the Eastern, Texas, and Western Interconnections.

<sup>3</sup> UFLS is designed for use in extreme conditions to stabilize the balance between generation and load. Under frequency protection schemes are drastic measures employed if system frequency falls below a specified value. *See Automatic Underfrequency Load Shedding and Load Shedding Plans Reliability Standards*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,682, at PP 4–10 (2011) (Order No. 763 NOPR) at PP 4–10.

<sup>4</sup> In the Notice of Inquiry issued in Docket No. RM16-6-000 on Feb. 8, 2016, the Commission provided detailed discussion of how inertia, primary frequency response, and secondary frequency response interact to mitigate frequency deviations. *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 154 FERC ¶ 61,117, at PP 3–7 (2016) (NOI). *See also Use of Frequency Response Metrics to Assess the Planning and Operating Requirements for Reliable Integration of Variable Renewable Generation*, Lawrence Berkeley National Laboratory, at 13–14 (Dec. 2010), <http://energy.lbl.gov/ea/certs/pdf/lbnl-4142e.pdf> (LBNL 2010 Report).

NOI, while the three U.S. Interconnections currently exhibit adequate frequency response performance above their Interconnection Frequency Response Obligations,<sup>16</sup> there has been a significant decline in the frequency response performance of the Western and Eastern Interconnections.<sup>17</sup>

#### B. Prior Commission Actions

10. In Order Nos. 2003<sup>18</sup> and 2006,<sup>19</sup> the Commission adopted standard procedures for the interconnection of large and small generating facilities, including the development of standardized *pro forma* generator interconnection agreements and procedures. The Commission required public utility transmission providers<sup>20</sup> to file revised OATTs containing these standardized provisions, and use the LGIA and SGIA to provide non-discriminatory interconnection service to Large Generators (*i.e.*, generating facilities having a capacity of more than 20 MW) and Small Generators (*i.e.*, generators having a capacity of no more than 20 MW). The *pro forma* LGIA and *pro forma* SGIA have since been revised through various subsequent proceedings.<sup>21</sup>

<sup>16</sup> The Interconnection Frequency Response Obligations are established by NERC and are designed to require sufficient frequency response for each Interconnection (*i.e.*, the Eastern, ERCOT, Quebec and Western Interconnections) to arrest frequency declines even for severe, but possible, contingencies.

<sup>17</sup> NOI, 154 FERC ¶ 61,117 at P 20.

<sup>18</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

<sup>19</sup> *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006).

<sup>20</sup> A public utility is a utility that owns, controls, or operates facilities used for transmitting electric energy in interstate commerce, as defined by the FPA. See 16 U.S.C. 824(e) (2012). A non-public utility that seeks voluntary compliance with the reciprocity condition of an OATT may satisfy that condition by filing an OATT, which includes a LGIA and SGIA. See Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at PP 840–845.

<sup>21</sup> *E.g.*, *Small Generator Interconnection Agreements and Procedures*, Order No. 792, 145 FERC ¶ 61,159 (2013), *clarifying*, Order No. 792-A, 146 FERC ¶ 61,214 (2014); *Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 81 FR 40,793 (Jun. 23, 2016), 155 FERC ¶ 61,277 (2016); *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 81 FR 50,290 (Aug. 1, 2016), 156 FERC ¶ 61,062 (2016).

11. As relevant here, the *pro forma* LGIA and *pro forma* SGIA are largely silent on any requirements with respect to primary frequency response. In particular, the only requirement in the *pro forma* LGIA or *pro forma* SGIA related to primary frequency response is contained within current Article 9.6.2.1 of the *pro forma* LGIA (Governors and Regulators), which provides that if speed governors are installed, they should be operated in automatic mode.<sup>22</sup> A speed governor implements the primary frequency response provided by a synchronous generating facility; however, Article 9.6.2.1 does not address governor settings or plant-level controls, which also affect the ability of a generating facility to provide primary frequency response. In addition, Article 9.6.2.1 does not require the installation of the necessary equipment for frequency response capability (*i.e.*, governors or equivalent controls). Finally, the *pro forma* SGIA does not contain any provisions related to primary frequency response.

#### C. Efforts To Evaluate the Impacts of the Changing Resource Mix

12. The Commission's *pro forma* generator interconnection agreements and procedures were developed at a time when traditional synchronous generating facilities with standard governor controls and large rotational inertia were the predominant sources of electricity generation. However, the nation's resource mix has undergone significant change since the issuance of Order Nos. 2003 and 2006. This transformation has been characterized by the retirement of baseload, synchronous generating facilities and the integration of more distributed generation, demand response, and natural gas generating facilities, and the rapid expansion of non-synchronous variable energy resources (VERs) such as wind and solar.<sup>23</sup> For example, the U.S. Energy Information Administration (EIA) has observed that the U.S. added approximately 13 gigawatts (GW) of wind, 6.2 GW of utility scale solar photovoltaic (PV), and 3.6 GW of distributed solar PV generating facilities in 2014 and 2015.<sup>24</sup> Conversely, NERC

<sup>22</sup> Article 9.6.2.1 of the *pro forma* LGIA.

<sup>23</sup> The term VER is defined as a device for the production of electricity that is characterized by an energy source that: (1) Is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator. See, *e.g.*, *Integration of Variable Energy Resources*, Order No. 764, FERC Stats. & Regs. ¶ 31,331, at P 210 (2012).

<sup>24</sup> See, *U.S. electric generation capacity additions, 2015 vs. 2014*, EIA (March 2016), <https://www.eia.gov/todayinenergy/detail.php?id=25492>.

has reported<sup>25</sup> that almost 42 GW of synchronous generating facilities (*e.g.*, coal, nuclear, and natural gas) have retired between 2011 and 2014, and the EIA recently reported that nearly 14 GW of coal and 3 GW of natural gas generating facilities retired in 2015.<sup>26</sup>

13. While technological advancements have enabled wind and solar generating facilities to now have the ability to provide primary frequency response, this functionality has not historically been a standard feature that was included and enabled on non-synchronous generating facilities. Moreover, wind and solar generating facilities typically operate at their maximum operating output, leaving no capacity (or "headroom")<sup>27</sup> to provide primary frequency response during under-frequency conditions.

14. Given the changes in the resource mix and concerns about the significant decline in frequency response for the Eastern and Western Interconnections,<sup>28</sup> NERC has undertaken several initiatives to evaluate the impacts of the changing resource mix, particularly with respect to primary frequency response. For example, in 2014, NERC initiated the Essential Reliability Services Task Force (Task Force) to analyze and better understand the impacts of the changing resource mix and develop technical assessments of essential reliability services.<sup>29</sup> The Task Force focused on three essential reliability services: Frequency support, ramping capability, and voltage support.<sup>30</sup> The Task Force considered the seven ancillary

<sup>25</sup> See NERC 2015 LTRA (Dec. 2015), <http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/2015LTRA%20-%20Final%20Report.pdf>.

<sup>26</sup> See *Electricity generating capacity retired in 2015 by fuel and technology*, EIA (May 2016), <http://www.eia.gov/todayinenergy/detail.php?id=25272>.

<sup>27</sup> Headroom refers to the difference between the current operating point of a generator and its maximum operating capability, and represents the potential amount of additional energy that can be provided by the generating facility in real-time.

<sup>28</sup> See NERC *Frequency Response Initiative Industry Advisory—Generator Governor Frequency Response*, at slide 10 (Apr. 2015), [http://www.nerc.com/pa/rrm/Webinars%20DL/Generator\\_Governor\\_Frequency\\_Response\\_Webinar\\_April\\_2015.pdf](http://www.nerc.com/pa/rrm/Webinars%20DL/Generator_Governor_Frequency_Response_Webinar_April_2015.pdf). (NERC 2015 Frequency Response Webinar). See also LBNL 2010 Report at pp xiv–xv.

<sup>29</sup> Essential reliability services are referred to as elemental reliability building blocks from resources (generation and load) that are necessary to maintain the reliability of the Bulk-Power System. See Essential Reliability Services Task Force Scope Document, at 1 (Apr. 2014), [http://www.nerc.com/comm/Other/essntrlrbltysrvcstskfrcDL/Scope\\_ERSTF\\_Final.pdf](http://www.nerc.com/comm/Other/essntrlrbltysrvcstskfrcDL/Scope_ERSTF_Final.pdf).

<sup>30</sup> Essential Reliability Services Task Force Measures Report, at 22 (Dec. 2015), <http://www.nerc.com/comm/Other/essntrlrbltysrvcstskfrcDL/ERSTF%20Framework%20Report%20-%20Final.pdf>.

services<sup>31</sup> adopted by the Commission in Order Nos. 888<sup>32</sup> and 890<sup>33</sup> as a subset of the essential reliability services that may need to be augmented by additional services as the Bulk-Power System<sup>34</sup> characteristics change.

15. The Task Force did not recommend new reliability standards or specific actions to alter the existing suite of ancillary services; however, it did make certain conclusions with regard to primary frequency response. Specifically, the Task Force concluded that it is prudent and necessary to ensure that primary frequency response capabilities are present in the future generation resource mix, and recommended that all new generators support the capability to manage frequency.<sup>35</sup>

16. In addition, as part of its ongoing analysis of primary frequency response concerns, NERC observed in a 2012 report that a number of generators implemented deadband settings that were so wide as to effectively defeat the ability to provide primary frequency response.<sup>36</sup> The report also notes that many generators provide frequency response in the wrong direction during

a disturbance.<sup>37</sup> Additionally, in February 2015, NERC issued an Industry Advisory that determined that a significant portion of generators within the Eastern Interconnection use deadbands or governor control settings that either inhibit or prevent the provision of primary frequency response.<sup>38</sup> Moreover, as noted in the NOI, NERC observed in 2015 that in many conventional steam plants, deadband settings exceed  $\pm 0.036$  Hz, resulting in primary frequency response that is not sustained, and that the vast majority of the gas turbine fleet is not frequency responsive.<sup>39</sup> In response to these issues and other concerns, NERC's Operating Committee approved a voluntary Primary Frequency Control Guideline that contains recommended settings for generator governors and other plant control systems, and encourages generators within the three U.S. Interconnections to provide sustained and effective primary frequency response.<sup>40</sup> NERC's Guideline recommends maximum 5 percent droop and  $\pm 0.036$  Hz deadband settings for most generating facilities.<sup>41</sup>

#### D. Initiatives by Individual Transmission Providers

17. While the *pro forma* LGIA and *pro forma* SGIA do not provide specific requirements related to frequency response, some public utility transmission providers have included provisions related to primary frequency response in their LGIA, SGIA, OATTs, and/or business practice manuals.

18. For example, ISO New England Inc. (ISO-NE) and New York Independent System Operator, Inc. (NYISO) have adopted provisions to their LGIAs that establish more specific requirements for governor operation.<sup>42</sup>

In particular, ISO-NE requires each generator within its region with a capability of 10 MW or more, including VERs, to operate with a functioning governor with specified droop and deadband settings, *i.e.*, maximum 5 percent droop and  $\pm 0.036$  Hz deadband, and to also ensure that the provision of primary frequency response is not inhibited by the effects of outer-loop controls.<sup>43</sup>

19. PJM Interconnection, L.L.C. (PJM) has implemented governor droop and deadband requirements, *i.e.*, maximum 5 percent droop and  $\pm 0.036$  Hz deadband, for all generating facilities excluding nuclear facilities with a gross plant/facility aggregate nameplate rating greater than 75 MVA.<sup>44</sup> PJM also recently added new interconnection requirements requiring new non-synchronous generators to interconnect with "enhanced inverters" that have various capabilities including, among other things, the ability to provide primary frequency response.<sup>45</sup>

20. Midcontinent Independent System Operator, Inc. (MISO) requires governor operation as a condition for providing regulating reserve but does not require specific settings.<sup>46</sup> Also, the Commission recently accepted tariff provisions proposed by the California Independent System Operator Corporation (CAISO) to require governor operation, specified droop and deadband settings, *i.e.*, maximum 5 percent droop and  $\pm 0.036$  Hz deadband, and provisions for sustained primary frequency response for its participating generators that have traditional governor controls.<sup>47</sup>

#### E. Notice of Inquiry

##### 1. Summary

21. On February 18, 2016, the Commission issued the NOI to explore issues regarding essential reliability

<sup>31</sup> The seven *pro forma* ancillary services set forth in Order Nos. 888 and 890 are: (1) Scheduling, System Control and Dispatch Service; (2) Reactive Supply and Voltage Control from Generation Sources Service; (3) Regulation and Frequency Response Service; (4) Energy Imbalance Service; (5) Operating Reserve—Spinning Reserve Service; (6) Operating Reserve—Supplemental Reserve Service; and (7) Generator Imbalance Service.

<sup>32</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>33</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>34</sup> Section 215(a)(1) of the Federal Power Act (FPA), 16 U.S.C. 824o(a)(1) (2012) defines "Bulk-Power System" as those "facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) [and] electric energy from generating facilities needed to maintain transmission system reliability." The term does not include facilities used in the local distribution of electric energy. *See also Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 76, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

<sup>35</sup> Essential Reliability Services Task Force Measures Report at vi.

<sup>36</sup> NERC Frequency Response Initiative Report at 92.

<sup>37</sup> NERC Frequency Response Initiative Report at 96–97.

<sup>38</sup> NERC Generator Governor Frequency Response Industry Advisory (Feb. 2015), <http://www.nerc.com/pa/rm/bpsa/Alerts%20DL/2015%20Alerts/NERC%20Alert%20A-2015-02-05-01%20Generator%20Governor%20Frequency%20Response.pdf>.

<sup>39</sup> NOI, 154 FERC ¶ 61,117 at P 50 (citing to NERC 2015 Frequency Response Webinar at 1).

<sup>40</sup> *See* NERC Primary Frequency Control Guideline Final Draft (Dec. 2015), [http://www.nerc.com/comm/OC/Reliability%20Guideline%20DL/Primary\\_Frequency\\_Control\\_final.pdf](http://www.nerc.com/comm/OC/Reliability%20Guideline%20DL/Primary_Frequency_Control_final.pdf) (NERC Primary Frequency Control Guideline). *See also* NERC Operating Committee Meeting Minutes (Jan. 2016), <http://www.nerc.com/comm/OC/AgendasHighlightsMinutes/Operating%20Committee%20Minutes%20-%20Dec%202015-16%202015-Final.pdf>.

<sup>41</sup> *See* NERC Primary Frequency Control Guideline at 7–9.

<sup>42</sup> *See* ISO-NE, Transmission, Markets and Services Tariff, Schedule 22 Large Generator Interconnection Procedures (9.0.0), Appendix 6, 9.6.2.2; NYISO, NYISO Tariffs, NYISO OATT, 30.14 OATT Att. X Appendices (8.0.0), Appendix 6, 9.5.4.

<sup>43</sup> *See* ISO-NE's Operating Procedure No. 14 I (Governor Control), [http://www.iso-ne.com/rules/proceeds/operating/isone/op14/op14\\_rto\\_final.pdf](http://www.iso-ne.com/rules/proceeds/operating/isone/op14/op14_rto_final.pdf).

<sup>44</sup> PJM's *pro forma* interconnection agreements obligate interconnection customers within its region to abide by all PJM rules and procedures, including rules set forth in PJM's Manuals (*See* PJM Tariff, Attachment O 8.0). *See also* PJM Manual 14D 7.1.1 (Generator Real-Power Control), <http://www.pjm.com/-/media/documents/manuals/m14d.ashx>.

<sup>45</sup> *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,097, at n.58 (2015).

<sup>46</sup> *See* MISO, FERC Electric Tariff, Module C, Energy and Operating Reserve Markets 39.2.1B (34.0.0) ("All Regulation Qualified Resources in the Day-Ahead Energy and Operating Reserve Market must be capable of automatically responding to and alleviating frequency deviations through a speed governor or similar device in accordance with the Applicable Reliability Standards.")

<sup>47</sup> *CAISO*, 156 FERC ¶ 61,182, at PP 10–12 and 17 (2016).

services and the evolving Bulk-Power System.<sup>48</sup> In particular, the Commission asked a broad range of questions on the need for reform of its rules and regulations regarding the provision of and compensation for primary frequency response. The Commission explained that there is a significant risk that, as conventional synchronous generating facilities retire or are displaced by increased numbers of VERCs that do not typically contribute to system inertia or have primary frequency response capabilities, the net amount of frequency responsive generation online will be reduced.<sup>49</sup> The Commission also explained that these developments and their potential impacts could challenge system operators in maintaining reliability.<sup>50</sup> Further, the Commission explained that NERC Reliability Standard BAL-003-1.1 and the *pro forma* LGIA and *pro forma* SGIA do not specifically address a generator's ability to provide frequency response.<sup>51</sup> The Commission noted, however, that while in previous years many non-synchronous generating facilities were not designed with primary frequency response capabilities, the technology now exists for new non-synchronous generating facilities to install primary frequency response capability.<sup>52</sup>

22. Accordingly, the Commission requested comments on three main sets of issues. First, the Commission sought comment on whether amendments to the *pro forma* LGIA and *pro forma* SGIA are warranted to require all new generating facilities, both synchronous and non-synchronous, to have primary frequency response capabilities as a precondition of interconnection.<sup>53</sup> Second, the Commission sought comment on the performance of existing generating facilities and whether primary frequency response requirements for these facilities are warranted.<sup>54</sup> Finally, the Commission sought comment on compensation for primary frequency response.<sup>55</sup>

## 2. Comments on Modifying the Pro Forma LGIA and Pro Forma SGIA

23. The Commission received a robust response from industry, with 47 entities collectively submitting nearly 700 pages of comments that provided responses to some or all of the questions posed by

the NOI.<sup>56</sup> Relevant to the proposed revisions considered in this NOPR, the Commission received numerous comments on whether the *pro forma* LGIA and *pro forma* SGIA should be revised to include requirements for all newly interconnecting generating facilities, whether synchronous or non-synchronous, to install primary frequency response capability.<sup>57</sup>

a. Comments in Support of Modifying the *pro forma* LGIA and *pro forma* SGIA

24. Most commenters support, or are not opposed to, revising the *pro forma* LGIA and SGIA to impose primary frequency response capability requirements on all new generating facilities as suggested in the NOI.<sup>58</sup> Several commenters indicate that the nation's changing resource mix could create reliability concerns related to the provision of primary frequency response. For example, PJM Utilities Coalition states that while newer generating facilities are not installing frequency response capability, the existing generating facilities that do provide this essential reliability service have more limited capability, due to the cost of operation and planned retirements, placing the grid at further risk.<sup>59</sup> Peak Reliability, the reliability coordinator for the Western Interconnection, states that as baseload generation retires, the number of generators providing primary frequency response is reduced and may present reliability challenges for system operators, as fewer options are available to reduce frequency deviations following an unexpected loss of generation or load.<sup>60</sup> CAISO asserts that due to the increased proportion of renewable generating facilities operating in CAISO's balancing authority area, there may not be sufficient frequency responsive capacity online when the system has high renewable output and low load levels.<sup>61</sup> Bonneville states that

<sup>56</sup> The Appendix lists the entities that submitted comments and the shortened names that are used throughout this NOPR.

<sup>57</sup> NOI, 154 FERC ¶ 61,117 at P 45.

<sup>58</sup> APPA, *et al.* Comments at 6; Bonneville Comments at 6; CAISO Comments at 2; California Cities Comments at 2; ELCON Comments at 5; EEI Comments at 12; EPSA, *et al.* Comments at 8; Howard F. Illian Comments at 43; Idaho Power Comments at 1; IEEE-PES Comments at 1; Indicated ISOs/RTOs Comments at 3; ITC, *et al.* Comments at 1; MISO Comments at 4; MISO TOs Comments at 6; NARUC Comments at 3; NERC Comments at 17; North American Generator Forum Comments at 2; Peak Reliability Comments at 4; PG&E Comments at 2; SoCal Edison Comments at 4; Southern Company Comments at 2; Tri-State Generation Comments at 3; WIRAB Comments at 3.

<sup>59</sup> PJM Utilities Coalition Comments at 3.

<sup>60</sup> Peak Reliability Comments at 4.

<sup>61</sup> CAISO Comments at 2.

the trend of declining frequency response capability will continue with a changing resource mix, unless provisions are put in place to assure that adequate inertial and primary frequency response capability are available in the future.<sup>62</sup> NERC states that the rapidly changing resource mix may reduce the level of available frequency capability.<sup>63</sup>

25. Numerous commenters assert that they recognize the benefits of revising the *pro forma* LGIA and *pro forma* SGIA to require primary frequency response capabilities for new generators. NERC, for example, asserts that new primary frequency response requirements for generators will improve operator flexibility for system restoration and island capability and help balancing authorities meet their frequency response obligations.<sup>64</sup> NERC also asserts that revisions to the *pro forma* LGIA and *pro forma* SGIA would result in measurable, clear requirements applicable to all new generating facilities in a fair and equitable manner.<sup>65</sup> NERC points out, however, that primary frequency response capability, by itself, would not require a resource to respond if called upon to help a balancing authority meet its frequency response obligation, and that, as a result, it is important to have mechanisms to ensure that sufficient frequency response capability is not only available but ready to respond at all times.<sup>66</sup> CASIO, Indicated ISOs/RTOs, MISO, and a number of trade associations also support modifications to the *pro forma* LGIA and *pro forma* SGIA for new generating facilities to install primary frequency response capability.<sup>67</sup> PJM Utilities Coalition states that, with all new generating facilities (both synchronous and non-synchronous) being fully capable of providing primary frequency response, requiring this capability will ensure that system operators have the ability to reliably operate the grid of the future.<sup>68</sup> Peak Reliability states that it supports modifications to the *pro forma* LGIA and *pro forma* SGIA and that requiring generating facilities to install or provide frequency response in the initial stages of the interconnection process will ensure that the grid is able to maintain

<sup>62</sup> Bonneville Comments at 2.

<sup>63</sup> NERC Comments at 17.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 18.

<sup>67</sup> APPA, *et al.* Comments at 2; CAISO Comments at 2; EEI Comments at 3; EPSA, *et al.* Comments at 8; Indicated ISOs/RTOs Comments at 3; MISO Comments at 4; North American Generator Forum Comments at 2.

<sup>68</sup> PJM Utilities Coalition Comments at 4-5.

<sup>48</sup> NOI, 154 FERC ¶ 61,117.

<sup>49</sup> *Id.* P 12.

<sup>50</sup> *Id.* P 14.

<sup>51</sup> *Id.* P 41.

<sup>52</sup> *Id.* P 43.

<sup>53</sup> *Id.* PP 2 and 44-45.

<sup>54</sup> *Id.* PP 2, 46, and 52.

<sup>55</sup> *Id.* PP 2, 53-54.

this essential service even as the resource mix changes.<sup>69</sup>

26. Other commenters also express support for revising the *pro forma* LGIA and *pro forma* SGIA. Bonneville points out that selling primary frequency response capability would not provide sufficient incentive for new generating facilities to invest in such capability, and argues that the only way to ensure that there is enough primary frequency response capability is to require new generators to install it.<sup>70</sup> WIRAB advises that while current studies do not indicate that there is a shortage of primary frequency response in the Western Interconnection and that all generators do not need to provide primary frequency response all of the time, the Commission should, however, require that all new generator owners install primary frequency response capability because of the changing resource mix in the Western Interconnection and the associated uncertainty regarding the future provision of primary frequency response.<sup>71</sup>

27. Several commenters that generally support revising the *pro forma* LGIA and *pro forma* SGIA also express certain concerns. For example, Southern Company expresses support for revising the *pro forma* LGIA and *pro forma* SGIA, but caveats its support by arguing that new regulations for primary frequency response should include an “opt-out” provision that would allow balancing authorities that do not anticipate frequency response shortfalls to delay the implementation of the new *pro forma* LGIA and *pro forma* SGIA requirements until these needs are actually anticipated in their regions in order to avoid higher costs.<sup>72</sup> EPSA, *et al.* state that while they do not fully oppose amending the *pro forma* LGIA and *pro forma* SGIA, they recommend that the Commission explore more effective and cost efficient ways to address the range of issues posed in the NOI and consider a measured approach before mandating governors for all prospective interconnecting generation.<sup>73</sup>

28. Some commenters that support modifying the *pro forma* LGIA and *pro forma* SGIA also assert that the costs of implementing primary frequency response capability for new generating facilities are low.<sup>74</sup> For example, APPA,

*et al.* state that the capability for providing primary frequency response is almost always installed in synchronous generation, and that the inclusion of this additional control for new non-synchronous generating facilities would likely add only nominal costs.<sup>75</sup> EEI asserts that all new generating facilities coming online can be fully capable of providing primary frequency response and that the associated cost of installing such capability during initial manufacturing or construction of a new VER is small when considering the overall cost of the new generating facility.<sup>76</sup>

29. In contrast to new generating facilities, some entities, however, explain that the costs of retrofitting existing generating facilities with primary frequency response capability could be significant in some cases.<sup>77</sup> For example, WIRAB states that the high cost of retrofitting existing generators to install the necessary control equipment supports limiting the requirement to new generators and taking early action now.<sup>78</sup>

30. In regards to nuclear generating facilities, some commenters indicate that nuclear plants have separate licensing requirements under the Nuclear Regulatory Commission and should not be required to provide primary frequency response. For example, the Nuclear Energy Institute asserts that while nearly all new generating facilities should be able to provide primary frequency response, nuclear plants are not well-suited to provide primary frequency response due to restrictions by their operating licenses issued by the Nuclear Regulatory Commission.<sup>79</sup> The Nuclear Energy Institute also asserts that turbine controls on most nuclear units are designed to maintain the internal steam pressure and are not intended to react to changes in the grid.<sup>80</sup> Similarly, the MISO TOs assert that requiring nuclear units to have primary frequency response capability would be contrary to Nuclear Regulatory Commission licensing requirements, and could have a detrimental effect on the safety of the nuclear fleet.<sup>81</sup>

EEI Comments at 13; Indicated ISOs/RTOs Comments at 5; MISO Comments at 4; SoCal Edison Comments at 2.

<sup>75</sup> APPA, *et al.* Comments at 6.

<sup>76</sup> EEI Comments at 13.

<sup>77</sup> APPA, *et al.* Comments at 6; Bonneville Comments at 8; California Cities Comments at 8; EEI Comments at 14; Idaho Power Comments at 4; WIRAB Comments at 6.

<sup>78</sup> WIRAB Comments at 6.

<sup>79</sup> Nuclear Energy Institute Comments at 1 and 4.

<sup>80</sup> Nuclear Energy Institute Comments at 4.

<sup>81</sup> MISO TOs Comments at 7.

31. In the NOI, the Commission also sought comment on whether it would be appropriate to include recommended governor settings contained within NERC’s Primary Frequency Control Guideline in the *pro forma* LGIA and *pro forma* SGIA.<sup>82</sup> Numerous commenters express support for including NERC’s recommended governor control settings in the *pro forma* LGIA and *pro forma* SGIA.<sup>83</sup> Some commenters note that NERC’s Guideline is consistent with existing regulations or practices in certain regions.<sup>84</sup> Indicated ISOs/RTOs point out that common primary frequency response settings for generators in an Interconnection will enhance reliability by reducing maneuvering by individual generators.<sup>85</sup> MISO asserts that NERC’s Guideline provides a sound baseline.<sup>86</sup> NERC notes that its Guideline was developed by technical committees with expertise and judgment of the electric industry, and accordingly, the Guideline is the “most advanced set of nationwide best practices and information currently available to support frequency response capability.”<sup>87</sup>

32. However, not all entities that support modifying the *pro forma* LGIA and *pro forma* SGIA endorse the inclusion of NERC’s recommended governor settings. For example, EEI states that it does not support including prescriptive performance requirements for governor control settings or other performance indicators in the *pro forma* LGIA or *pro forma* SGIA due to the physical, technical, or operational limitations of new generating facilities to provide primary frequency response.<sup>88</sup> Similarly, APPA, *et al.* state that they do not support revising the *pro forma* LGIA and *pro forma* SGIA to include the recommended settings contained within NERC’s Guideline at this time.<sup>89</sup> MISO TOs state that some transmission owners in MISO believe that NERC’s recommended governor settings are appropriate for traditional synchronous generating facilities, but recommend additional consideration for other generation technologies.<sup>90</sup> On the other hand, MISO TOs state that other transmission owners in MISO request

<sup>82</sup> NOI, 154 FERC ¶ 61,117 at P 45.

<sup>83</sup> See e.g., Bonneville Comments at 7; IEEE-PES Comments at 1; Indicated ISOs/RTOs Comments at 4; California Cities Comments at 2; WIRAB Comments at 7.

<sup>84</sup> Indicated ISOs/RTOs Comments at 4; SoCal Edison Comments at 4; Peak Reliability Comments at 7; Manitoba Comments at 8.

<sup>85</sup> Indicated ISOs/RTOs Comments at 5.

<sup>86</sup> MISO Comments at 4.

<sup>87</sup> NERC Comments at 12.

<sup>88</sup> EEI Comments at 15–17.

<sup>89</sup> APPA, *et al.* Comments at 8.

<sup>90</sup> MISO TOs Comments at 8.

<sup>69</sup> Peak Reliability Comments at 4–5.

<sup>70</sup> Bonneville Comments at 21.

<sup>71</sup> WIRAB Comments at 5–6.

<sup>72</sup> Southern Company Comments at 2–3.

<sup>73</sup> EPSA, *et al.* Comments at 8–9.

<sup>74</sup> APPA, *et al.* Comments at 6; Bonneville Comments at 8; California Cities Comments at 2;

flexibility and assert that specified governor settings should not be “hard-wired” or dictated in the *pro forma* LGIA and *pro forma* SGIA.<sup>91</sup>

b. Comments Opposed To Modifying the *pro forma* LGIA and *pro forma* SGIA

33. Other commenters contend that the *pro forma* LGIA and *pro forma* SGIA should not be modified to require primary frequency response capability from new generating facilities.<sup>92</sup> Some commenters argue that requiring all new generating facilities to have primary frequency response capability will result in extra costs above those necessary to ensure reliability.<sup>93</sup> For example, APS argues that a global mandate to provide primary frequency response or to require generating facilities to be primary frequency response capable would result in significantly increased costs while providing a disproportionately minor impact on improving reliability.<sup>94</sup> Powerex asserts that modifying the *pro forma* LGIA and *pro forma* SGIA to include minimum primary frequency response requirements will increase the cost of entry for new generators, particularly VERs, which typically are not designed with such capability.<sup>95</sup> Several commenters note that there would be a significant opportunity cost for certain generating facilities to reserve headroom for the provision of primary frequency response.<sup>96</sup>

34. Some of the commenters that are opposed to modifying the *pro forma* LGIA and *pro forma* SGIA assert that they prefer a market-based approach instead of a requirement for new generating facilities to install primary frequency response capability.<sup>97</sup> For example, AWEA asserts that, initially, the *pro forma* LGIA and *pro forma* SGIA should not be revised to require new

generating facilities to have primary frequency response capability, and only if market-based steps do not satisfactorily address the need for primary frequency response, then the Commission could consider an additional requirement for new generating facilities to have such capability as a final step.<sup>98</sup>

35. Other commenters oppose mandatory requirements and prefer a voluntary approach to improving primary frequency response performance.<sup>99</sup> For example, TVA asserts that if current voluntary actions fail to show improvement in primary frequency response, then the *pro forma* LGIA and *pro forma* SGIA could be revised to contain a general primary frequency response requirement, similar to reactive power, but that NERC should be directed to establish governor settings and performance requirements through the NERC Standards Development Process instead of the Commission including such requirements in the *pro forma* LGIA and *pro forma* SGIA.<sup>100</sup> Some commenters assert that governor control details are better left to individual balancing authorities.<sup>101</sup> For example, APS argues that the Commission should allow balancing authorities to determine the type and magnitude of generating facilities within its balancing authority area that are frequency-response enabled.<sup>102</sup> APS also points out that any need to install frequency response capability or otherwise support frequency response performance can and should be evaluated and agreed upon between a generating facility and the transmission provider during the interconnection study process.<sup>103</sup>

## II. Discussion

### A. Primary Frequency Response Requirements

#### 1. The Need for Reform

36. Pursuant to FPA section 206, the Commission preliminarily finds that conditions have changed since the issuance of Order Nos. 2003 and 2006 and certain aspects of the *pro forma* LGIA and *pro forma* SGIA may now be unjust, unreasonable, unduly discriminatory, or preferential.<sup>104</sup>

Specifically, as discussed above, the record indicates that while the frequency response performance of the Eastern and Western Interconnections is currently adequate, the frequency response performance of both Interconnections has significantly declined from historic values.<sup>105</sup> Furthermore, the record shows that there is an ongoing evolution of the nation’s generation resource mix, including significant retirements of baseload generation and an increasing proportion of VERs interconnecting to the electric grid.<sup>106</sup> Several commenters point out that there is significant risk that the rapidly changing resource mix may reduce the level of available frequency response capability online.<sup>107</sup> This is in part because, as noted in the NOI, VERs have not been consistently designed with primary frequency response capabilities.<sup>108</sup> The record suggests, however, that VER manufacturers have made significant technological advancements in recent years to develop primary frequency response capability for VERs.<sup>109</sup> In addition, NERC, in conjunction with various industry stakeholders, has developed more robust technical guidance for the operation of governors or equivalent controls.<sup>110</sup> As a result of the evolving resource mix and the potential for adverse impacts on primary frequency response, the Commission is concerned that there may be potential reliability impacts if it does not undertake the reforms proposed in this NOPR. Moreover, the Commission is concerned that certain aspects of the existing *pro forma* LGIA and *pro forma* SGIA may no longer be just and reasonable.

37. First, the current requirements for governor controls in the *pro forma* LGIA do not reflect advances in technology or the latest recommended operating practices. Specifically, current Article 9.6.2.1 states that “speed governors,” if installed, must be operated in automatic

changes are necessary. *See, e.g.*, Order No. 764, FERC Stats. & Regs. ¶ 31,331.

<sup>105</sup> *See* NERC 2015 Frequency Response Webinar at 10, NERC Frequency Response Initiative Report at 22, and LBNL 2010 Report at pp xiv–xv.

<sup>106</sup> *See, e.g.*, P 12, *supra* (describing recent and ongoing changes in the nation’s generation mix).

<sup>107</sup> *See, e.g.*, Bonneville Comments at 2; CAISO Comments at 2; NERC Comments at 17; Peak Reliability Comments at 4; PJM Utilities Coalition Comments at 3.

<sup>108</sup> NOI, 154 FERC ¶ 61,117 at PP 42–43.

<sup>109</sup> *See, e.g.*, PJM Utilities Comments at 4–5; EEI Comments at 13. *See also* PJM Interconnection, L.L.C., Docket No. ER15–1193–000 (March 6, 2015) Transmittal Letter at 11. *See also* NERC 2014 LTRA, at 27 (Nov. 2014), [http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/2014LTRA\\_ERATTA.pdf](http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/2014LTRA_ERATTA.pdf).

<sup>110</sup> *See* P 16, *supra*.

<sup>91</sup> MISO TOs Comments at 8.

<sup>92</sup> AES Companies Comments at 6; Apex Comments at 6; APS Comments at 6; AWEA Comments at 12; Chelan County Comments at 2; ESA Comments at 2; Grid Storage Consulting Comments at 2; Microgrids Resources Coalition Comments at 3; NRECA Comments at 9; Powerex Comments at 5; SDG&E Comments at 3; SolarCity Comments at 1; TVA Comments at 2.

<sup>93</sup> Apex Comments at 5–6; APS Comments at 6; AWEA Comments at 12; Chelan County Comments at 2; Powerex Comments at 5; Solar City Comments at 1.

<sup>94</sup> APS Comments at 6. It is unclear whether the increased costs referenced by APS refer only to the costs for the necessary equipment to provide primary frequency response or the costs associated with maintaining the headroom necessary to provide primary frequency response.

<sup>95</sup> Powerex Comments at 5.

<sup>96</sup> Apex Comments at 7; Solar City Comments at 1; AWEA Comments at 6.

<sup>97</sup> Apex Comments at 6; AWEA Comments at 12; Chelan County Comments at 2; ESA Comments at 2; SDG&E Comments at 3.

<sup>98</sup> AWEA Comments at 12.

<sup>99</sup> APS Comments at 8; NRECA Comments at 6; TVA Comments at 2.

<sup>100</sup> TVA Comments at 2–3 and 5.

<sup>101</sup> APS Comments at 8; AES Companies Comments at 8.

<sup>102</sup> APS Comments at 8.

<sup>103</sup> *Id.* at 15.

<sup>104</sup> The Commission routinely evaluates the effectiveness of its regulations and policies in light of changing industry conditions to determine if

mode. However, many of the new generating facilities interconnecting to the grid, such as wind and solar, do not utilize traditional speed governors; instead they utilize enhanced inverters and other plant supervisory control technology that can be designed to include primary frequency response capability.<sup>111</sup> Therefore, due to advancements in technology, the Commission preliminarily finds that the existing references to “speed governors” in Article 9.6.2.1 that apply only to synchronous resources are outdated, and therefore may no longer be just and reasonable.

38. Second, since the issuance of Order No. 2003 and the establishment of the *pro forma* LGIA, NERC, in conjunction with industry stakeholders, has amassed a significant body of knowledge in regards to the operation of generator governors and plant control systems. For example, as noted above, NERC observed in 2012 that a number of generators implemented deadband settings that were so wide as to effectively defeat the ability to provide primary frequency response, and that many generators provide frequency response in the wrong direction during a disturbance.<sup>112</sup> Additionally, as noted above, NERC observed in 2015 that in many conventional steam plants, deadband settings exceed a  $\pm 0.036$  Hz dead band, resulting in primary frequency response that is not sustained, and that the vast majority of the gas turbine fleet is not frequency responsive.<sup>113</sup>

39. The record here suggests that the actual governor and plant control system settings that are being implemented by some generator owners and/or operators may be defeating the intent of Article 9.6.2.1 of the *pro forma* LGIA. In response to these issues, NERC, through the work of its various task forces, subcommittees, and initiatives, has developed a voluntary Guideline that includes recommended droop and deadband settings based on significant investigation.<sup>114</sup> However, the *pro forma* LGIA does not currently reflect these updated recommended

practices for governor and plant control system settings of generating facilities.

40. Third, given the nation’s evolving resource mix and the potential adverse impacts on primary frequency response as noted in the NOI and pointed out by several commenters, the Commission believes that changes to the *pro forma* LGIA and *pro forma* SGIA may be necessary to provide for the continued reliable operation of the power system. As noted above, the Task Force concluded that all new generating facilities should be required to be capable of providing primary frequency response.<sup>115</sup> However, the *pro forma* LGIA does not currently require large generating facilities to install such capability; rather, it only requires governor operation in “automatic mode” if a “speed governor” is installed.<sup>116</sup>

41. In addition, the Commission is concerned that the current *pro forma* SGIA may be unduly discriminatory or preferential because it does not establish any specific requirements with respect to the installation or operation of governors or equivalent frequency control equipment. In particular, the *pro forma* SGIA does not have a similar provision to Article 9.6.2.1 of the *pro forma* LGIA. The Commission has previously acted under FPA section 206 to remove inconsistencies between the *pro forma* LGIA and *pro forma* SGIA when there is no economic or technical basis for treating large and small generating facilities differently.<sup>117</sup> Similarly, in this instance, the record developed from the NOI appears to suggest that small generating facilities are capable of installing and enabling governors at low cost in a manner comparable to large generating facilities.<sup>118</sup> As discussed above, the record indicates that there have been significant advances in technology, as well as the development of more robust technical guidance for the operation of governors or equivalent controls for both large and small generating

facilities.<sup>119</sup> In particular, the IEEE–P1547 Working Group noted that its new IEEE–1547 standard for interconnecting distributed generation will likely include certain requirements for providing primary frequency response.<sup>120</sup> Given these low-cost technological advances, the Commission does not anticipate that these additional requirements added in the *pro forma* SGIA will present a barrier to entry for small generating facilities. And, given the need for additional primary frequency response capability and an increasingly large market penetration of small generating facilities, the Commission believes that there is a need to add these requirements to the *pro forma* SGIA to help ensure adequate primary frequency response capability.

42. Moreover, as noted above, a number of commenters assert that costs for new generating facilities to install the capability of providing primary frequency response are low, suggesting that there is not a financial barrier to small generating facilities installing the capability to provide frequency response.<sup>121</sup> PJM’s recent changes to require both small and large non-synchronous generating facilities to use enhanced inverters, which include primary frequency response capability, among other functions, further support this notion.<sup>122</sup>

## 2. Commission Proposal

43. To remedy the potentially unjust, unreasonable, and unduly discriminatory or preferential practices described above, the Commission preliminarily finds that revisions to the *pro forma* LGIA and *pro forma* SGIA are appropriate. The Commission believes that revising the *pro forma* LGIA and *pro forma* SGIA to require all new generating facilities to install, maintain, and operate a functioning governor or equivalent controls, consistent with the proposed requirements described below, will help to ensure adequate primary frequency response capability as the resource mix continues to evolve, ensure fair and consistent treatment for all types of generating facilities, help balancing authorities meet their frequency response obligations pursuant to NERC Reliability Standard BAL–003–1.1, and help improve reliability during

<sup>111</sup> See Electric Power Research Institute, *Recommended Settings for Voltage and Frequency Ride Through of Distributed Energy Resources* (May 2015) at 27, <http://www.epri.com/abstracts/Pages/ProductAbstract.aspx?ProductId=00000003002006203>. See also National Renewable Energy Labs (NREL), *Advanced Grid-Friendly Controls Demonstration Project for Utility-Scale PV Power Plants*, at 1–2 (Jan. 2016), <http://www.nrel.gov/docs/fy16osti/65368.pdf>.

<sup>112</sup> See P 16, *supra*.

<sup>113</sup> *Id.*

<sup>114</sup> See NERC Primary Frequency Control Guideline.

<sup>115</sup> See P 15, *supra*.

<sup>116</sup> Article 9.6.2.1 of the *pro forma* LGIA.

<sup>117</sup> See *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 81 FR 50,290 (Aug. 1, 2016), 156 FERC ¶ 61,062 (2016), (The Final Rule revised the *pro forma* SGIA such that small generating facilities have frequency and voltage ride through requirements comparable to large generating facilities).

<sup>118</sup> IEEE–P1547 Working Group Comments at 1, 5, and 7. Moreover, the Commission notes that other commenters stated costs of installing primary frequency response capability are generally low, but did not differentiate between small and large generating facilities. See, e.g., APPA, *et al.* Comments at 6; California Cities Comments at 2; EEI Comments at 13; Indicated ISOs/RTOs Comments at 3–5; SoCal Edison Comments at 2.

<sup>119</sup> See PP 13, 36, *supra*.

<sup>120</sup> IEEE–P1547 Working Group Comments at 1, 5, and 7.

<sup>121</sup> See, e.g., APPA, *et al.* Comments at 2; EEI Comments at 13; Indicated ISOs/RTOs Comments at 5; SoCal Edison Comments at 2.

<sup>122</sup> *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,097 at P 28 (the Commission stated that it “find[s] that PJM’s proposal will not present a barrier to non-synchronous resources.”).

system restoration and islanding situations.<sup>123</sup>

44. In particular, the Commission proposes to revise the *pro forma* LGIA and *pro forma* SGIA to include the following: (1) Requirements for new large and small generating facilities, both synchronous and non-synchronous, to install, maintain, and operate equipment capable of providing primary frequency response as a condition of interconnection; (2) requirements for governor or equivalent controls to be operated, at a minimum, with maximum 5 percent droop and  $\pm 0.036$  Hz deadband settings; (3) requirements to ensure the timely and sustained response to frequency deviations, including provisions to prevent plant-level (*i.e.*, outer-loop) control equipment from inhibiting primary frequency response and resulting in premature withdrawal; and (4) a requirement for droop parameters to be based on nameplate capability with a linear operating range of 59 to 61 Hz. Additionally, as informed by NOI commenters, the Commission believes that it is not necessary to impose a generic headroom requirement or subject newly interconnecting nuclear generating facilities to the new requirements. The Commission does not propose to mandate any separate compensation related to the proposed requirements. The Commission seeks comment on the proposed reforms, as discussed more fully below.

45. Specifically, the Commission proposes to revise existing sections 9.6 and 9.6.2.1 of the *pro forma* LGIA and to include proposed new sections 9.6.4, 9.6.4.1, 9.6.4.2, and 9.6.4.3. Similarly, the Commission proposes to revise existing section 1.8 of the *pro forma* SGIA and add proposed new sections 1.8.4, 1.8.4.1, 1.8.4.1.1, 1.8.4.1.2, and 1.8.4.1.3.<sup>124</sup>

46. The Commission's proposed revisions to the *pro forma* LGIA and *pro forma* SGIA would apply to new generating facilities that execute or request the unexecuted filing of interconnection agreements on or after the effective date of any Final Rule issued in Docket No. RM16-6-000. The Commission also proposes to apply the requirements to any large or small generating facility that has an executed or has requested the filing of an unexecuted LGIA or SGIA as of the effective date of any Final Rule in Docket No. RM16-6-000, but that takes

any action that requires the submission of a new interconnection request that results in the filing of an executed or unexecuted interconnection agreement on or after the effective date of any Final Rule in Docket No. RM16-6-000.

47. In particular, the proposed revisions to the *pro forma* LGIA and *pro forma* SGIA would require new large and small generating facilities to install, maintain, and operate a functioning governor or equivalent controls, which the Commission proposes to define as the required hardware and/or software that provides frequency responsive real power control with the ability to sense changes in system frequency and autonomously adjust the generating facility's real power output in accordance with the proposed maximum droop and deadband parameters and in the direction needed to correct frequency deviations. The Commission seeks comment on this proposal.

48. The Commission also proposes to require new large and small generating facilities to install, maintain and operate governor or equivalent controls with the ability to operate with a maximum 5 percent droop and  $\pm 0.036$  Hz deadband parameter, consistent with NERC's recommended guidance. As noted above, the Commission sought comment in the NOI on whether NERC's recommended guidance for governor settings related to droop and deadband should be included in the *pro forma* LGIA and *pro forma* SGIA, and numerous commenters agreed stating that NERC's Guideline provides a sound baseline.<sup>125</sup> Therefore, the Commission preliminarily finds that a maximum droop setting of 5 percent and deadband setting of  $\pm 0.036$  Hz are appropriate to include in the *pro forma* LGIA and *pro forma* SGIA as interconnection requirements for new generating facilities. The Commission notes that these proposed requirements are *minimum* requirements; therefore, if a new generating facility elects, in coordination with its transmission provider, to operate in a more responsive mode by using lower droop or tighter deadband settings, nothing in these requirements would prohibit it from doing so.<sup>126</sup> The Commission seeks comment on these proposed

requirements for droop and deadband settings.

49. The Commission also proposes to prohibit all new large and small generating facilities from taking any action that would inhibit the provision of primary frequency response, except under certain conditions as discussed below. The lack of coordination between governor and plant-level control systems can result in premature withdrawal of primary frequency response by allowing additional plant control systems to reverse the action of the governor to return the unit to operating at a pre-selected target set-point.<sup>127</sup> NERC's Guideline explains that "in order to provide sustained primary frequency response, it is essential that the prime mover governor, plant controls and remote plant controls are coordinated."<sup>128</sup> Accordingly, the Commission proposes to require new generating facilities that respond to frequency deviations to not inhibit primary frequency response, such as by coordinating plant-level, outer-loop control equipment with the governor or equivalent controls, except under certain operational constraints including, but not limited to, ambient temperature limitations, outages of mechanical equipment, or regulatory requirements. The Commission also proposes to require new generating facilities to respond to frequency deviations without undue delay and to sustain the response until at least system frequency returns to a stable value within the governor's deadband setting. The Commission believes this proposed requirement for sustained response is consistent with the current requirements of PJM and ISO-NE as well as similar OATT revisions recently implemented by CAISO.<sup>129</sup> The Commission seeks comment on the proposed requirements for sustained response. In particular, the Commission seeks comment on whether these provisions will be sufficient to prevent plant-level (*i.e.*, outer-loop) controls from inhibiting primary frequency response.

50. Regarding droop settings, in its comments to the NOI, MISO proposed that a linear droop should be available between 59 to 61 Hz.<sup>130</sup> The

<sup>123</sup> See NERC Comments at 17. See also NERC Essential Reliability Services Task Force Measures Framework Report at iv.

<sup>124</sup> The specific proposed modifications and additions to the *pro forma* LGIA and *pro forma* SGIA are set forth at PP 52-53, below.

<sup>125</sup> See *e.g.*, Bonneville Comments at 7; California Cities Comments at 2; IEEE-PES Comments at 2; Indicated ISOs/RTOs Comments at 4; MISO Comments at 4; WIRAB Comments at 7.

<sup>126</sup> Moreover, the Commission proposes that nothing in these requirements would prohibit the implementation of asymmetrical droop settings (*i.e.*, different droop settings for under-frequency and over-frequency conditions), provided that each segment has a droop value of no more than 5 percent.

<sup>127</sup> NERC Frequency Response Initiative Report at 31. See also NOI, 154 FERC ¶ 61,117 at P 49 (stating that primary frequency response withdrawal "has the potential to degrade the overall response of the Interconnection and result in a frequency that declines below the original nadir").

<sup>128</sup> NERC Primary Frequency Control Guideline at 4.

<sup>129</sup> See, *e.g.*, ISO-NE Operating Procedure OP-14 and PJM Manual 14D. See also CAISO, 156 FERC ¶ 61,182 at PP 10-12 and 17.

<sup>130</sup> MISO Comments at 4.

Commission believes that this is reasonable because it would allow for new generating facilities that remain connected during frequency deviations to provide a proportional response within this range of frequencies. Accordingly, the Commission proposes to require the droop parameter to be based on the nameplate capability of the unit and linear in operating range between 59 to 61 Hz. The Commission seeks comment on these proposed requirements for droop settings.

51. Several NOI commenters expressed concern about possible generic headroom requirements<sup>131</sup> that could result in significant opportunity costs.<sup>132</sup> The Commission clarifies that nothing in these proposed reforms will impose a generic headroom requirement for new generating facilities or affect the unit commitment and dispatch decisions of balancing authorities. Therefore, if a generating facility that is subject to these proposed requirements has been dispatched by its balancing authority to a set-point at which there is no available operating range to increase or decrease its output in response to frequency deviations, it would not be in violation of the proposed requirements in regards to providing sustained response. The Commission believes that the reliability benefits from the proposed modifications to the *pro forma* LGIA and *pro forma* SGIA do not require imposing additional costs that would result from a generic headroom requirement. The Commission also agrees with NOI commenters regarding the unique operating characteristics and regulatory requirements of nuclear generating facilities regulated by the Nuclear Regulatory Commission, and therefore proposes to exempt such generating facilities from the proposed reforms.<sup>133</sup> The Commission seeks comment on the proposal to not impose a generic headroom requirement and to not apply the new requirements to nuclear generating facilities.

52. In light of the above discussion, the Commission proposes to modify sections 9.6 and 9.6.2.1 of the *pro forma* LGIA and add new sections 9.6.4, 9.6.4.1, 9.6.4.2, and 9.6.4.3 as follows:

<sup>131</sup> A generic headroom requirement would require generating facilities to operate below maximum output at all times to ensure sufficient ability to increase their real power output in response to under-frequency conditions.

<sup>132</sup> See, e.g., Apex Comments at 7; Solar City Comments at 1; AWEA Comments at 6.

<sup>133</sup> See, e.g., Nuclear Energy Institute Comments at 1, 4; MISO TOs Comments at 7.

#### 9.6 Reactive Power and Primary Frequency Response

9.6.2.1 *Voltage Regulators.* Whenever the Large Generating Facility is operated in parallel with the Transmission System and voltage regulators are capable of operation, Interconnection Customer shall operate the Large Generating Facility with its voltage regulators in automatic operation. If the Large Generating Facility's voltage regulators are not capable of such automatic operation, Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative, and ensure that such Large Generating Facility's reactive power production or absorption (measured in MVARs) are within the design capability of the Large Generating Facility's generating unit(s) and steady state stability limits. Interconnection Customer shall not cause its Large Generating Facility to disconnect automatically or instantaneously from the Transmission System or trip any generating unit comprising the Large Generating Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the Control Area on a comparable basis.

9.6.4 *Primary Frequency Response.* Interconnection Customer shall ensure the primary frequency response capability of its Large Generating Facility by installing, maintaining, and operating a functioning governor or equivalent controls. The term "functioning governor or equivalent controls" as used herein shall mean the required hardware and/or software that provides frequency responsive real power control with the ability to sense changes in system frequency and autonomously adjust the Large Generating Facility's real power output in accordance with the droop and deadband parameters and in the direction needed to correct frequency deviations. Interconnection Customer is required to install a governor or equivalent controls with the capability of operating with a maximum 5 percent droop and  $\pm 0.036$  Hz deadband. The droop characteristic shall be based on the nameplate capacity of the Large Generating Facility, and shall be linear in the range of 59 to 61 Hz. The deadband parameter shall be the range of frequencies above and below nominal (60 Hz) in which the governor or equivalent controls is not expected to adjust the Large Generating Facility's real power output in response to frequency deviations. Interconnection Customer shall notify Transmission Provider that the primary frequency response capability of the Large Generating Facility has been tested and confirmed during commissioning. Once Interconnection Customer has synchronized the Large Generating Facility with the Transmission System, Interconnection Customer shall operate the Large Generating Facility consistent with provisions specified in Sections 9.6.4.1 and 9.6.4.2 of this Agreement. The primary frequency response requirements contained herein shall apply to both synchronous and non-synchronous Large Generating Facilities. Nothing in Sections 9.6.4, 9.6.4.1 and 9.6.4.2 shall

require the Large Generating Facility to operate above its minimum operating limit or below its maximum operating limit, or otherwise alter its dispatch to have headroom to provide primary frequency response.

9.6.4.1 *Governor or Equivalent Controls.* Whenever the Large Generating Facility is operated in parallel with the Transmission System, Interconnection Customer shall operate the Large Generating Facility with its governor or equivalent controls in service and responsive to frequency. Interconnection Customer shall, in coordination with Transmission Provider, set the deadband parameter to a maximum of  $\pm 0.036$  Hz and set the droop parameter to a maximum of 5 percent. Interconnection Customer shall be required to provide the status and settings of the governor or equivalent controls to Transmission Provider upon request. If Interconnection Customer needs to operate the Large Generating Facility with its governor or equivalent controls not in service, Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative. Interconnection Customer shall make Reasonable Efforts to return its governor or equivalent controls into service as soon as practicable.

9.6.4.2 *Sustained Response.* Interconnection Customer shall ensure that the Large Generating Facility's real power response to sustained frequency deviations outside of the deadband setting is provided without undue delay, and ensure that the response is not inhibited, except under certain operational constraints including, but not limited to, ambient temperature limitations, outages of mechanical equipment, or regulatory requirements. The Large Generating Facility shall sustain the real power response at least until system frequency returns to a stable value within the deadband setting of the governor or equivalent controls.

9.6.4.3 *Exemptions.* Large Generating Facilities that are regulated by the United States Nuclear Regulatory Commission shall be exempt from Sections 9.6.4, 9.6.4.1, and 9.6.4.2 of this Agreement.

53. Similarly, the Commission proposes to modify section 1.8 of the *pro forma* SGIA and add new sections 1.8.4, 1.8.4.1, 1.8.4.2 and 1.8.4.3 as follows:

#### 1.8 Reactive Power and Primary Frequency Response

1.8.4 *Primary Frequency Response.* Interconnection Customer shall ensure the primary frequency response capability of its Small Generating Facility by installing, maintaining, and operating a functioning governor or equivalent controls. The term "functioning governor or equivalent controls" as used herein shall mean the required hardware and/or software that provides frequency responsive real power control with the ability to sense changes in system frequency and autonomously adjust the Small Generating Facility's real power output in accordance with the droop and deadband parameters and in the direction needed to correct frequency deviations. Interconnection Customer is required to install a governor or

equivalent controls with the capability of operating with a maximum 5 percent droop and  $\pm 0.036$  Hz deadband. The droop characteristic shall be based on the nameplate capacity of the Small Generating Facility, and shall be linear in the range of 59 to 61 Hz. The deadband parameter shall be the range of frequencies above and below nominal (60 Hz) in which the governor or equivalent controls is not expected to adjust the Small Generating Facility's real power output in response to frequency deviations. Interconnection Customer shall notify Transmission Provider that the primary frequency response capability of the Small Generating Facility has been tested and confirmed during commissioning. Once Interconnection Customer has synchronized the Small Generating Facility with the Transmission System, Interconnection Customer shall operate the Small Generating Facility consistent with the provisions specified in Sections 1.8.4.1 and 1.8.4.2 of this Agreement. The primary frequency response requirements contained herein shall apply to both synchronous and non-synchronous Small Generating Facilities. Nothing in Sections 1.8.4, 1.8.4.1 and 1.8.4.2 shall require the Small Generating Facility to operate above its minimum operating limit, below its maximum operating limit, or otherwise alter its dispatch to have headroom to provide primary frequency response.

1.8.4.1 Governor or Equivalent Controls. Whenever the Small Generating Facility is operated in parallel with the Transmission System, Interconnection Customer shall operate the Small Generating Facility with its governor or equivalent controls in service and responsive to frequency. Interconnection Customer shall, in coordination with Transmission Provider, set the deadband parameter to a maximum of  $\pm 0.036$  Hz and set the droop parameter to a maximum of 5 percent. Interconnection Customer shall be required to provide the status and settings of the governor or equivalent controls to Transmission Provider upon request. If Interconnection Customer needs to operate the Small Generating facility with its governor or equivalent controls not in service, Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative. Interconnection Customer shall make Reasonable Efforts to return its governor or equivalent controls into service as soon as practicable.

1.8.4.2 Sustained Response. Interconnection Customer shall ensure that the Small Generating Facility's real power response to sustained frequency deviations outside of the deadband setting is provided without undue delay, and ensure that the response is not inhibited, except under certain operational constraints including, but not limited to, ambient temperature limitations, outages of mechanical equipment, or regulatory requirements. The Small Generating Facility shall sustain the real power response at least until system frequency returns to a stable value within the deadband setting of the governor or equivalent controls.

1.8.4.3 Exemptions. Small Generating Facilities that are regulated by the United

States Nuclear Regulatory Commission shall be exempt from Sections 1.8.4, 1.8.4.1, 1.8.4.2 of this Agreement.

54. The Commission proposes to apply the primary frequency response requirements to any new large or small generating facility that executes or requests the unexecuted filing of a LGIA or SGIA on or after the effective date of any Final Rule issued in this proceeding. In addition, the Commission proposes to apply the requirements to any large or small generating facility that has an executed or has requested the filing of an unexecuted LGIA or SGIA as of the effective date of any Final Rule in Docket No. RM16-6-000, but that takes any action that requires the submission of a new interconnection request that results in the filing of an executed or unexecuted interconnection agreement on or after the effective date of any Final Rule in Docket No. RM16-6-000. The Commission seeks comment on the proposed effective date including whether applying these requirements to existing generating facilities that take any action that requires the submission of a new interconnection request that results in the filing of an executed or unexecuted interconnection agreement on or after the effective date of any Final Rule in Docket No. RM16-6-000 would be unduly burdensome.

55. The Commission does not propose in this NOPR to require that the interconnection customer receive any compensation for these proposed requirements. The Commission has previously accepted changes to transmission provider tariffs that similarly required interconnection customers to install primary frequency response capability or that established specified governor settings, without requiring any accompanying compensation.<sup>134</sup> While the Commission has not required compensation for similar requirements in the past, it clarifies that nothing in this NOPR is meant to prohibit a public utility from filing a proposal for primary frequency response compensation under FPA section 205, if it so chooses.<sup>135</sup>

#### B. Request for Comment

56. The Commission seeks comment on the proposed: (1) Requirements for new large and small generating facilities to install, maintain, and operate a governor or equivalent controls; (2) requirements for droop and deadband

settings of 5 percent and  $\pm 0.036$  Hz, respectively; (3) requirements for timely and sustained response; (4) requirement for droop parameters to be based on nameplate capability with a linear operating range of 59 to 61 Hz; (5) exemptions for new nuclear units; and (6) effective dates as discussed above. The Commission also seeks comment on its proposal to not impose a generic headroom requirement or mandate compensation related to the proposed reforms.

57. In the NOI, the Commission also sought comment on the performance of existing resources and whether primary frequency response requirements for these resources are warranted.<sup>136</sup> At this time, the Commission proposes only to adopt the reforms included in this NOPR regarding newly interconnecting large and small generating facilities. However, the Commission seeks comment regarding whether the reforms proposed in this NOPR are sufficient to ensure adequate levels of primary frequency response, or whether additional reforms are needed. In particular, the Commission seeks comment on whether additional primary frequency response performance or capability requirements for existing resources are needed, and if so, whether the Commission should impose those requirements by: (1) Directing the development or modification of a reliability standard pursuant to section 215(d)(5) of the FPA; or (2) acting pursuant to section 206 of the FPA to require changes to the *pro forma* OATT.

#### C. Proposed Compliance Procedures

58. The Commission proposes to require all public utility transmission providers to adopt the requirements of any Final Rule in Docket No. RM16-6-000 as revisions to the LGIA and SGIA in their OATTs within 60 days after the publication of the Final Rule in the **Federal Register**.

59. Some public utility transmission providers may have provisions in their existing LGIAs and SGIAs that the Commission has found to be consistent with or superior to the *pro forma* LGIA and *pro forma* SGIA. Where these provisions would be modified by the Final Rule, public utility transmission providers must either comply with the Final Rule or demonstrate that these previously-approved variations continue to be consistent with or superior to the *pro forma* LGIA and *pro forma* SGIA as modified by the Final Rule. The Commission also proposes to permit appropriate entities to seek

<sup>134</sup> PJM Interconnection, L.L.C., 151 FERC ¶ 61,097, at n.58 (2015); CAISO, 156 FERC ¶ 61,182, at PP 10-12 and 17 (2016); New England Power Pool, 109 FERC ¶ 61,155 (2004), order on reh'g, 110 FERC ¶ 61,335 (2005).

<sup>135</sup> 16 U.S.C. 824d (2012).

<sup>136</sup> NOI, 154 FERC ¶ 61,117 at PP 2, 46-52.

“independent entity variations” from the proposed revisions to the *pro forma* LGIA and *pro forma* SGIA.<sup>137</sup>

60. The Commission would assess whether each compliance filing satisfies the proposed requirements stated above and issue additional orders as necessary to ensure that each public utility transmission provider meets the requirements of the subsequent Final Rule.

61. The Commission also proposes that transmission providers that are not public utilities would have to adopt the requirements of this proposal and subsequent Final Rule as a condition of maintaining the status of their safe harbor tariff or otherwise satisfying the reciprocity requirement of Order No. 888.<sup>138</sup>

**III. Information Collection Statement**

62. The Paperwork Reduction Act (PRA)<sup>139</sup> requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons, or contained in a rule of general applicability. OMB’s regulations require the approval of certain information collection requirements imposed by agency rules.<sup>140</sup> Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to

the filing requirements of this proposal will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number. Transmission providers are subject to the proposed revisions to the *pro forma* LGIA and SGIA.

63. In this NOPR, the Commission proposes to amend its *pro forma* LGIA and *pro forma* SGIA in accordance with section 35.28(f)(1) of its regulations.<sup>141</sup> The proposed revisions to the *pro forma* LGIA and *pro forma* SGIA would require new large and small generating facilities to install, maintain, and operate a functioning governor or equivalent controls which the Commission proposes to define as the required hardware and/or software that provides frequency responsive real power control with the ability to sense changes in system frequency and autonomously adjust the generating facility’s real power output in accordance with the proposed maximum droop and dead band parameters and in the direction needed to correct frequency deviations. The NOPR proposes to require each public utility transmission provider to amend its *pro forma* LGIA and *pro forma* SGIA to require that all newly interconnecting large and small generating facilities, as well as all existing large and small generating facilities that take any action

that requires the submission of a new interconnection request that results in the filing of an executed or unexecuted interconnection agreement, to adhere to the proposed requirements, on or after the effective date of any Final Rule issued in this proceeding.

64. The reforms in this NOPR would require filings of *pro forma* LGIAs and *pro forma* SGIAs with the Commission. The Commission anticipates the proposed reforms, once implemented, would not significantly change currently existing burdens on an ongoing basis. With regard to those public utility transmission providers that believe that they already comply with the proposed reforms in this NOPR, they could demonstrate their compliance in the filing required 60 days after publication of the Final Rule in the **Federal Register**. The Commission will submit the proposed reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.<sup>142</sup> The Commission will use FERC–516B as a temporary “placeholder” information collection number.<sup>143</sup>

*Burden Estimate:*<sup>144</sup> The Commission believes that the burden estimates below are representative of the average burden on respondents. The estimated burden and cost for the requirements contained in this NOPR follow.<sup>145</sup>

**FERC 516B, IN NOPR IN RM16–6**

	Number of respondents <sup>146</sup>	Annual number of responses per respondent	Total number of responses	Average burden (hours) & cost (\$) per response	Total annual burden hours & total annual cost (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
LGIA & SGIA changes/revisions .....	74	1	74	10 hours; \$745.00	740 hours; \$55,130.00.
Total .....	.....	.....	74	.....	740 hours; \$55,130.00.

There are no maintenance cost, installation cost or any additional cost or requirements after year 1.

*Title:* FERC–516B, Electric Rate Schedules and Tariff Filings.

*Action:* Revision of currently approved collection of information.

*OMB Control No.:* 1902–0286.

*Respondents for this Rulemaking:* Businesses or other for profit and/or not-for-profit institutions.

*Frequency of Information:* One-time during year 1.

*Necessity of Information:* The Commission proposes to revise its regulations to require all newly interconnecting large and small

<sup>137</sup> See, e.g., Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 827.

<sup>138</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760–63.

<sup>139</sup> 44 U.S.C. 3501–3520 (2012).

<sup>140</sup> 5 CFR 1320.11 (2016).

<sup>141</sup> 18 CFR 35.28(f)(1) (2016).

<sup>142</sup> 44 U.S.C. 3507(d) (2012).

<sup>143</sup> The reporting requirements in this NOPR would normally be included under FERC–516 (OMB Control No. 1902–0096). However, FERC–516 is pending review at OMB in an unrelated action. Because only one item per OMB Control No. can

be pending OMB review at a time, the Commission is temporarily using the information collection number FERC–516B (OMB Control No. 1902–0286) to ensure timely submittal of this NOPR to OMB.

<sup>144</sup> Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency, including: The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the “burden” if the agency demonstrates that

the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.

<sup>145</sup> For this information collection, the Commission staff estimates that industry is similarly situated in terms of hourly cost (wages plus benefits). Based on the Commission’s average cost (wages plus benefits) for 2016, the Commission is using \$74.50/hour.

<sup>146</sup> The NERC Compliance Registry lists 80 entities that administer a transmission tariff and provide transmission service. The Commission identifies only 74 as being subject to the proposed requirements because 6 are Canadian entities and are not under the Commission’s jurisdiction.

generating facilities, both synchronous and non-synchronous, to install, maintain, and operate equipment capable of providing primary frequency response as a condition of interconnection. To implement these requirements, the Commission proposes to revise the *pro forma* LGIA and the *pro forma* SGIA.

*Internal Review:* The Commission has reviewed the proposed changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

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

66. Comments on the collection of information and the associated burden estimate in the proposed rule should be sent to the Commission in this docket and may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission], at the following email address: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please refer to OMB Control No. 1902-0286 in your submission.

#### IV. Environmental Analysis

67. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>147</sup> The Commission concludes that neither an Environmental Assessment or an Environmental Impact Statement is required for proposed revisions under section 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the

Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications, and services.<sup>148</sup> The revisions proposed in this NOPR update and clarify the application of the Commission's standard interconnection requirements to synchronous and non-synchronous generators. Therefore, this NOPR falls within the categorical exemptions provided in the Commission's regulations, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

#### V. Regulatory Flexibility Act

68. The Regulatory Flexibility Act of 1980 (RFA)<sup>149</sup> generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA does not mandate any particular outcome in a rulemaking. It only requires consideration of alternatives that are less burdensome to small entities and an agency explanation of why alternatives were rejected.

69. The Small Business Administration (SBA) revised its size standards (effective January 22, 2014) for electric utilities from a standard based on megawatt hours to a standard based on the number of employees, including affiliates. Under SBA's standards, some transmission owners will fall under the following category and associated size threshold: Electric bulk power transmission and control, at 500 employees.<sup>150</sup>

70. The Commission estimates that the total number of transmission providers, both public and non-public, affected by this NOPR is 74.<sup>151</sup> Of these, the Commission estimates that approximately 27.5 percent are small entities. The Commission estimates the average total cost to each of these entities will be minimal, requiring on average 10 hours, or \$745.00. According to SBA guidance, the determination of significance of impact "should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors."<sup>152</sup> The Commission

does not consider the estimated burden to be a significant economic impact. As a result, the Commission believes this NOPR would not have a significant economic impact on a substantial number of small entities.

71. The Commission estimates that the total annual number of new non-synchronous interconnections per year for the first few years of potential implementation under this NOPR would be approximately 200, representing approximately 5,000 MW of installed capacity. Of these, the Commission estimates that the majority are small entities. The Commission estimates the average total cost to each of these entities will be minimal, requiring on average approximately \$3,300 per MW of installed capacity. According to SBA guidance, the determination of significance of impact "should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors." The Commission does not consider the estimated burden to be a significant economic impact on these entities because the cost is relatively minimal compared to the average capital cost per MW for wind and solar PV generation.<sup>153</sup> Additionally, the Commission does not believe that there will be substantial additional costs for new synchronous generators because synchronous generators already come equipped with governors that provide the capability to provide primary frequency response. Accordingly, the Commission believes that this NOPR would not have a significant economic impact on a substantial number of small entities.

#### VI. Comment Procedures

72. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due January 24, 2017. Comments must refer to Docket No. RM16-6-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

<sup>148</sup> 18 CFR 380.4(a)(15) (2015).

<sup>149</sup> 5 U.S.C. 601-612 (2012).

<sup>150</sup> 13 CFR 121.201, Sector 22 (Utilities), NAICS code 221121 (Electric Bulk Power Transmission and Control).

<sup>151</sup> The NERC Compliance Registry lists 80 entities that administer a transmission tariff and provide transmission service. The Commission identifies only 74 as being subject to the proposed requirements because 6 are Canadian entities and are not under the Commission's jurisdiction.

<sup>152</sup> U.S. Small Business Administration, *A Guide for Government Agencies: How to Comply with the*

*Regulatory Flexibility Act*, at 18 (May 2012), [https://www.sba.gov/sites/default/files/advocacy/rfaguide\\_0512\\_0.pdf](https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf).

<sup>153</sup> LBNL estimates that capital cost per MW of installed wind capacity is \$1,690,000. See LBNL 2015 Wind Market Report (Aug. 2016), [https://emp.lbl.gov/sites/all/files/2015-windtechreport.final\\_.pdf](https://emp.lbl.gov/sites/all/files/2015-windtechreport.final_.pdf). NREL estimates that the capital cost per MW of installed solar PV capacity is \$1,770,000. See NREL U.S. Photovoltaic Prices and Cost Breakdowns (Sep. 2015), <http://www.nrel.gov/docs/fy15osti/64746.pdf>.

<sup>147</sup> Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

73. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

74. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

75. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document

Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

#### VII. Document Availability

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

77. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for

viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

By direction of the Commission.

Issued: November 17, 2016.

**Nathaniel J. Davis, Sr.**,

*Deputy Secretary.*

#### Appendix

#### LIST OF COMMENTERS (DOCKET NO. RM16-6-000)

AES Companies	AES Corporation/AES Energy Storage/Dayton Power and Light Company/Indianapolis Power and Light Company.
APPA, et al	American Public Power Association/Large Public Power Council/Transmission Access Policy Study Group.
AWEA	American Wind Energy Association.
Apex	Apex Compressed Air Energy Storage.
APS	Arizona Public Service Company.
Bonneville	Bonneville Power Administration.
CAISO	California Independent System Operator.
Chelan County	Chelan County Public Utility District.
California Cities	City of Anaheim/City of Azusa/City of Banning/City of Colton/City of Pasadena/City of Riverside.
EEL	Edison Electric Institute.
EDP	EDP Renewables North America.
EPRI	Electric Power Research Institute.
EPSA, et al	Electric Power Supply Association/Independent Power Producers of New York/New England Power Generators Association/Western Power Trading Forum.
ELCON	Electricity Consumers Resource Council.
ESA	Energy Storage Association.
Grid Storage Consulting	Grid Storage Consulting.
Howard F. Illian	Howard F. Illian
Idaho Power	Idaho Power Company.
Indicated ISOs/RTOs	Independent Electricity System Operator/ISO New England/New York Independent System Operator/PJM Interconnection/Southwest Power Pool.
IEEE-P1547 Working Group	Institute of Electrical and Electronics Engineers (IEEE) P1547 Standards Working Group.
IEEE-PES	IEEE Power and Energy Society Technical Council.
ITC, et al	International Transmission Company/Michigan Electric Transmission Company/ITC Great Plains/ITC Midwest.
Manitoba	Manitoba Hydro.
Microgrids Resources Coalition	Microgrids Resources Coalition.
MISO	Midcontinent Independent System Operator.
MISO TOs	Midcontinent Independent System Operator Transmission Owners.
NARUC	National Association of Regulatory Utility Commissioners.
NRECA	National Rural Electric Cooperative Association.
NERC	North American Electric Reliability Corporation.
North American Generator Forum	North American Generator Forum.
Nuclear Energy Institute	Nuclear Energy Institute.
PG&E	Pacific Gas and Electric Company.
Peak Reliability	Peak Reliability.
PJM Utilities Coalition	PJM Utilities Coalition.
Powerex	Powerex Corp.
Public Interest Organizations	Public Interest Organizations.
Ralph D. Masiello	Ralph D. Masiello.
SDG&E	San Diego Gas & Electric Company.
Solar City	Solar City Corporation.
SoCal Edison	Southern California Edison Company.
Southern Company	Southern Company.
Steel Producers	Steel Producers.

## LIST OF COMMENTERS (DOCKET NO. RM16-6-000)—Continued

Tacoma Power .....	Tacoma Power.
TVA .....	Tennessee Valley Authority.
Tri-State Generation .....	Tri-State Generation and Transmission Association.
Union of Concerned Scientists .....	Union of Concerned Scientists.
WIRAB .....	Western Interconnection Regional Advisory Body.

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-107424-12]

RIN 1545-BK95

#### Update to Minimum Present Value Requirements for Defined Benefit Plan Distributions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations providing guidance relating to the minimum present value requirements applicable to certain defined benefit pension plans. These proposed regulations would provide guidance on changes made by the Pension Protection Act of 2006 and would provide other modifications to these rules as well. These regulations would affect participants, beneficiaries, sponsors, and administrators of defined benefit pension plans. This document also provides a notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by February 23, 2017. Outlines of topics to be discussed at the public hearing scheduled for March 7, 2017, must be received by February 23, 2017.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-107424-12), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-107424-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-107424-12). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Neil S. Sandhu or Linda S.F. Marshall at (202) 317-6700; concerning submissions of comments, the hearing, and/or being placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 401(a)(11) of the Internal Revenue Code (Code) provides that, in order for a defined benefit plan to qualify under section 401(a), except as provided under section 417, in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant must be provided in the form of a qualified joint and survivor annuity. In the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a defined benefit plan must provide a qualified preretirement survivor annuity to the surviving spouse of such participant, except as provided under section 417.

Section 411(d)(6)(B) provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment is treated as impermissibly reducing accrued benefits. However, the last sentence of section 411(d)(6)(B) provides that the Secretary may by regulations provide that section 411(d)(6)(B) does not apply to a plan amendment that eliminates an optional form of benefit (other than a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy).

Section 417(e)(1) provides that a plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if that present value does not exceed the amount that can be distributed without the participant's consent under section 411(a)(11). Section 417(e)(2) provides that, if the present value of the qualified joint and survivor annuity or the

qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant's consent under section 411(a)(11), then a plan may immediately distribute the present value of a qualified joint and survivor annuity or the qualified preretirement survivor annuity only if the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution.

Section 417(e)(3)(A) provides that the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.<sup>1</sup>

Section 417(e)(3)(B) of the Code, as amended by section 302 of the Pension Protection Act of 2006 (PPA '06), Public Law 109-280, 120 Stat. 780 (2006), provides that the term "applicable mortality table" means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under section 430(h)(3)(A) (without regard to section 430(h)(3)(C) or (3)(D)).

Section 417(e)(3)(C) of the Code, as amended by section 302 of PPA '06, provides that the term "applicable interest rate" means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) of the Code for the month before the date of the distribution or such other time as the Secretary may prescribe by regulations. However, for purposes of section 417(e)(3), these rates are to be determined without regard to the segment rate stabilization rules of section 430(h)(2)(C)(iv). In addition, under section 417(e)(3)(D), these rates are to be determined using the average yields for a month, rather than the 24-month average used under section 430(h)(2)(D).

Section 411(a)(13) of the Code, as added by section 701(b) of PPA '06, provides that an "applicable defined benefit plan," as defined by section 411(a)(13)(C), is not treated as failing to meet the requirements of section 417(e)

<sup>1</sup> Under section 411(a)(11)(B), the same applicable mortality table and applicable interest rate are used for purposes of determining whether the present value of a participant's nonforfeitable accrued benefit exceeds the maximum amount that can be immediately distributed without the participant's consent.

with respect to accrued benefits derived from employer contributions solely because the present value of a participant's accrued benefit (or any portion thereof) may be, under the terms of the plan, equal to the amount expressed as the hypothetical account balance or as an accumulated percentage of such participant's final average compensation.

Section 1107(a)(2) of PPA '06 provides that a pension plan does not fail to meet the requirements of section 411(d)(6) by reason of a plan amendment to which section 1107 applies, except as provided by the Secretary of the Treasury. Section 1107 of PPA '06 applies to plan amendments made pursuant to the provisions of PPA '06 or regulations issued thereunder that are adopted no later than a specified date, generally the last day of the first plan year beginning on or after January 1, 2009.

Final regulations under section 417 relating to the qualified joint and survivor and qualified preretirement survivor annuity requirements have not been amended to reflect PPA '06. The regulations, which were issued on August 22, 1988, were amended on April 3, 1998, to reflect changes enacted by the Uruguay Round Agreements Act, Public Law 103-465 (GATT).

Section 1.417(e)-1(d)(1) provides that a defined benefit plan generally must provide that the present value of any accrued benefit and the amount of any distribution, including a single sum, must not be less than the amount calculated using the specified applicable interest rate and the specified applicable mortality table. The present value of any optional form of benefit cannot be less than the present value of the accrued benefit determined in accordance with the preceding sentence.

Section 1.417(e)-1(d)(6) provides an exception from the minimum present value requirements of section 417(e) and § 1.417(e)-1(d). This exception applies to the amount of a distribution paid in the form of an annual benefit that either does not decrease during the life of the participant (or, in the case of a qualified preretirement survivor annuity, the life of the participant's spouse), or that decreases during the life of the participant merely because of the death of the survivor annuitant (but only if the reduction is to a level not below 50 percent of the annual benefit payable before the death of such survivor annuitant) or the cessation or reduction of Social Security supplements or qualified disability benefits.

Notice 2007-81, 2007-2 CB 899 (see 26 CFR 601.601(d)(2)(ii)(b)), provides guidance on the applicable interest rate.

Rev. Rul. 2007-67, 2007-2 CB 1047 (see 26 CFR 601.601(d)(2)(ii)(b)), provides guidance on the applicable mortality table<sup>2</sup> and the timing rules that apply to the determination of the applicable interest rate and the applicable mortality table.

The Worker, Retiree, and Employer Recovery Act of 2008, Public Law 109-280 (120 Stat. 780), amended section 415(b)(2)(E)(v) to provide that the applicable mortality table under section 417(e)(3)(B) applies for purposes of adjusting a benefit or limitation pursuant to section 415(b)(2)(B), (C), or (D).

Sections 205(g), 203(e), and 204(g) of the Employee Retirement Income Security Act of 1974 (ERISA) contain rules that are parallel to Code sections 417(e), 411(a)(11), and 411(d)(6), respectively. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these regulations apply for purposes of the Code and the corresponding provisions of ERISA.

In *West v. AK Steel Corporation Retirement Accumulation Pension Plan*, 484 F.3d 395 (6th Cir. 2007), the court held that a preretirement mortality discount could not be used in the computation of the present value of a participant's single-sum distribution under a cash balance plan if the death benefit under the plan was equal in value to the participant's accrued benefit under the plan. The court found that, if a participant's beneficiary is entitled to the participant's entire accrued benefit upon the participant's death before attainment of normal retirement age, the use of a mortality discount for the period before normal retirement age would result in a partial forfeiture of benefits in violation of the ERISA vesting rules that correspond to the rules of section 411(a). See also *Berger v. Xerox Corporation Retirement Income Guarantee Plan*, 338 F.3d 755 (7th Cir. 2003); *Crosby v. Bowater, Inc. Ret. Plan*, 212 FRD. 350 (W.D. Mich. 2002), rev'd on other grounds, 382 F.3d 587 (6th Cir. 2004) (accrued benefits include not only retirement benefits themselves, but also death benefits which are directly related to the value of the retirement benefits). In *Stewart v. AT&T Inc.*, 354 Fed. Appx. 111 (5th Cir. 2009), however, the court held that a

preretirement mortality discount was appropriately applied to determine a single-sum distribution under a traditional defined benefit plan. The court distinguished *AK Steel* and *Berger* on the basis that the plans at issue in those cases did not provide for a forfeiture of the accrued benefit on the death of the participant before retirement, whereas the plan at issue in *Stewart* provided for such a forfeiture.

Final regulations (TD 9783) under section 417(e) that permit defined benefit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity and partly in a more accelerated form were published by the Treasury Department and the IRS in the **Federal Register** on September 9, 2016 (81 FR 62359).

## Explanation of Provisions

### Overview

These proposed regulations would amend the current final regulations under section 417(e) regarding the minimum present value requirements of section 417(e)(3) in several areas. Specifically, the proposed regulations would update the regulations for changes made by PPA '06 and to eliminate certain obsolete provisions. The proposed regulations also contain a few other clarifying changes.

### Updates To Reflect Statutory and Regulatory Changes

The proposed regulations would update the existing regulatory provisions to reflect the statutory changes made by PPA '06, including the new interest rates and mortality tables set forth in section 417(e)(3) and the exception from the valuation rules for certain applicable defined benefit plans set forth in section 411(a)(13). The proposed regulations clarify that the interest rates that are published by the Commissioner pursuant to the provisions as modified by PPA '06 are to be used without further adjustment. In addition, the proposed regulations would eliminate obsolete provisions of the regulations relating to the transition from pre-1995 law to the interest rates and mortality assumptions provided by GATT. Furthermore, the proposed regulations make conforming changes to reflect the final regulations under section 417(e) that permit defined benefit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity and partly in a more accelerated form.

<sup>2</sup> Notice 2008-85, 2008-2 CB 905, Notice 2013-49, 2013-32 IRB 127, Notice 2015-53, 2015-33 IRB 190, and Notice 2016-50, 2016-38 IRB 371, set forth the section 417(e)(3) applicable mortality tables for 2009 through 2017.

### Other Clarifying Changes

#### A. Treatment of Preretirement Mortality

The proposed regulations would include rules relating to the treatment of preretirement mortality discounts in determining the minimum present value of accrued benefits under the regulations to address the issue raised by *AK Steel* and *Berger* of whether a plan that provides a death benefit equal in value to the accrued benefit may apply a preretirement mortality discount for the probability of death when determining the amount of a single-sum distribution.

Section 411(a) generally prohibits forfeitures of accrued benefits. Under section 411(a)(1), an employee's rights in his accrued benefit derived from employee contributions must be nonforfeitable, and under section 411(a)(2), an employee's rights in his accrued benefit derived from employer contributions must become nonforfeitable in accordance with a vesting schedule that is specified in the statute. Section 411(a)(3)(A) provides that a right to an accrued benefit derived from employer contributions is not treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 401(a)(11)).

Section 411(a)(7)(A)(i) defines a participant's accrued benefit under a defined benefit plan as the employee's accrued benefit determined under the plan and, except as provided in section 411(c)(3), expressed in the form of an annual benefit commencing at normal retirement age. Section 1.411(a)-7(a)(1) defines a participant's accrued benefit under a defined benefit plan as the annual benefit commencing at normal retirement age if the plan provides an accrued benefit in that form. If a defined benefit plan does not provide an accrued benefit in the form of an annual benefit commencing at normal retirement age, § 1.411(a)-7(a)(1)(ii) defines the accrued benefit as an annual benefit commencing at normal retirement age which is the actuarial equivalent of the accrued benefit determined under the plan. The regulation further clarifies that the term "accrued benefits" refers only to pension or retirement benefits. Consequently, accrued benefits do not include ancillary benefits not directly related to retirement benefits, such as incidental death benefits.

Section 411(d)(6)(A) prohibits a plan amendment that decreases a participant's accrued benefit. Section 411(d)(6)(B) provides that a plan amendment that has the effect of

eliminating or reducing an early retirement benefit or retirement-type subsidy or eliminating an optional form of benefit with respect to benefits attributable to service before the amendment is treated as reducing accrued benefits for this purpose. Section 1.411(d)-3(g)(2)(v) provides that a death benefit under a defined benefit plan other than a death benefit that is part of an optional form of benefit is an ancillary benefit. Section 1.411(d)-3(g)(6)(ii)(B) describes death benefits payable after the annuity starting date that are considered part of an optional form of benefit. Pursuant to § 1.411(d)-3(g)(14) and (15), section 411(d)(6) protected benefits do not include a death benefit under a defined benefit plan that is an ancillary benefit and not part of an optional form of benefit.

A death benefit under a defined benefit plan that is payable when the participant dies before attaining normal retirement age and before benefits commence is not part of the participant's accrued benefit within the meaning of section 411(a)(7). Accordingly, the anti-forfeiture rules of section 411(a) do not apply to such a death benefit. This is the case even if the amount of the death benefit is the same as the amount the participant would have received had the participant separated from service and elected to receive a distribution immediately before death. Moreover, such a death benefit is an ancillary benefit within the meaning of § 1.411(d)-3(g)(2)(v)—rather than a section 411(d)(6) protected benefit—and therefore can be eliminated by plan amendment (provided that a qualified preretirement survivor annuity for a surviving spouse is preserved, pursuant to section 401(a)(11)).

The minimum present value requirements of section 417(e)(3) do not take into account the value of ancillary benefits that are not part of the participant's accrued benefit under the plan. Consistent with this, § 1.417(e)-1(d)(1)(i) does not require ancillary death benefits to be taken into account in the required minimum present value calculation. Because questions have arisen regarding this rule, the proposed regulations would clarify that the probability of death under the applicable mortality table is generally taken into account for purposes of determining the present value under section 417(e)(3), without regard to the death benefits provided under the plan other than a death benefit that is part of the normal form of benefit or part of another optional form of benefit (as described in § 1.411(d)-3(g)(6)(ii)(B)) for which present value is determined.

However, a different rule applies with respect to whether the probability of death under the applicable mortality table is taken into account for purposes of determining the present value with respect to the accrued benefit derived from contributions made by an employee. This is because an employee's rights in the accrued benefit derived from the employee's own contributions are nonforfeitable under section 411(a)(1), and the exception for death under section 411(a)(3)(A) to the nonforfeatability of accrued benefits does not apply to the accrued benefit derived from employee contributions. As a result, for purposes of determining the present value under section 417(e)(3) with respect to the accrued benefit derived from contributions made by an employee (that is computed in accordance with the requirements of section 411(c)(3)), the probability of death during the assumed deferral period, if any, is not taken into account. For purposes of the preceding sentence, the assumed deferral period is the period between the date of the present value determination and the assumed commencement date for the annuity attributable to contributions made by an employee.

The proposed regulations include an example to illustrate the application of the minimum present value requirements of section 417(e)(3) in the case of a single-sum distribution of a participant's entire accrued benefit that consists both of an accrued benefit derived from employee contributions and an employer-provided accrued benefit. Consistent with the rules in these proposed regulations, the example illustrates that a single-sum distribution of the participant's entire accrued benefit in such a case must equal the sum of the minimum present value of the accrued benefit derived from employee contributions, determined under section 417(e)(3) (applying the special rules set forth in the preceding paragraph), and the minimum present value of the employer-provided accrued benefit, determined under section 417(e)(3). Note that Rev. Rul. 89-60, 1989-1 CB 113 (1989) suggests that it is sufficient for a single-sum distribution in such a case to merely equal the greater of the minimum present value of the accrued benefit derived from employee contributions and the minimum present value of the participant's entire accrued benefit. To the extent the guidance under Rev. Rul. 89-60 is inconsistent with the final regulations that adopt these proposed regulations, the regulations would

supersede the guidance in Rev. Rul. 89–60.

#### B. Social Security Level Income Options

Questions have arisen regarding whether the minimum present value requirements of section 417(e)(3) apply to a social security level income option. As noted above, § 1.417(e)–1(d)(6) provides that the minimum present value requirements of section 417(e)(3) do not apply to the amount of a distribution paid in the form of an annual benefit that does not decrease during the life of the participant, or that decreases during the life of the participant merely because of the death of the survivor annuitant or the cessation or reduction of social security supplements or qualified disability benefits.

A social security supplement is defined in § 1.411(a)–7(c)(4) as a benefit for plan participants that commences before and terminates before the age when participants are entitled to old-age insurance benefits, unreduced on account of age, under title II of the Social Security Act, and does not exceed such old-age insurance benefit. A social security supplement (other than a QSUPP as defined in § 1.401(a)(4)–12) is an ancillary benefit that is not a section 411(d)(6) protected benefit.

A social security level income option is an optional form of benefit (protected under section 411(d)(6)) under which a participant's accrued benefit is paid in the form of an annuity with larger payments in earlier years, before an assumed social security commencement age, to provide the participant with approximately level retirement income when the assumed social security payments are taken into account. It is appropriate to subject a social security level income option to the rules of section 417(e)(3) because, when a participant's accrued benefit is paid as a social security level income option, a portion of the participant's accrued benefit (which may be substantial) is accelerated and paid over a short period of time until social security retirement age. Because the periodic payments under a social security level income option decrease during the lifetime of the participant and the decrease is not the result of the cessation of an ancillary social security supplement, § 1.417(e)–1(d)(6) does not provide an exception from the minimum present value requirements of section 417(e)(3) for such a distribution. These proposed regulations contain an example that illustrates this point.

#### C. Application of Required Assumptions to the Accrued Benefit

The proposed regulations would clarify the scope of the rule of § 1.417(e)–1(d)(1) under which the present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit (with both values determined using the applicable interest rate and the applicable mortality table). The proposed regulations would require that the present value of any optional form of benefit cannot be less than the present value of the accrued benefit payable at normal retirement age, and would provide an exception for an optional form of benefit payable after normal retirement age to the extent that a suspension of benefits applies pursuant to section 411(a)(3)(B).

#### *Effective/Applicability Dates*

The changes under the proposed regulations are proposed to apply to distributions with annuity starting dates in plan years beginning on or after the date regulations that finalize these proposed regulations are published in the **Federal Register**. Prior to this applicability date, taxpayers must continue to apply existing regulations relating to section 417(e), modified to reflect the relevant statutory provisions during the applicable period (and guidance of general applicability relating to those statutory provisions, such as Rev. Rul. 2007–67).

#### **Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the proposed regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS

request comments on all aspects of these proposed regulations. In addition, the Treasury Department and the IRS specifically request comments on whether, in the case of a plan that provides a subsidized annuity payable upon early retirement and determines a single-sum distribution as the present value of the early retirement annuity, the present-value determination should be required to be calculated using the applicable interest rate and the applicable mortality table applied to the early retirement annuity (or whether the requirement to have a minimum present value that is equal to the present value of the annuity payable at normal retirement age determined in accordance with section 417(e)(3) provides the level of protection for the participant that is required by section 417(e)(3)). See *Rybarczyk v. TRW*, 235 F.3d 975 (6th Cir. 2000).

All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing has been scheduled for March 7, 2017, beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by February 23, 2017, and an outline of topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by February 23, 2017. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### **Drafting Information**

The principal authors of these regulations are Neil S. Sandhu and Linda S.F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department

participated in the development of these regulations.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

■ **Par. 1.** The authority citation for part 1 continues to read in part as follows:

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

■ **Par. 2.** Section 1.417(e)–1 is amended by:

- 1. Revising paragraphs (d)(1)(i), (d)(2), (d)(3), (d)(4), and (d)(6).
- 2. Adding paragraph (d)(8)(vi).
- 3. Revising paragraph (d)(9).
- 4. Removing paragraph (d)(10).

The addition and revisions read as follows:

#### § 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

\* \* \* \* \*

(d) *Present value requirement*—(1) *General rule*—(i) *Defined benefit plans*—(A) *In general.* A defined benefit plan must provide that the present value of any accrued benefit and the amount (subject to sections 411(c)(3) and 415) of any distribution, including a single sum, must not be less than the amount calculated using the applicable mortality table described in paragraph (d)(2) of this section and the applicable interest rate described in paragraph (d)(3) of this section, as determined for the month described in paragraph (d)(4) of this section. The present value of any optional form of benefit, determined in accordance with the preceding sentence, cannot be less than the present value of the accrued benefit payable at normal retirement age, except to the extent that, for an optional form of benefit payable after normal retirement age, the requirements for suspension of benefits under section 411(a)(3)(B) are satisfied. The same rules used for the plan under this paragraph (d) must also be used to compute the present value of the benefit for purposes of determining whether consent for a distribution is required under paragraph (b) of this section.

(B) *Payment of a portion of a participant's benefit.* The rules of this paragraph (d)(1) apply with respect to a payment of only a portion of the accrued benefit in the same manner as these rules would apply to a distribution of the entire accrued

benefit. See paragraph (d)(7) of this section.

(C) *Special rules for applicable defined benefit plans.* See section 411(a)(13) and the regulations thereunder for an exception from the rules of section 417(e)(3) and this paragraph (d) that applies to certain distributions from certain applicable defined benefit plans.

\* \* \* \* \*

(2) *Applicable mortality table*—(i) *In general.* The applicable mortality table for a calendar year is the mortality table that is prescribed by the Commissioner in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter. This mortality table is to be based on the table specified under section 430(h)(3)(A), but without regard to section 430(h)(3)(C) or (D).

(ii) *Mortality discounts*—(A) *In general.* Except as provided under paragraph (d)(2)(ii)(B) of this section, the probability of death under the applicable mortality table is taken into account for purposes of determining the present value under this paragraph (d) without regard to the death benefits provided under the plan (other than a death benefit that is part of the normal form of benefit or part of another optional form of benefit, as described in § 1.411(d)–3(g)(6)(ii)(B), for which present value is determined).

(B) *Special rule for employee-provided benefit.* For purposes of determining the present value under this paragraph (d) with respect to the accrued benefit derived from employee contributions (that is determined in accordance with the requirements of section 411(c)(3)), the probability of death during the assumed deferral period, if any, is not taken into account. For purposes of the preceding sentence, the assumed deferral period is the period between the date of the present value determination and the assumed commencement date for the annuity attributable to contributions made by an employee.

(3) *Applicable interest rate*—(i) *In general.* The applicable interest rate for a month is determined using the first, second, and third segment rates for that month under section 430(h)(2)(C), as modified pursuant to section 417(e)(3)(D) (and without regard to the segment rate stabilization rules of section 430(h)(2)(C)(iv)). The applicable interest rate is specified by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin, and is applied under rules similar to the rules under § 1.430(h)(2)–1(b). Thus, for example, in determining the present

value of a straight life annuity, the first segment is applied with respect to payments expected to be made during the 5-year period beginning on the annuity starting date, the second segment rate is applied with respect to payments expected to be made during the 15-year period following the end of that 5-year period, and the third segment rate is applied with respect to payments expected to be made after the end of that 15-year period. The interest rates that are published by the Commissioner are to be used for this purpose without further adjustment.

(ii) *Examples.* The following examples illustrate the rules of paragraphs (d)(2) and (3) of this section.

*Example 1.* (i) Plan A is a non-contributory single-employer defined benefit plan with a calendar-year plan year, a one-year stability period coinciding with the calendar year, and a two-month lookback used for determining the applicable interest rate. The normal retirement age is 65, and all participant elections are made with proper spousal consent. Plan A provides for optional single sum payments equal to the present value of the participant's accrued benefit. Plan A provides that the applicable interest rates are the segment rates as specified by the Commissioner for the second full calendar month preceding the calendar year that contains the annuity starting date. The applicable mortality table is the table specified by the Commissioner for the calendar year that contains the annuity starting date.

(ii) Participant P retires in May 2017 at age 60 and elects (with spousal consent) to receive a single-sum payment. P has an accrued benefit of \$2,000 per month payable as a life annuity beginning at the plan's normal retirement age of 65. The applicable mortality rates for 2017 apply. The applicable interest rates published by the Commissioner for November 2016 are 1.57%, 3.45%, and 4.39% for the first, second, and third segment rates, respectively. The deferred annuity factor calculated based on these interest rates and the applicable mortality table for 2017 is 10.931 for a participant age 60. To satisfy the requirements of section 417(e)(3) and this paragraph (d), the single-sum payment received by P cannot be less than \$262,344 (that is, \$2,000 × 12 × 10.931).

*Example 2.* (i) The facts are the same as for *Example 1* of this paragraph (d)(3)(ii), except that Plan A provides for mandatory employee contributions. Participant Q retires in May 2017 at age 60 and elects (with spousal consent) to receive a single-sum payment of Q's entire accrued benefit. Q has an accrued benefit of \$2,000 per month payable as a life annuity beginning at Plan A's normal retirement age of 65, consisting of an accrued benefit derived from employee contributions determined in accordance with section 411(c)(2) (Q's employee-provided accrued benefit) of \$500 per month and an accrued benefit derived from employer contributions (Q's employer-provided accrued benefit) of \$1,500 per month.

(ii) Pursuant to paragraph (d)(2)(ii)(B) of this section, the single-sum payment used to settle Q's employee-provided accrued benefit cannot be less than the present value of that portion of Q's accrued benefit determined using the applicable interest and mortality rates described in paragraphs (d)(3)(i) and (d)(2)(ii) of this section, determined without taking the probability of death during the assumed deferral period into account. The deferred annuity factor calculated based on the interest and mortality rates specified in *Example 1* of this paragraph (d)(3)(ii) (taking the probability of death only after age 65 into account) is 11.266 for a participant age 60. To satisfy the requirement of section 417(e)(3) and this paragraph (d), the single-sum payment received by Q with respect to the employee-provided portion of the accrued benefit cannot be less than the minimum present value of \$67,596 (that is,  $\$500 \times 12 \times 11.266$ ).

(iii) The single-sum payment used to settle Q's employer-provided accrued benefit cannot be less than the present value of that portion of Q's accrued benefit determined using the applicable interest and mortality rates. However, for this purpose, Plan A is permitted to take the probability of death during the assumed deferral period into account. The single-sum payment received by Q with respect to the employer-provided portion of the accrued benefit cannot be less than \$196,758 (that is,  $\$1,500 \times 12 \times 10.931$ ).

(iv) The total single-sum payment received by Q cannot be less than the sum of the minimum present value of Q's employee- and employer-provided accrued benefits, or \$264,354 ( $\$67,596 + \$196,758$ ).

(4) *Time for determining interest rate and mortality table*—(i) *Interest rate general rule*. Except as provided in paragraph (d)(4)(v) or (vi) of this section, the applicable interest rate to be used for a distribution is the applicable interest rate determined under paragraph (d)(3) of this section for the applicable lookback month. The applicable lookback month for a distribution is the lookback month (as described in paragraph (d)(4)(iv) of this section) for the stability period (as described in paragraph (d)(4)(iii) of this section) that contains the annuity starting date for the distribution. The time and method for determining the applicable interest rate for each participant's distribution must be determined in a consistent manner that is applied uniformly to all participants in the plan.

(ii) *Mortality table general rule*. The applicable mortality table to be used for a distribution is the mortality table that is published for the calendar year during which the stability period containing the annuity starting date begins.

(iii) *Stability period*. A plan must specify the period for which the applicable interest rate remains constant (the stability period). This stability

period may be one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year. This same stability period also applies to the applicable mortality table.

(iv) *Lookback month*. A plan must specify the lookback month that is used to determine the applicable interest rate with respect to a stability period. The lookback month may be the first, second, third, fourth, or fifth full calendar month preceding the first day of the stability period.

(v) *Permitted average interest rate*. A plan may apply the rules of paragraph (d)(4)(i) of this section by substituting a permitted average applicable interest rate with respect to the plan's stability period for the applicable interest rate determined under paragraph (d)(3) of this section for the applicable lookback month for the stability period. For this purpose, a permitted average applicable interest rate with respect to a stability period is the applicable interest rate that is computed by averaging the applicable interest rates determined under paragraph (d)(3) of this section for two or more consecutive months from among the first, second, third, fourth, and fifth calendar months preceding the first day of the stability period. For this paragraph (d)(4)(v) to apply, a plan must specify the manner in which the permitted average interest rate is computed.

(vi) *Additional determination dates*. The Commissioner may prescribe, in guidance published in the Internal Revenue Bulletin, other times that a plan may provide for determining the applicable interest rate.

(vii) *Example*. The following example illustrates the rules of this paragraph (d)(4):

*Example*. (i) The facts are the same as *Example 1* of paragraph (d)(3)(ii) of this section, except that Plan A provides that the applicable interest rates are the rates for the third full calendar month preceding the beginning of the plan quarter that contains the annuity starting date. Plan A also provides that the applicable mortality table is the table specified by the Commissioner for the calendar year that contains the beginning of the stability period.

(ii) The segment interest rates that apply for annuity starting dates during the period beginning April 1, 2017 and ending June 30, 2017 are the segment rates for January 2017. This plan design permits the applicable interest rate to be fixed for each plan quarter and for the applicable interest rate for all distributions made during each plan quarter to be determined before the beginning of the plan quarter.

\* \* \* \* \*

(6) *Exceptions*—(i) *In general*. This paragraph (d) (other than the provisions relating to section 411(d)(6)

requirements in paragraph (d)(9) of this section) does not apply to the amount of a distribution paid in the form of an annual benefit that—

(A) Does not decrease during the life of the participant, or, in the case of a QPSA, the life of the participant's spouse; or

(B) Decreases during the life of the participant merely because of—

(1) The death of the survivor annuitant (but only if the reduction is to a level not below 50 percent of the annual benefit payable before the death of the survivor annuitant); or

(2) The cessation or reduction of a social security supplement or qualified disability benefit (as defined in section 411(a)(9)).

(ii) *Example*. The following example illustrates the rules of this paragraph (d)(6).

*Example*. (i) The facts are the same as *Example 1* of paragraph (d)(3)(ii) of this section. Plan A also provides an optional distribution in the form of a Social Security level income option. Under this provision, the participant's benefit is adjusted so that a larger amount is payable until age 65, at which time it is reduced to provide a level income in combination with the participant's estimated social security benefit beginning at age 65. Participant R's reduced early retirement benefit payable as a straight life annuity benefit commencing at age 60 is \$1,300 per month (which is less than the actuarially equivalent benefit that would have been determined using the applicable interest and mortality rates under section 417(e)(3)) and R's estimated social security benefit is \$1,000 per month beginning at age 65.

(ii) Because the benefit payable under the social security level income option decreases at age 65 and the decrease is not on account of the death of the participant or a beneficiary or the cessation or reduction of social security supplements or qualified disability benefits, the benefits payable under the social security level income option are subject to the minimum present value requirements of section 417(e)(3). As illustrated in *Example 1* of paragraph (d)(3)(ii) of this section, the minimum present value of Participant R's benefits under section 417(e)(3) is \$262,344, which is based on the present value of R's accrued benefit, not R's benefit that would be payable as a straight life annuity at the annuity starting date.

(iii) The deferred annuity factor for a participant age 60 with lifetime benefits commencing at age 65, based on the November 2016 segment rates and the applicable mortality table for 2017, is 10.931. The corresponding temporary annuity factor to age 65 is 4.752. The minimum benefits payable to Participant R in the form of a social security level income option (with a decrease of \$1,000—equal to the participant's estimated social security benefit—occurring at age 65) are \$2,090.99 per month until age 65 and \$1,090.99 per month thereafter. Any

amounts less than this would have a present value smaller than the required amount of \$262,344, and thus would fail to satisfy the minimum present value requirement of section 417(e)(3).

\* \* \* \* \*

(8) \* \* \*

(vi) *Applicability date for provisions reflecting PPA '06 updates and other rules.* Paragraphs (d)(1) through (4) of this section apply to distributions with annuity starting dates in plan years beginning on or after the date regulations that finalize these proposed regulations are published in the **Federal Register**. Prior to this applicability date, taxpayers must continue to apply the provisions of § 1.417(e)-1(d) as contained in 26 CFR part 1 as in effect immediately before publication of those final regulations, except to the extent superseded by statutory changes and guidance of general applicability relating to those statutory changes.

(9) *Relationship with section 411(d)(6)*—(i) *In general.* A plan amendment that changes the interest rate or the mortality assumptions used for the purposes described in paragraph (d)(1) of this section (including a plan amendment that changes the time for determining those assumptions) is generally subject to section 411(d)(6). However, for certain exceptions to the rule in the preceding sentence, see paragraph (d)(7)(iv) of this section, § 1.411(d)-4, Q&A-2(b)(2)(v) (with respect to plan amendments relating to involuntary distributions), and section 1107(a)(2) of the Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780 (2006) (PPA '06) (with respect to certain plan amendments that were made pursuant to a change to the Internal Revenue Code by PPA '06 or regulations issued thereunder).

(ii) *Section 411(d)(6) relief for change in time for determining interest rate and mortality table.* Notwithstanding the general rule of paragraph (d)(9)(i) of this section, if a plan amendment changes the time for determining the applicable interest rate (and, if the amendment changes the stability period described in paragraph (d)(4)(iii) of this section, the time for determining the applicable mortality table), including an indirect change as a result of a change in plan year, the amendment will not be treated as reducing accrued benefits in violation of section 411(d)(6) merely on account of this change if the conditions of this paragraph (d)(9)(ii) are satisfied. If the plan amendment is effective on or after the date the amendment is adopted, any distribution for which the annuity starting date occurs in the one-year period commencing at the time the amendment is effective must be

determined using the interest rate and mortality table provided under the plan determined at either the date for determining the interest rate and mortality table before the amendment or the date for determining the interest rate and mortality table after the amendment, whichever results in the larger distribution. If the plan amendment is adopted retroactively (that is, the amendment is effective prior to the adoption date), the plan must use the interest rate and mortality table determination dates resulting in the larger distribution for distributions with annuity starting dates occurring during the period beginning with the effective date and ending one year after the adoption date.

\* \* \* \* \*

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2016-27907 Filed 11-23-16; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 267

[Docket ID: DOD-2016-OS-0079]

RIN 0790-AJ51

#### **Production of Official Records or Disclosure of Official Information in Proceedings Before Federal, State or Local Governmental Entities of Competent Jurisdiction**

**AGENCY:** National Reconnaissance Office, Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule sets forth procedures for the National Reconnaissance Office (NRO) personnel to follow for the release of official information by NRO personnel in legal proceedings, through testimony, production of documents, or otherwise.

**DATES:** Comments must be received by January 24, 2017.

**ADDRESSES:** You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

Follow the instructions for submitting comments.

- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive,

Mailbox #24, Alexandria, VA 22350-1700.

*Instructions:* All submissions received must include the agency name and docket number or RIN 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.

**FOR FURTHER INFORMATION CONTACT:** Lisa Miller, (703) 808-1060.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Pursuant to DoD Directive 5105.23, "National Reconnaissance Office (NRO)," effective October 29, 2015 (available at <http://www.dtic.mil/whs/directives/corres/pdf/510523p.pdf>), the NRO was designated as a Defense Agency. This proposed regulation aligns with comparable regulations for other defense agencies. This rulemaking discusses procedures for NRO personnel to follow when asked to provide official testimony in a legal proceeding. It also informs members of the public of the procedures for official NRO documents, files, records or information or official testimony which could include:

(1) Any material contained in the files of the NRO;

(2) Any information relating to, or based upon, material contained in the files of the NRO, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by any person while such person was performing official duties while detailed to the NRO, assigned to the NRO, or due to that person's official status or association with the NRO. These procedures also apply to subpoenas *duces tecum* for any document within the NRO's possession and to requests for official certification of copies of any documents.

These procedures discussed in this proposed rule apply to information requests associated with:

(1) State court proceedings, to include grand jury proceedings.

(2) Federal civil proceedings where the United States, NRO, or any other Federal Agency is not a party to the case; and

(3) State and local legislative and administrative proceedings.

**Authority**

The authority for promulgation of this regulatory action is 50 U.S.C. 3003(4)(f) and 10 U.S.C. 424(b)(2), and Executive Order 12333, “*United States Intelligence Activities*”, as amended, with particular reference to Section 1.4 (f) and (g) and Section 1.6 (d), (e) and (h).

Congress, when enacting the National Security Act of 1947 (“the Act”), intended to provide a comprehensive program for the future security of the United States, and provide for the establishment of integrated policies and procedures for the departments, agencies, and functions of the Government relating to the national security. The Act was designed to provide a Department of Defense, including the three military Departments of the Army, the Navy (including naval aviation and the United States Marine Corps), and the Air Force under the direction, authority, and control of the Secretary of Defense. The Act also provided for the establishment of unified or specified combatant commands. The National Reconnaissance Office is identified as an “intelligence agency” under the National Security Act of 1947, as amended, (50 U.S.C. 3003(4)(f)).

An exemption for specified intelligence agencies from the disclosure of organizational and personnel information is provided in 10 U.S.C. 424(b)(2). This exemption provides that, except as required by the President, no provision of law shall be construed to require the disclosure of: (1) The organization or any function of an organization of the Department of Defense (specifically the Defense Intelligence Agency, National Reconnaissance Office and the National Geospatial Intelligence Agency); or (2) the number of persons employed by, or assigned or detailed to, any such organization or the name, official title, occupational series, grade, or salary of any such person.

**Costs and Benefits**

This proposed rule would benefit the public and the United States Government by providing clear procedures for members of the public and Government employees to follow when official testimony or official documents, records, files or information are sought from NRO or from NRO personnel in connection with legal proceedings.

**Regulatory Analysis****Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a “significant regulatory action,” although not economically significant because the rulemaking does not have an annual effect on the economy of \$100 million or more, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

**Unfunded Mandates Reform Act (2 U.S.C. Ch. 25)**

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately \$146 million. This rulemaking would not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

**Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. Ch. 6)**

The Department of Defense certifies that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. Ch. 6) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule would provide clarity to U.S. Government personnel and outside counsel on the proper rules and procedures to serve process on U.S. Government officials in their official capacity and to obtain official U.S. Government testimony or documents for use in legal proceedings. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

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

It has been determined that this rulemaking does not impose reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

**Executive Order 13132, “Federalism”**

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rulemaking would not have a substantial effect on the States; the relationship between the National Government and the States; or the distribution of power and responsibilities among the various levels of Government.

**List of Subjects in 32 CFR Part 267**

Legal proceedings, Testimony, Documentation.

Accordingly, 32 CFR part 267 is proposed to be added to read as follows:

**PART 267—PRODUCTION OF OFFICIAL RECORDS OR DISCLOSURE OF OFFICIAL INFORMATION IN PROCEEDINGS BEFORE FEDERAL, STATE OR LOCAL GOVERNMENTAL ENTITIES OF COMPETENT JURISDICTION**

- Sec.
- 267.1 Scope and purpose.
  - 267.2 Definitions.
  - 267.3 Policy.
  - 267.4 Procedures.
  - 267.5 Service of process.
  - 267.6 Fees.

**Authority:** 50 U.S.C. 3003(4)(f) and 10 U.S.C. 424(b)(2).

**§ 267.1 Scope and purpose.**

(a) This part establishes policy, assigns responsibilities, and prescribes mandatory procedures governing the release of official information by National Reconnaissance Office (NRO) personnel in legal proceedings, through testimony, production of documents, or otherwise. This part sets forth procedures for NRO personnel to follow if they are subpoenaed to produce or disclose, or to testify with respect to:

(1) Any material contained in the files of the NRO;

(2) Any information relating to, or based upon, material contained in the files of the NRO, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by any person while such person was performing official duties while detailed to the NRO, assigned to the NRO, or due to that person's official status or association with the NRO. These procedures also apply to subpoenas *duces tecum* for any document within the NRO's possession and to requests for official certification of copies of any documents.

(b) These procedures apply to information requests associated with:

(1) State court proceedings, to include grand jury proceedings.

(2) Federal civil proceedings where the United States, NRO, or any other Federal Agency is not a party to the case; and

(3) State and local legislative and administrative proceedings.

(c) These procedures do not apply to:

(1) Congressional requests or subpoenas for testimony or documents; and

(2) Release of official information or testimony by NRO personnel in the following situations, authorized:

(i) Before courts-martial convened by the authority of the Military Departments or in any administrative meetings conducted by a DoD component;

(ii) Pursuant to administrative proceedings conducted by the Equal Employment Opportunity and Diversity Management (EEO&DM) Office;

(iii) In response to requests for records or information from the United States Department of Justice (DOJ) or other federal government counsel representing the United States or the interests of the United States in litigation;

(iv) Pursuant to the disclosure of any information to Federal, State, or local prosecuting or law enforcement authorities in conjunction with an investigation conducted by a DoD criminal investigative organization.

(d) This part is intended to provide guidance for the internal operation of the NRO and to ensure the orderly execution of NRO's mission, not to impede any legal proceeding.

#### § 267.2 Definitions.

For the purpose of this part:

*Demand.* Any subpoena, order, or other legal summons (except garnishment orders) that is issued by a federal, state, or local governmental entity of competent jurisdiction with the authority to require the production, disclosure, or release of official NRO information or for the appearance and testimony of NRO personnel as witnesses.

*Employee or NRO employee.* When used herein refers to NRO personnel, current or former.

*General Counsel.* The NRO General Counsel, to include the Principal Deputy General Counsel, Deputy General Counsel, or Acting General Counsel.

*Litigation.* All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards or other tribunals, foreign and domestic. This term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving litigation.

*NRO personnel.* Present and former civilian employees assigned or detailed to NRO, or employed by NRO, and present and former military personnel assigned or detailed to NRO, or employed by NRO. The definition of NRO personnel also includes individuals hired through contractual agreements by or on behalf of NRO.

*Official Information.* All information of any kind, in any storage medium, whether or not classified or protected from disclosure that:

(1) Is in the custody and control of the NRO; or

(2) Relates to information in the custody and control of the NRO; or

(3) Was acquired by NRO personnel as part of their official duties or because of their official status within NRO.

*Production or Produce.* The disclosure of:

(1) Any material contained in the files of NRO; or

(2) Any information relating to, or based upon, material contained in the files of the NRO, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by any person while such person was performing official duties as detailed to the NRO, assigned to the NRO, or due to that person's official status or association with the NRO.

These procedures also apply to subpoenas *duces tecum* for any document within the NRO's possession and to requests for certification of copies of any documents.

*Service of Process.* The delivery of a summons and complaint, or other document the purpose of which is to give notice of a proceeding or to establish the jurisdiction of a court or administrative proceeding, in the

manner prescribed by Rule 4, Federal Rules of Civil Procedure, to an officer or agency of the United States named in court or administrative proceedings.

#### § 267.3 Policy.

(a) No employee shall produce any materials or information in response to a demand without prior authorization as set forth in this part. This part applies to current and to former employees and contractors, in accordance with applicable nondisclosure agreements.

(b) This part is intended only to provide procedures for responding to a demand for production of documents or information, and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable by any party against the United States.

(c) Except as permitted by paragraph (d) of this section, no NRO personnel may provide testimony or produce documents in any proceeding referenced in § 267.1(b) of this part concerning information acquired in the course of performing official NRO duties or because of the person's official relationship with NRO, except as specifically authorized by the General Counsel.

(d) With the approval of the General Counsel, on behalf of the Director of NRO, NRO personnel may testify at the request of another Federal agency, or, where it is in the interests of the NRO, at the request of a State or local government or State legislative committee, subject to applicable nondisclosure agreements and in accordance with procedures set forth in this part.

(e) Official information that is not classified or privileged may be made available for use in Federal and State courts, at the discretion of the General Counsel, who may deny requested information or testimony under the procedures set forth in this part, or as otherwise authorized and warranted under applicable law.

#### § 267.4 Procedures.

(a) If official information is sought, through testimony or otherwise, by a litigation demand, the individual seeking such release or testimony must set forth, in writing and with as much specificity as possible, the nature and relevance of the official information sought, and shall send such demand to NRO Office of General Counsel (OGC), National Reconnaissance Office, Chantilly, VA 20151.

(b) Any NRO personnel in receipt of a litigation request or demand for official NRO information or the testimony of NRO personnel as

witnesses shall immediately notify the NRO OGC, National Reconnaissance Office, Chantilly, VA 20151 (703/808-1060), and shall provide a copy of the request or demand to the OGC, which shall follow the procedures set forth in this section.

(c) NRO personnel shall not produce, disclose, release, comment upon, or testify concerning any official information during litigation except as expressly authorized in writing by the General Counsel. In exigent circumstances, the General Counsel may issue oral approval, but a written record of such approval will be made and retained in the OGC.

(d) The NRO OGC and senior NRO officials with responsibility for the information sought in the demand shall determine whether any information, materials, or testimony may properly be produced in response to the demand, provided that the OGC may assert any and all legal defenses and objections to the demand available to NRO prior to the start of any search for information responsive to the demand. NRO may, in its sole discretion, decline to begin any search for information responsive to the demand until a final and non-appealable disposition of any such defenses and objections raised by NRO has been made by the entity or person that issued the demand.

(e) In deciding whether to authorize the release of official NRO information or the testimony of NRO personnel concerning official information (hereafter referred to as "production") pursuant to paragraph (d) of this section, OGC shall consider the following factors, among any other pertinent considerations:

(1) Whether production would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether production would violate a statute, executive order, regulation, or directive;

(3) Whether production would reveal NRO organization, functions, or personnel information protected from disclosure by statute;

(4) Whether production would reveal information properly classified in the interest of national security;

(5) Whether production would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or similarly confidential commercial or financial information without the

owner's consent, or otherwise be inappropriate under the circumstances;

(6) Whether the disclosure would have an adverse effect on performance by the NRO of its official mission and duties, to include:

(i) The need to conserve the time of NRO personnel for the conduct of official business;

(ii) The need to avoid spending the time and money of the United States to serve private purposes;

(iii) The need to avoid involving the NRO in contested issues not related to its official mission.

(f) The NRO OGC is responsible for notifying the appropriate NRO employees and other persons of all decisions regarding responses to demands and providing advice and counsel as to the implementation of such decisions.

(g) If, after NRO personnel have received a litigation request or demand and have in turn notified the OGC in accordance with paragraph (b) of this section, a response to the request or demand is required before instructions from the OGC are received, an attorney from the OGC, or, as appropriate, an attorney from the U.S. Department of Justice (DOJ) representing the NRO, shall appear before and furnish the court or other competent authority with a copy of this part; shall inform the requestor or the court or other authority that the request or demand is being reviewed, and shall respectfully seek a stay of the request or demand pending a final determination by NRO OGC.

(h) If the court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken pursuant to paragraph (g) of this section, or if such court or other authority orders that the request or demand must be complied with notwithstanding the final decision of the General Counsel, the NRO personnel upon whom the request or demand was made shall notify the General Counsel of such ruling or order. If the General Counsel determines that no further legal review of or challenge to the ruling or order will be sought, the affected NRO personnel shall comply with the demand or order. If directed by the General Counsel not to comply with the demand, however, the affected NRO personnel shall respectfully decline to comply with the demand. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). In that circumstance, the NRO personnel shall state the following to the Court: "I must respectfully advise the Court that under instructions given to me by the General Counsel of the National Reconnaissance Office, in

accordance with Department of Defense Directive 5405.2 and [this part, (32 CFR part 267), I must respectfully decline to [produce/disclose] that information."

(i) In the event NRO personnel receive a litigation demand for official information originated by another U.S. Government component, the General Counsel shall forward the appropriate portions of the request to the OGC for the other component. The General Counsel shall notify the requestor, court, or other authority of the referral, unless providing such notice would itself disclose classified information. To protect classified information, the General Counsel, in such cases, shall notify the requestor of the referral of the request, or positions thereof, to another government agency without specifying the identity of such agency. The General Counsel shall assist in coordinating responses by the unidentified agency to the request to the extent necessary to protect classified information from unauthorized disclosure.

#### § 267.5 Service of process.

(a) Service of Process Upon the NRO or NRO Personnel Accepted in an Official Capacity Only. This section sets forth mandatory procedures for accomplishing valid service of process by registered or certified mail upon NRO or upon NRO personnel sued or summoned in an official capacity.

(b) Accepting service of process upon NRO personnel in their individual capacities at the workplace is not a function of NRO. Acceptance of service of process in a person's individual capacity is the responsibility of that individual. Consistent with 10 U.S.C. 424, NRO will not provide the name or address of any current or former employee of NRO to individuals or entities seeking to serve process on such employee solely in his or her individual capacity, even where the matter is related to NRO activities.

(c) Service of a summons or complaint upon NRO or service of process upon NRO personnel for official information or testimony must be made by: serving the United States Attorney for the district in which the action is brought, and sending copies of the summons and complaint by registered or certified mail to the Attorney General of the United States and to the General Counsel of the National Reconnaissance Office, 15675 Lee Road, Chantilly, VA 20151-1715. The envelope shall be conspicuously marked "Copy of Summons and Complaint Enclosed." Parties may call the OGC at (703) 808-1060 for guidance.

(d) Only the General Counsel or designee is authorized to accept the copies of the summons or complaint on

behalf of NRO. Individual NRO personnel sued or summoned to provide information or testimony in an official capacity are not authorized to accept service of process. If the General Counsel accepts service of process on behalf of NRO or NRO personnel, in accordance with this paragraph, the documents for which service is accepted shall be stamped: "Service accepted on behalf of the organization in official capacity only."

(1) NRO personnel who receive or who have reason to expect to receive service of process in any capacity concerning a matter that may involve testimony or the furnishing of documents that could reasonably be expected to involve official NRO information shall notify the NRO OGC, (703) 808-1060 before accepting service and before providing the requestor, counsel or other representative of the party who sent the demand with any official NRO information in response to the demand.

(2) If service is sought in an official capacity upon an individual who is alleged to work at NRO Headquarters in Chantilly, Virginia, the process server should call OGC at (703) 808-1060 for guidance.

(i) To protect classified NRO employment associations and/or classified contracts, the Office of General Counsel shall refuse to confirm or deny the existence or the nonexistence of an employment relationship with the specific individual sued or summoned in an official capacity (other than publicly acknowledged senior agency officials of NRO).

(ii) OGC shall direct the process server to follow the procedures set forth in this part to serve process upon the United States Attorney for the judicial district in which the action is brought and to send a copy of such process to NRO OGC by certified or registered mail.

(iii) OGC will notify the person summoned and the appropriate NRO Security Officer of the legal demand.

(e) NRO does not accept personal service of process upon NRO personnel at NRO facilities or on NRO premises, unless expressly directed otherwise by the General Counsel. Process servers will not be allowed to enter NRO facilities for the purpose of serving process upon any NRO personnel solely in his or her individual capacity. The General Counsel, on behalf of the Director of NRO, has sole discretion to authorize acceptance of personal service of process upon the NRO or NRO personnel served in their official capacities, or served upon NRO

personnel in an combined individual and official capacity, and may exercise this discretion in circumstances where serving process on NRO personnel by registered or certified mail is not authorized by law or where, in particular circumstances, the General Counsel determines that acceptance of personal service of process serves the best organizational interests of the NRO.

(1) A process server who arrives at NRO during duty hours without first having contacted the NRO OGC will be referred to the Visitor Center. The Visitor Center is not authorized to and shall not accept service of process upon NRO or on behalf of any alleged NRO personnel. The Visitor Center shall contact OGC.

(i) The General Counsel or designee shall review the service of process at the Visitor Center to assess whether the NRO person is sued or summoned in an official or in an individual capacity. If the person is sued or summoned in an individual capacity, the General Counsel shall refuse to accept service on that basis.

(ii) If the General Counsel determines that service is sought upon NRO or upon an alleged employee of NRO in an official capacity, or if the General Counsel is concerned that official NRO information or documents may be relevant to the subject matter of the proceeding, the General Counsel shall direct the process server to follow the procedures set forth in this part and shall refuse to accept service on the basis of failure to comply with applicable regulations, unless, as an exercise of discretion, OGC determines that acceptance of personal service of process best serves the organizational interests of the NRO.

(iii) If the General Counsel exercises discretion to accept service of process upon NRO or upon NRO personnel in an official capacity, in accordance with this paragraph, the documents for which service is accepted shall be stamped: "Service accepted on behalf of the organization in official capacity only."

(iv) OGC will notify the person summoned and the appropriate NRO Security Officer of the legal demand.

(2) [Reserved]

(f) Litigants may attempt to serve process upon NRO personnel in their official capacities at their residences or other places. Because NRO personnel are not authorized to accept such service of process, such service is not effective under the Federal Rules of Civil Procedure. NRO personnel should refuse to accept service. However, NRO personnel may find it difficult to determine whether they are being sued or summoned in their private or official

capacity. Therefore, NRO personnel shall notify NRO OGC as soon as possible if they receive any summons or complaint that appears to relate to actions in connection with their official duties and shall direct such summons or complaint to the General Counsel so that the General Counsel can determine the scope of service.

(g) The Commander or Chief of Facility at NRO facilities other than NRO Headquarters may accept copies of service of process for himself or herself or for NRO personnel assigned to the installation who are sued or summoned in their official capacities, without officially confirming or denying the existence or nonexistence of an employment or contract relationship with the summoned individual. The Commander or Chief of Facility will accept any such service of process by noting on the return of service form: "Service accepted on behalf of the organization in official capacity only." The Commander or Chief of Facility will then immediately refer the matter to the General Counsel.

(1) No individual will officially confirm or deny that the person sued or summoned is affiliated with NRO as an employee or contractor unless OGC, in coordination with the Commander or Chief of Facility, has first determined both that the individual's association with NRO is unclassified and that such association may be officially and publicly acknowledged in connection with the legal proceeding. If the NRO person's association with NRO is classified, service of process shall not be accepted unless, as an exercise of discretion, OGC determines that acceptance of service of process under the circumstances best serves the organizational interests of the NRO and can be accomplished without officially confirming or denying the classified association at issue. Any such service if accepted must be stamped on the return of service form "Service accepted on behalf of the organization in official capacity only."

(2) Whether service is accepted or refused, the General Counsel will coordinate with NRO security personnel, other federal agencies, or other US Government personnel and contact DOJ for guidance on how to provide information responsive to legal process while protecting classified information from unauthorized disclosure in accordance with legal requirements. If OGC or the Commander or Chief of Facility accepts service "on behalf of the organization in official capacity only" and that service was directed toward an individual whose association with NRO is or was

classified, OGC will work with the party who made the litigation demand and/or the court and DOJ to identify an individual who can provide responsive information or testimony while protecting classified information in accordance with legal requirements, or will move for other appropriate relief as necessary to protect classified information.

(h) If any NRO person is sued or summoned in a foreign court, that person shall provide full documentation of the matter securely to the cognizant Commander or Chief of Facility. The Commander or Chief of Facility will immediately email a scanned copy of the service of process to OGC, and shall send the document securely via an information system approved to handle classified information, marking the email to indicate attorney-client privilege protections as applicable. The person sued or summoned will not complete any return of service forms for the foreign court without first obtaining approval from NRO OGC to the cognizant Commander or Chief of Facility in writing, and shall follow instructions from OGC regarding how to complete the return of service form. OGC will coordinate with DOJ to determine whether service is effective and whether the NRO person is entitled to be represented at Government expense.

(i) The Commander or Chief of Facility will establish procedures at the NRO facility, including a provision for liaison with local staff judge advocates, if any, to ensure that service of process on persons in their individual capacities is accomplished in accordance with local law, relevant treaties, and Status of Forces Agreements. Such procedures must be approved by the General Counsel. Commanders or Chiefs of Facility will designate a point of contact to conduct liaison with the OGC.

(j) Acceptance of service of any summons or complaint by OGC “on behalf of the organization in official capacity only” shall not constitute an official acknowledgement or confirmation by NRO that any individual named in the summons or complaint is, in fact, a current or former employee of NRO. Acceptance of service of process shall not constitute waiver with respect to jurisdiction, propriety or validity of service, improper venue, or any other defense in law or equity available under the laws or rules applicable to the service of process.

#### § 267.6 Fees.

(a) Consistent with the guidelines in DoD 7000.14–R, Vol. 11A, Chap. 4, “User Fees” (available at <http://>

[comptroller.defense.gov/Portals/45/documents/fmr/Volume\\_11a.pdf](http://comptroller.defense.gov/Portals/45/documents/fmr/Volume_11a.pdf)), NRO may charge reasonable fees, as established by regulation and to the extent not prohibited by law, to parties seeking, by request or demand, official information not otherwise available under the DoD Freedom of Information Act, 5 U.S.C. 552. Such fees are calculated to reimburse the Government for the expense of providing such information, and may include:

(1) The costs of time expended by NRO personnel to process and respond to the request or demand;

(2) Attorney time for reviewing the request or demand and any information located in response thereto, and for related legal work in connection with the request or demand; and

(3) Expenses generated by materials and equipment used to search for, produce, and copy the responsive information. *See Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978).

(b) [Reserved]

Dated: November 18, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2016–28221 Filed 11–23–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2016–0968]

RIN 1625–AA09

#### Drawbridge Operation Regulation; Youngs Bay, Astoria, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the operating schedule that governs the Oregon State highway bridge across Youngs Bay foot of Fifth Street (Old Youngs Bay Bridge), mile 2.4, at Astoria, OR. The Oregon Department of Transportation (ODOT) is proposing to change the operating schedule of the Old Youngs Bay Bridge for several months while work is performed on the north bascule lift. This change would allow ODOT to operate the double bascule draw in single leaf mode, one lift at a time, and reduce the vertical clearance of the non-operable half of the span by five feet.

**DATES:** Comments and related material must reach the Coast Guard on or before

December 27, 2016. The Coast Guard anticipates that this proposed rule will be effective from 7 a.m. on March 1, 2017 to 5 p.m. on October 31, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG–2016–0968 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.

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 Steven M. Fischer, Bridge Administrator, Thirteenth Coast Guard District Bridge Program Office, telephone 206–220–7282; email [d13bridges@uscg.mil](mailto:d13bridges@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Table of Abbreviations**

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking  
§ Section  
U.S.C. United States Code  
ODOT Oregon State Department of Transportation

##### **II. Background, Purpose and Legal Basis**

ODOT owns and operates the Old Youngs Bay Bridge, and proposes a temporary change to the existing operating regulation. The Coast Guard approved a temporary rule change authorizing ODOT to operate the Old Youngs Bay Bridge in single leaf mode from May 2016 through October 2016, document citation 81 FR 28018. No negative impacts were observed during that rule change. The subject proposed regulation will allow the drawtender to open half the draw span in single leaf mode, from 7 a.m. on March 1, 2017 to 5 p.m. on October 31, 2017. ODOT’s proposal would allow the construction workers to utilize a containment system that reduces the non-opening half of the bridge’s vertical clearance by five feet. Marine traffic on Youngs Bay consists of vessels ranging from small pleasure craft, sailboats, small tribal fishing boats, and commercial tug and tow, and mega yachts.

##### **III. Discussion of Proposed Rule**

This proposed rule would temporarily amend 33 CFR 117.899 by adding the south lift only to open in single leaf

mode, and suspend a full opening. This proposed rule is necessary to accommodate extensive maintenance and restoration efforts on the Old Youngs Bay Bridge. This bridge provides a vertical clearance approximately 19 feet above mean high water when in the closed-to-navigation position. One half of the double bascule bridge will have a containment system installed on the north half of the span, which will reduce the vertical clearance by 5 feet from 19 feet above mean high water to 14 feet above mean high water. Adjusting the existing drawbridge regulation will allow construction workers to complete bridge and highway upgrades before winter of 2017, while having minimal impact on maritime navigation, and no alternate routes are on this part of Youngs Bay into Youngs River.

#### IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive order (s) related to rulemaking. Below we summarize our analyses based on these statutes and Executive order (s), and we discuss First Amendment rights of protestors.

##### A. Regulatory Planning and Review

E.O. 12866 and E.O. 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. E.O. 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 for the Old Youngs Bay Bridge to open half the span on signal, and not delay passage of any mariner. Vessels not requiring an opening may pass under the bridge at any time. The north lift vertical clearance will be reduced as explained in paragraph III. No alternate routes are available on this part of Youngs Bay.

##### 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. 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 E.O. 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 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 expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

##### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, 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. In § 117.899, from 7 a.m. on March 1, 2017 through 5 p.m. on October 31, 2017, suspend paragraph (b) and add paragraph (d) to read as follows:

#### § 117.899 Drawbridge Operation Regulation; Youngs Bay, Astoria, OR

\* \* \* \* \*

(d) The draw of the Oregon State (Old Youngs Bay) Highway Bridge, mile 2.4, across Youngs Bay foot of Fifth Street,

shall open the south half of the double bascule span on signal for the passage of vessels, if at least one half-hour notice is given to the drawtender, at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 7 a.m. to 5 p.m. Monday through Friday and from 8 a.m. to 4 p.m. Saturday and Sunday from March 1, 2017 to October 31, 2017. At all other times, including all Federal holidays, but Columbus Day, at least a two-hour notice by telephone is required. The opening signal is two prolonged blasts followed by one short blast.

Dated: November 16, 2016.

**Brendan McPherson,**

*Captain, U.S. Coast Guard, Acting Commander, Thirteenth Coast Guard District.*

[FR Doc. 2016–28359 Filed 11–23–16; 8:45 am]

**BILLING CODE 9110–04–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R10–OAR–2016–0591; FRL–9955–47–Region 10]

#### Air Plan Approval: AK; Permitting Fees Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve state implementation plan (SIP) revisions submitted by the State of Alaska (state) Department of Environmental Conservation on February 1, 2016. The revisions implement changes to permit administration and compliance fees based on the state's fee study results. Changes include: The addition of definitions, restructuring of fee categories, rearranging and renumbering of certain fee rules, and updating cross references to align with the restructured fee rules.

**DATES:** Written comments must be received on or before December 27, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–OAR–2016–0591 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:** Randall Ruddick at (206) 553–1999, or [ruddick.randall@epa.gov](mailto:ruddick.randall@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA. For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. The EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If the EPA receives no adverse comments, the EPA will not take further action on this proposed rule.

If the EPA receives adverse comments, the EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: November 14, 2016.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

[FR Doc. 2016–28276 Filed 11–23–16; 8:45 am]

**BILLING CODE 6560–50–P**

# Notices

Federal Register

Vol. 81, No. 227

Friday, November 25, 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.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Notice of Public Meeting of the Assembly of the Administrative Conference of the United States

**AGENCY:** Administrative Conference of the United States.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, the Assembly of the Administrative Conference of the United States will hold a meeting to consider four proposed recommendations and to conduct other business. This meeting will be open to the public.

**DATES:** The meeting will take place on Tuesday, December 13, 2016, 1:00 p.m. to 5:30 p.m., and Wednesday, December 14, 2016, 9:00 a.m. to 12:00 noon. The meeting may adjourn early if all business is finished.

**ADDRESSES:** The meeting will be held at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 (Main Conference Room).

**FOR FURTHER INFORMATION CONTACT:** Shawne McGibbon, General Counsel (Designated Federal Officer), Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036; Telephone 202-480-2088; email [smcgibbon@acus.gov](mailto:smcgibbon@acus.gov).

**SUPPLEMENTARY INFORMATION:** The Administrative Conference of the United States makes recommendations to federal agencies, the President, Congress, and the Judicial Conference of the United States regarding the improvement of administrative procedures (5 U.S.C. 594). The membership of the Conference, when meeting in plenary session, constitutes the Assembly of the Conference (5 U.S.C. 595).

*Agenda:* The Assembly will consider four proposed recommendations as described below:

*Social Security Administration Federal Courts Analysis.* This proposed recommendation encourages the Judicial Conference of the United States to develop a uniform set of procedural rules for social security cases commenced in federal court that involve claims for benefits arising under Titles II and XVI of the Social Security Act. It also highlights areas in which such rules should be adopted and sets forth criteria for the promulgation of additional rules.

*Informal Agency Adjudication.* This proposed recommendation offers best practices to agencies for structuring evidentiary hearings that are not required by the Administrative Procedure Act. It suggests ways to ensure the integrity of the decisionmaking process; sets forth recommended pre-hearing, hearing, and post-hearing practices; and urges agencies to describe their practices in a publicly accessible document and seek periodic feedback on those practices.

*The Ombudsman in Federal Agencies.* This proposed recommendation takes account of the broad array of federal agency ombudsman offices that have been established since the Administrative Conference's adoption in 1990 of Recommendation 90-2 on the same subject, <https://www.acus.gov/recommendation/ombudsman-federal-agencies>. The new recommendation continues to urge both agencies and Congress to consider creating additional ombudsman offices that provide an opportunity for individuals to raise issues confidentially and receive assistance in resolving them without fear of retribution. The recommendation emphasizes the importance of adherence to the three core standards of independence, confidentiality, and impartiality, and identifies best practices for the operation, staffing, and evaluation of federal agency ombudsman offices.

*Self-Represented Parties in Administrative Hearings.* This proposed recommendation offers best practices for agencies dealing with self-represented parties in administrative hearings. Recommendations include the use of triage and diagnostic tools, development of a continuum of services to aid parties, and re-evaluation and simplification of

existing hearing practices, where possible. The project builds on the activity of a working group on Self-Represented Parties in Administrative Hearings that is co-led by the Administrative Conference and the Department of Justice's Office for Access to Justice.

Additional information about the proposed recommendations and the order of the agenda, as well as other materials related to the meeting, can be found at the 66th Plenary Session page on the Conference's Web site: <https://www.acus.gov/meetings-and-events/plenary-meeting/66th-plenary-session>.

*Public Participation:* The Conference welcomes the attendance of the public at the meeting, subject to space limitations, and will make every effort to accommodate persons with disabilities or special needs. Members of the public who wish to attend in person are asked to RSVP online at the 66th Plenary Session Web page listed above, no later than Friday, December 9, 2016, in order to facilitate entry. Members of the public who attend the meeting may be permitted to speak only with the consent of the Chairman and the unanimous approval of the members of the Assembly. If you need special accommodations due to disability, please inform the Designated Federal Officer noted above no later than Tuesday, December 6, 2016. The public may also view the meeting through a live webcast, which will be available at: <https://livestream.com/ACUS/66thPlenary>.

*Written Comments:* Persons who wish to comment on any of the proposed recommendations may do so by submitting a written statement either online by clicking "Submit a Comment" on the 66th Plenary Session Web page listed above or by mail addressed to: December 2016 Plenary Session Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036. Written submissions must be received no later than 10:00 a.m. (EST), Wednesday, December 7, to assure consideration by the Assembly.

Dated: November 21, 2016.

**Shawne McGibbon,**  
General Counsel.

[FR Doc. 2016-28402 Filed 11-23-16; 8:45 am]

**BILLING CODE 6110-01-P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service**

[Document Number AMS–NOP–16–0100; NOP–16–11]

**Notice of Meeting of the National Organic Standards Board**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), is announcing a meeting of the National Organic Standards Board (NOSB) to assist the USDA in the development of standards for substances to be used in organic production and to advise the Secretary of Agriculture on any other aspects of the implementation of Organic Foods Production Act.

**DATES:** The Board will receive public comments via webinar on April 13, 2017 from 1:00 p.m. to approximately 4:00 p.m. Eastern Time (ET). A face-to-face meeting will be held April 19–21, 2017, from 8:30 a.m. to approximately 6:00 p.m. ET. The deadline to submit written comments and/or sign up for oral comment at either the webinar or face-to-face meeting is 11:59 p.m. ET, March 30, 2017.

**ADDRESSES:** The April 13, 2017 webinar is virtual and will be accessed via the internet and/or phone. Access information will be available on the AMS Web site prior to the webinar. The April 19–21, 2017 meeting will take place at the Sheraton Denver Downtown Hotel, 1550 Court Pl., Denver, CO 80202, United States. Detailed information pertaining to the webinar and face-to-face meeting, including instructions about providing written and oral comments can be found at [www.ams.usda.gov/NOSBMeetings](http://www.ams.usda.gov/NOSBMeetings).

**FOR FURTHER INFORMATION CONTACT:** Ms. Michelle Arsenault, Advisory Committee Specialist, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2642–S, Mail Stop 0268, Washington, DC 20250–0268; Phone: (202) 720–3252; Email: [nosb@ams.usda.gov](mailto:nosb@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** The NOSB makes recommendations to the Department of Agriculture about whether substances should be allowed or prohibited in organic production and/or handling, assists in the development of standards for organic production, and advises the Secretary on other aspects of the implementation

of the Organic Foods Production Act (7 U.S.C. 6501–6522). The public meeting allows the NOSB to discuss and vote on proposed recommendations to the USDA, receive updates from the USDA National Organic Program (NOP) on issues pertaining to organic agriculture, and receive comments from the organic community. The meeting is open to the public. All meeting documents, including the meeting agenda, NOSB proposals and discussion documents, instructions for submitting and viewing public comments, and instructions for requesting time for oral comments will be available on the AMS Web site at [www.ams.usda.gov/NOSBMeetings](http://www.ams.usda.gov/NOSBMeetings). Please check the Web site periodically for updates. Meeting topics will encompass a wide range of issues, including: Substances petitioned for addition to or deletion from the National List of Allowed and Prohibited Substances (National List), substances on the National List that require NOSB review before their 2019 sunset dates, and guidance on organic policies. Participants and attendees may take photos and video at the meeting, but not in a manner that disturbs the proceedings.

**Public Comments:** Comments should address specific topics noted on the meeting agenda.

**Written Comments:** Written public comments will be accepted on or before 11:59 p.m. ET March 30, 2017 via <http://www.regulations.gov>. Comments submitted after this date will be provided to the NOSB, but Board members may not have adequate time to consider those comments prior to making recommendations. The NOP strongly prefers comments to be submitted electronically; however, written comments may also be submitted (*i.e.* postmarked) by the deadline, via mail to the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Oral Comments:** The NOSB is providing the public multiple dates and opportunities to provide oral comments and will accommodate as many individuals and organizations as time permits. Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. ET, March 30, 2017, and can only register for one speaking slot: Either during the webinar, April 13, 2017, or at the face-to-face meeting, April 19–21, 2017. Once the schedule is full, individuals will be added to a waiting list. Instructions for registering and participating in the webinar can be found at [www.ams.usda.gov/NOSBMeetings](http://www.ams.usda.gov/NOSBMeetings).

**Meeting Accommodations:** The meeting hotel is ADA Compliant, and

the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this public meeting, please notify the person listed under **FOR FURTHER INFORMATION CONTACT**. Determinations for reasonable accommodation will be made on a case-by-case basis.

Dated: November 21, 2016.

**Elanor Starmer,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2016–28383 Filed 11–23–16; 8:45 am]

**BILLING CODE 3410–02–P**

**BROADCASTING BOARD OF GOVERNORS****Government in the Sunshine Act Meeting Notice**

**DATE AND TIME:** Wednesday, November 30, 2016, 11:30 a.m. EST.

**PLACE:** Cohen Building, Room 3321, 330 Independence Ave. SW., Washington, DC 20237.

**SUBJECT:** Notice of Meeting of the Broadcasting Board of Governors.

**SUMMARY:** The Broadcasting Board of Governors (Board) will be meeting at the time and location listed above. The Board will vote on a consent agenda consisting of the minutes of its September 28, 2016 meeting and a resolution for BBG Meeting Dates in 2017. The Board will receive a report from the Chief Executive Officer and Director of BBG.

This meeting will be available for public observation via streamed webcast, both live and on-demand, on the agency's public Web site at [www.bbg.gov](http://www.bbg.gov). Information regarding this meeting, including any updates or adjustments to its starting time, can also be found on the agency's public Web site.

The public may also attend this meeting in person at the address listed above as seating capacity permits. Members of the public seeking to attend the meeting in person must register at <https://bbgboardmeetingnov2016.eventbrite.com> by 12:00 p.m. (EDT) on November 29. For more information, please contact BBG Public Affairs at (202) 203–4400 or by email at [pubaff@bbg.gov](mailto:pubaff@bbg.gov).

**CONTACT PERSON FOR MORE INFORMATION:** Persons interested in obtaining more

information should contact Oanh Tran at (202) 203-4545.

**Oanh Tran,**

*Director of Board Operations.*

[FR Doc. 2016-28574 Filed 11-22-16; 4:15 pm]

**BILLING CODE 8610-01-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-80-2016]

#### **Foreign-Trade Zone (FTZ) 148—Knoxville, Tennessee; Notification of Proposed Production Activity; CoLinX, LLC; (Bearing Units) Crossville, Tennessee**

CoLinX, LLC (CoLinX) submitted a notification of proposed production activity to the FTZ Board for its facilities in Crossville, Tennessee within FTZ 148. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 17, 2016.

CoLinX already has authority to produce kits of bearing products within Sites 2, 6, 8 and 9 of FTZ 148. The current request would add foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt CoLinX from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, CoLinX would be able to choose the duty rates during customs entry procedures that apply to mounted unit roller assemblies (housed, spherical roller bearing units) and mounted unit ball assemblies (housed ball bearing units) (duty rate 4.5%) for the foreign-status materials/components noted below. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Single-row, radial ball bearings (Y-bearings); bearings housings for ball bearings; and, corrugated paperboard boxes (duty rate ranges from duty-free to 5.8%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 4, 2017.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the Board's Web site, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Elizabeth Whiteman at [Elizabeth.Whiteman@trade.gov](mailto:Elizabeth.Whiteman@trade.gov) or (202) 482-0473.

Dated: November 18, 2016.

**Andrew McGilvray,**  
*Executive Secretary.*

[FR Doc. 2016-28376 Filed 11-23-16; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-51-2016]

#### **Foreign-Trade Zone (FTZ) 126—Reno, Nevada; Authorization of Production Activity; Tesla Motors, Inc.; Subzone 126D (Lithium-Ion Batteries, Electric Motors and Stationary Energy Storage Systems); Sparks, Nevada**

On July 20, 2016, the Economic Development Authority of Western Nevada, grantee of FTZ 126, submitted a notification of proposed production activity to the FTZ Board on behalf of Tesla Motors, Inc., operator of Subzone 126D, for its facility located in Sparks, Nevada.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 52824, August 10, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: November 17, 2016.

**Andrew McGilvray,**  
*Executive Secretary.*

[FR Doc. 2016-28378 Filed 11-23-16; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-560-826]

#### **Monosodium Glutamate from Indonesia: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015**

**AGENCY:** Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on monosodium glutamate (MSG) from Indonesia. The period of review (POR) is May 8, 2014 through October 31, 2015. The review covers a single mandatory respondent, PT Cheil Jedang Indonesia (CJI). The Department preliminarily determines that the respondent has not made sales of subject merchandise below normal value (NV). We invite interested parties to comment on these preliminary results.

**DATES:** Effective November 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** David Lindgren or Joseph Traw, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3870 or (202) 482-6079, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On January 7, 2016, the Department initiated this administrative review on MSG from Indonesia covering one company, CJI. The events that have occurred between initiation and these preliminary results are discussed in the Preliminary Decision Memorandum.<sup>1</sup>

##### **Scope of the Order**

The merchandise covered by this order is monosodium glutamate (MSG), whether or not blended or in solution with other products. The product is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2922.42.10.00. Merchandise covered by this order may

<sup>1</sup> See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping Duty and Countervailing Duty Operations, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Monosodium Glutamate from Indonesia, 2014-2015," dated November 18, 2016 (Preliminary Decision Memorandum).

also enter under HTSUS subheadings 2922.42.50.00, 2103.90.72.00, 2103.90.74.00, 2103.90.78.00, 2103.90.80.00, and 2103.90.90.91. These tariff classifications are provided for convenience and customs purposes; however, the written product description, available in the Preliminary Decision Memorandum, remains dispositive.<sup>2</sup>

### Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/index.html>. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

### Preliminary Results of Review

As a result of this review, we calculated a *de minimis* dumping margin for CJI for the period May 8, 2014 through October 31, 2015.

### Disclosure and Public Comment

The Department intends to disclose to the parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.<sup>3</sup> Pursuant to 19 CFR 351.309(c)(ii), the Department will issue a case brief schedule at a later date in the proceeding, notifying interested parties of the deadlines for submitting case and rebuttal briefs. When the case brief schedule is issued,

parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>4</sup> Case and rebuttal briefs should be filed using ACCESS.<sup>5</sup> In order to be properly filed, ACCESS must successfully receive an electronically-filed document in its entirety by 5 p.m. Eastern Time on the established deadline.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, within 30 days after the date of publication of this notice.<sup>6</sup> Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

Unless extended, the Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

### Assessment Rates

Upon issuance of the final results, the Department will determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). If CJI's weighted-average dumping margin is not zero or *de minimis* (*i.e.*, less than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Where the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

For entries of subject merchandise during the POR produced by the respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company under review will be the rate established in the final results of this review, except, if the rate is zero or *de minimis* (*i.e.*, less than 0.5 percent), no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters is 6.19 percent, the all-others rate established in the investigation.<sup>7</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that

<sup>2</sup> For a complete description of the Scope of the Order, see Preliminary Decision Memorandum.

<sup>3</sup> See 19 CFR 351.224(b).

<sup>4</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>5</sup> See 19 CFR 351.303.

<sup>6</sup> See 19 CFR 351.310(c).

<sup>7</sup> See *Monosodium Glutamate From the Republic of Indonesia: Final Determination of Sales at Less Than Fair Value* 79 FR 58329 (September 29, 2014).

reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 17, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Comparisons to Normal Value
- V. Product Comparisons
- VI. Date of Sale
- VII. Constructed Export Price
- VIII. Normal Value
- IX. Currency Conversion
- X. Recommendation

[FR Doc. 2016-28366 Filed 11-23-16; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-351-849, A-580-890, A-201-848, A-455-805]

### Emulsion Styrene-Butadiene Rubber From Brazil, the Republic of Korea, Mexico, and Poland: Postponement of Preliminary Determination of Sales at Less Than Fair Value Investigations

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Effective November 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Drew Jackson at (202) 482-4406 (Brazil); Carrie Bethea at (202) 482-1491 (the Republic of Korea (Korea)); Julia Hancock at (202) 482-1394 (Mexico); and Stephen Bailey at (202) 482-0193 (Poland), Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

### Postponement of Preliminary Determinations

On August 10, 2016, the Department of Commerce (the Department) initiated the antidumping duty investigations of imports of emulsion styrene-butadiene rubber (ESB Rubber) from Brazil, Korea, Mexico, and Poland.<sup>1</sup> The notice of

<sup>1</sup> See *Emulsion Styrene-Butadiene Rubber From Brazil, the Republic of Korea, Mexico, and Poland:*

initiation stated that, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(b)(1), we would issue our preliminary determinations no later than 140 days after the date of initiation, unless postponed. Currently, the preliminary determinations in these investigations are due no later than December 28, 2016.

On November 7, 2016, Lion Elastomers and East West Copolymer (Petitioners), made a timely request, pursuant to 19 CFR 351.205(e), for postponement of the preliminary determinations, in order to facilitate the Department's analysis of respondents' questionnaire responses in each investigation. Because there are no compelling reasons to deny the request, pursuant to section 733(c)(1)(A) of the Act, the Department is postponing the deadline for the preliminary determinations by 50 days.<sup>2</sup>

For the reasons stated above, the Department, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations to no later than 190 days after the date on which the Department initiated these investigations. Therefore, the new deadline for the preliminary determinations is February 16, 2017. In accordance with section 735(a)(1) of the Act, the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 16, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2016-28365 Filed 11-23-16; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XF057

### Marine Fisheries Advisory Committee

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

*Initiation of Less-Than-Fair-Value Investigations*, 81 FR 55438 (August 19, 2016).

<sup>2</sup> See Letter to the Secretary of Commerce from Petitioners entitled "Request to Extend the Preliminary Determinations," dated November 7, 2016.

**ACTION:** Notice of open public meetings.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and provide advice on the NOAA Fisheries Draft National Bycatch Reduction Strategy.

**DATES:** The meeting is scheduled for December 14, 2016, 2-4 p.m., Eastern Standard Time.

**ADDRESSES:** Public access is available at 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing to participate may contact Heidi Lovett, (301) 427-8034; email: [heidi.lovett@noaa.gov](mailto:heidi.lovett@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The charter and other information are located online at <http://www.nmfs.noaa.gov/ocs/mafac/>.

### Matters To Be Considered

The Committee is convening to discuss and finalize their recommendations on fisheries and living marine resource issues and priorities that should be addressed by the incoming Administration. Other administrative matters may be considered. This date, time, and agenda are subject to change.

### Time and Date

The meeting is scheduled for December 14, 2016, 2-4 p.m., Eastern Standard Time by conference call. Conference call information for the public will be posted at <http://www.nmfs.noaa.gov/ocs/mafac/> by December 7, 2016.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heidi Lovett, 301-427-8034 by December 7, 2016.

Dated: November 21, 2016.

**Jennifer Lukens,**

*Director for the Office of Policy, National Marine Fisheries Service.*

[FR Doc. 2016-28421 Filed 11-23-16; 8:45 am]

**BILLING CODE 3510-22-P**

**COMMODITY FUTURES TRADING COMMISSION****Sunshine Act Meetings**

**TIME AND DATE:** 10:00 a.m., Friday, December 2, 2016.

**PLACE:** Three Lafayette Centre, 1155 21st Street NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Surveillance, enforcement, and examinations matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's Web site at <http://www.cftc.gov>.

**CONTACT PERSON FOR MORE INFORMATION:** Christopher Kirkpatrick, 202-418-5964.

**Natise Allen,**

*Executive Assistant.*

[FR Doc. 2016-28522 Filed 11-22-16; 4:15 pm]

**BILLING CODE** 6351-01-P

**COMMODITY FUTURES TRADING COMMISSION****Agency Information Collection Activities: Comment Request—Proposal To Amend Collection 3038-0005: Instructions to CFTC Form CPO-PQR**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed amendment to the 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 proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the proposed amendment of the instructions to CFTC Form CPO-PQR to permit commodity pool operators (CPOs) to use specified alternative accounting principles, standards or practices in presenting and calculating financial information in Form CPO-PQR to the same extent that CPOs are permitted to use such alternative accounting principles, standards or practices pursuant to CFTC Regulation 4.22(d)(2) to present and compute financial statements in pool Annual Reports.

**DATES:** Comments must be submitted on or before January 24, 2017.

**ADDRESSES:** You may submit comments, identified by "Form CPO-PQR Instructions," or "OMB Control No. 3038-0005" 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.

**FOR FURTHER INFORMATION CONTACT:**

Christopher Cummings, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418-5445; email: [ccummings@cftc.gov](mailto:ccummings@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, including each proposed extension of an existing 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:* Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity trading Advisors and to Monthly Reporting by Futures Commission Merchants (OMB Control No. 3038-0005). This is a request for comment on a proposed amendment to a currently approved information collection.

*Abstract:* The CFTC has amended Regulation 4.22(d) to permit a CPO that meets certain requirements to present and compute required Annual Reports in accordance with specified accounting

principles, standards or practices other than United States generally accepted accounting principles (U.S. GAAP). At the same time, the CFTC amended Regulation 4.27(c)(2) to permit a CPO that claims relief under Regulation 4.22(d) as amended to use the same alternative accounting principles, standards or practices in presenting and computing the financial information that the CPO is required to report on a quarterly basis to the CFTC in Form CPO-PQR. The instructions to Form CPO-PQR, however, specify that all financial information in the form must be presented and computed in accordance with U.S. GAAP. Accordingly, the CFTC is proposing to amend the instructions to Form CPO-PQR to permit use of alternative accounting principles, standards or practices by CPOs that claim relief under Regulation 4.22(d), as amended.

With respect to the collection of information, the CFTC invites comments on whether the proposed amendment to Collection 3038-0005 is necessary for the proper performance of the functions of the CFTC, including whether the information will have a practical use, and whether the proposed amendment will increase the burden on CPOs who are required to file Form CPO-PQR.

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>. You should submit only information that you wish to make available publicly. If you wish the Commission 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 Commission's regulations.<sup>1</sup>

The Commission 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 Information Collection Request 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:* The CFTC is not revising its estimate of the burden for

<sup>1</sup> 17 CFR 145.9.

this collection as a result of the amendment to the instructions to Form CPO–PQR because the requirement to provide the financial information remains substantively unchanged. There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: November 21, 2016.

**Robert N. Sidman,**

*Deputy Secretary of the Commission.*

[FR Doc. 2016–28389 Filed 11–23–16; 8:45 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

[Docket ID: USAF–2016–HQ–0008]

#### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to delete a system of records.

**SUMMARY:** The Department of the Air Force proposes to delete one system of record notice from its inventory of record systems subject to the Privacy Act of 1974, as amended.

**DATES:** Comments will be accepted on or before December 27, 2016. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

\* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name and docket number 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.

**FOR FURTHER INFORMATION CONTACT:** Mr. LaDonne L. White, Department of the

Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (571) 256–2515.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties and Transparency Division Web site at <http://dpcl.d.defense.gov/>.

The Department of the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 21, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

#### Deletion:

##### F036 SAFAA A

#### SYSTEM NAME:

Civilian Personnel Files (April 14, 1999, 64 FR 18406).

#### REASON:

Civilian Personnel Files are covered by OPM/GOVT–1 General Personnel Records (December 11, 2012, 77 FR 73694). OPM/GOVT–1 is a government-wide SORN that covers the existing Air Force Records collection.

There is no OMB control number associated to this collection.

[FR Doc. 2016–28392 Filed 11–23–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Charter Amendment of Department of Defense Federal Advisory Committees

**AGENCY:** Department of Defense.

**ACTION:** Amendment of Federal Advisory Committee.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that it is amending the charter for the Defense Innovation Board.

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Advisory Committee

Management Officer for the Department of Defense, 703–692–5952.

**SUPPLEMENTARY INFORMATION:** This committee's charter is being amended in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The amended charter and contact information for the Designated Federal Officer (DFO) can be obtained at <http://www.facadatabase.gov/>.

The DoD is amending the charter for the Defense Innovation Board previously announced in the **Federal Register** on April 1, 2016 (81 FR 18842) and August 1, 2016 (81 FR 50485). Specifically, the DoD is amending the charter to update the estimated annual operating costs and estimated personnel costs of the Defense Innovation Board.

Dated: November 21, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2016–28395 Filed 11–23–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Eligibility Designations and Applications for Waiver of Eligibility Requirements; Programs Under Parts A and F of Title III of the Higher Education Act of 1965, as Amended (HEA), and Programs Under Title V of the HEA

**AGENCY:** Office of Postsecondary Education, Department of Education (Department).

**ACTION:** Notice.

#### *Overview Information:*

Notice announcing process for designation of eligible institutions, and inviting applications for waiver of eligibility requirements for fiscal year (FY) 2017.

This notice applies to the following programs:

1. Programs authorized under Part A, Title III of the HEA: Strengthening Institutions Program (Part A SIP), Alaska Native and Native Hawaiian-Serving Institutions (Part A ANNH), Predominantly Black Institutions (Part A PBI), Native American-Serving Nontribal Institutions (Part A NASNTI), and Asian American and Native American Pacific Islander-Serving Institutions (Part A AANAPISI).

2. Programs authorized under Part F, Title III of the HEA: Hispanic-Serving Institutions STEM and Articulation (Part F, HSI STEM and Articulation), Predominantly Black Institutions (Part F

PBI), Alaska Native and Native Hawaiian-Serving Institutions (Part F ANNH), Native American-Serving Nontribal Institutions (Part F NASNTI), and Asian American and Native American Pacific Islander-Serving Institutions (Part F AANAPISI).

3. Programs authorized under Title V of the HEA: Developing Hispanic-Serving Institutions (HSI) and Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA).

**DATES:**

*Applications Available:* December 1, 2016.

*Deadline for Transmittal of Applications:* January 9, 2017.

**Special Note:** Section 312 of the HEA and 34 CFR 607.2–607.5 include most of the basic eligibility requirements for grant programs authorized under Titles III and V of the HEA. Section 312(b)(1)(B) of the HEA provides that, to be eligible for these programs, an institution of higher education's (IHE's or institution's) average "educational and general expenditures" (E&G) per full-time equivalent (FTE) undergraduate student must be less than the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction in that year.

Since 2004, the National Center for Educational Statistics (NCES) has calculated Core Expenses per FTE of institutions, a statistic similar to E&G per FTE. Both E&G per FTE and Core Expenses per FTE are based on regular operational expenditures of institutions (excluding auxiliary enterprises, independent operations, and hospital expenses). They differ only in that E&G per FTE is based on fall undergraduate enrollment, while Core Expenses per FTE is based on 12-month undergraduate enrollment for the academic year.

To avoid inconsistency in the data submitted to, and produced by, the Department, for the purpose of section 312(b)(1)(B) of the HEA, E&G per FTE is calculated using the same methodology as Core Expenses per FTE. Accordingly, with regard to this and future notices inviting applications for waivers of eligibility requirements, to calculate E&G per FTE for the purpose of determining institutional eligibility for programs under Title V and Part A and Part F of Title III of the HEA, the Department will apply the NCES methodology for calculating Core Expenses per FTE. Institutions requesting an eligibility waiver determination must use the Core Expenses per FTE data reported to

NCES' Integrated Postsecondary Education Data System (IPEDS) for the most currently available academic year, in this case academic year 2014–2015.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Programs:*

The Part A SIP, Part A ANNH, Part A PBI, Part A NASNTI, and Part A AANAPISI programs are authorized under Title III, Part A, of the HEA. The HSI and PPOHA programs are authorized under Title V of the HEA. The Part F, HSI STEM and Articulation, Part F PBI, Part F AANAPISI, Part F ANNH, and Part F NASNTI programs are authorized under Title III, Part F of the HEA. Please note that certain programs in this notice have the same or similar names as other programs that are authorized under a different statutory authority. For this reason, we specify the statutory authority as part of the acronym for certain programs.

Under the programs discussed above, institutions are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. An IHE that is designated as an eligible institution may also receive a waiver of certain non-Federal cost-sharing requirements for one year under the Federal Supplemental Educational Opportunity Grant (FSEOG) program authorized by Part A, Title IV of the HEA and the Federal Work-Study (FWS) program authorized by section 443 of the HEA. Qualified institutions may receive the FSEOG and FWS waivers for one year even if they do not receive a grant under the Title III or Title V programs. An applicant that receives a grant from the Student Support Services (SSS) program that is authorized under section 402D of the HEA, 20 U.S.C. 1070a–14, may receive a waiver of the required non-Federal cost share for institutions for the duration of the grant. An applicant that receives a grant from the Undergraduate International Studies and Foreign Language (UISFL) program that is authorized under section 604 of the HEA, 20 U.S.C. 1124, may receive a waiver or reduction of the required non-Federal cost share for institutions for the duration of the grant.

*Special Note:* To qualify as an eligible institution under the grant programs listed in this notice, your institution must satisfy several criteria. For most of these programs, these criteria include those that relate to the enrollment of needy students and to Core Expenses per FTE student count for a specified base year. The most recent data available in IPEDS for Core Expenses per FTE are for base year 2014–2015. In

order to award FY 2017 grants in a timely manner, we will use these data to evaluate eligibility.

Accordingly, all institutions interested in either applying for a new grant under the Title III or Title V programs addressed in this notice, or requesting a waiver of the non-Federal cost share, must be designated as an eligible institution for FY 2017. Under the HEA, any IHE interested in applying for a grant under any of these programs must first be designated as an eligible institution. (34 CFR 606.5 and 607.5).

*Eligible Applicants:*

The eligibility requirements for the programs authorized under Part A of Title III of the HEA are in sections 312 and 317–320 of the HEA (20 U.S.C. 1058, 1059d–1059g) and in 34 CFR 607.2 through 607.5. The regulations may be accessed at: [www.gpo.gov/fdsys/pkg/CFR-2001-title34-vol3/xml/CFR-2001-title34-vol3-part607.xml](http://www.gpo.gov/fdsys/pkg/CFR-2001-title34-vol3/xml/CFR-2001-title34-vol3-part607.xml).

The eligibility requirements for the programs authorized by Part F of Title III of the HEA are in section 371 of the HEA (20 U.S.C. 1067q). There are currently no specific regulations for these programs.

The eligibility requirements for the Title V HSI program are in Part A of Title V of the HEA and in 34 CFR 606.2 through 34 CFR 606.5. The regulations may be accessed at: [www.gpo.gov/fdsys/pkg/CFR-2001-title34-vol3/xml/CFR-2001-title34-vol3-part606.xml](http://www.gpo.gov/fdsys/pkg/CFR-2001-title34-vol3/xml/CFR-2001-title34-vol3-part606.xml).

The requirements for the PPOHA program are in Part B of Title V of the HEA and in the notice of final requirements published in the **Federal Register** on July 27, 2010 (75 FR 44055), and in 34 CFR 606.2(a) and (b), and 606.3 through 606.5.

The Department has instituted a process known as the Eligibility Matrix (EM), under which we will use information submitted by IHEs to IPEDS to determine which institutions meet the basic eligibility requirements for the programs authorized by Title III or Title V of the HEA listed above. We will use enrollment and fiscal data for the 2014–2015 year submitted by institutions to IPEDS to make eligibility determinations for FY 2017. Beginning December 1, 2016, an institution will be able to review the Department's decision on whether it is eligible for Title III or Title V grant programs through this process by examining its entry in the EM linked through the Department's Institutional Service Eligibility Web site at: <http://www2.ed.gov/about/offices/list/ope/idades/eligibility.html>.

The EM is a read-only worksheet that lists all potentially eligible

postsecondary institutions, as determined by the Department using the data described above. If the entry for your institution in the EM shows that your institution is eligible to apply for a grant for a particular program, and you plan to submit an application for a grant in that program, you will not need to apply for eligibility or for a waiver through the process described in this notice. Rather, you may print out the eligibility certification directly. However, if the EM does not show that your institution is eligible for a program in which you plan to apply for a grant, you must submit a waiver request as discussed in this notice.

You may search the EM by institution name, IPEDS unit ID number, or OPE ID number. If you are inquiring about general eligibility, look up your institution's name under the SIP column. If you are inquiring about specific program eligibility, look under that program's column.

If the EM does not show that your institution is eligible for a program, or if your institution does not appear in the EM, or if you disagree with the eligibility determination in the EM, you can apply for a waiver or reconsideration through the process described in this notice. The waiver application process is the same as in previous years; you will choose the waiver option on the Web site at <http://opeweb.ed.gov/title3and5/> and submit your institution's waiver request.

**Enrollment of Needy Students:** For the Title III and V programs (excluding the PBI programs), an institution is considered to have an enrollment of needy students if: (1) At least 50 percent of its degree students received financial assistance under the Federal Pell Grant, FSEOG, FWS, or the Federal Perkins Loan programs; or (2) the percentage of its undergraduate degree students who

were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offer similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 2014–2015 must be more than the median for its category of comparable institutions provided in the 2014–2015 Median Pell Grant and Core Expenses per FTE Student table in this notice. If your institution qualifies under the first criterion, under which at least 50 percent of its degree students received financial assistance under one of several Federal student aid programs (the Federal Pell Grant, FSEOG, FWS, or the Federal Perkins Loan programs), but not the second criterion, under which an institution's Federal Pell Grant percentage for base year 2014–2015 must be more than the median for its category of comparable institutions provided in the 2014–2015 Median Pell Grant and Core Expenses per FTE Student table in this notice, you must submit a waiver request including the requested data, which is not available in IPEDS.

For the definition of "Enrollment of Needy Students" for purposes of the Part A PBI program, see section 318(b)(2) of the HEA, and for purposes of the Part F PBI program see section 371(c)(9) of the HEA.

**Core Expenses per FTE Student:** For the Title III, Part A SIP; Part A ANNH; Part A PBI; Part A NASNTI; Part A AANAPISI; Title III, Part F HSI STEM and Articulation; Part F PBI; Part F AANAPISI; Part F ANNH; Part F NASNTI; Title V, Part A HIS, and Title V, Part B PPOHA programs, an

institution should compare its base year 2014–2015 Core Expenses per FTE student to the average Core Expenses per FTE student for its category of comparable institutions in the base year 2014–2015 Median Pell Grant and Average Core Expenses per FTE Student Table in this notice. The institution meets this eligibility requirement under these programs if its Core Expenses for the 2014–2015 base year are less than the average for its category of comparable institutions.

Core Expenses are defined as the total expenses for the essential education activities of the institution. Core Expenses for public institutions reporting under the Governmental Accounting Standards Board (GASB) requirements include expenses for instruction, research, public service, academic support, student services, institutional support, scholarships and fellowships excluding discounts and allowances, and other operating and non-operating expenses. Core Expenses for institutions reporting under the Financial Accounting Standards Board (FASB) standards (primarily private, not-for-profit, and for-profit) include expenses for instruction, research, public service, academic support, student services, institutional support, net grant aid to students (excluding discounts and allowances), and other expenses. For both FASB and GASB institutions, core expenses exclude expenses for auxiliary enterprises (e.g., bookstores, dormitories), hospitals, and independent operations. The following table identifies the relevant median Federal Pell Grant percentages for the base year 2014–2015 and the relevant Core Expenses per FTE student for the base year 2014–2015 for the four categories of comparable institutions:

Type of institution	Base year 2014–2015 median Pell Grant percentage	Base year 2014–2015 average core expenses per FTE student
Two-year Public Institutions .....	41	\$12,333
Two-year Non-profit Private Institutions .....	59	14,151
Four-year Public Institutions .....	39	29,192
Four-year Non-profit Private Institutions .....	41	36,629

**Waiver Information:** IHEs that do not meet the needy student enrollment requirement or the Core Expenses per FTE requirement may apply to the Secretary for a waiver of these requirements, as described in sections 392 and 522 of the HEA, and the implementing regulations at 34 CFR

606.3(b), 606.4(c) and (d), 607.3(b), and 607.4(c) and (d).

IHEs requesting a waiver of the needy student enrollment requirement or the Core Expenses per FTE requirement must include in their application detailed information supporting the waiver request, as described in the

instructions for completing the application.

The regulations governing the Secretary's authority to waive the needy student requirement, 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3), refer to "low-income" students or families. The regulations at 34 CFR 606.3(c) and 607.3(c) define "low-income" as an

amount that does not exceed 150 percent of the amount equal to the

poverty level, as established by the U.S. Census Bureau.

the low-income levels for various sizes of families:

For the purposes of this waiver provision, the following table sets forth

2015 ANNUAL LOW-INCOME LEVELS

Size of family unit	Family income for the 48 contiguous states, DC, and outlying jurisdictions	Family income for Alaska	Family income for Hawaii
1	\$11,770	\$14,720	\$13,550
2	15,930	19,920	18,330
3	20,090	25,120	23,110
4	24,250	30,320	27,890
5	28,410	35,520	32,670
6	32,570	40,720	37,450
7	36,730	45,920	42,230
8	40,890	51,120	47,010

Note: We use the 2015 annual low-income levels because those are the amounts that apply to the family income reported by students enrolled for the fall 2014 semester. For family units with more than eight members, add the following amount for each additional family member: \$4,160 for the contiguous 48 States, the District of Columbia, and outlying jurisdictions; \$5,200 for Alaska; and \$4,780 for Hawaii.

The figures shown under family income represent amounts equal to 150 percent of the family income levels established by the U.S. Census Bureau for determining poverty status. The poverty guidelines were published on January 22, 2015, in the **Federal Register** by the U.S. Department of Health and Human Services (80 FR 3236).

Information about “metropolitan statistical areas” referenced in 34 CFR 606.3(b)(4) and 607.3(b)(4) may be obtained at: [www.census.gov/prod/2010pubs/10smadb/appendixc.pdf](http://www.census.gov/prod/2010pubs/10smadb/appendixc.pdf) and [www.census.gov/prod/2008pubs/07ccdb/appd.pdf](http://www.census.gov/prod/2008pubs/07ccdb/appd.pdf).

*Electronic Submission of Waiver Applications:*

If your institution does not appear in the EM as one that is eligible for the program under which you plan to apply for a grant, you must submit an application for a waiver of the eligibility requirements. To request a waiver, you must upload a waiver narrative at: <http://opweb.ed.gov/title3and5/>.

*Exception to the Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format if you are unable to submit an application electronically because—

- You do not have access to the Internet; or
- You do not have the capacity to upload documents to the Web site; *and*
- No later than two weeks before the waiver application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

*Mail or fax your statement to:* Christopher Smith or Jason Cottrell, U.S. Department of Education, 400 Maryland Avenue SW., Room 4C146, Washington, DC 20202. Fax: (202) 401-8466.

Your paper waiver application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

*Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: Christopher Smith, U.S. Department of Education, 400 Maryland Avenue SW., Room 4C146, Washington, DC 20202.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider waiver applications postmarked after the application deadline date.

*Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the application, on or before the application deadline date, to the Department at the following address: Christopher Smith, U.S. Department of Education, 400 Maryland Avenue SW., Room 4C146, Washington, DC 20202.

Hand delivered applications will be accepted daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

*Applicable Regulations:* (a) The Education Department General

Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474. (d) The regulations for certain Title III programs in 34 CFR part 607, and for the HSI program in 34 CFR part 606. (e) The notice of final requirements for the PPOHA program, published in the **Federal Register** on July 27, 2010 (75 FR 44055).

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

**Note:** There are no program-specific regulations for the Part A AANAPISI, Part A NASNTI, and Part A PBI programs or any of the Part F, Title III programs. Also, there have been amendments to the HEA since the Department last issued regulations for the programs established under Titles III and V of the statute. Accordingly, we encourage each potential applicant to read the applicable sections of the HEA in order to fully understand the eligibility requirements for the program for which they are applying.

*For Applications and Further Information Contact:* Christopher Smith, Institutional Service, U.S. Department of Education, 400 Maryland Avenue SW., Room 4C146, Request for Eligibility Designation, Washington, DC 20202. Telephone: (202) 453-7946, or by email: [Christopher.smith@ed.gov](mailto:Christopher.smith@ed.gov).

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, audio tape, or compact disc) on request to one of the contact persons listed in this section.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must

have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: November 21, 2016.

**Lynn B. Mahaffie,**

*Deputy Assistant Secretary for Policy, Planning and Innovation, Delegated the Duties of the Assistant Secretary for Postsecondary Education.*

[FR Doc. 2016-28400 Filed 11-23-16; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2016-ICCD-0094]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Approval To Participate in Federal Student Financial Aid Programs

**AGENCY:** Department of Education (ED), Federal Student Aid (FSA).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before December 27, 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-0094. 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-347, Washington, DC 20202-4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection

activities, please contact Veronica Pickett, 202-377-4232.

**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:* Application for Approval to Participate in Federal Student Financial Aid Programs.

*OMB Control Number:* 1845-0012.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments; Private Sector.

*Total Estimated Number of Annual Responses:* 7,286.

*Total Estimated Number of Annual Burden Hours:* 24,352.

*Abstract:* Section 487(c) of the Higher Education Act of 1965, as amended (HEA) requires that the Secretary of Education prescribe regulations to ensure that any funds postsecondary institutions receive under the HEA are used solely for the purposes specified in, and in accordance with, the provision of the applicable programs. The Institutional Eligibility regulations govern the initial and continuing eligibility of postsecondary educational institutions participating in the student financial assistance program authorized by Title IV of the HEA. An institution must use this Application to apply for approval to be determined to be eligible

and if the institution wishes, to participate; to expand its eligibility; or to continue to participate in the Title IV programs. An institution must also use the application to report certain required data as part of its recordkeeping requirements contained in the regulations under 34 CFR part 600 (Institutional Eligibility under the HEA). The Department uses the information reported on the Application in its determination of whether an institution meets the statutory and regulatory requirements.

Dated: November 21, 2016.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2016-28349 Filed 11-23-16; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### President's Council of Advisors on Science and Technology

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of open teleconference.

**SUMMARY:** This notice sets forth the schedule and summary agenda for a conference call of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** December 12, 2016 4:00 p.m. to 5:00 p.m.

**ADDRESSES:** To receive the call-in information, attendees should register for the conference call on the PCAST Web site, <http://www.whitehouse.gov/ostp/pcast>, no later than 10:00 a.m. (ET) on Monday, December 12, 2016.

**FOR FURTHER INFORMATION CONTACT:** Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: <http://whitehouse.gov/ostp/pcast>. Questions about the meeting should be directed to Ms. Jennifer Michael at email: [Jennifer\\_L\\_Michael@ostp.eop.gov](mailto:Jennifer_L_Michael@ostp.eop.gov) or phone: (202) 456-4444.

**SUPPLEMENTARY INFORMATION:** The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House, cabinet departments, and other Federal

agencies. See the Executive Order at <http://www.whitehouse.gov/ostp/pcast>. PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

**Type of Meeting:** Open.

**Proposed Schedule and Agenda:** The President's Council of Advisors on Science and Technology (PCAST) is scheduled to hold a public conference call on December 12, 2016 from 4:00 p.m. to 5:00 p.m.

**Open Portion of Meeting:** During this open meeting, PCAST is scheduled to discuss its semiconductor, national nanotechnology initiative, and science and technology for safe drinking water studies. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: <http://whitehouse.gov/ostp/pcast>.

**Public Comments:** It is the policy of the PCAST to accept written comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on December 12, 2016 at a time specified in the meeting agenda posted on the PCAST Web site at <http://whitehouse.gov/ostp/pcast>. This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

**Oral Comments:** To be considered for the public speaker list at the meeting, interested parties should register to speak at <http://whitehouse.gov/ostp/pcast>, no later than 1:00 p.m. (ET) on December 9, 2016. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 10 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always

file written comments with the committee.

**Written Comments:** Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 1:00 p.m. (ET) on December 9, 2016, so that the comments may be made available to the PCAST members prior to this meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at <http://whitehouse.gov/ostp/pcast> in the section entitled "Connect with PCAST."

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

**Meeting Accommodations:** Individuals requiring special accommodation to access this public meeting should contact Ms. Jennifer Michael at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC on November 18, 2016.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2016-28281 Filed 11-23-16; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER17-362-000]

#### Rio Bravo Solar II, 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 Rio Bravo Solar II, 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 December 7, 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: November 17, 2016.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2016-28327 Filed 11-23-16; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP16-492-000]

#### EcoEléctrica, L.P.; Notice of Schedule for Environmental Review of the LNG Terminal Sendout Capacity Increase Project

On August 11, 2016, EcoEléctrica, L.P. (EcoEléctrica) filed an application in Docket No. CP16-492-000 requesting a limited amendment under section 3 of the Natural Gas Act to operate certain liquefied natural gas (LNG) facilities. The proposed project is known as the LNG Terminal Sendout Capacity Increase Project (Project), and would increase the vaporization send out

capacity at EcoEléctrica's existing LNG terminal in Peñuelas, Puerto Rico to supply the Puerto Rico Electric Power Authority with an additional 93 million cubic feet per day.

On August 25, 2016, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

#### Schedule for Environmental Review

Issuance of EA, April 12, 2017.

90-day Federal Authorization

Decision Deadline, July 11, 2017.

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

#### Project Description

EcoEléctrica proposes to modify its current operations to use a spare vaporizer at its existing LNG terminal in Peñuelas, Puerto Rico. No changes would be made to the design of the existing LNG vaporization system, the existing LNG storage tank, or in-tank LNG sendout pumps as part of the Project. The Project would not include any construction activities and no ground disturbance would be required for construction or operation.

#### Background

On November 1, 2016, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed LNG Terminal Sendout Capacity Increase Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; other interested parties; and local libraries and newspapers. The scoping period identified in the NOI will end on December 1, 2016.

#### Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by

automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208-FERC or on the FERC Web site ([www.ferc.gov](http://www.ferc.gov)). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (*i.e.*, CP16-492), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208-3676, TTY (202) 502-8659, or at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: November 18, 2016.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2016-28329 Filed 11-23-16; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER17-361-000]

#### Pumpjack Solar I, 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 Pumpjack Solar I, 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 December 8, 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: November 18, 2016.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2016-28324 Filed 11-23-16; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. ER17-360-000]

**Rio Bravo Solar I, 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 Rio Bravo Solar I, 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 December 7, 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](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: November 17, 2016.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2016-28326 Filed 11-23-16; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Notice of Electric Quarterly Report Users Group Meeting**

	Docket Nos.
Filing Requirements for Electric Utility Service Agreements.	RM01-8-000

	Docket Nos.
Electricity Market Transparency Provisions of Section 220 of the Federal Power Act.	RM10-12-000
Revisions to Electric Quarterly Report Filing Process.	RM12-3-000
Electric Quarterly Reports ....	ER02-2001-000

Take notice that on December 8, 2016, the staff of the Federal Energy Regulatory Commission (Commission) will hold an Electric Quarterly Report (EQR) Users Group meeting. The meeting will take place from 12:00 p.m. to 4:00 p.m. (EST), in the Commission Meeting Room at 888 First Street NE., Washington, DC 20426. All interested persons are invited to attend. For those unable to attend in person, access to the meeting will be available by webcast.

This meeting will provide a forum for dialogue between Commission staff and EQR users and such meetings will also be held in the future on a periodic basis. During the meeting, Commission staff and EQR users will discuss potential improvements to the EQR program and the EQR filing process, including: (1) The EQR Test Submission System (Sandbox); (2) revisions to the EQR Frequently Asked Questions (FAQs), EQR Users Guide, EQR Data Dictionary, and allowable entries for Hub and Balancing Authority Areas; and (3) best practices for data submission, regarding filing best available data, standardizing Price and Quantity, reporting contract rate information, reviewing RTO or ISO reports, reporting Point of Delivery Specific Location (PODSL), and possible new transaction products. Please note that matters pending before the Commission and subject to ex parte limitations cannot be discussed at this meeting. An agenda of the meeting is attached.

Due to the nature of the discussion, those interested in actively participating in the discussion are encouraged to attend in person. All interested persons (whether attending in person or via webcast) are asked to register online at <https://www.ferc.gov/whats-new/registration/12-08-16-form.asp>. There is no registration fee.

Those who would like to participate in the discussion by telephone during the meeting should send a request for a telephone line to [EQRUsersGroup@ferc.gov](mailto:EQRUsersGroup@ferc.gov) by 5:00 p.m. (EST) on Thursday, December 1, 2016 with the subject line: EQR Users Group Meeting Teleconference Request.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For

accessibility accommodations, please send an email to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free 1-866-208-3372 (voice) or 202-208-1659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

For more information about the EQR Users Group meeting, please contact Don Callow of the Commission's Office of Enforcement at (202) 502-8838, or send an email to [EQRUsersGroup@ferc.gov](mailto:EQRUsersGroup@ferc.gov).

Dated: November 17, 2016.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2016-28328 Filed 11-23-16; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RM17-4-000]

#### Establishing the Length of License Terms for Hydroelectric Projects

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Notice of Inquiry.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is inviting comments on what changes, if any, the Commission should make to its policy for establishing the length of original and new license terms for hydroelectric projects.

**DATES:** Comments are due January 24, 2017.

**ADDRESSES:** Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments, see the Comment Procedures section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Nick Jayjack, (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-6073.

Carolyn Clarkin, (Legal Information), Office of the General Counsel—Energy

Projects, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502-8563.

#### SUPPLEMENTARY INFORMATION:

1. In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comment on whether, and, if so, how the Commission should revise its policy for establishing the length of original and new licenses it issues for hydroelectric projects.

#### I. Background

2. Section 6 of the Federal Power Act (FPA)<sup>1</sup> provides that hydropower licenses shall be issued for a term not to exceed 50 years. There is no minimum license term for original licenses. FPA section 15(e)<sup>2</sup> provides that any new license (*i.e.*, relicense) shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years.

3. It is current Commission policy to set a 50-year term for licenses issued for projects located at federal dams.<sup>3</sup> For projects located at non-federal dams, the Commission's current policy is to set a 30-year term where there is little or no authorized redevelopment, new construction, or environmental mitigation and enhancement; a 40-year term for a license involving a moderate amount of these activities; and a 50-year term where there is an extensive amount of such activity.<sup>4</sup> The purpose of this policy is to ease the economic impact of new costs, promote balanced and comprehensive development of renewable power generating resources, and encourage licensees to be better environmental stewards.<sup>5</sup>

4. Determining whether the measures required under a license are minimal, moderate, or extensive is highly case-sensitive and largely based on a qualitative analysis of the record before the Commission. In establishing the appropriate license term, staff initially examines the nature and extent of the required measures in the context of the project at issue,<sup>6</sup> and then uses the cost of measures as a check on a qualitative

conclusion that measures required under a relicense are minimal, moderate, or extensive. Further, the Commission's policy is to take a forward-looking approach, such that measures adopted under a previous license term are not considered.<sup>7</sup> It has also been the Commission's policy to set license terms that coordinate, to the extent feasible, the license terms for projects in the same river basin to maximize future consideration of cumulative impacts at the same time the projects are due to be relicensed.<sup>8</sup>

5. The length of an original license has not been contested on rehearing for some time. The length of a new license, however, has recently been contested in several relicensing proceedings. The arguments raised in these cases include that the Commission, when establishing the license term, should have considered, or given more weight to: Capacity-related investments or environmental enhancements made by the licensee during the current license and before issuance of the new license;<sup>9</sup> total cost of the relicensing process;<sup>10</sup> losses in generation value related to environmental measures;<sup>11</sup> the license terms of projects that the licensee states are similarly situated to its project;<sup>12</sup> and the license term provided for in settlement agreements.<sup>13</sup> In each circumstance, the Commission declined to deviate from its current policy to extend the length of the license.

#### II. Subject of the Notice of Inquiry

6. The Commission seeks comments on whether, and, if so, how the Commission should revise its policy for establishing license terms for projects located at non-federal dams. Below, we outline five potential options that

<sup>7</sup> See, e.g., *Duke Energy Carolinas, LLC (Duke Energy)*, 156 FERC ¶ 61,010, at P 19 (2016); *Public Utility District No. 1 of Chelan County, Washington (Chelan PUD)*, 127 FERC ¶ 61,152, at PP 12-14 (2009); *Ford Motor Co.*, 110 FERC ¶ 61,236, at PP 6-8 (2005).

<sup>8</sup> See, e.g., 18 CFR 2.23 (2016); *Chelan PUD*, 127 FERC ¶ 61,152 at P 18.

<sup>9</sup> See, e.g., *Duke Energy*, 156 FERC ¶ 61,010 at PP 9-26; *Alabama Power Co.*, 155 FERC ¶ 61,080, at P 72 (2016); *Public Utility District No. 1 of Douglas County, Washington (Douglas PUD)*, 143 FERC ¶ 61,130, at PP 12-14 (2013); *Chelan PUD*, 127 FERC ¶ 61,152 at PP 12-14; *Georgia Power Co.*, 111 FERC ¶ 61,183, at PP 10-15 (2005); *Ford Motor Co.*, 110 FERC ¶ 61,236 at PP 6-8.

<sup>10</sup> See, e.g., *Duke Energy*, 156 FERC ¶ 61,010 at P 14.

<sup>11</sup> See, e.g., *id.* P 12.

<sup>12</sup> See, e.g., *Duke Energy*, 156 FERC ¶ 61,010 at PP 20-23; *Alabama Power Co.*, 155 FERC ¶ 61,080 at PP 71, 75; *Duke Energy Progress, Inc.*, 153 FERC ¶ 61,056, at PP 39, 42 (2015); *Douglas PUD*, 143 FERC ¶ 61,130 at P 15.

<sup>13</sup> See, e.g., *Duke Energy Progress, Inc.*, 153 FERC ¶ 61,056 at PP 40, 44; *Douglas PUD*, 143 FERC ¶ 61,130 at PP 18-19; *Chelan PUD*, 127 FERC ¶ 61,152 at PP 16-17.

<sup>1</sup> 16 U.S.C. 799 (2012).

<sup>2</sup> 16 U.S.C. 808(e) (2012).

<sup>3</sup> See *City of Danville, Virginia*, 58 FERC ¶ 61,318, at 62,020 (1992).

<sup>4</sup> See *id.* (addressing original licenses); *Consumers Power Co.*, 68 FERC ¶ 61,077, at 61,384 (1994) (addressing relicenses).

<sup>5</sup> *Consumers Power Co.*, 68 FERC ¶ 61,077 at 61,384.

<sup>6</sup> For example, one type of fishway may be more expensive than another, and a fishway type that might be considered extensive for a small project could be seen as minimal for a larger one.

Commission staff has identified for establishing license terms: (1) Retain the existing license term policy; (2) add to the existing license term policy the consideration of measures implemented under the prior license; (3) replace the existing license term policy with a 50-year default license term unless the Commission determines that a lesser license term would be in the public interest (for example, to better coordinate, to the extent feasible, the license terms for projects in the same river basin for future consideration of cumulative impacts); (4) add a more quantitative cost-based analysis to the existing license term policy; and (5) alter current policy to accept the longer license term agreed upon in an applicable settlement agreement, when appropriate. We encourage comments on these options, as well as the suggestion of any other alternatives. While the Commission will consider comments filed, the Commission may not, and is not required to, take further action.

#### A. Retain Existing License Term Policy

7. The Commission could retain its current policy to set a 30-year term where there is little or no authorized redevelopment, new construction, or environmental mitigation and enhancement; a 40-year term where there is a moderate amount of these activities; and a 50-year term where there is an extensive amount of such activity. The Commission seeks comment on whether it should retain its current license term policy and on the following questions:

- i. What challenges does the Commission's current license term policy pose?
- ii. Does the Commission's current license term policy discourage licensees from investing in environmental and recreational enhancements or in development improvements (e.g., efficiency upgrades or project expansions) before relicensing? How so? What other factors affect whether and when a licensee makes such project enhancements or improvements?
- iii. Does a license term affect a licensee's ability to finance its project, and if so, how?
- iv. Does the Commission's license term policy affect the likelihood of parties reaching settlement agreements? How so?
- v. Does the current license term policy have benefits for stakeholders and affected resources? If so, please describe these benefits.

#### B. Consider Measures Implemented During a Prior License Term

8. In addition to considering measures required under the new license, the Commission could, when establishing the license term, consider measures implemented under the prior license.<sup>14</sup> The Commission would have to determine which measures to consider (i.e., the timing and type of measures), and whether the considered measures justify a 30-, 40-, or 50-year license term. The Commission seeks comment on this policy option and on the following questions:

- i. Why should the Commission consider early measures when establishing a license term?
- ii. What measures should be considered under "early measures" and why? Should the Commission consider all early measures, including developmental, environmental, recreation, and maintenance activities? Are there certain types of measures that the Commission should not consider?
- iii. How would the Commission's consideration of early measures affect whether and when licensees make non-developmental and developmental improvements?
- iv. How should the Commission limit the scope of early measures considered? Should the Commission only consider activities conducted within a certain number of years of relicensing?

#### C. 50-Year Default License Term

9. The Commission could establish 50 years as the default license term. A lesser license term could be set to coordinate, to the extent feasible, the license terms for projects in the same river basin for future consideration of cumulative impacts or for other appropriate reasons. Under the 50-year default option, parties other than the licensee would bear the burden of arguing that the license term should be less than 50 years. The Commission seeks comment on establishing a 50-year default license term and on the following questions:

- i. What would be the benefit(s) of the Commission establishing a 50-year default license term?
- ii. What factors, other than the coordination of license terms for projects in the same river basin, would weigh against the presumption of a 50-year default license term?
- iii. How would the default term affect license settlements and negotiations?

<sup>14</sup>"Early" measures could include: measures that the licensee implemented through an amendment of its existing license where such amendment did not extend the existing license term, and measures implemented by a licensee that were permissible under but not required by the existing license.

#### D. Quantitative Cost-Based Analysis

10. The Commission could include a more quantitative cost-based analysis that factors-in project size and capacity into its license term policy. The Commission seeks comment on using a more quantitative cost-based analysis to establish a license term and on the following questions:

- i. What costs should the Commission consider in a quantitative analysis?
- ii. How should cost be calculated? Should cost be calculated on a total cost or a on a cost per megawatt basis?
- iii. What weight should the Commission give to costs when establishing the license term?
- iv. The Commission licenses an array of small and large projects. How could the Commission account for project size and capacity when considering project costs?
- v. Commission staff relies on the cost information provided by the licensees. How could the Commission ensure the reliability of the cost information and to what extent would consideration of this type of information affect the licensing process?

#### E. Agreed-Upon Settlement Term

11. The Commission could establish the license term based on the term negotiated in a settlement agreement when appropriate. The Commission seeks comment on this policy option and on the following questions:

- i. How would establishing the license term based on the term agreed upon in a settlement agreement affect settlement negotiations?
- ii. When should the Commission not defer to the license term agreed upon in a settlement agreement?

### III. Comment Procedures

12. The Commission invites interested persons to submit comments and other information on the matters, issues, and specific questions identified in this notice, and any alternative proposals that commenters may wish to discuss. Comments are due January 24, 2017. Comments must refer to Docket No. RM17-4-000, and must include the commenter's name, the organization they represent, if applicable, and their address.

13. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

Commenters filing electronically do not need to make a paper filing.

14. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

15. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

#### IV. Document Availability

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

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

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

By direction of the Commission.

Issued: November 17, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016-28195 Filed 11-23-16; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC17-35-000.

*Applicants:* Calpine Energy Services Holdco LLC, North American Power Business, LLC, North American Power and Gas, LLC.

*Description:* Joint Application of Calpine Energy Services Holdco LLC, et al. for Approval Under Section 203 of the Federal Power Act and Request for Expedited Action.

*Filed Date:* 11/17/16.

*Accession Number:* 20161117-5201.

*Comments Due:* 5 p.m. ET 12/8/16.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG17-30-000.

*Applicants:* Niles Valley Energy LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status for Niles Valley Energy LLC.

*Filed Date:* 11/16/16.

*Accession Number:* 20161116-5138.

*Comments Due:* 5 p.m. ET 12/7/16.

*Docket Numbers:* EG17-31-000.

*Applicants:* IMG Midstream LLC.

*Description:* Self-Certification of EWG of Wolf Run Energy LLC.

*Filed Date:* 11/16/16.

*Accession Number:* 20161116-5139.

*Comments Due:* 5 p.m. ET 12/7/16.

*Docket Numbers:* EG17-32-000.

*Applicants:* SR South Loving LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of SR South Loving LLC.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118-5042.

*Comments Due:* 5 p.m. ET 12/9/16.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10-1350-006.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Services, Inc. submits Refund Report.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118-5070.

*Comments Due:* 5 p.m. ET 12/9/16.

*Docket Numbers:* ER10-2564-006; ER10-2289-006; ER10-2600-006.

*Applicants:* Central Hudson Gas & Electric Corporation, Tucson Electric Power Company, UNS Electric, Inc., UniSource Energy Development Company.

*Description:* Amendment and Third Supplement to December 31, 2015 Triennial Market Power Update for the Southwest Region of the Fortis, Inc. subsidiaries.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118-5148.

*Comments Due:* 5 p.m. ET 12/9/16.

*Docket Numbers:* ER16-1973-001.

*Applicants:* Western Antelope Blue Sky Ranch B LLC.

*Description:* Compliance filing; Western Antelope Blue Sky Ranch B LLC MBR Tariff to be effective 6/22/2016.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118-5047.

*Comments Due:* 5 p.m. ET 12/9/16.

*Docket Numbers:* ER16-2298-003.

*Applicants:* Duke Energy Kentucky, Inc.

*Description:* Tariff Amendment: DEK Errata to Supplemental Revised Filing RS No. 14 to be effective 10/1/2016.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118-5127.

*Comments Due:* 5 p.m. ET 12/9/16.

*Docket Numbers:* ER16-2730-001.

*Applicants:* LSC Communications US, LLC.

*Description:* Tariff Amendment: LSCC MBRA App Supplement to be effective 10/1/2016.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118-5105.

*Comments Due:* 5 p.m. ET 12/9/16.

*Docket Numbers:* ER17-157-001.

*Applicants:* Moapa Southern Paiute Solar, LLC.

*Description:* Tariff Amendment: Supplement to Application for Order Accepting Initial Market-Based Rate Tariff to be effective 10/22/2016.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118-5119.

*Comments Due:* 5 p.m. ET 12/9/16.

*Docket Numbers:* ER17-263-001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Substitute Original Service Agreement No. 4573, Queue No. NQ139 to be effective 1/1/2017.

*Filed Date:* 11/17/16.

*Accession Number:* 20161117-5149.

*Comments Due:* 5 p.m. ET 12/8/16.

*Docket Numbers:* ER17-297-001.

*Applicants:* Ampex Energy, LLC.

*Description:* Tariff Amendment: Amend MBR Application to be effective 11/15/2016.

*Filed Date:* 11/17/16.

*Accession Number:* 20161117-5116.

*Comments Due:* 5 p.m. ET 12/8/16.

*Docket Numbers:* ER17-355-000.

*Applicants:* ITC Midwest LLC.

*Description:* Report Filing: Errata to Filing of CIAC Agreement with Northern States Power to be effective N/A.

*Filed Date:* 11/17/16.

*Accession Number:* 20161117-5134.

*Comments Due:* 5 p.m. ET 12/8/16.

*Docket Numbers:* ER17-381-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Revisions to OATT Schedule 12—

Appdx A re RTEP Approved by the Board in Oct 2016 to be effective 2/15/2017.

*Filed Date:* 11/17/16.

*Accession Number:* 20161117–5164.

*Comments Due:* 5 p.m. ET 12/8/16.

*Docket Numbers:* ER17–382–000.

*Applicants:* CED Ducor Solar 1, LLC.

*Description:* Baseline eTariff Filing: Market-Based Rates Tariff to be effective 11/19/2016.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118–5067.

*Comments Due:* 5 p.m. ET 12/9/16.

*Docket Numbers:* ER17–383–000.

*Applicants:* CED Ducor Solar 2, LLC.

*Description:* Baseline eTariff Filing: Market-Based Rates Tariff to be effective 11/19/2016.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118–5069.

*Comments Due:* 5 p.m. ET 12/9/16.

*Docket Numbers:* ER17–384–000.

*Applicants:* CED Ducor Solar 3, LLC.

*Description:* Baseline eTariff Filing: Market-Based Rates Tariff to be effective 11/19/2016.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118–5071.

*Comments Due:* 5 p.m. ET 12/9/16.

*Docket Numbers:* ER17–385–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Cancellation: Notice of Cancellation of ICSA No. 3409 Queue Position #T107, X3–004 & Y2–019 to be effective 7/20/2016.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118–5096.

*Comments Due:* 5 p.m. ET 12/9/16.

*Docket Numbers:* ER17–386–000.

*Applicants:* New York Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: NYISO tariff revision—ICAP Demand Curve Reset to be effective 1/17/2017.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118–5098.

*Comments Due:* 5 p.m. ET 12/9/16.

*Docket Numbers:* ER17–387–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2016–11–18 Revisions to Attachment FF–6 to address cost allocation gap to be effective 1/18/2017.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118–5099.

*Comments Due:* 5 p.m. ET 12/9/16.

*Docket Numbers:* ER17–389–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2016–11–18 SA 2872 Montana Dakota-Montana Dakota 1st Rev. GIA (J405) to be effective 11/19/2016.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118–5115.

*Comments Due:* 5 p.m. ET 12/9/16.

*Docket Numbers:* ER17–390–000.

*Applicants:* Midcontinent

Independent System Operator, Inc., ITC Midwest LLC.

*Description:* § 205(d) Rate Filing: 2016–11–18 SA 2728 MidAmerican-ITCM 2nd Rev. FSA (H021) to be effective 11/18/2016.

*Filed Date:* 11/18/16.

*Accession Number:* 20161118–5117.

*Comments Due:* 5 p.m. ET 12/9/16.

Take notice that the Commission received the following electric reliability filings:

*Docket Numbers:* RD17–1–000.

*Applicants:* North American Electric Reliability Corporation.

*Description:* Petition of the North American Electric Reliability Corporation for Retirement of Reliability Standard BAL–004–0.

*Filed Date:* 11/10/16.

*Accession Number:* 20161110–5240.

*Comments Due:* 5 p.m. ET 12/19/16.

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: November 18, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–28323 Filed 11–23–16; 8:45 am]

**BILLING CODE 6717–01–P**

pursuant to the Federal Energy Regulatory Commission's (Commission) Order issued on September 15, 2016 Order.<sup>1</sup>

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on December 5, 2016.

Dated: November 17, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–28330 Filed 11–23–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL16–6–003]

#### PJM Interconnection LLC; Notice of Filing

Take notice that on November 14, 2016, PJM Interconnection L.L.C. submitted tariff filing per: Compliance Filing to be effective February 1, 2017,

## ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9030–4]

#### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7146 or <http://www.epa.gov/nepa>

<sup>1</sup> PJM Interconnection, L.L.C., et al., 156 FERC 61,180 (2016).

Weekly receipt of Environmental Impact Statements Filed 11/14/2016 Through 11/18/2016 Pursuant to 40 CFR 1506.9.

#### Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <http://www.epa.gov/compliance/nepa/eisdata.html>.

EIS No. 20160273, Final, FHWA, FL, SR 87 Connector, Contact: Joseph Sullivan 850-553-2248.

Under 49 U.S.C. 304a(b), FHWA has issued a Final EIS and ROD. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20160274, Draft, FHWA, NY, NYS Route 198 (Scajaquada Expressway) Corridor Project, Comment Period Ends: 01/25/2017, Contact: Peter Osborn 518-431-4127.

EIS No. 20160275, Draft Supplement, USFS, WA, Pack and Saddle Stock Outfitter-Guide Special Use Permit Issuance, Comment Period Ends: 01/09/2017, Contact: Jennifer Zbyszewski 509-996-4021.

EIS No. 20160276, Final, FRA, MD, Baltimore and Potomac Tunnel, Review Period Ends: 12/27/2016, Contact: Brandon Bratcher 202-493-0844.

EIS No. 20160277, Final, USCG, LA, Port Delfin Project Deepwater Port Application, Review Period Ends: 01/12/2017, Contact: Roddy C. Bachman 202-372-1451.

EIS No. 20160278, Final, BLM, OR, Proposed Land use Plan Amendment for the Boardman to Hemingway Transmission Line Project, Review Period Ends: 12/25/2016, Contact: Tamara Gertsch 307-775-6115

EIS No. 20160279, Final, BOEM, LA, Outer Continental Shelf Oil and Gas Leasing Program: 2017-2022, Review Period Ends: 12/27/2016, Contact: Dr. Jill Lewandowski 703-787-1703

EIS No. 20160280, Adoption, USFWS, NAT, ADOPTION—Programmatic—Habitat Restoration Activities Implemented Throughout the Coastal United States, Review Period Ends: 12/27/2016, Contact: Peter Barlow 703-358-2119

The U.S. Department of the Interior's Fish and Wildlife Service is adopting the U.S. Department of Commerce's National Oceanic and Atmospheric Agency's Final EIS #20150171, filed with EPA on 06/11/2015. The USFWS was not a cooperating agency. Therefore, recirculation of the EIS is necessary under Section 1506.3(b) of the CEQ Regulations.

EIS No. 20160281, Draft, USFS, CO, Snowmass Multi-Season Recreation Projects, Comment Period Ends: 01/11/2017, Contact: Roger Poirier 970-945-3245

EIS No. 20160282, Final Supplement, USFWS, HI, Na Pua Makani Wind Project and Habitat Conservation Plan, Review Period Ends: 01/03/2017, Contact: Jodi Charrier 808-792-9400

#### Amended Notices

EIS No. 20160256, Draft Supplement, USACE, MO, Mississippi River between the Ohio and Missouri Rivers (Regulating Works), Comment Period Ends: 01/18/2017, Contact: Kip Runyon 314-331-8396, Revision to the FR Notice Published 11/04/2016, Extending the Comment Period from 12/19/2016 to 01/18/2017.

Dated: November 21, 2016.

#### Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016-28407 Filed 11-23-16; 8:45 am]

BILLING CODE 6560-50-P

### FEDERAL DEPOSIT INSURANCE CORPORATION

#### Agency Information Collection Activities: Proposed Revision of Information Collection; National Survey of Unbanked and Underbanked Households; Comment Request (3064-0167)

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its continuing effort to reduce paperwork and respondent burden and as required by the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to comment on the survey collection instrument for its fourth National Survey of Unbanked and Underbanked Households (Household Survey), currently approved under OMB Control No. 3064-0167, scheduled to be conducted in partnership with the U.S. Census Bureau as a supplement to its June 2017 Current Population Survey (CPS). The survey seeks to estimate the proportions of unbanked and underbanked households in the U.S. and to identify the factors that inhibit the participation of these households in the mainstream banking system, and opportunities to expand the use of banking services among underserved consumers. The results of these ongoing surveys will help policymakers and bankers

understand the issues and challenges underserved households perceive when deciding how and where to conduct financial transactions.

**DATES:** Comments must be submitted on or before January 24, 2017.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- <http://www.FDIC.gov/regulations/laws/federal/notices.html>.
- *Email:* [comments@fdic.gov](mailto:comments@fdic.gov). Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202-898-3767), Counsel, MB-3007, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to OMB control number 3064-0167. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Manny Cabeza, at the FDIC address above.

**SUPPLEMENTARY INFORMATION:** The FDIC is considering possible revisions to the following collection of information:

*Title:* National Survey of Unbanked and Underbanked Households.

*OMB Number:* 3064-0167.

*Frequency of Response:* Once.

*Affected Public:* U.S. Households.

*Estimated Number of Respondents:* 50,000.

*Average Time per Response:* 10 minutes (0.16 hours) per respondent.

*Estimated Total Annual Burden:* 0.16 hours × 50,000 respondents = 8,334 hours.

*General Description of Collection:* The FDIC recognizes that public confidence in the banking system is strengthened when banks effectively serve the broadest possible set of consumers. As a result, the agency is committed to increasing the participation of unbanked and underbanked households in the financial mainstream by ensuring that all Americans have access to safe, secure, and affordable banking services. The National Survey of Unbanked and Underbanked Households is one contribution to this end.

The National Survey of Unbanked and Underbanked Households is also a key component of the FDIC's efforts to

comply with a Congressional mandate contained in section 7 of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (“Reform Act”) (Pub. L. 109–173), which calls for the FDIC to conduct ongoing surveys “on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the ‘unbanked’) into the conventional finance system.” Section 7 further instructs the FDIC to consider several factors in its conduct of the surveys, including: (1) “what cultural, language and identification issues as well as transaction costs appear to most prevent ‘unbanked’ individuals from establishing conventional accounts”; and (2) “what is a fair estimate of the size and worth of the ‘unbanked’ market in the United States.” The National Survey of Unbanked and Underbanked Households is designed to address these factors and provide a factual basis on the proportions of unbanked households. Such a factual basis is necessary to adequately assess banks’ efforts to serve these households as required by the statutory mandate.

To obtain this information, the FDIC partnered with the U.S. Census Bureau, which administered the Household Survey supplement (“FDIC Supplement”) to households that participated in the January 2009, June 2011, June 2013 and June 2015 CPS. The results of these surveys were released to the public in December 2009, September 2012, October 2014, and October 2016, respectively.

The FDIC supplement has yielded nationally-representative data, not otherwise available, on the size and characteristics of the population that is unbanked or underbanked, the use by this population of alternative financial services, and the reasons why some households do not make greater use of mainstream banking services. The National Survey of Unbanked and Underbanked Households is the only population-representative survey conducted at the national level that provides state-level estimates of the size and characteristics of unbanked and underbanked households for all 50 states and the District of Columbia. An executive summary of the results of the first three Household Surveys, the full reports, and the survey instruments can be accessed through the following link: <http://www.economicinclusion.gov/surveys/>.

Consistent with the statutory mandate to conduct the surveys on an ongoing basis, the FDIC already has in place arrangements for conducting the fourth Household Survey as a supplement to the June 2017 CPS. However, prior to finalizing the next survey questionnaire, the FDIC seeks to solicit public comment on whether changes to the existing instrument are desirable and, if so, to what extent. It should be noted that, as a supplement of the CPS survey, the Household Survey needs to adhere to specific parameters that include limits in the length and sensitivity of the questions that can be asked of CPS respondents. Specifically, there is a strict limitation on the number of questions permitted and the average time required to complete the survey.

#### Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC’s 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; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 21st day of November 2016.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2016–28393 Filed 11–23–16; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Information Collection Revision; Comment Request (3064–0189)

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The Federal Deposit Insurance Corporation (“FDIC”) invites the general public and other Federal agencies to take this opportunity to comment on a revision of a continuing information collection, titled, “Company-Run Annual Stress Test Reporting Template and Documentation

for Covered Institutions with Total Consolidated Assets of \$50 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act,” (3064–0189), as required by the Paperwork Reduction Act of 1995.

**DATES:** Comments must be received by January 24, 2017.

**ADDRESSES:** You may submit written comments by any of the following methods:

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

- *Email:* [comments@fdic.gov](mailto:comments@fdic.gov). Include “Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of \$50 Billion or More” on the subject line of the message.

- *Mail:* Manny Cabeza (202–898–3767), Counsel, MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- *Hand Delivery/Courier:* 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.

- *Public Inspection:* All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/> including any personal information provided.

*Additionally, you may send a copy of your comments:* By mail to the U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by facsimile to 202.395.6974, Attention: Federal Banking Agency Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information from Manny Cabeza, 202.898.3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., MB–3016 Washington, DC 20429. In addition, copies of the templates referenced in this notice can be found on the FDIC’s Web site (<http://www.fdic.gov/regulations/laws/federal/>).

**SUPPLEMENTARY INFORMATION:** The FDIC is requesting comment on the following changes to the information collection:

*Title:* Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of \$50 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

*OMB Control Number:* 3064–0189.

*Description:* Section 165(i)(2) of the Dodd-Frank Wall Street Reform and

Consumer Protection Act<sup>1</sup> (“Dodd-Frank Act”) requires certain financial companies, including state nonmember banks and state savings associations, to conduct annual stress tests<sup>2</sup> and requires the primary financial regulatory agency<sup>3</sup> of those financial companies to issue regulations implementing the stress test requirements.<sup>4</sup> A state nonmember bank or state savings association is a “covered bank” and therefore subject to the stress test requirements if its total consolidated assets are more than \$10 billion. Under section 165(i)(2), a covered bank is required to submit to the Board of Governors of the Federal Reserve System (“Board”) and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency shall require.<sup>5</sup>

On October 15, 2012, the FDIC published in the *Federal Register* a final rule implementing the section 165(i)(2) annual stress test requirement.<sup>6</sup> The final rule requires covered banks to meet specific reporting requirements under section 165(i)(2). In 2012, the FDIC first implemented the reporting templates for covered banks with total consolidated assets of \$50 billion or more and provided instructions for completing the reports.<sup>7</sup> This information collection notice describes revisions by the FDIC to the relevant reporting templates and related instructions, as well as required information. The information contained in these information collections may be given confidential treatment to the extent allowed by law (5 U.S.C. 552(b)(4)).

Consistent with past practice, the FDIC intends to use the data collected to assess the reasonableness of the stress test results of covered banks and to provide forward-looking information to the FDIC regarding a covered institution’s capital adequacy. The FDIC also may use the results of the stress tests to determine whether additional analytical techniques and exercises could be appropriate to identify, measure, and monitor risks at the covered bank. The stress test results are

expected to support ongoing improvement in a covered bank’s stress testing practices with respect to its internal assessments of capital adequacy and overall capital planning.

The FDIC recognizes that many covered banks with total consolidated assets of \$50 billion or more are required to submit reports using the Board’s Comprehensive Capital Analysis and Review (“CCAR”) reporting form, FR Y–14A. The FDIC also recognizes the Board has modified the FR Y–14A, and the FDIC will keep its reporting requirements as similar as possible with the Board’s FR Y–14A in order to minimize burden on affected institutions. Therefore, the FDIC is revising its reporting requirements to remain consistent with the Board’s FR Y–14A for covered banks with total consolidated assets of \$50 billion or more.

#### **Proposed Revisions to Reporting Templates for Institutions With \$50 Billion or More in Assets**

The proposed revisions to the DFAST–14A reporting templates consist of clarifying instructions, adding and removing schedules, adding, deleting, and modifying existing data items, and altering the as-of dates. These proposed changes would increase consistency between the DFAST–14A with the FR Y–14A and CALL Report,

#### *Summary Schedule, Standardized RWA Worksheet*

The proposed revision includes multiple line items changes intended to promote consistency with the FR Y–14A and ensure the collection of accurate information.

#### *Summary Schedule, Capital Worksheet*

Covered institutions would be required to estimate their supplementary leverage ratio for the planning horizon beginning on January 1, 2018. The FDIC proposes adding two items to the Summary Schedule: Supplementary Leverage Ratio Exposure (SLR Exposure) and Supplementary Leverage Ratio (the SLR). The SLR would be a derived field.

In addition, to collect more precise information regarding deferred tax assets (DTAs), the FDIC proposes modifying one existing item on the Capital—DFAST worksheet of the Summary schedule as-of December 31, 2016. The FDIC proposes changing existing item 112 on the Capital—DFAST worksheet of the Summary schedule, “Deferred tax assets arising from temporary differences that could not be realized through net operating loss carrybacks, net of DTLs, but before

related valuation allowances”, to “Deferred tax assets arising from temporary differences, net of DTLs.” A covered institution in a net deferred tax liability (DTL) position would report this item as a negative number. This modification would provide more specific information about the components of the “DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs” subject to the common equity tier 1 capital deduction threshold.

The proposed revisions would also remove certain items that pertained to the capital regulations in place before the adoption of the Basel III final rule.

#### *Summary Schedule, Counterparty Worksheet*

The FDIC proposes adding the item “Other counterparty losses” to the counterparty worksheet of the Summary schedule.

#### *Regulatory Capital Instruments Schedule*

The FDIC proposes to remove the Regulatory Capital Instruments Schedule.

#### *Regulatory Capital Transitions Schedule*

The FDIC proposes to remove the Regulatory Capital Transitions Schedule.

#### *Operational Risk Schedule*

The FDIC proposes to remove the Operational Risk Schedule.

#### **Burden Estimates**

The FDIC estimates that the proposed revisions will not affect the burden estimates of this information collection which will remain as follows:

*Number of Respondents:* 4.

*Annual Burden per Respondent:* 1,114.

*Total Annual Burden:* 4,456.

The FDIC recognizes that the Board requires bank holding companies to prepare the Summary, Macro scenario, Operational risk, Regulatory capital transitions, and Regulatory capital instruments for the FR Y–14A. The FDIC believes that the systems covered institutions use to prepare the FR Y–14A reporting templates will also be used to prepare the reporting templates described in this notice. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the FDIC, including whether the information has practical utility;

<sup>1</sup> Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

<sup>2</sup> 12 U.S.C. 5365(i)(2)(A).

<sup>3</sup> 12 U.S.C. 5301(12).

<sup>4</sup> 12 U.S.C. 5365(i)(2)(C).

<sup>5</sup> 12 U.S.C. 5365(i)(2)(B).

<sup>6</sup> 77 FR 62417 (October 15, 2012).

<sup>7</sup> 77 FR 52719 (August 30, 2012) and 77 FR 70435 (November 26, 2012). The most recent revisions to the reporting templates and related instructions were made in 2014. See 79 FR 58780 (September 30, 2014) and 79 FR 75152 (December 17, 2014)

(b) The accuracy of the FDIC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Dated at Washington, DC, this 21st day of November.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2016-28344 Filed 11-23-16; 8:45 am]

**BILLING CODE 6714-01-P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 9, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Mike Weis and Valerie Weis, Norwalk, Iowa, individually and as controlling shareholders of Interstate Enterprises, Ltd. a wholly-owned subsidiary of Interstate Telephone Company, Truro, Iowa, and as a group acting in concert with: Paul Cain, Van Meter, Iowa; Kelly Cain, Van Meter, Iowa; David Cain, Van Meter, Iowa; Meghan E. Cain, Van Meter, Iowa; Stephen Cain, Winterset, Iowa; Marvin A. Eivins, Winterset, Iowa; Lillian K. Eivins, Winterset, Iowa; Susan Eivins Brakhane, Winterset, Iowa; James W.*

*Mease, Winterset, Iowa; Sue A. Mease, Winterset, Iowa; Justin J. Mease, Ankeny, Iowa; April S. Schaefer, Cedar Rapids, Iowa; Shane K. Pashek, Winterset, Iowa; Ann Pashek, Winterset, Iowa; Taylor E. Pashek, Winterset, Iowa; S. James Smith, Winterset, Iowa; Linda J. Smith, Earlham, Iowa; Kari L. Brett, Altoona, Iowa; Ellen D. Wade, Beacon, New York; M. Randall Townsend, Winterset, Iowa; Kimberly A. Townsend, Winterset, Iowa; Megan A. Townsend, Winterset, Iowa; David E. Trask, Winterset, Iowa; Judith A. Trask, Winterset, Iowa; and Kristin Elizabeth Weis, Winterset, Iowa; to acquire control voting shares of Farmers and Merchants Bancorp, Winterset, Iowa, and thereby indirectly control Farmers & Merchants State Bank, Winterset, Iowa.*

Board of Governors of the Federal Reserve System, November 21, 2016.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2016-28386 Filed 11-23-16; 8:45 am]

**BILLING CODE 6210-01-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 December 21, 2016.

A. *Federal Reserve Bank of St. Louis* (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166-2034. Comments can also be sent electronically to [Comments.applications@stls.frb.org](mailto:Comments.applications@stls.frb.org):

1. *Lonoke Bancshares, Inc., Lonoke, Arkansas; to indirectly acquire 100 percent of Pinnacle Bancshares, Inc., Rogers, Arkansas, and thereby indirectly acquire Pinnacle Bank, Rogers, Arkansas.*

Board of Governors of the Federal Reserve System, November 21, 2016.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2016-28387 Filed 11-23-16; 8:45 am]

**BILLING CODE 6210-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Docket No. CDC-2016-0110]

#### Draft Guideline Update—CDC Recommendations on Use of Chlorhexidine-Impregnated Dressings for Prevention of Intravascular Catheter-Related Infections

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notice of availability and request for public comments.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces the opening of a docket to obtain public comment on the *Draft Update of CDC Recommendations on Use of Chlorhexidine-Impregnated Dressings for Prevention of Intravascular Catheter-Related Infections* (Draft Recommendation Update). The Draft Recommendation Update addresses new and updated strategies for the prevention of intravascular catheter-related infections in healthcare settings. CDC is providing a supporting appendix in the docket that includes primary evidence, study evaluation, and data evaluation tables that were used in developing the Draft Recommendation Update.

**DATES:** Comments must be received on or before January 24, 2017.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC-2016-0110 by any of the following methods:

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

• *Mail:* Division of Healthcare Quality Promotion, National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS-A07, Atlanta, GA 30329, Attn: Docket No. CDC-2016-0110.

*Instructions:* All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to <http://regulations.gov>, including any personal information provided. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

Written materials identified by Docket No. CDC-2016-0110, will be available for public inspection Monday through Friday, except for legal holidays, 9 a.m. until 4:30 p.m. Eastern Standard Time, at CDC Library, 1600 Clifton Road NE., Atlanta, Georgia 30329. Please call ahead to (404) 639-1717 and request a Library representative to schedule your visit. All public comments will be reviewed and considered prior to finalizing the Draft Recommendation Update.

**FOR FURTHER INFORMATION CONTACT:**

Contact Erin Stone, Division of Healthcare Quality Promotion, National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop A-31, Atlanta, Georgia 30329; Telephone: (404) 639-4000.

**SUPPLEMENTARY INFORMATION:** Since 2014 CDC has collaborated with national partners, academicians, public and private health professionals, and other partners to create this Draft Recommendation Update. CDC received input from the Healthcare Infection Control Practices Advisory Committee (HICPAC) throughout the development of the Draft Recommendation Update. HICPAC includes representatives from public health, infectious diseases, regulatory and other federal agencies, professional societies, and other stakeholders. This Draft Recommendation Update is not a federal rule or regulation.

The Draft Recommendation Update is designed for use by infection prevention staff, healthcare epidemiologists, administrators, nurses, and personnel responsible for developing, implementing, and evaluating infection prevention and control programs for healthcare settings across the continuum of care. The recommendations contained in the Draft

Recommendation Update are based on a targeted systematic review of the best available evidence for a specific topic related to the prevention of intravascular catheter-related infections.

Dated: November 21, 2016.

**Sandra Cashman,**

*Executive Secretary, Centers for Disease Control and Prevention.*

[FR Doc. 2016-28385 Filed 11-23-16; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2015-D-2537]

**Submission of Quality Metrics Data; Draft Guidance for Industry; Availability; Request for Comments**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a revised draft guidance for industry entitled “Submission of Quality Metrics Data.” In order to help develop compliance and inspection policies and practices, improve the Agency’s ability to predict, and therefore possibly mitigate, future drug shortages, and to encourage the pharmaceutical industry to implement state-of-the-art, innovative quality management systems for pharmaceutical manufacturing, FDA intends to initiate a quality metrics reporting program. The revised draft guidance describes FDA’s plans for an initial, voluntary phase of this program. FDA expects that this voluntary phase will allow the Agency to learn more about a limited set of quality metrics and associated analytics, and to help inform future FDA decisionmaking about its quality metrics program. This revised draft also provides an opportunity to gain additional perspectives from industry participants on the future use of quality metrics data.

**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 January 24, 2017.

**ADDRESSES:** You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://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 <https://www.regulations.gov>.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA-2015-D-2537 for “Submission of Quality Metrics Data.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://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 <https://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 <https://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 (CDER), Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002 or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Tara Goen Bizjak, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2109, Silver Spring, MD 20993-0002, 301-796-3257; 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 revised draft guidance for industry entitled "Submission of Quality Metrics Data." More than a decade ago, FDA launched an initiative to encourage the implementation of a modern, risk-based pharmaceutical quality assessment system. As part of this initiative, and in recognition of the increasing complexity of pharmaceutical manufacturing, FDA developed a 21st century vision for manufacturing and product quality with input from academia and industry. FDA articulated its vision as "a maximally efficient, agile, flexible pharmaceutical manufacturing sector that reliably produces high-quality drug products without extensive regulatory oversight."

Significant progress toward achieving this vision has occurred in the intervening years, as evidenced by programs and guidance from FDA around major initiatives such as pharmaceutical development and quality by design, quality risk management and pharmaceutical quality systems, process validation, and process analytical technology, among others. These programs and guidances are intended to promote effective use of the most current pharmaceutical science and engineering principles, and knowledge throughout a product's life cycle.

Despite these achievements, however, we have not fully realized our 21st century vision for manufacturing and quality, and indicators of serious product quality defects persist. The Agency has found that the majority of drug shortages stem from quality issues—the discovery of substandard manufacturing facilities or processes, or identification of significant quality defects in finished products, necessitating remediation efforts, which in turn, may interrupt production, and cause a shortage of drugs. Taking action to reduce drug shortages remains a top priority for FDA.

The continued existence of product quality issues may point to increased complexities in the supply chain, limited innovation in manufacturing, inadequate adoption of modern manufacturing technologies and robust quality management systems, or other factors. As described in the revised draft guidance, FDA is proposing a voluntary phase of a quality metrics reporting program to learn more about a limited set of quality metrics and associated analytics. Under this program,

beginning in early 2018, FDA anticipates accepting the voluntary submission of data from owners and operators of certain human drugs establishments, especially manufacturers of covered drug products and active pharmaceutical ingredients (API) used in covered drug products. A covered drug product is: (1) Subject to an approved application under section 505 of the Federal Food, Drug, and Cosmetic (the FD&C Act) (21 U.S.C. 355) or under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262); (2) marketed pursuant to an over-the-counter (OTC) monograph, or (3) a marketed unapproved finished drug product. Other types of establishments may also choose to submit quality metrics data as explained in the revised draft guidance. FDA expects to use information about participating establishments in our risk-based decisionmaking, and to evaluate our planned analytics as we further develop the quality metrics program as a subject of future rulemaking.

Under Title VII section 706 of the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112-144), FDA may require the submission of any records or other information that FDA may inspect under section 704 of the FD&C Act (21 U.S.C. 374), in advance or in lieu of an inspection by requesting the records or information from a person that owns or operates an establishment that is engaged in the manufacture, preparation, propagation, compounding, or processing of a drug. The quality metrics data described in the revised draft guidance is information of the type that FDA may inspect under section 704 of the FD&C Act. However, FDA does not intend to require the submission of information pursuant to section 704(a)(4) of the FD&C Act in implementing the voluntary phase of the quality metrics reporting program. FDA does not intend to take enforcement action based on errors in a quality metrics data submission made to this voluntary phase of the reporting program, provided the submission is made in good faith.

Current good manufacturing practice (CGMP) for human drugs requires manufacturers to have an ongoing program to maintain and evaluate product and process data that relate to product quality (21 CFR 211.180(e) and 21 U.S.C. 351(a)(2)(B)). Manufacturers are expected to use a quality program to support process validation, and manufacturers may include the metrics described in this guidance in their quality program. As discussed in the revised draft guidance, FDA encourages

manufacturers to routinely use additional quality metrics beyond the metrics described in this guidance in performing product and establishment specific evaluations.

FDA envisions information collected from a fully implemented quality metrics reporting program will be an important factor in further focusing the use of FDA resources on the areas of highest risk to public health, which may include: (1) Establishing a signal detection program as one factor in identifying establishments and products that may pose significant risk to consumers; (2) identifying situations in which there may be a risk for drug supply disruption; (3) improving the effectiveness of establishment inspections; and (4) improving FDA's evaluation of drug manufacturing and control operations.

FDA has engaged with stakeholders in several ways to develop mutually useful and objective quality metrics. On July 28, 2015, FDA published a draft guidance entitled "Request for Quality Metrics" (80 FR 44973). On August 24, 2015, FDA conducted a public meeting to discuss the draft guidance at the Agency's campus in Silver Spring, MD. FDA has also consulted stakeholders at various trade and professional association meetings, and published a prior request for comment in the **Federal Register** on February 12, 2013 (78 FR 9928), that concerned manufacturing quality metrics as they relate to drug shortages. These efforts identified several categories of quality-related information that CDER and CBER considered in developing the quality metrics discussed in the guidance. The revised draft guidance announced in this notice replaces the currently published draft 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 the submission of quality metrics data. 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. Revisions to the 2015 Draft Guidance

On July 28, 2015, FDA announced the availability of the draft guidance entitled "Request for Quality Metrics" (80 FR 44973). The revised draft guidance includes the following changes from the earlier draft guidance: Adoption of a phased-in (voluntary) approach, reduction in the number of data elements requested (*i.e.*, reduction

in reporting burden), support for both product reports and site reports, modifications to the quality metrics data definitions, addition of clarifying examples for the definitions, addition of comment fields, and clarification of special considerations for non-application and OTC product reporting. FDA recognizes that a voluntary phase of the program would give participants an opportunity to demonstrate transparency and a willingness to proactively engage with the Agency in pursuit of the goals described in the revised draft guidance. FDA also expects that it will be able to use information submitted during a voluntary phase of the program to inform risk-based decisionmaking, and to help evaluate our planned analytics as we further develop the quality metrics reporting program as a subject of future rulemaking.

A voluntary program would also allow all types of drug manufacturing establishments to report information. For example, active ingredient manufacturers, including those manufacturing atypical active ingredients, and excipient manufacturers, may participate in the voluntary phase of the reporting program. While the program is geared towards finished drug products and API manufacturing, all manufacturers may report quality metrics data. FDA may not be able to accomplish the overall goals of an FDA quality metrics reporting program, as described in the draft guidance, from voluntary reporting alone. If FDA does not receive a large body of data from reporting establishments, the ways in which the Agency can use the information may be limited. For example, the data received may not constitute a representative sample of the industry. Further, a self-selection bias may increase the risk of signaling an outlier where none exists. For these reasons, we expect to use the information collected during this voluntary phase of the program to specifically focus on: (1) Working with establishments towards early resolution of potential quality problems and to reduce the likelihood that the establishment's operations will be disrupted and impact the drug supply, (2) helping to prepare for and direct our inspections, and (3) use of the calculated metrics as an element of the post-approval manufacturing change reporting program with an emphasis on encouraging lifecycle manufacturing improvement.

We intend to include the reporting of quality metrics as a factor in our surveillance inspection risk-based model, publish a list of reporters who

provide a certain amount of information, share publicly the measured impact on inspection frequency reduction, and provide an opportunity for participants to submit feedback.

In the revised draft guidance, FDA has reduced the proposed footprint of the program from four primary metrics and three optional metrics to three primary metric areas (*i.e.*, lot acceptance rate, invalidated out-of-specification rate, and product quality complaint rate). FDA continues to recognize the importance of measuring an establishment's pharmaceutical quality system robustness and quality culture (*e.g.*, senior management engagement, Corrective Action and Preventive Action effectiveness and continual improvement, and process capability/performance). Furthermore, these areas continue to be covered on FDA drug establishment manufacturing inspections, and concomitant metrics may be added as the program matures.

FDA revised the guidance to clarify the technical definitions and provide illustrative examples for specific scenarios (see Appendix B of the revised draft guidance). FDA revised the draft guidance to contemplate submission of either product reports segmented by site, or site reports segmented by product. FDA intends to publicly recognize both product reporting and site reporting establishments on a quality metrics reporters list. The Agency intends to encourage product reporting because it demonstrates a certain level of oversight and controls over the manufacturing of drug products across the supply chain. In addition, we believe that a product report is better suited to identify potential drug supply disruptions. As described in the revised draft guidance, FDA intends to publish a quality metrics reporters list that includes product reporters that provide a list of the establishments in their product supply chain and some or all of the quality metrics data identifying them as "Product Reporter Top Tier" or "Product Reporter Mid Tier", respectively. The proposed quality metrics reporter list would also identify reporters who provide only the list of the establishments in their product supply chain.

In the approach described in the revised draft guidance, site reporting establishments would also be included on the quality metrics reporters list, as there may be scenarios where product reporting establishments do not have access to this information or may choose not to report for covered establishments. FDA intends to provide an opportunity

for both types of establishments to benefit from this incentive.

In order to implement a phased-in approach, FDA intends to begin collecting quality metrics data as part of a voluntary phase of the program. The first phase of the quality metrics program outlined in the revised draft guidance would be fully voluntary. After evaluating the results of the voluntary phase of the quality metrics program in 2018, FDA intends to initiate notice and comment rulemaking under existing statutory authority to develop a mandatory quality metrics reporting program.

FDA carefully considered supporting flexible data collection timeframes for the purposes of reporting. In the context of a program that required product-based reporting, such flexibility would be feasible. However, in the context of the voluntary phase of the reporting program, FDA is proposing a common timeframe to facilitate publication of the quality metrics reporters list, and given the need to identify duplicate data if both the product reporting establishment and site reporting establishment submit data.

A Technical Specifications Document entitled "Quality Metrics Technical Conformance Guide, Version 1.0" was published on June 27, 2016 (81 FR 41545). This guide provides technical recommendations for the submission of quality metrics data. It is intended to serve as the technical reference for implementation of the quality metrics program. FDA intends to publish Version 2.0 of the Technical Conformance Guide soon after publication of the revised draft guidance. We anticipate that the electronic submission platform will be available to test in 2017.

Reporting establishments will be able to submit 300 word text comments to provide an explanation of submitted data or report plans for improvement. FDA may refer to the comments if unusual data or trends are identified or as preparation for an onsite inspection. The submission of comments is optional. In the future, FDA may consider establishing a set of codes to standardize the comments.

FDA also revised the draft guidance to address the special complexities for grouping non-application drug products. Defining a "product" for the purpose of grouping non-application drugs for the submission of quality metrics data proved challenging without an application number. Using one segment to group products, such as active pharmaceutical ingredient(s), manufacturing process, minor formulation changes, or stock-keeping

unit, is an imperfect solution. For the purpose of this revised draft guidance, FDA has defined a product family for finished drug products as any combination of National Drug Code (NDC) product code segments where the active pharmaceutical ingredient and dose form is the same (*i.e.*, a product family could be multiple strengths or only a single strength). For APIs, the product family is defined by the NDC product code segment. Our intent is to define product family in a way that was likely consistent with how products are grouped for the Periodic Product Review per 21 CFR 211.180(e) (*e.g.*, Annual Product Review). We expect that this approach will group similar products with similar manufacturing operations together.

There are also special considerations with respect to product quality complaints for OTC products. Manufacturers of OTC products typically receive much more frequent communications from customers than manufacturers of prescription drug products, and the nature of these communications are quite different. The definition of a product quality complaint is intended to cover any possible or actual quality issue, while excluding preferential complaints. We anticipate that our analytics will account for this imbalance in reporting type between prescription and OTC drug products.

### III. How To Report Quality Metrics Data to FDA

FDA expects to encourage reporting establishments to submit quality metrics data reports where the data is segmented on a quarterly basis throughout a single calendar year. At present, FDA intends to open the electronic portal in January 2018 to receive voluntary submissions of data. FDA expects to publish a **Federal Register** notice providing instructions on the submission of voluntary reports and specifying the dates that we intend to open the portal, published no fewer than 30 days before the portal is opened (*e.g.*, before December 1, 2017). FDA expects to begin the data analysis once the portal is closed and then publish initial findings and the quality metric reporters list on the FDA Web site.

To reduce discrepancies between site and product reporting, FDA is proposing a defined, uniform reporting period.

In the rare instance that a reporting establishment or covered establishment discovers an error in its submission, an amendment may be made with an associated explanation via email to [OPQ-OS-QualityMetrics@fda.hhs.gov](mailto:OPQ-OS-QualityMetrics@fda.hhs.gov).

The amendment process is specified in the Technical Conformance Guide.

### IV. Paperwork Reduction Act of 1995

This revised draft guidance contains information collection provisions that 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 collection of some of the information requested in the revised draft guidance is covered under FDA regulations at 21 CFR parts 210 and 211 and approved under OMB control number 0910–0139. In accordance with the PRA, FDA intends to solicit public comment and obtain OMB approval for any information collections recommended in this guidance that are new or that would represent material modifications to those previously approved collections of information found in FDA regulations or guidances. Subject to OMB approval, FDA anticipates that it will begin collecting quality metrics data in January 2018.

### V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, or <https://www.regulations.gov/>.

Dated: November 18, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28332 Filed 11–23–16; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2007–D–0369]

#### Bioequivalence Recommendations for Cyclobenzaprine Hydrochloride; Revised Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a revised draft guidance for industry on generic cyclobenzaprine hydrochloride extended release capsules, entitled "Draft Guidance on Cyclobenzaprine Hydrochloride." The recommendations provide specific guidance on the design

of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for cyclobenzaprine hydrochloride extended release capsules.

**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 comments 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 January 24, 2017.

**ADDRESSES:** You may submit comments as follows:

#### *Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://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 <https://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-

2007-D-0369 for "Bioequivalence Recommendations for Cyclobenzaprine Hydrochloride; Revised Draft Guidance for Industry; Availability." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," will be publicly viewable at <https://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 <https://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.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://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:**

Xiaoqiu Tang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4730, Silver Spring, MD 20993-0002, 301-796-5850.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled "Bioequivalence Recommendations for Specific Products," which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at <http://www.fda.gov/Drugs/Guidance/ComplianceRegulatoryInformation/Guidances/default.htm>.

As described in that guidance, FDA adopted this process to develop and disseminate product-specific BE recommendations and to provide a meaningful opportunity for the public to consider and comment on those recommendations. This notice announces the availability of revised draft BE recommendations for generic cyclobenzaprine hydrochloride extended release capsules.

FDA initially approved new drug application 021777 for AMRIX (cyclobenzaprine hydrochloride) extended release capsules in February 2007. In August 2008, FDA issued a draft guidance for industry on BE recommendations for generic cyclobenzaprine hydrochloride extended release capsules. We are now issuing a revised draft guidance for industry on BE recommendations for generic cyclobenzaprine hydrochloride extended release capsules ("Draft Guidance on Cyclobenzaprine Hydrochloride").

In June 2016, Teva Pharmaceuticals Industries, Ltd. and its wholly-owned subsidiaries, Teva Pharmaceuticals International GmbH, Teva Pharmaceuticals USA, Inc., Teva Sales and Marketing, Inc., Teva Branded Pharmaceutical Products R&D, Inc., and Cephalon, Inc., submitted a citizen petition requesting that FDA take several actions with respect to ANDAs for cyclobenzaprine hydrochloride extended release oral capsules, including regarding the demonstration of BE for any ANDA referencing AMRIX. FDA has reviewed the issues raised in this citizen petition and is responding to the citizen petition separately in the docket for that citizen

petition (Docket No. FDA-2016-P-1873, available at <https://www.regulations.gov/>).

This revised 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 the design of BE studies to support ANDAs for cyclobenzaprine hydrochloride extended release capsules. 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 revised draft guidance at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <https://www.regulations.gov/>.

Dated: November 18, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016-28334 Filed 11-23-16; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2016-N-0001]

### Request for Nominations on the Blood Products Advisory Committee

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of a nonvoting industry representative to serve on the Blood Products Advisory Committee for the Center for Biologics Evaluation and Research (CBER) notify FDA in writing. FDA is also requesting nominations for a nonvoting industry representative(s) to serve on the Blood Products Advisory Committee. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

**DATES:** Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to

FDA by December 23, 2016. See sections I and II of this document for further details. Concurrently, nomination materials for prospective candidates should be sent to FDA by December 23, 2016.

**ADDRESSES:** All statements of interest from industry organizations that wish to participate in the selection process of nonvoting industry representative nomination should be sent to Bryan Emery (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives may be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal: <https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm> or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993-0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's Web site <http://www.fda.gov/AdvisoryCommittees/default.htm>.

**FOR FURTHER INFORMATION CONTACT:** Bryan Emery, Division of Scientific Advisors and Consultants, CBER, 10903 New Hampshire Ave., Bldg. 71, Rm. 6128, Silver Spring, MD 20993-0002, 240-402-8054, Fax: 301-595-1307, email: [bryan.emery@fda.hhs.gov](mailto:bryan.emery@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** The Agency intends to add a nonvoting industry representative(s) to the following advisory committee:

#### I. CBER Blood Products Advisory Committee

The Committee reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood; products derived from blood and serum or biotechnology intended for use in the diagnosis, prevention, or treatment of human diseases; and, as required, any other product for which FDA has regulatory responsibility. The Committee then advises the Commissioner of Food and Drugs of its findings regarding screening, testing, and labeling of products on clinical and laboratory studies involving such products on the affirmation or revocation of biological products licenses, as well as on the quality and relevance of FDA's research program that provides the scientific support for regulating these agents. The Committee will function at times as a medical device panel under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) Medical Device Amendments of 1976. As such, the Committee: (1)

Recommends classification of devices subject to its review into regulatory categories, (2) recommends the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, (3) advises on formulation of product development protocols and reviews premarket approval applications for those devices to recommend changes in classification as appropriate, (4) recommends exemption of certain devices from the application of portions of the FD&C Act, (5) advises on the necessity to ban a device, and (6) responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

#### II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

#### III. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current curriculum vitae, and the name of the committee of interest should be sent to the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process).

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: November 18, 2016.

**Janice M. Soreth,**

*Associate Commissioner, Special Medical Programs.*

[FR Doc. 2016-28306 Filed 11-23-16; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel; Time Sensitive R21 Application Review Group.

*Date:* December 9, 2016.

*Time:* 1:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIEHS/National Institutes of Health, Keystone Building, Room 1002, 530 Davis Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

*Contact Person:* Laura A. Thomas.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 18, 2016.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-28301 Filed 11-23-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Neurological Disorders and Stroke; Notice of 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 National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Neurological Disorders and Stroke Council.

*Date:* February 9–10, 2017.

*Open:* February 9, 2017, 8:00 a.m. to 3:30 p.m.

*Agenda:* Report by the Director, NINDS; Report by the Director, Division of Extramural Research; and Administrative and Program Developments.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

*Closed:* February 9, 2017, 3:30 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

*Closed:* February 10, 2017, 8:00 a.m. to 11:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* Robert Finkelstein, Ph.D., Director, Division of Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496-9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.ninds.nih.gov>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: November 18, 2016.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-28303 Filed 11-23-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Social and Behavioral Influences on HIV Prevention and Treatment.

*Date:* December 6, 2016.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Shalanda A. Bynum, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, Bethesda, MD 20892, 301-755-4355, [bynumsa@csr.nih.gov](mailto:bynumsa@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Program Projects: Community Prevention of HIV/AIDS.

*Date:* December 7, 2016.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435-1166, [roebuckk@csr.nih.gov](mailto:roebuckk@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR14-066: Limited competition: Specific Pathogen Free macaque colonies (U42).

*Date:* December 7, 2016.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, 301-451-2796, [bdey@mail.nih.gov](mailto:bdey@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Fogarty HIV Research Training Program for Low- and Middle-Income Country Institutions.

*Date:* December 9, 2016.

*Time:* 8:00 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Shalanda A. Bynum, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, Bethesda, MD 20892, 301-755-4355, [bynumsa@csr.nih.gov](mailto:bynumsa@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: HIV/AIDS Innovative Research Applications.

*Date:* December 9, 2016.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301-435-1775, [rubertm@csr.nih.gov](mailto:rubertm@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 18, 2016.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016-28302 Filed 11-23-16; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2016-0002]

#### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final Notice.

**SUMMARY:** New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance

premium rates for new buildings and their contents.

**DATES:** The effective date for each LOMR is indicated in the table below.

**ADDRESSES:** Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov).

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbibit@fema.dhs.gov](mailto:patrick.sacbibit@fema.dhs.gov); or visit the FEMA Map Information eXchange (FMIX) online at [www.floodmaps.fema.gov/fhm/fmx\\_main.html](http://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The

changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov).

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: October 31, 2016.

**Roy E. Wright,**

*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Arizona: Mohave (FEMA Docket No.: B-1640).	City of Lake Havasu (16-09-1124P).	The Honorable Mark S. Nexsen, Mayor, City of Lake Havasu, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	City Hall, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	Sep. 15, 2016 .....	040116
California:					
Los Angeles (FEMA Docket No.: B-1640).	City of Los Angeles (16-09-1177P).	The Honorable Eric Garcetti, Mayor, City of Los Angeles, 200 North Spring Street, Los Angeles, CA 90012.	Department of Public Works, 1149 South Broadway, Suite 700, Los Angeles, CA 90015.	Sep. 30, 2016 .....	060137
Los Angeles (FEMA Docket No.: B-1640).	City of Los Angeles (16-09-1249P).	The Honorable Eric Garcetti, Mayor, City of Los Angeles, 200 North Spring Street, Los Angeles, CA 90012.	Department of Public Works, 1149 South Broadway, Suite 700, Los Angeles, CA 90015.	Sep. 28, 2016 .....	060137
Idaho: Ada (FEMA Docket No.: B-1633).	Unincorporated Areas of Ada County (15-10-1460P).	Mr. Jim Tibbs, Chairman, Board of County Commissioners, Ada County, 200 West Front Street, 3rd Floor, Boise, ID 83702.	Ada County Courthouse, 200 West Front Street, Boise, ID 83702.	Mar. 9, 2016 .....	160001
Illinois:					
Cook (FEMA Docket No.: B-1641).	Village of Elmwood Park (15-05-7561P).	The Honorable Angelo Saviano, Village President, Elmwood Park, Elmwood Park Village Hall, 11 Conti Parkway, Elmwood Park, IL 60707.	Village Hall, 11 Conti Parkway, Elmwood Park, IL 60707.	Sep. 28, 2016 .....	170089
Cook (FEMA Docket No.: B-1641).	Village of River Grove (15-05-7561P).	The Honorable Marilyn J. May, Village President, Village of River Grove, 2621 North Thatcher Avenue, River Grove, IL 60171.	Village Hall, Administrative Offices, 2621 North Thatcher Avenue, River Grove, IL 60171.	Sep. 28, 2016 .....	170152
Douglas (FEMA Docket No.: B-1633).	City of Tuscola (16-05-0749P).	The Honorable Daniel J. Kleiss, Mayor, City of Tuscola, 214 North Main Street, Tuscola, IL 61953.	City Hall, 214 North Main Street, Tuscola, IL 61953.	Aug. 25, 2016 .....	170195
Douglas (FEMA Docket No.: B-1633).	Unincorporated Areas of Douglas County (16-05-0749P).	The Honorable Don Munson, Chairman, Douglas County Board, Douglas County Courthouse, 401 South Center Street, Tuscola, IL 61953.	Douglas County Courthouse, 401 South Center Street, Tuscola, IL 61953.	Aug. 25, 2016 .....	170194
Peoria (FEMA Docket No.: B-1633).	City of Peoria (15-05-6957P).	The Honorable Jim Ardis, Mayor, City of Peoria, 419 Fulton Street, Suite 401, Peoria, IL 61602.	Public Works Department, 3505 North Dries Lane, Peoria, IL 61604.	Sept. 16, 2016 .....	170536
Will (FEMA Docket No.: B-1641).	City of Joliet (16-05-2519P).	The Honorable Robert O'Dekirk, Mayor, City of Joliet, 150 West Jefferson Street, Joliet, IL 60432.	City Hall, 150 West Jefferson Street, Joliet, IL 60432.	Sept. 16, 2016 .....	170702
Iowa:					
Franklin (FEMA Docket No.: B-1633).	City of Sheffield (16-07-1093X).	The Honorable Nick Wilson, Mayor, City of Sheffield, City Hall, 110 South 3rd Street, P.O. Box 252, Sheffield, IA 50475.	City Hall, 110 South 3rd Street, Sheffield, IA 50475.	Aug. 26, 2016 .....	190132
Polk (FEMA Docket No.: B-1633).	City of Grimes (15-07-2236P).	The Honorable Thomas Armstrong, Mayor, City of Grimes, City Hall, 101 Northeast Harvey Street, Grimes, IA 50111.	City Hall, 101 North East Harvey Street, Grimes, IA 50111.	Aug. 16, 2016 .....	190228
Polk (FEMA Docket No.: B-1633).	Unincorporated Areas of Polk County (15-07-2236P).	Mr. Tom Hockensmith, Board of Supervisors, Polk County, Polk County Administration Building, 111 Court Avenue, Suite 300, Des Moines, IA 50309.	Polk County Public, Works, 5885 North East, 14th Street, Des Moines, IA 50313.	Aug. 16, 2016 .....	190901
Missouri:					
St. Louis (FEMA Docket No.: B-1633).	City of Chesterfield (16-07-0481P).	The Honorable Bob Nation, Mayor, City of Chesterfield, 690 Chesterfield Parkway West, Chesterfield, MO 63017.	City Hall, 690 Chesterfield Parkway West, Chesterfield, MO 63017.	Aug. 19, 2016 .....	290896
St. Louis (FEMA Docket No.: B-1633).	City of Wildwood (16-07-0481P).	The Honorable Timothy Woerther, Mayor, City of Wildwood, City Hall, 16860 Main Street, Wildwood, MO 63040.	City Hall, 16860 Main Street, Wildwood, MO 63040.	Aug. 19, 2016 .....	290922
Nevada: Clark (FEMA Docket No.: B-1640).	Unincorporated Areas of Clark County (16-09-0249P).	The Honorable Steve Sisolak, Chairman, Board of Supervisors, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106.	Office of the Director of Public Works, 500 South Grand Central Parkway, Las Vegas, NV 89155.	Sep. 22, 2016 .....	320003
New Jersey: Passaic (FEMA Docket No.: B-1633).	Borough of Bloomingdale (16-02-0098P).	The Honorable Jonathan Dunleavy, Mayor, Borough of Bloomingdale, 101 Hamburg Turnpike, Bloomingdale, NJ 07403.	Bloomingdale Borough Hall, 101 Hamburg Turnpike, Bloomingdale, NJ 07403.	Aug. 23, 2016 .....	345284
New York: Cortland (FEMA Docket No.: B-1626).	Town of Scott (16-02-0318P).	Mr. Kevin Fitch, Town Supervisor, Town of Scott, Town Hall, 6689 NYS Route 41, Homer, NY 13077.	Town Hall, 6689 NYS Route 41, Homer, NY 13077.	Aug. 12, 2016 .....	361328

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Ohio:					
Cuyahoga (FEMA Docket No.: B-1641P).	City of Strongsville (16-05-2288P).	The Honorable Thomas, P. Perciak, Mayor, City of Strongsville, City Hall, 16099 Foltz Parkway, Strongsville, OH 44149.	City Hall, 16099 Foltz Parkway, Strongsville, OH 44149.	Sep. 29, 2016 .....	390132
Lucas (FEMA Docket No.: B-1633).	City of Oregon (16-05-1552P).	The Honorable Michael J. Seferian, Mayor, City of Oregon, 5330 Seaman Road, Oregon, OH 43616.	City Hall, 5330 Seaman Road, Oregon, OH 43616.	Sep. 13, 2016 .....	390361
Tuscarawas (FEMA Docket No.: B-1633).	Village of Zoar (16-05-2633P).	The Honorable Scott Gordon, Mayor, Village of Zoar, 250 North Main Street, P.O. Box 544, Zoar, OH 44697.	County Administrative Offices, 125 East High Avenue, New Philadelphia, OH 44663.	Sep. 9, 2016 .....	390752
Warren (FEMA Docket No.: B-1633).	Unincorporated Areas of Warren County (15-05-6683P).	The Honorable Pat South, Chairperson, Warren County Board of County Commissioners, 406 Justice Drive, 1st Floor, Lebanon, OH 45036.	Warren County Administration Building, 406 Justice Drive, Room 167, Lebanon, OH 45036.	Aug. 29, 2016 .....	390757
Oregon:					
Jackson (FEMA Docket No.: B-1633).	City of Central Point (16-10-0502P).	The Honorable Hank Williams, Mayor, City of Central Point, 140 South 3rd Street, Central Point, OR 97502.	City of Central Point, 140 South 3rd Street, Central Point, OR 97502.	Sep. 14, 2016 .....	410092
Jackson (FEMA Docket No.: B-1633).	Unincorporated Areas of Jackson County (16-10-0502P).	Mr. Don Skundrick, Jackson County Commissioner, 10 South Oakdale Avenue, Room 100, Medford, OR 97501.	Jackson County Roads, Parks and Planning Services, 10 South Oakdale Avenue, Medford, OR 97501.	Sep. 14, 2016 .....	415589
Multnomah (FEMA Docket No.: B-1626).	City of Portland (16-10-0674P).	The Honorable Charlie Hales, Mayor, City of Portland, 1221 Southwest 4th Avenue, Room 340, Portland, OR 97204.	Bureau of Environmental Services, 1221 Southwest 4th Avenue, Room 230, Portland, OR 97204.	Aug. 12, 2016 .....	410183
Washington (FEMA Docket No.: B-1626).	City of Beaverton (15-10-1269P).	The Honorable Denny Doyle, Mayor, City of Beaverton, The Beaverton Building, 12725 Southwest Millikan Way, Beaverton, OR 97005.	City Hall Planning & Engineering Department, 12725 Southwest Millikan Way, Beaverton, OR 97005.	Aug. 19, 2016 .....	410240
Texas:					
Dallas (FEMA Docket No.: B-1633).	City of Grand Prairie (16-06-1079P).	The Honorable Ron Jensen, Mayor, City of Grand Prairie, 317 West College Street, P.O. Box 534045, Grand Prairie, TX 75053.	City Development Center, 206 West Church Street, Grand Prairie, TX 75050.	Sep. 12, 2016 .....	485472
Dallas (FEMA Docket No.: B-1633).	City of Irving (16-06-1079P).	The Honorable Beth Van Duyne, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	Public Works Department, 825 West Irving Boulevard, Irving, TX 75060.	Sep. 12, 2016 .....	480180
Tarrant (FEMA Docket No.: B-1641).	City of Fort Worth (16-06-1158P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 1000 Throckmorton Street, Fort Worth, TX 76102.	Sep. 30, 2016 .....	480596
Washington: Spokane (FEMA Docket No.: B-1633).	Unincorporated Areas of Spokane County (16-10-0312P).	The Honorable Nancy McLaughlin, County Commissioner, Spokane County, Spokane County Courthouse, 1116 West Broadway Avenue, Spokane, WA 99260.	Public Works Building, 1026 West Broadway Avenue, Spokane, WA 99260.	Aug. 26, 2016 .....	530174
Wisconsin:					
Dane (FEMA Docket No.: B-1633).	City of Madison (16-05-1781P).	The Honorable Paul R. Soglin, Mayor, City of Madison, Mayor's Office, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.	City Hall, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.	Sep. 14, 2016 .....	550083
Dane (FEMA Docket No.: B-1633).	Unincorporated Areas of Dane County (16-05-1781P).	The Honorable Joe Parisi, Dane County Executive, City-County Building, 210 Martin Luther King Jr. Boulevard, Room 421, Madison, WI 53703.	City-County Building, 210 Martin Luther King Jr. Boulevard, Room 116, Madison, WI 53703.	Sep. 14, 2016 .....	550077
Milwaukee (FEMA Docket No.: B-1633).	City of Milwaukee (16-05-0269P).	The Honorable Tom Barrett, Mayor, City of Milwaukee, 200 East Wells Street, Room 201, Milwaukee, WI 53202.	City Hall, 200 East Wells Street, Milwaukee, WI 53202.	Sep. 23, 2016 .....	550278
Milwaukee (FEMA Docket No.: B-1633).	City of Oak Creek (16-05-0269P).	The Honorable Stephen Scaffidi, Mayor, City of Oak Creek, 8040 South 6th Street, Oak Creek, WI 53154.	City Hall, 8640 South Howell Avenue, Oak Creek, WI 53154.	Sep. 23, 2016 .....	550279
Waukesha (FEMA Docket No.: B-1626).	City of Brookfield (16-05-2092P).	The Honorable Steven V. Ponto, Mayor, City of Brookfield, 2000 North Calhoun Road, Brookfield, WI 53005.	City Hall, 2000 North Calhoun Road, Brookfield, WI 53005.	Aug. 12, 2016 .....	550478

[FR Doc. 2016-28345 Filed 11-23-16; 8:45 am]

BILLING CODE 9110-12-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID FEMA-2016-0002]

**Final Flood Hazard Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final Notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium

rates for buildings and the contents of those buildings.

**DATES:** The effective date of October 2, 2015 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov) by the effective date indicated above.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbibit@fema.dhs.gov](mailto:patrick.sacbibit@fema.dhs.gov); or visit the FEMA Map Information eXchange (FMIX) online at [www.floodmaps.fema.gov/fhm/fmx\\_main.html](http://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these

changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov).

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below. (Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: October 31, 2016.

**Roy E. Wright,**  
*Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

I. Non-watershed-based studies:

Community	Community map repository address
<b>Sonoma County, California and Incorporated Areas</b> <b>Docket No.: FEMA-B-1440</b>	
City of Petaluma .....	Community Development Department, 11 English Street, Petaluma, CA 94952.
Unincorporated Areas of Sonoma County .....	Permit and Resource Management, 2550 Ventura Avenue, Santa Rosa, CA 95403.

[FR Doc. 2016-28357 Filed 11-23-16; 8:45 am]  
**BILLING CODE 9110-12-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-3378-EM; Docket ID FEMA-2016-0001]

**South Carolina; Amendment No. 1 to Notice of an Emergency Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of South Carolina (FEMA-3378-

EM), dated October 6, 2016, and related determinations.

**DATES:** *Effective Date:* October 30, 2016.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective October 30, 2016.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to

Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**  
*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016-28351 Filed 11-23-16; 8:45 am]

**BILLING CODE 9111-23-P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4290-DR; Docket ID FEMA-2016-0001]

**Minnesota; Major Disaster and Related Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA-4290-DR), dated November 2, 2016, and related determinations.

**DATES:** *Effective Date:* November 2, 2016.

**FOR FURTHER INFORMATION CONTACT:**

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated November 2, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Minnesota resulting from severe storms and flooding during the period of September 21-24, 2016, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, David G. Samaniego, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Minnesota have been designated as adversely affected by this major disaster:

Blue Earth, Fillmore, Freeborn, Goodhue, Houston, Le Sueur, Rice, Steele, and Waseca Counties for Public Assistance.

All areas within the State of Minnesota are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidially Declared Disaster Areas; 97.049, Presidially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016-28354 Filed 11-23-16; 8:45 am]

**BILLING CODE 9111-23-P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4287-DR; Docket ID FEMA-2016-0001]

**Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA-4287-DR), dated October 20, 2016, and related determinations.

**DATES:** *Effective Date:* November 15, 2016.

**FOR FURTHER INFORMATION CONTACT:**

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 20, 2016.

Phillips County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidially Declared Disaster Areas; 97.049, Presidially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016-28348 Filed 11-23-16; 8:45 am]

**BILLING CODE 9111-23-P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4286-DR; Docket ID FEMA-2016-0001]

**South Carolina; Amendment No. 7 to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA-4286-DR), dated October 11, 2016, and related determinations.

**DATES:** *Effective Date:* October 30, 2016.

**FOR FURTHER INFORMATION CONTACT:**

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective October 30, 2016.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora

Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016–28352 Filed 11–23–16; 8:45 am]

**BILLING CODE 9111–23–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4283–DR; Docket ID FEMA–2016–0001]

**Florida; Amendment No. 7 to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4283–DR), dated October 8, 2016, and related determinations.

**DATES:** Effective Date: November 4, 2016.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 8, 2016.

Broward, Orange, and Osceola Counties for Public Assistance, including direct federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially

Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016–28356 Filed 11–23–16; 8:45 am]

**BILLING CODE 9111–23–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4291–DR; Docket ID FEMA–2016–0001]

**Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4291–DR), dated November 2, 2016, and related determinations.

**DATES:** *Effective Date:* October 15, 2016.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.  
**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective October 15, 2016.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2016–28347 Filed 11–23–16; 8:45 am]

**BILLING CODE 9111–23–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4291–DR; Docket ID FEMA–2016–0001]

**Virginia; Major Disaster and Related Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–4291–DR), dated November 2, 2016, and related determinations.

**DATES:** *Effective Date:* November 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated November 2, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from Hurricane Matthew during the period of October 7, 2016, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing

Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Donald L. Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Virginia have been designated as adversely affected by this major disaster:

The independent cities of Chesapeake, Newport News, Norfolk, and Virginia Beach for Individual Assistance.

All areas within the Commonwealth of Virginia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**  
Administrator, Federal Emergency Management Agency.

[FR Doc. 2016-28350 Filed 11-23-16; 8:45 am]

**BILLING CODE 9111-23-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID FEMA-2016-0002]

**Final Flood Hazard Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final notice.

**SUMMARY:** Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

**DATES:** The effective date of March 21, 2017 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

**ADDRESSES:** The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov) by the effective date indicated above.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibt, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbibt@fema.dhs.gov](mailto:patrick.sacbibt@fema.dhs.gov); or visit the FEMA Map Information eXchange (FMIX) online at [www.floodmaps.fema.gov/fhm/fmx\\_main.html](http://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov).

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below. (Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: October 31, 2016.

**Roy E. Wright,**  
Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

**I. Watershed-Based Studies**

Community	Community map repository address
<b>Lower Missouri-Moreau Watershed</b>	
<b>Howard County, Missouri and Incorporated Areas Docket No.: FEMA-B-1602</b>	
City of Franklin .....	City Hall, 410 Crews Avenue, Franklin, MO 65250.
City of Glasgow .....	City Hall, 100 Market Street, Glasgow, MO 65254.
City of New Franklin .....	City Hall, 130 East Broadway, New Franklin, MO 65274.
Unincorporated Areas of Howard County .....	County Courthouse, 1 Courthouse Square, Fayette, MO 65248.

Community	Community map repository address
<b>Crosswicks-Neshaminy Watershed</b>	
<b>Bucks County, Pennsylvania (All Jurisdictions)</b> <b>Docket No.: FEMA-B-1539</b>	
Borough of Bristol .....	Municipal Building, 250 Pond Street, Bristol, PA 19007.
Borough of Chalfont .....	Borough Hall, 40 North Main Street, Chalfont, PA 18914.
Borough of Doylestown .....	Borough Hall, 57 West Court Street, Doylestown, PA 18901.
Borough of New Britain .....	Municipal Building, 45 Keeley Avenue, New Britain, PA 18901.
Borough of Newtown .....	Pickering, Corts & Summerson, 642 Newtown-Yardley Road, Suite 300, Newtown, PA 18940.
Borough of Tullytown .....	Municipal Building, 500 Main Street, Tullytown, PA 19007.
Township of Bensalem .....	Township Building, 2400 Byberry Road, Bensalem, PA 19020.
Township of Bristol .....	Township Municipal Complex, 2501 Bath Road, Bristol, PA 19007.
Township of Buckingham .....	Township Zoning Office, 4613 Hughesian Drive, Buckingham, PA 18912.
Township of Doylestown .....	Township Administration Building, 425 Wells Road, Doylestown, PA 18901.
Township of Falls .....	Falls Township Building, 188 Lincoln Highway, Suite 100, Fairless Hills, PA 19030.
Township of Middletown .....	Middletown Township Municipal Center, 3 Municipal Way, Langhorne, PA 19047.
Township of New Britain .....	New Britain Township Municipal Building, 207 Park Avenue, Chalfont, PA 18914.
Township of Newtown .....	Township Building, 100 Municipal Drive, Newtown, PA 18940.
Township of Northampton .....	Northampton Township Administrative Building, 55 Township Road, Richboro, PA 18954.

II. Non-Watershed-Based Studies:

Community	Community map repository address
<b>Contra Costa County, California and Incorporated Areas</b> <b>Docket No.: FEMA-B-1540</b>	
City of Antioch .....	Engineering and Development Services Division, 200 H Street, Antioch, CA 94509.
City of Brentwood .....	Community Development, Building Division, 150 City Park Way, Brentwood, CA 94513.
City of Clayton .....	City Engineer, 1470 Civic Court, Suite 320, Concord, CA 94520.
City of Concord .....	Floodplain Administrator/City Engineer, 1950 Parkside Drive MS/52, Concord, CA 94519.
City of Hercules .....	Engineering Department, 111 Civic Drive, Hercules, CA 94547.
City of Lafayette .....	Planning Office, Suite 210, 3675 Mount Diablo Boulevard, Lafayette, CA 94549.
City of Martinez .....	Engineering Department, 525 Henrietta Street, Martinez, CA 94553.
City of Oakley .....	Public Works and Engineering, 3231 Main Street, Oakley, CA 94561.
City of Pinole .....	Public Works Department, 2131 Pear Street, Pinole, CA 94564.
City of Pittsburg .....	Engineering Record Section, City Hall, 65 Civic Avenue, Pittsburg, CA 94565.
City of Richmond .....	Engineering Division, 450 Civic Center Plaza, Richmond, CA 94804.
City of San Pablo .....	Planning/Zoning, 13831 San Pablo Avenue, San Pablo, CA 94806.
City of Walnut Creek .....	Public Works Department, Engineering Division, 1666 North Main Street, Walnut Creek, CA 94596.
Town of Danville .....	Engineering Department, 510 La Gonda Way, Danville, CA 94526.
Unincorporated Areas of Contra Costa County .....	Public Works Department, 255 Glacier Drive, Martinez, CA 94553.

**Bolivar County, Mississippi and Incorporated Areas**  
**Docket No.: FEMA-B-1345**

City of Cleveland .....	Community Development Department, 215 North Bayou Road, Cleveland, MS 38732.
City of Mound Bayou .....	City Hall, 106 Green Avenue, Mound Bayou, MS 38762.
City of Rosedale .....	City Hall, 304 Court Street, Rosedale, MS 38769.
City of Shaw .....	City Hall, 101 Faison Street, Shaw, MS 38773.
City of Shelby .....	City Hall, 305 3rd Street, Shelby, MS 38774.
Town of Alligator .....	Town Hall, 13 Lake Street, Alligator, MS 38720.
Town of Benoit .....	Town Hall, 114 West Preston Street, Benoit, MS 38725.
Town of Beulah .....	Town Hall, 205 South Front Street, Beulah, MS 38726.
Town of Boyle .....	Town Hall, 111 T.M. Jones Highway, Boyle, MS 38730.
Town of Duncan .....	Town Hall, 204 West Park South, Duncan, MS 38740.
Town of Gunnison .....	Town Hall, 404 Main Street, Gunnison, MS 38746.

Community	Community map repository address
Town of Merigold .....	Town Hall, 107 South Front Street, Merigold, MS 38759.
Town of Pace .....	Town Hall, 333 Jenny Washington Street, Pace, MS 38764.
Town of Renova .....	Town Hall, 5 2nd Street, Renova, MS 38732.
Town of Winstonville .....	Town Hall, 101 Osley Avenue, Winstonville, MS 38781.
Unincorporated Areas of Bolivar County .....	Bolivar County Administrator Office, 200 South Court Street, Cleveland, MS 38732.
<b>Berks County, Pennsylvania (All Jurisdictions)</b> <b>Docket No.: FEMA-B-1546</b>	
Borough of Bernville .....	Borough Hall, 6602 Bernville Road, Bernville, PA 19506.
Township of Jefferson .....	Jefferson Township Office Building, 5 Solly Lane, Bernville, PA 19506.
Township of Penn .....	Penn Township Municipal Building, 840 North Garfield Road, Bernville, PA 19506.
<b>Warren County, Pennsylvania (All Jurisdictions)</b> <b>Docket No.: FEMA-B-1543</b>	
Borough of Bear Lake .....	Borough of Bear Lake, Warren County Building, Henry R. Rouse Annex, 100 Dillon Drive, Youngsville, PA 16371.
Borough of Clarendon .....	Borough Building, 15 North Main Street, Clarendon, PA 16313.
Borough of Sugar Grove .....	Borough of Sugar Grove, Warren County Courthouse Office of Planning and Zoning, 204 4th Avenue, Warren, PA 16365.
Borough of Tidioute .....	Borough Maintenance Garage, 63 Grant Street, Tidioute, PA 16351.
Borough of Youngsville .....	Borough Building, 40 Railroad Street, Youngsville, PA 16371.
City of Warren .....	City Municipal Building, 318 West 3rd Avenue, Warren, PA 16365.
Township of Brokenstraw .....	Brokenstraw Township Building, 770 Rouse Avenue, Youngsville, PA 16371.
Township of Cherry Grove .....	Cherry Grove Fire Hall and Township Office, 6039 Cherry Grove Road, Clarendon, PA 16313.
Township of Columbus .....	Township Building, 44 North Street, Columbus, PA 16405.
Township of Conewango .....	Conewango Township Building, 4 Fireman Street, Warren, PA 16365.
Township of Deerfield .....	Deerfield Township Building, 4638 Morrison Run Road, Tidioute, PA 16351.
Township of Eldred .....	Eldred Township Building, 2915 Newton Road, Pittsfield, PA 16340.
Township of Elk .....	Elk Township Office, 3794 Cole Hill Road, Suite 1, Russell, PA 16345.
Township of Farmington .....	Farmington Township Office, 596 Fairbanks Road, Russell, PA 16345.
Township of Freehold .....	Freehold Township Building, 139 Lottsville Niobe Road, Bear Lake, PA 16402.
Township of Glade .....	Glade Township Municipal Building, 1285 Cobham Park Road, Warren, PA 16365.
Township of Limestone .....	Limestone Township Municipal Building, 16 Hill Drive, Tidioute, PA 16351.
Township of Mead .....	Mead Township Building, 119 Mead Boulevard, Clarendon, PA 16313.
Township of Pine Grove .....	Pine Grove Township Hall, 306 East Street, Russell, PA 16345.
Township of Pittsfield .....	Township Municipal Building, 488 Dalrymple Street, Pittsfield, PA 16340.
Township of Pleasant .....	Pleasant Township Municipal Building, 8 Chari Lane, Warren, PA 16365.
Township of Sheffield .....	Township Office, 20 Leather Street, Sheffield, PA 16347.
Township of Southwest .....	Township of Southwest, Warren County Courthouse Office of Planning and Zoning, 204 4th Avenue, Warren, PA 16365.
Township of Spring Creek .....	Township Building, 3811 Old Route 77, Spring Creek, PA 16436.
Township of Sugar Grove .....	Township Building, 195 Creek Road, Sugar Grove, PA 16350.
Township of Triumph .....	Triumph Township Building, 10390 Youngsville Road, Grand Valley, PA 16420.
Township of Watson .....	Watson Township Community Building, 2011 Route 337, Tidioute, PA 16351.

[FR Doc. 2016-28343 Filed 11-23-16; 8:45 am]

BILLING CODE 9110-12-P

**DEPARTMENT OF HOMELAND SECURITY****Transportation Security Administration**

[Docket No. TSA-2011-0008]

**Aviation Security Advisory Committee (ASAC) Meeting****AGENCY:** Transportation Security Administration, DHS.**ACTION:** Committee management; notice of Federal Advisory committee meeting.**SUMMARY:** The Transportation Security Administration (TSA) will hold a meeting of the Aviation Security Advisory Committee (ASAC) on Monday, December 5, 2016, to discuss issues listed in the "Meeting Agenda" section below. This meeting will be open to the public as stated in the **SUMMARY** section below.

**DATES:** The Committee will meet on Monday, December 5, 2016, from 1:00 p.m. to 4:00 p.m. This meeting may end early if all business is completed.

**ADDRESSES:** The meeting will be held at TSA Headquarters, 601 12th Street South, Arlington, VA 20598-6028.

We invite your comments on the items listed in the “Meeting Agenda” section below. You may submit comments on these items, identified by the TSA docket number to this action (Docket No. TSA-2011-0008), to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, using any one of the following methods:

*Electronically:* You may submit comments through the Federal eRulemaking portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Mail, In Person, or Fax:* Address, hand-deliver, or fax your written comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; fax (202) 493-2251. The Department of Transportation (DOT), which maintains and processes the TSA’s official regulatory dockets, will scan the submission and post it to FDMS.

For other applicable information on the meeting, comment submissions, facilities, or services, see the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Dean Walter, Aviation Security Advisory Committee Designated Federal Official, Transportation Security Administration (TSA-28), 601 South 12th Street, Arlington, VA 20598-6028, [ASAC@tsa.dhs.gov](mailto:ASAC@tsa.dhs.gov), 571-227-2645.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

TSA invites interested persons to participate in this action by submitting written comments, data, or views on the issues to be considered by the committee as listed in the “Meeting Summary” section below. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from the agenda items to be discussed at the meeting. See **ADDRESSES** above for information on where to submit comments.

Please identify the docket number at the beginning of your comments. TSA encourages commenters to provide their names and addresses. The most helpful comments reference a specific item of

the meeting agenda or document, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file all comments to our docket address, as well as items sent to the address or email under **FOR FURTHER INFORMATION CONTACT**, in the public docket, except for comments containing confidential information and Sensitive Security Information (SSI),<sup>1</sup> as that term is defined under 49 U.S.C. 114(r) and 49 CFR part 1520. Should you wish your personally identifiable information redacted prior to filing in the docket, please so state. TSA will consider all comments that are in the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. All comments, however, will become part of the committee record. The docket is available for public inspection before and after the comment closing date. Submit comments by November 28, 2016, on issues listed in the “Meeting Agenda” section below.

##### *Handling of Confidential or Proprietary Information and Sensitive Security Information Submitted in Public Comments*

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the action. Comments containing trade secrets, confidential commercial or financial information, or SSI should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

<sup>1</sup> “Sensitive Security Information” or “SSI” is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenters have submitted such documents. TSA may include a redacted version of the comment in the public docket. If an individual requests to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom of Information Act (5 U.S.C. 552) and DHS’s Freedom of Information Act regulation found in 6 CFR part 5.

##### *Reviewing Comments in the Docket*

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual who submitted the comment (or signed the comment, if an association, business, labor union, etc., submitted the comment). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit <http://DocketInfo.dot.gov>.

You may review TSA’s electronic public docket on the Internet at <http://www.regulations.gov>. In addition, DOT’s Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA’s public docket, you may visit this facility between 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, or call (202) 366-9826. This docket operations facility is located in the West Building Ground Floor, Room W12-140 at 1200 New Jersey Avenue SE., Washington, DC 20590.

##### **Availability of Committee Documents**

You can get an electronic copy using the Internet by—

(1) Searching for the key words “Aviation Security Advisory Committee” on the electronic Federal Docket Management System Web page at <http://www.regulations.gov>; or

(2) Accessing the Government Printing Office’s Web page at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR> to view the daily published **Federal Register** edition; or accessing the “Search the **Federal Register** by Citation” in the “Related Resources” column on the left, if you need to do a Simple or Advanced search for

information, such as a type of document that crosses multiple agencies or dates.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this action.

### Summary

Notice of this meeting is given in accordance with the Aviation Security Stakeholder Participation Act, codified at 49 U.S.C. 44946. Pursuant to 49 U.S.C. 44946(f), the Aviation Security Advisory Committee is exempt from the Federal Advisory Committee Act (5 U.S.C. App.). The committee provides advice and recommendations for improving aviation security measures to the Administrator of TSA.

The meeting will be open to the public and will focus on items listed in the "Meeting Agenda" section below. Members of the public, and all non-ASAC members and non-TSA staff must register in advance with their full name and date of birth to attend. Due to space constraints the meeting is limited to 75 people, including ASAC members and staff, on a first to register basis. Attendees are required to present government-issued photo identification to verify identity.

In addition, members of the public must make advance arrangements, as stated below, to present oral or written statements specifically addressing issues pertaining to the items listed in the "Meeting Agenda" section below. The public comment period will begin at approximately 3:00 p.m., depending on the meeting progress. Speakers are requested to limit their comments to three minutes. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than November 28, 2016, to register to attend the meeting and/or to present oral or written statements addressing issues pertaining to the items listed in the "Meeting Agenda" section below. Anyone in need of assistance or a reasonable accommodation for the meeting should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### Meeting Agenda

The Committee will meet to discuss items listed in the agenda below:

- Aviation Security Act implementation update:
  - Sec. 3304(a)(4): TSA Staffing and Resource Allocation—Best practices for checkpoint optimization
  - Sec. 3407(a): Inspections and Assessments—Model and best practices for unescorted access security

- Sec. 3501(a)–(c): Checkpoints of the Future—More efficient and effective passenger screening processes
- Subcommittee briefing on calendar year 2016 activities, key issues and areas of focus for calendar year 2017:
  - Commercial airports
  - International aviation
  - Air cargo
  - General aviation
  - Security Technology
- REAL ID Act of 2005 implementation update
- Discussion of the 2017 Committee Agenda

Dated: November 16, 2016.

**Eddie D. Mayenschein,**

*Assistant Administrator, Office of Security Policy and Industry Engagement.*

[FR Doc. 2016–28299 Filed 11–23–16; 8:45 am]

**BILLING CODE 9110–05–P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### Intent To Request Extension From OMB of One Current Public Collection of Information: Sensitive Security Information Threat Assessments

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 60-day notice.

**SUMMARY:** The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0042, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves TSA determining whether the party or representative of a party seeking access to sensitive security information (SSI) in a civil proceeding in Federal district court, or a prospective bidder seeking access to SSI for the purpose of perfecting a proposal in response to a TSA request for proposal, may be granted access to the SSI.

**DATES:** Send your comments by January 24, 2017.

**ADDRESSES:** Comments may be emailed to [TSAPRA@tsa.dhs.gov](mailto:TSAPRA@tsa.dhs.gov) or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

**FOR FURTHER INFORMATION CONTACT:** Christina Walsh at the above address, or by telephone (571) 227–2062.

### SUPPLEMENTARY INFORMATION:

#### Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at <http://www.reginfo.gov>. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

#### Information Collection Requirement

*OMB Control Number 1652–0042; Sensitive Security Information Threat Assessment.* TSA is seeking to renew the ICR, control number 1652–0042, for the maximum three-year period in order to continue compliance with sec. 525(d) of the Department of Homeland Security Appropriations Act, 2007 (Pub. L. 109–295, 120 Stat 1355, 1382, Oct. 4, 2006), as reenacted, and to continue the process TSA developed whereby a party seeking access to SSI in a civil proceeding in Federal district court who demonstrates a substantial need for relevant SSI in the preparation of the party's case, and who is unable without undue hardship to obtain the substantial equivalent of the information by other means, may request that the party or party's representative be granted conditional access to the SSI at issue in the case. The procedures also apply to witnesses retained by a party as experts or consultants and court reporters that are required to record or transcribe testimony containing specific SSI and do not have a current security threat clearance required for access to classified national security information as defined by E.O. 12958 as amended. The procedure is also used by a prospective bidder who is seeking to

submit a proposal in response to a request for proposal by TSA. The prospective bidder may request certain SSI to perfect their bid. Applicants seeking access to SSI in Federal district court litigation and the bidder will be required to complete TSA Form 2211 in order to have a security threat assessment completed before they can receive the requested SSI.

In order to determine if the individual may be granted access to SSI for this purpose, TSA will conduct a threat assessment that includes: (1) A fingerprint-based criminal history records check (CHRC), (2) a name-based check to determine whether the individual poses or is suspected of posing a threat to transportation or national security, including checks against terrorism, immigration, or other databases TSA maintains or uses; and (3) a professional responsibility check (for attorneys and court reporters).

TSA will use the information collected to conduct the security threat assessment for the purpose of determining whether the provision of such access to the information for the proceeding presents a risk of harm to the Nation. The results of the security threat assessment will be used to make a final determination on whether the individual may be granted access to the SSI at issue in the case or to perfect a bid to be submitted to TSA. TSA estimates that the total annual hour burden for this collection will be 127 hours, based on an estimated 127 annual respondents and a one-hour burden per respondent.

Dated: November 18, 2016.

**Joanna Johnson,**

*TSA Paperwork Reduction Act Officer, Office of Information Technology.*

[FR Doc. 2016-28294 Filed 11-23-16; 8:45 am]

BILLING CODE 9110-05-P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0049]

#### Agency Information Collection Activities: Request for Verification of Naturalization, Form N-25; Extension, Without Change, of a Currently Approved Collection

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 30-Day Notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and

Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on April 27, 2016 at 81 FR 24865, allowing for a 60-day public comment period. USCIS did receive 1 comment in connection with the 60-day notice.

**DATES:** The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 27, 2016. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Comments may also be submitted via fax at (202) 395-5806. (This is not a toll-free number.) All submissions received must include the agency name and the OMB Control Number 1615-0049.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529-2140, Telephone number (202) 272-8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at (800) 375-5283; TTY (800) 767-1833.

#### SUPPLEMENTARY INFORMATION:

##### Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2005-0036 in the search box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Verification of Naturalization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N-25; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local or Tribal Government. This form will allow U.S. Citizenship and Immigration Services (USCIS) to obtain verification from the courts that a person claiming to be a naturalized citizen has, in fact, been naturalized.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N-25 is 1,000 and the estimated hour burden per response is .25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 250 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$500.00.

Dated: November 9, 2016.

**Samantha Deshommnes,**

Chief, Regulatory Coordination Division,  
Office of Policy and Strategy, U.S. Citizenship  
and Immigration Services, Department of  
Homeland Security.

[FR Doc. 2016-28279 Filed 11-23-16; 8:45 am]

BILLING CODE 9111-97-P

**DEPARTMENT OF HOMELAND  
SECURITY**

**U.S. Citizenship and Immigration  
Services**

[OMB Control Number 1615-0030]

**Agency Information Collection  
Activities: Application for Waiver of the  
Foreign Residence Requirement of  
Section 212(e) of the Immigration and  
Nationality Act, Form I-612; Revision  
of a Currently Approved Collection.**

**AGENCY:** U.S. Citizenship and  
Immigration Services, Department of  
Homeland Security.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until January 24, 2017.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615-0030 in the body of the letter, the agency name and Docket ID USCIS-2008-0012. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at <http://www.regulations.gov> under e-Docket ID number USCIS-2008-0012;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529-2140.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division,

Samantha Deshommnes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529-2140, telephone number 202-272-8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at 800-375-5283 (TTY 800-767-1833).

**SUPPLEMENTARY INFORMATION:**

**Comments**

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2008-0012 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer at <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Overview of This Information Collection*

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-612; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection is necessary and may be submitted only by an alien who believes that compliance with foreign residence requirements would impose exceptional hardship on his or her spouse or child who is a citizen of the United States, or a lawful permanent resident; or that returning to the country of his or her nationality or last permanent residence would subject him or her to persecution on account of race, religion, or political opinion. Certain aliens admitted to the United States as exchange visitors are subject to the foreign residence requirements of section 212(e) of the Immigration and Nationality Act (the Act). Section 212(e) of the Act also provides for a waiver of the foreign residence requirements in certain instances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-612 is 736 and the estimated hour burden per response is .333 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 245 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$90,160.

Dated: November 9, 2016.

**Samantha Deshommnes,**

Chief, Regulatory Coordination Division,  
Office of Policy and Strategy, U.S. Citizenship  
and Immigration Services, Department of  
Homeland Security.

[FR Doc. 2016-28278 Filed 11-23-16; 8:45 am]

BILLING CODE 9111-97-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5909-N-80]

**30-Day Notice of Proposed Information Collection: Disaster Recovery Grant Reporting System**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* December 27, 2016.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email [Anna.P.Guido@hud.gov](mailto:Anna.P.Guido@hud.gov) or telephone 202-402-5535.

This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60

days was published on September 21, 2016 81 FR 64934.

**A. Overview of Information Collection**

*Title of Information Collection:* Disaster Recovery Grant Reporting System.

*OMB Approval Number:* 2506-0165.  
*Type of Request:* Revision of currently approved collection.

*Form Number:* SF-424 Application for Federal Assistance.

*Description of the need for the information and proposed use:* Disaster Recovery Grant Reporting (DRGR) System is a grants management system used by the Office of Community Planning and Development to monitor special appropriation grants under the Community Development Block Grant program. This collection pertains to Community Development Block Grant Disaster Recovery (CDBG-DR), Neighborhood Stabilization Program (NSP), Rural Capacity Building (RCB) for Community Development, and Affordable Housing Capacity Building for Affordable Housing and Community Development Program (Section 4 program) grant appropriations.

The CDBG program is authorized under Title I of the Housing and Community Development Act of 1974, as amended. Following major disasters, Congress appropriates supplemental CDBG funds for disaster recovery. According to Section 104(e)(1) of the Housing and Community Development Act of 1974, HUD is responsible for reviewing grantees' compliance with applicable requirements and their continuing capacity to carry out their programs. Grant funds are made available to states and units of general local government, Indian tribes, and insular areas, unless provided otherwise by supplemental appropriations statute, based on their unmet disaster recovery needs.

The Rural Capacity Building (RCB) Program enhances the capacity and ability of local governments, Indian tribes, housing development organizations, rural Community Development Corporations (CDCs), and

rural Community Housing Development Organizations (CHDOs), to carry out community development and affordable housing activities that benefit low- and moderate-income families and persons in rural areas. The original authorizing statute for the RCB program is the Consolidated and Further Continuing Appropriations Act, 2012, Public Law 112-55.

The Capacity Building for Affordable Housing and Community Development Program, also known as the Section 4 program, was originally authorized under Section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103-120, 107 Stat. 1148, 42 U.S.C. 9816 note), as amended. The program enhances the capacity and ability of community development corporations (CDCs) and community housing development organizations (CHDOs) to carry out community development and affordable housing activities that benefit low-income persons.

*Respondents:* DRGR is used to monitor CDBG-DR, NSP, NSP-TA, RCB and Section 4 grants, as well as several programs that do not fall under the Office of Block Grant Assistance. Separate information collections have been submitted and approved for these programs. CDBG-DR and NSP grant funds are made available to states and units of general local government, Indian tribes, and insular areas, unless provided otherwise by supplemental appropriations statute. NSP-TA grant funds are awarded on a competitive basis and are open to state and local governments, as well as non-profit groups and consortia that may include for-profit entities. RCB grants are competitively awarded to local governments, Indian tribes, housing development organizations, rural Community Development Corporations (CDCs), and rural Community Housing Development Organizations (CHDOs). Section 4 grant funds are directly awarded to grantees designated in the authorizing statute and subsequent appropriations.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
<b>CDBG-DR Non-Recurring</b>							
Published Action Plan ..	7	1	7	40.00	280.00	\$25.00	\$7,000.00
SF 424 .....	0	0	0	0.00	0.00	0.00	0.00
Procurement, Financial Controls and DOB documentation .....	7	1	7	6.00	42.00	25.00	1,050.00
Performance and Financial Projections ...	7	1	7	8.00	56.00	25.00	1,400.00
Grant Agreement (HUD 40092) .....	20	1	20	1.00	20.00	25.00	500.00

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Grantee's Written Agreements .....	20	1	20	5.00	100.00	25.00	2,500.00
DRGR Activation, Activity Set-Up and Completion .....	20	1	20	20.00	400.00	25.00	10,000.00
<b>CDBG-DR Recurring</b>							
Average Sized Grants Online Quarterly Reporting via DRGR .....	87	4	348	9.00	3,132.00	25.00	78,300.00
Large Grants Online Quarterly Reporting via DRGR .....	27	4	108	57.00	6,156.00	25.00	153,900.00
Average-sized grants online voucher submissions .....	87	61	5,307	0.22	1,168.00	25.00	29,189.00
Large-sized grants online voucher submission .....	27	947	25,569	0.37	9,460.53	25.00	236,513.25
CDBG-DR Subtotal .....	309	1,022	31,413	.....	20,814.07	25.00	520,351.75
<b>NSP Recurring</b>							
Online Quarterly Reporting via DRGR .....	617	4	2,468	4.00	9,872.00	25.00	246,800.00
DRGR voucher submissions .....	617	38	23,446	0.18	4,220.28	25.00	105,507.00
NSP Subtotal .....	1,234	42	25,914	4.18	14,092.28	25.00	352,307.00
<b>NSP3-TA Recurring</b>							
TA work plan submissions .....	12	5	60	8.00	480.00	25.00	12,000.00
DRGR voucher submissions .....	12	38	456	0.18	82.08	25.00	2,052.00
NSP3-TA Subtotal	24	43	516	8.18	562.00	25.00	14,052.00
<b>Rural Capacity and Section 4 Non-Recurring</b>							
DRGR Activation and Account Setup .....	8	1	8	2.00	16.00	35.00	560.00
Action Plan Setup and Submission .....	8	1	8	12.00	96.00	35.00	3,360.00
<b>Rural Capacity and Section 4 Recurring</b>							
Action Plan Revisions ..	16	2	32	0.50	16.00	35.00	560
Semi-Annual Report Submission .....	16	2	32	8.00	256.00	35.00	8,960
Voucher Submission ....	16	12	192	0.25	48.00	35.00	1,680
RCB and Section 4 Subtotal .....	64	18	272	22.75	432.00	.....	15,120
Total .....	1,534	1,125	58,115	N/A	35,900.35	Varies	901,830.75

## B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of

the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those

who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 18, 2016.

**Anna P. Guido,**

*Department Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 2016-28447 Filed 11-23-16; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5909-N-87]

### 30-Day Notice of Proposed Information Collection: Multifamily Project Construction Change

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* December 27, 2016.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:**

Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov) or telephone 202-402-3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 16, 2016 81 FR 63785.

### A. Overview of Information Collection

*Title of Information Collection:* Multifamily Request for Construction Change.

*OMB Approval Number:* 2502-0011.  
*Type of Request:* Extension of a currently approved collection.

*Form Number:* HUD-92437, HUD-92441, HUD-92442, HUD-92442-A, HUD-92442-CA, HUD-92442-A-CA.

*Description of the need for the information and proposed use:* The information collected on the Multifamily Request for Construction Change form provides HUD with information from contractors, mortgagors/borrowers, and mortgagees/lenders for construction of multifamily projects and to obtain approval of changes in previously approved contract drawings and/or specifications.

*Respondents:* (i.e. affected public): Business or other for-profit, Not-for-profit institutions, contractors, mortgagors/borrowers, and mortgagees/lenders.

*Estimated Number of Respondents:* 854.

*Estimated Number of Responses:* 854.

*Frequency of Response:* 1.

*Average Hours per Response:* 3.

*Total Estimated Burden:* 2,562.

### B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: Including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 21, 2016.

**Colette Pollard,**

*Department Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 2016-28441 Filed 11-23-16; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5909-N-86]

### 30-Day Notice of Proposed Information Collection: The Housing Counseling Federal Advisory Committee Membership Application

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* December 27, 2016.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:**

Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov) or telephone 202-402-3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 29, 2016 at FR 81 59237.

### A. Overview of Information Collection

*Title of Information Collection:* The Housing Counseling Federal Advisory Committee Membership Application.

*OMB Approval Number:* 2502-0606.  
*Type of Request:* Extension of a currently approved collection.

*Form Number:* HUD-90005 HCFAC.  
*Description of the need for the information and proposed use:* The

Housing Counseling Federal Advisory Committee (HCFAC) was created under the Dodd-Frank “Expand and Preserve Homeownership through Counseling Act” Public Law 111–203, title XIV, § 1441, July 21, 2010, 124 Stat. 2163 (Act), 42 U.S.C. 3533(g) to provide strategic planning and policy guidance to HUD on housing counseling issues. The Membership Application will be used to select the members of the HCFAC.

*Respondents:* (i.e. affected public); Not-for-profit institutions.

*Estimated Number of Respondents:* 162.

*Estimated Number of Responses:* 162.

*Frequency of Response:* Occasion or as needed.

*Average Hours per Response:* 90%.

*Total Estimated Burden:* 145.80.

## B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency’s estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: Including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 21, 2016.

**Colette Pollard,**

*Department Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 2016–28444 Filed 11–23–16; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–48]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), call the toll-free Title V information line at 800–927–7588 or send an email to [title5@hud.gov](mailto:title5@hud.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency’s needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for “off-site use only” recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human

Services, Room 12–07, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 or send an email to [title5@hud.gov](mailto:title5@hud.gov) for detailed instructions, or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (e.g., acreage, floor plan, condition of property, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following address(es): ARMY: Ms. Veronica Rines, Office of the Assistant Chief of Staff for Installation Management, Department of Army, Room 5A128, 600 Army Pentagon, Washington, DC 20310, (571) 256–8145; COE: Ms. Brenda Johnson-Turner, HQUSACE/CEMP–CR, 441 G Street NW., Washington, DC 20314, (202) 761–7238; (These are not toll-free numbers).

Dated: November 17, 2016.

**Brian P. Fitzmaurice,**

*Director, Division of Community Assistance,  
Office of Special Needs Assistance Programs.*

**TITLE V, FEDERAL SURPLUS  
PROPERTY PROGRAM FEDERAL  
REGISTER REPORT FOR 11/25/2016**

**Suitable/Available Properties**

*Building*

Alabama

4735; RPUID: 186113

Fort Rucker

Ft. Rucker AL 36362

Landholding Agency: Army

Property Number: 21201640006

Status: Unutilized

Comments: off-site removal only; no future agency need; 106 sq. ft.; relocation difficult due to type; 48+ months vacant; contact Army for accessibility and conditions.

Colorado

09301

Fort Carson

Ft. Carson CO 80913

Landholding Agency: Army

Property Number: 21201640001

Status: Underutilized

Comments: off-site removal only; 2,680 sq. ft.; relocation extremely difficult due to size/type; Administrative; 2+ months vacant; maintenance/repair needed; contact Army for more info.

Louisiana

00426; RPUID: 190313

Fort Polk

Ft. Polk LA 71459

Landholding Agency: Army

Property Number: 21201640002

Status: Underutilized

Comments: off-site removal only; no future agency need; 3,083 sq. ft.; relocation extremely difficult due to size/type; lodging; poor conditions; contact Army for more info.

00425; RPUID: 292914

Fort Polk

Ft. Polk LA 71459

Landholding Agency: Army

Property Number: 21201640003

Status: Underutilized

Comments: off-site removal only; no future agency need; 960 sq. ft.; relocation difficult due to type; lodging; poor conditions; contact Army for more info.

03603; RPUID: 293084

Fort Polk

Ft. Polk LA 71459

Landholding Agency: Army

Property Number: 21201640004

Status: Underutilized

Comments: off-site removal only; no future agency need; 1,932 sq. ft.; relocation difficult due to size/type; admin. office; contact Army for more info.

03602; RPUID: 293083

Fort Polk

Ft. Polk LA 71459

Landholding Agency: Army

Property Number: 21201640005

Status: Underutilized

Comments: off-site removal only; no future agency need; 1,932 sq. ft.; relocation

difficult due to size/type; poor conditions; contact Army for more info.

Minnesota

2 Buildings

Rusk County Veterans Memorial

Ladysmith MN 54848

Landholding Agency: Army

Property Number: 21201640010

Status: Excess

Directions: DY001-16,257 sq. ft. (225300);

DY002-2,280 sq. ft. (225301)

Comments: off-site removal only; relocation extremely difficult due to size/type; fair/poor conditions; contact Army for more info. on a specific property listed above.

Virginia

1201; RPUID: 572697

Fort A.P. Hill

Ft. A.P. Hill VA 22427

Landholding Agency: Army

Property Number: 21201640008

Status: Underutilized

Comments: off-site removal only; no future agency need; relocation extremely difficult due to size/type; airfield ops. bldg.; fair/poor conditions; contact Army for more info.

Wisconsin

5 Buildings

Milwaukee USARC/AMSA #49

Milwaukee WI 53218

Landholding Agency: Army

Property Number: 21201640011

Status: Unutilized

Directions: 00312-3,216 sq. ft. (968290); 00308-14,903 sq. ft. (968288); 00307-9,657 sq. ft. (968287); 00316-54 sq. ft. (587956); 00314-136 sq. ft. (621067)

Comments: off-site removal only; no future agency need; relocation extremely difficult for some due to size/type; poor conditions; contact Army for more info. on a specific property listed above.

**Unsuitable Properties**

*Building*

Nevada

10139; RPUID: 330786

Hawthorne Army Depot

Hawthorne NV 89415

Landholding Agency: Army

Property Number: 21201640007

Status: Unutilized

Comments: public access denied and no alternative method to gain access without compromising national security.

Reasons: Secured Area

North Carolina

9 Buildings

Fort Bragg

Ft Bragg NC 28310

Landholding Agency: Army

Property Number: 21201640013

Status: Unutilized

Directions: M1650-306646; M1750-298672; M2148-296765; 13151-608821; 86606-577995; 87006-604470; A2875-576093; D2612-600085; H5748-620204

Comments: public access denied and no alternative method to gain access without compromising national security.

Reasons: Secured Area

Oklahoma

2 Buildings

Hwy 9 East & Hwy 9 North

Stigler OK 74462

Landholding Agency: COE

Property Number: 31201640017

Status: Unutilized

Directions: NLC01; NLNC06

Comments: documented deficiencies: significant damage to structures; clear threat to physical safety.

Reasons: Extensive deterioration

Tennessee

5 Buildings

Fort Campbell

Ft. Campbell TN 42223

Landholding Agency: Army

Property Number: 21201640014

Status: Unutilized

Directions: 00712-610380; 03710-587231;

A7156-617910; 00176-567327; 00711-606990

Comments: public access denied and no alternative method to gain access without compromising national security.

Reasons: Secured Area

Texas

Building 11107

Biggs Army Airfield Flight line

Fort Bliss TX 79916

Landholding Agency: Army

Property Number: 21201640012

Status: Excess

Comments: public access denied and no alternative method to gain access without compromising national security.

Reasons: Secured Area

Vermont

2 Buildings

Ethan Allen AFB

Colchester VT 05446

Landholding Agency: Army

Property Number: 21201640009

Status: Underutilized

Directions: 02415 (370592); 02425 (370594)

Comments: documented deficiencies: holes in roof; cracks in walls; mostly likely to collapse; unsound foundation; clear threat to physical safety.

Reasons: Extensive deterioration

[FR Doc. 2016-28133 Filed 11-23-16; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[Docket No. FWS-R5-ES-2016-0135;  
FXES11120500000-167-FF05E00000]**

**Proposed Oil & Gas Coalition Multi-State Habitat Conservation Plan for Ohio, Pennsylvania, and West Virginia**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement; notice of public scoping meetings; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce our intent to prepare a draft environmental impact statement (EIS) for proposed issuance of an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act (ESA) for the draft Oil & Gas Coalition Multi-State Habitat Conservation Plan (O&G HCP). The O&G HCP is being developed to streamline environmental permitting and compliance with the ESA for nine companies in conjunction with their respective midstream and upstream oil and gas exploration, production, and maintenance activities in Ohio, Pennsylvania, and West Virginia over a 50-year period. We announce a public scoping period during which we invite input regarding development of the draft EIS, which will evaluate the impacts to the human environment associated with issuance of an ITP and implementation of the O&G HCP, and alternatives. We will hold public informational meetings and request comments during this public scoping period.

**DATES:** *Comment submission:* We will accept comments received or postmarked on or before December 27, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date.

*Public meetings:* The Service will host five public information and scoping meetings, as well as an informational webinar. Information about the scoping meetings and webinar is provided below in **SUPPLEMENTARY INFORMATION** under Scoping Meetings and also on the Service's project Web page: [www.fws.gov/northeast/ecologicalservices/hcp/oghcp.html](http://www.fws.gov/northeast/ecologicalservices/hcp/oghcp.html). Please note that the scoping meetings will be hosted by the Service in an open house format from 5:00 to 7:00 p.m. Eastern Time, with a presentation provided from 6:00 to 6:30 p.m. Eastern Time.

**ADDRESSES:** You may submit written comments by one of the following methods:

*Electronically:* Go to the Federal eRulemaking Portal Web site at: <http://www.regulations.gov>. In the Search box, enter FWS-R5-ES-2016-0135, which is the docket number for this notice. Click on the appropriate link to locate this document and submit a comment.

*By hard copy:* Submit by U.S. mail or hand-delivery to Public Comments Processing, Attn: FWS-R5-ES-2016-0135, Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg

Pike, ABHC-PPM; Falls Church, VA 22041-3803.

*At the scoping meetings:* You will have the opportunity to submit comments either electronically or in hard copy format at five public scoping meetings. The addresses for the meetings are set forth below in **SUPPLEMENTARY INFORMATION** under Scoping Meetings. Comment forms and a computer station will be available for use at the meeting venues.

We request that you send comments by only one of the methods described above. We will post all information received in the docket at <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:**

Pamela R. Shellenberger, by mail at U.S. Fish and Wildlife Service, 110 Radnor Rd, Suite 101, State College, PA 16801, or by telephone at (814) 234-4090, extension 7459. If you use a telecommunications device for the deaf, please call the Federal Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** The O&G HCP is being developed by a coalition of nine companies (collectively called "the companies") that individually conduct upstream and/or midstream oil and gas activities within the three-State plan area. The coalition members are: Antero Resources Corporation; Ascent Resources, LLC; Chesapeake Energy Corporation; EnLink Midstream L.P.; EQT Corporation; MarkWest Energy Partners, L.P., MPLX L.P., and Marathon Petroleum Corporation (all part of same corporate enterprise); Rice Energy, Inc.; Southwestern Energy Company; and The Williams Companies, Inc. The companies, which will be co-permittees, intend to seek ITP coverage because their respective oil and gas exploration, production, and maintenance activities have the potential to incidentally take species that are known to occur in the three-State plan area and that are protected by the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Therefore, the companies' ITP application will include a draft HCP that addresses these activities. The companies have indicated that they intend to request ITP coverage for five bat species: The endangered Indiana bat (*Myotis sodalis*), the threatened northern long-eared bat (*Myotis septentrionalis*), the little brown bat (*Myotis lucifugus*), the eastern small-footed bat (*Myotis leibii*), and the tri-colored bat (*Perimyotis subflavus*).

We publish this notice under the authority of the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4231 *et seq.*), its implementing regulations in the Code of Federal Regulations at 40 CFR 1501.7, 1506.6, and 1508.22 and the Department of the Interior's NEPA implementing regulations at 43 CFR 46.235, and pursuant to section 10(c) of the ESA. We intend to prepare a draft EIS to evaluate the impacts to the human environment associated with the companies' anticipated permit application and draft O&G HCP and several alternatives. In advance of receiving the companies' ITP application, the Service is providing this notice to request information from other agencies, Tribes, and the public on the scope of the Service's review as well as issues to consider in the NEPA analysis. The primary purpose of the scoping process is to allow the public, Tribes, and other agencies to provide input to the Service for development of the draft EIS by identifying important issues and alternatives related to the Service's proposed action (issuance of an ITP based on the companies' anticipated application and draft O&G HCP).

**Project Summary**

The companies' draft HCP is being prepared to streamline environmental permitting and compliance with the ESA in conjunction with their respective midstream and upstream oil and gas exploration, production, and maintenance activities in Ohio, Pennsylvania, and West Virginia. The geographic extent of the companies' activities within the three-State O&G HCP plan area over the requested 50-year permit term will in part be informed by predictive modeling.

Midstream and upstream oil and gas exploration, production, and maintenance activities will potentially affect covered species (see Covered Species, below) in the plan area. A model of the proposed covered activities will be used to estimate potential impacts to the covered species by overlaying the predicted covered activity implementation (including the type and location of infrastructure build-out) on the covered species' habitats. The draft HCP will include measures to ensure that impacts from incidental take of covered species and impacts to those species' habitats associated with the covered activities (see Covered Activities, below) will be minimized and mitigated to the maximum extent practicable.

## Background

Section 9 of the ESA prohibits “take” of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538, 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1532 (19)). The term “harm” is defined by regulation as an act which actually kills or injures wildlife. Such 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 (50 CFR 17.3). The term “harass” is defined in the regulations as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Pursuant to section 10(a)(1)(B) of the ESA, the Secretary of the Interior may issue permits to authorize “incidental take” of listed species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Service regulations governing permits for endangered species and threatened species, respectively, appear at 50 CFR 17.22 and 17.32. Section 10(a)(2)(B) of the ESA contains provisions for issuing an ITP to a non-Federal entity for the take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- The applicant will develop an HCP and ensure that adequate funding for the plan will be provided;
- The taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild; and
- The applicant will carry out any other measures that the Secretary may require as being necessary or appropriate for the purposes of the HCP.

## Plan Area

The companies’ oil and gas development activities will be conducted within a three-State plan area of Ohio, Pennsylvania, and West Virginia. This plan area was developed to ensure that the natural resources that

might be affected by covered activities can be adequately assessed at a regional scale and that sufficient mitigation opportunities are available. The companies intend that any resulting permit will cover their activities wherever they may occur within the three-State area, though the draft plan may identify a subset of that area where certain activities may or may not occur.

## Covered Activities

The companies intend to develop an HCP to address their oil and gas exploration, production, and maintenance activities that will occur in the plan area over a proposed 50-year ITP term. Their specific midstream and upstream oil and gas activities that are proposed for coverage in the HCP include the following:

- Upstream (Well) Development Activities:
  - Development activities, including those associated with access roads, staging areas, and seismic operations, as well as geophysical exploration, which includes surveying/staking, land/tree clearing, explosives use, boring, and vehicle traffic.
  - Well field development activities, including those associated with production wells, well pads, drilling rigs, pump/well heads, reserve pits, storage tanks, fuel tanks, water tanks, electric equipment, drilling pipe storage, water wells, waterlines, surface water intakes, disposal wells, water impoundments, borrow pits, reserve pits, electric distribution lines, and communication towers.
  - Construction activities associated with well pads, ancillary features, and onsite components, including but not limited to surveying/staking; land/tree clearing; grading; stormwater and erosion and sediment control; wetland, stream, and sensitive area mitigation/protection; trenching/boring; surface water pumping; spoil/debris placement; vegetation pile placement, vehicle traffic, drilling/well pad development and completion activities; and office, control, utility, storage, and maintenance structure construction or placement incidental to specific projects.

- Production and operations activities, including those related to access roads, production, gas flaring, vehicle traffic, post-construction stormwater management, maintenance of well pads and ancillary features and components (supporting infrastructure installation, repair and replacement, equipment upgrades, inspections and repairs, workovers and recompletions, minor amounts of soil disturbance,

vegetation maintenance, road maintenance, etc.).

- Decommissioning and reclamation activities, including those associated with vehicle traffic, land/tree clearing, land excavation/backfilling, vegetation restoration, and well plugging.

- Midstream (Pipeline) Development Activities

- Construction of gathering, transmission, and distribution pipelines and associated activities, including but not limited to access road construction, staging area establishment, pipe storage/laydown area establishment, stream and water crossing construction, road boring, surveying/staking, land/tree clearing, stormwater and erosion and sediment control, grading, trenching/boring, stockpiling, pipeline assembly, trench backfilling, vehicle traffic, revegetation, and surface impact reclamation.

- Construction of surface features, including but not limited to access roads, staging areas, and storage yards; booster, compressor, and pump stations and related facilities; meter stations; mainline valves; pig launcher/receiver facilities; regular facilities; facilities to process, refine, stabilize, and store natural gas and/or other hydrocarbons; communication towers; electric distribution lines; electric substations; capacitor stations; transformer stations; office/control/utility/storage/maintenance structures incidental to specific projects; parking areas; cathodic protection facilities; and storage tanks.

- Operation and maintenance of pipeline and surface facilities and related activities, including but not limited to vehicle traffic, equipment upgrades, inspections and repairs/replacements, leak detection, pigging, painting, minor amounts of soil disturbance, vegetation maintenance to preserve the right of way, road maintenance, and odor reduction.

- Installation of new culverts/ditches, gas flaring, blow downs, and hydrostatic testing and discharge.

- Decommissioning and reclamation of pipeline and surface facilities and related activities, including but not limited to vehicle traffic, land excavation/backfilling, and vegetative restoration.

## Covered Species

The companies intend to seek incidental take coverage for five species of bats: The Indiana bat, northern long-eared bat, little brown bat, eastern small-footed bat, and tri-colored bat. The Indiana bat is listed as an endangered species, and the northern long-eared bat is listed as threatened under the ESA. A rule issued under

section 4(d) of the ESA for northern long-eared bats (81 FR 1900, January 14, 2016) prohibits certain actions that do not include the incidental take of northern long-eared bats resulting from most otherwise lawful activities, including take due to the removal of habitat and disturbance from human activities, and intentional take caused by human activities in most areas. The companies anticipate that they may include northern long-eared bats in the O&G HCP, so that the species could be covered under the ITP should the section 4(d) rule be rescinded or amended or if the species were to be uplisted to endangered under the ESA during the permit term. The little brown bat, eastern small-footed bat, and tri-colored bat are included as covered species under the HCP so that the species are addressed in the event that any or all were to be listed under the ESA within the term of the proposed permit.

#### Permit Term

The companies anticipate requesting a 50-year ITP term. Their reasoning for their request includes the following: Oil and gas infrastructure has a long production and economic life; the extensive oil and gas resources in the plan area are expected to be developed over the long term; preliminary information indicates that ongoing operations and maintenance and decommissioning may result in incidental take after facility construction; and facility construction schedules are responsive to dynamic market pressures. The Service will determine the permit term consistent with applicable legal requirements.

#### Environmental Impact Statement

The NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Based on 40 CFR 1508.27 and 1508.8, we have determined that the proposed action (*i.e.*, issuance of a section 10(a)(1)(B) permit (ITP) to the companies for implementation of the proposed O&G HCP) may have significant effects on the human environment. Therefore, before deciding whether to issue an ITP to the companies, the Service intends to prepare an EIS to analyze the impacts associated with that action and alternatives to it. We will first develop a draft EIS, which will be subject to public review, before finalizing the EIS and making a permit decision.

The draft EIS will consider the impacts of the proposed action on the

human environment. The draft EIS will also include analysis of a reasonable range of alternatives to the proposed action. Alternatives to be analyzed in the draft EIS may include, but are not limited to, measures such as: Variations in the permit term or permit structure; the quantity of take permitted; the amount, location, and/or type of conservation, monitoring, or mitigation provided in the O&G HCP; the scope of covered activities; or a combination of these factors. Additionally, a no-action alternative (*i.e.*, no permit issuance) will be evaluated in the draft EIS.

The draft EIS will identify and describe direct, indirect, and cumulative impacts on the human environment, which may include biological resources, land use, air quality, water quality, water resources, socioeconomic, climate, and other environmental resources that could occur with the implementation of the proposed action and alternatives. Following scoping for the draft EIS, and after receipt of the companies' permit application, including the proposed O&G HCP, the Service will publish a notice of availability, which will request comments on the application and on the Service's draft EIS.

#### Public Comments

We request data, comments, information, and suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, and any other interested party regarding the scope of our NEPA analysis, and impacts to the human environment resulting from the proposed action and alternatives. We will consider these comments when developing the draft EIS. We particularly seek comments on the following:

(1) Aspects of the human environment that warrant examination (*e.g.*, biological resources, land use, air quality, water quality, water resources, socioeconomic, climate, and other environmental resources, etc.) and any baseline information that could inform the analyses.

(2) Information concerning the range, distribution, population size, and population trends concerning the covered species in the plan area.

(3) Additional biological information concerning the covered species or other federally listed species that occur in the plan area.

(4) Direct, indirect, and/or cumulative impacts that implementation of the proposed action (*i.e.*, covered activities) will have on the covered species or other federally listed species.

(5) Information about measures that can be implemented to avoid, minimize, and mitigate impacts to the covered species.

(6) Other possible alternatives to the proposed action that the Service should consider.

(7) Whether there are connected, similar, or reasonably foreseeable cumulative actions (*i.e.*, current or planned activities) and their potential impacts on covered species or other federally listed species in the plan area.

(8) The presence of archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns within the plan area that are required to be considered in project planning by the National Historic Preservation Act.

(9) Any other environmental issues that should be considered with regard to the proposed HCP and potential permit issuance.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**.

The Service will post all public comments and information received electronically or via hardcopy in the docket at: <http://regulations.gov>. All comments received, including names and addresses, will become part of the administrative record and will be available to the public. Before including your address, phone number, electronic mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—will be publicly available. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

#### Scoping Meetings

The purpose of the scoping meetings will be to provide the public with information regarding the anticipated application, draft HCP, and the Service's permitting process, and its associated environmental review. The Service will provide information on the scope of issues and alternatives that may be initially considered. The companies' HCP contractor will also be available to answer questions about the draft HCP under development. Written comments will be accepted at the meeting. Comments can also be submitted by methods listed in **ADDRESSES**. Once the draft EIS and draft HCP are complete and made available for review, there will be additional opportunity for public comment on the content of these

documents through an additional public comment period.

The scoping meetings will be held from 5:00 to 7:00 p.m. Eastern Time at the following locations on the following dates:

1. Chartiers Township Community Center (Banquet Room; 2013 Community Center Drive, Houston, PA 15342) on Monday, December 12, 2016.
2. Southgate Hotel (Banquet Rooms 1 and 2; 2248 Southgate Parkway, Cambridge, OH 43725) on Tuesday, December 13, 2016.
3. Beni Kedem Temple (Ballroom; 100 Quarrier Street, Charleston, WV 25301) on Wednesday, December 14, 2016.
4. Village Square Conference Center (Ballroom A; Rt. 19 South/1489 Milford Street, Clarksburg, WV 26301) on Thursday, December 15, 2016.
5. Genetti Hotel (Washington Room; 200 West Fourth Street, Williamsport, PA 17701) on Friday, December 16, 2016.

The webinar will be held on Tuesday, December 20, 2016, at 6:00 p.m. Eastern Time. Registration and log-in information for the webinar is available on the Service's project Web page: [www.fws.gov/northeast/ecologicalservices/hcp/oghcp.html](http://www.fws.gov/northeast/ecologicalservices/hcp/oghcp.html).

Persons needing reasonable accommodations to attend and participate in the public meetings should contact Pam Shellenberger at 814-234-4090, extension 7459, as soon as possible. To allow sufficient time to process requests, please call at least 1 week before the public meetings. Information regarding this proposed action is available in alternative formats upon request.

Dated: November 15, 2016.

**Paul Phifer,**

*Assistant Regional Director, Ecological Services, Northeast Region.*

[FR Doc. 2016-28336 Filed 11-23-16; 8:45 am]

**BILLING CODE 4333-15-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS-R3-ES-2016-N190; FXES1113030000-178-FF03E00000]**

**Endangered and Threatened Wildlife and Plants; Permit Applications**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to enhance the survival of endangered or threatened species. Federal law prohibits certain activities with endangered species unless a permit is obtained.

**DATES:** We must receive any written comments on or before December 27, 2016.

**ADDRESSES:** Send written comments by U.S. mail to the Regional Director, Attn: Carlita Payne, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437-1458; or by electronic mail to [permitsR3ES@fws.gov](mailto:permitsR3ES@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Carlita Payne, (612) 713-5343.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et*

*seq.*), prohibits certain activities with endangered and threatened species unless the activities are specifically authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A permit granted by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) of the ESA for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

**Applications Available for Review and Comment**

We invite local, State, Tribal, and Federal agencies and the public to comment on the following applications. Please refer to the permit number when you submit comments. Documents and other information the applicants have submitted with the applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

**Permit Applications**

Proposed activities in the following permit requests are for the recovery and enhancement of survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE38856A .....	Skelly & Loy, Inc .....	Indiana bat ( <i>Myotis sodalis</i> ), northern long-eared bat ( <i>Myotis septentrionalis</i> ), Virginia big eared bat ( <i>Corynorhinus townsendii virginianus</i> ).	Rangewide .....	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, radio-tag, release.	Amend, renew.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE11135C .....	Herpetological Resource and Management, LLC.	Copperbelly water snake ( <i>Nerodia erythrogaster neglecta</i> ), Eastern massasauga ( <i>Sistrurus catenatus catenatus</i> ), Karner blue butterfly ( <i>Lycaeides melissa samuelis</i> ), Mitchell's satyr butterfly ( <i>Neonympha mitchellii mitchellii</i> ), Poweshiek skipperling butterfly ( <i>Oarisma poweshiek</i> ), Pitcher's Thistle ( <i>Cirsium pitcheri</i> ), Dwarf Lake Iris ( <i>Iris lacustris</i> ), Michigan monkey flower ( <i>Mimulus michiganensis</i> ), and Eastern prairie fringed orchid ( <i>Platanthera leucophaea</i> ).	Michigan, Indiana, Illinois, Wisconsin, Ohio.	Survey and Monitoring, Habitat mapping and assessment.	Capture and release ....	New.
TE11145C .....	Lisa Kleinschmidt .....	Indiana bat, northern long-eared bat, gray bat ( <i>Myotis grisescens</i> ).	Rangewide .....	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, radiotag, harp trap, release.	New.
TE11170C .....	Ashleigh Cable .....	Indiana bat, northern long-eared bat, gray bat.	Illinois .....	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, radiotag, harp trap, release.	New.
TE174388 .....	Metropolitan Park District of the Toledo Area.	Karner blue butterfly ( <i>Lycaeides melissa samuelis</i> ).	Ohio .....	Conduct habitat management for the benefit of the species; document habitat use.	Conservation and species management.	Renew.
TE64241B .....	Barker Lemar Engineering Consultants.	Indiana bat, northern long-eared bat.	Illinois, Iowa .....	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, radiotag, release.	Amend.

**National Environmental Policy Act**

The proposed activities in the requested permits qualify as categorical exclusions under the National Environmental Policy Act, as provided by Department of the Interior implementing regulations in part 46 of title 43 of the CFR (43 CFR 46.205, 46.210, and 46.215).

**Public Availability of Comments**

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive in response to this notice are available for public inspection, by appointment, during normal business hours at the address listed above in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your

personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*).

Dated: November 18, 2016.

**Lori H. Nordstrom,**

*Assistant Regional Director, Ecological Services, Midwest Region.*

[FR Doc. 2016-28346 Filed 11-23-16; 8:45 am]

**BILLING CODE 4333-15-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[FWS-HQ-LE-2016-N182; FF09L00200-FX-LE18110900000]

**Freedom of Information Act; Notice of Lawsuit**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** The U.S. Fish and Wildlife Service seeks information about potential objections to the public release of possibly confidential information regarding import and export activities tracked via the Service's Law Enforcement Management Information System. We issue this notice and solicit this information in response to a lawsuit under the Freedom of Information Act.

**DATES:** You must submit comments on or before December 16, 2016.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Email:* [lawenforcement@fws.gov](mailto:lawenforcement@fws.gov).
- *Fax:* (703) 358-2271.
- *U.S. mail or hand-delivery:* U.S.

Fish and Wildlife Service, Office of Law Enforcement (FOIA), 5275 Leesburg Pike (MS: OLE), Falls Church, VA 22041.

**FOR FURTHER INFORMATION CONTACT:**

Michael Jenkins, Management Analyst Specialist, USFWS, Office of Law Enforcement, 5275 Leesburg Pike, Falls Church, VA 22041; telephone (703) 358-1949.

**SUPPLEMENTARY INFORMATION:** This notice is issued under part 2 of title 43 of the Code of Federal Regulations (CFR), which sets forth regulations for administration of the Freedom of Information Act (FOIA) by the U.S. Department of the Interior (“the Department”).

We, the U.S. Fish and Wildlife Service (“the Service” or USFWS), hereby announce that information related to records for the import and export of all wildlife specimens to and from the United States may be disclosed under FOIA (43 CFR 2.27(b)).

Submitters of this type of information can contact the Service to review records subject to possible release. If you are a submitter of this information, the Service will presume that you do not object to the disclosure of your information if a response to this notice is not received by the date specified above in **DATES**.

**I. Background**

The Department is soliciting views from submitters with respect to whether certain records constitute “trade secrets and commercial or financial information obtained from a person [that are] privileged or confidential” information under the FOIA, 5 U.S.C. 552(b)(4). The records at issue concern information in the Service’s Law Enforcement Management Information System (LEMIS) relating to the import and export of all wildlife specimens to and from the United States:

- a. From January 1, 2005, to the present;
- b. on USFWS Form 3-177 including: Date of import/export, port of clearance, purpose code, customs document number, name of carrier, air waybill or bill of lading number, transportation code, number of cartons of wildlife, names of U.S. importer/exporter and foreign importer/exporter with country code, scientific and common name of species, foreign CITES permit and U.S. permit numbers, description and source codes, country of origin code, quantity/unit, and monetary value.

This notice relates to a FOIA request by The Center for Biological Diversity (CBD) of February 24, 2016. In response to this FOIA request, the Service withheld the customs document number, name of carrier, air waybill or bill of lading number, foreign CITES permit and U.S. permit numbers, quantity and declared value of wildlife, and foreign importer/exporter columns in their entirety under FOIA Exemption 4. The Service withheld additional information under Exemptions 6 and 7(C). The Service’s response to this FOIA request is now the subject of a lawsuit, *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, No. 16-00527 (D. Ariz., filed August 8, 2016). A copy of CBD’s FOIA request, as well as the complaint filed in the United States District Court for the District of Arizona, has been posted on: <https://www.fws.gov/le/businesses.html#FOIAMatters>. Upon request, the Service will provide submitters the relevant submitter information that the Service found to be responsive to CBD’s requests.

**II. Issues for Comment**

The Department has been asked to release certain information in LEMIS since 2005 relating to the import and export of all wildlife specimens to and from the United States. This notice provides you with the opportunity to object to the public release of these records if they are exempt from disclosure under FOIA, 5 U.S.C. 552(b). Please reference *Center for Biological Diversity v. U.S. FWS*, No. 16-00527, in any communications regarding this matter.

If you wish to object to the disclosure of these records, the Department’s FOIA regulations (“regulations”) require you to submit a “detailed written statement” setting forth the justification for withholding any portion of the information under any exemption of the FOIA. See 43 CFR 2.30.

Under FOIA’s Exemption 4, 5 U.S.C. 552(b)(4), “trade secrets and commercial or financial information obtained from a person and privileged or confidential” are exempt from disclosure under the FOIA. When the Department has reason to believe that information that is responsive to a FOIA request may be exempt from disclosure under FOIA’s Exemption 4, the regulations require the Department to provide notice to the submitter(s) of the responsive material and advise the submitter(s) of the procedures for objecting to the release of the requested material. This publication serves as notice.

Further, if you object to the public disclosure of the records (or any

portions of records) at issue in *Center for Biological Diversity v. U.S. FWS*, No. 16-00527 (D. Ariz., filed Aug. 8, 2016), on the basis that the information submitted is protected by FOIA Exemption 4, then the regulations require the “detailed written statement” referenced above to include a “specific and detailed discussion” of the following:

(i) Whether the Government required the information to be submitted and, if so, how substantial competitive or other business harm would likely result from release; or

(ii) Whether you provided the information voluntarily and, if so, how the information in question fits into a category of information that you customarily do not release to the public.

(iii) Certification that the information is confidential, that you have not disclosed the information to the public, and that the information is not routinely available to the public from other sources.

In order for information to qualify for protection under Exemption 4 as a “trade secret,” the information must be “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” See *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). This definition requires there be a direct relationship between the information at issue and the productive process. *Id.* Should you wish to object to the disclosure of any of the information in the documents on the basis that such information is a trade secret, the specific and detailed discussion must explain how *each category* of information the objections are related to qualify for protection under Exemption 4 as a “trade secret.” The explanation must also identify a direct relationship between the information and the productive process.

In order for information to qualify for protection under the aspect of Exemption 4 that protects privileged or confidential commercial or financial information, the first requirement is that the information must be either “commercial or financial.” In determining whether documents are “commercial or financial,” the D.C. Circuit has firmly held that these terms should be given their “ordinary meanings” and that records are commercial so long as you have “commercial interest” in them. See *Public Citizen*, 704 F.2d at 1290 (citing *Washington Post Co. v. HHS*, 690 F.2d

252, 266 (D.C. Cir. 1982), and *Board of Trade v. Commodity Futures Trading Comm'n*, 627 F.2d 392, 403 (D.C. Cir. 1980)); see also *Nat'l Ass'n of Home Builders v. Norton*, 309 F.3d 26, 38 (D.C. Cir. 2002) (stating "information is 'commercial' under [Exemption 4] if, 'in and of itself,' it serves a 'commercial function' or is of a 'commercial nature.'").

The specific and detailed discussion that you provide must explain how the information relates to your commercial interest and the commercial function the information serves or the commercial nature of the information.

The test to determine if information is "privileged" or "confidential" under Exemption 4 depends on whether the submitter was required to provide the information to the Government or whether the submitter voluntarily disclosed the information to the Government. *Bartholdi Cable. Co. v. FCC*, 114 F.3d 274, 281 (D.C. Cir. 1997). Where you voluntarily provide information to the Government, the information will be considered confidential for the purposes of Exemption 4 "if it is of a kind that would customarily not be released to the public by the person from whom it was obtained." *Id.* (citing *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871, 879 (D.C. Cir. 1992) (*en banc*)). Alternatively, where the Government requires you to provide information (as is the case for the information at hand), then commercial or financial information generally is "confidential" under Exemption 4 "if disclosure . . . is likely to have either of the following effects: (1) Impair the Government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom it was obtained." *National Parks and Conservation Assoc. v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). A showing of substantial competitive harm is necessary only where the information in question is required to be submitted to the Government.

You must explain whether you voluntarily provided the information in question or whether the Government required the information to be submitted. Should you assert that you voluntarily submitted the information, you must also explain how the information in question fits into a category of information that you customarily do not release to the public. If you assert that the Government required you to submit the information in question (as is the case for the information at hand), then you must

explain how substantial competitive or other business harm would likely result from release.

To demonstrate that disclosure is likely to cause substantial competitive harm, there must be evidence that: (1) You face actual competition; and (2) substantial competitive injury would likely result from disclosure. See *Lion Raisins v. USDA*, 354 F.3d 1072, 1079 (9th Cir. 2004); *Inner City Press/Community on the Move v. Federal Reserve System*, 380 F. Supp. 2d 211, 220 (S.D.N.Y. 2005); *GC Micro Corp. v. Def. Logistics Agency*, 33 F.3d 1109 (9th Cir. 1994); *National Parks & Conservation Association v. Kleppe*, 547 F.2d 673, 679 (D.C. Cir. 1976) ("*National Parks II*").

In order for the Department to fully evaluate whether you are likely to suffer substantial competitive injury from disclosure of the withheld information, any objections on this basis must include a detailed explanation of who your competitors are and the nature of the competition. You must also explain with specificity how disclosure of *each category* of information that you object to disclosing on this basis would provide your competitors with valuable insights into your operation, give competitors pricing advantages over you, or unfairly give advantage to competitors in future business negotiations, or any other information that sufficiently explains the substantial competitive injury that would likely result from disclosure. *National Parks II*, 547 F.2d at 684; *Center for Public Integrity v. Dep't of Energy*, 191 F. Supp. 2d 187, 194 (D.D.C. 2002); *Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 29 (D.D.C. 2000). Additionally, as noted above, you must also certify that any information you object to disclosing is confidential, you have not disclosed the information to the public, and the information is not routinely available to the public from other sources. See 43 CFR 2.30–2.31.

As a final matter, please be aware that the FOIA requires that "any reasonably segregable portion of a record" must be released after appropriate application of the FOIA's nine exemptions. See 5 U.S.C. 552(b) (discussion after exemptions). In addition, please note that, where a record contains both exempt and nonexempt material, the bureau will generally separate and release the nonexempt information when responding to a FOIA request. 43 CFR 2.25. You should be mindful of this segregability requirement in formulating any objections you may have to the disclosure of the information sought by CBD.

### III. Submission of Objections

Should you wish to object to disclosure of any of the requested records (or portions thereof), the Department must receive from you all of the information requested above by no later than the date specified above in **DATES**.

If you do not submit any objections to the disclosure of the information (or portions thereof) to CBD on or before the date specified above in **DATES**, the Department will presume that you do not object to such disclosure and may release the information without redaction. Please note that the Department, not you, is responsible for deciding whether the information should be released or withheld. If we decide to release records over your objections, we will inform you at least 10 business days in advance of the intended release.

Please note that any comments you submit to the Department objecting to the disclosure of the documents may be subject to disclosure under the FOIA if the Department receives a FOIA request for them. In the event your comments contain commercial or financial information and a requester asks for the comments under the FOIA, the Department will notify you and give you an opportunity to comment on the disclosure of such information.

Dated: November 14, 2016.

**Stephen Guertin**,

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2016-28379 Filed 11-23-16; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

[178D0102DM/DS64600000/  
DLSN00000.000000/DX.64601]

### Notice of Senior Executive Service Performance Review Board Appointments

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Senior Executive Service (SES) Performance Review Board.

**DATES:** These appointments are effective upon publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Raymond Limon, Director, Office of Human Resources, Office of the

Secretary, Department of the Interior,  
1849 C Street NW., Washington, DC  
20240, Telephone Number: (202) 208-  
5310.

**SUPPLEMENTARY INFORMATION:** The  
members of the Department of the  
Interior SES Performance Review Board  
are as follows:

ALLEN, MATTHEW R.  
ANDREW, JONATHAN M.  
ANDROFF, BLAKE J.  
APPLEGATE, JAMES D. R.  
ARAGON, JOSE RAMON  
ARROYO, BRYAN  
AUSTIN, STANLEY J.  
AUSTIN, TERESA MADEYA  
BAIL, KRISTIN MARA  
BARON, JILL S.  
BATHRICK, MARK L.  
BEALL, JAMES W.  
BEAN, MICHAEL J.  
BEARPAW, GEORGE WATIE  
BEAUDREAU, TOMMY P.  
BECK, RICHARD T.  
BECKER, BRIAN D.  
BELIN, ALLETTA D.  
BELNAP, JAYNE  
BENGE, SHAWN T.  
BERRIGAN, MICHAEL J.  
BERRY, DAVID A.  
BETANCOURT, JULIO L.  
BLACK, MICHAEL S.  
BLAIR, JOHN WATSON  
BLANCHARD, MARY JOSIE  
BLASER, THOMAS A.  
BLEDSOE DOWNES, ANN MARIE  
BOHLKE, JOHN KARL F. P.  
BOLTON, HANNIBAL  
BOWKER, BRYAN L.  
BRANUM, LISA A.  
BROWN, LAURA B.  
BROWN, WILLIAM Y.  
BRZEZINSKI, MARK F.  
BUCKNER, SHAWN M.  
BUFFA, NICOLE NMN  
BURCH, MELVIN E.  
BURCKMAN, JAMES N.  
BURDEN, JOHN W.  
BURKETT, VIRGINIA  
BURNS, SYLVIA W.  
CALDWELL, MICHAEL A.  
CARDINALE, RICHARD T.  
CARL, LEON M.  
CARTER-PFISTERER, CAROLE  
CASH, CASSIUS M.  
CELATA, MICHAEL A.  
CHAVARRIA, GABRIELA DEL C.  
CHOUET, BERNARD A.  
CHRISTOPHER, TERESA R.  
CLARK, HORACE G.  
CLEMENT, JOEL P.  
CLINE, DONALD WALTER  
CLOERN, JAMES E.  
CLUCK, RODNEY E.  
COLLETT, TIMOTHY S.  
COMPTON, JEFFREY S.  
CONNELL, JAMIE E.  
COPLIN, TYLER B. II  
CORDOVA-HARRISON, ELIZABE  
CRAFF, ROBERT C.  
CRIBLEY, BUD C.  
CRONIN, THOMAS M.  
CRUICKSHANK, WALTER D.  
CRUZAN, DARREN A.

CUMMINGS, JODY ALLEN  
CUNNINGHAM, WILLIAM L.  
DABOLT, THOMAS O.  
DALTON, KENNETH A.  
DARNELL, JOSEPH D.  
DAVIS, KIMBRA G.  
DAVIS, MARK H.  
DAVIS, ROSE MARIE  
DEANGELIS, DONALD L.  
DEARMAN, TONY L.  
DEERINWATER, DANIEL J.  
DELOATCH, IVAN B.  
DETTINGER, MICHAEL  
DEVARIS, AIMEE MARIE  
DOHNER, CYNTHIA  
DOUGLAS, JAMES C.  
DOWNS, BRUCE M.  
DUMONTIER, DEBRA L.  
DUNTON, RONALD L.  
DUTSCHKE, AMY L.  
EDSALL, DONNA LYNN  
ELLIS, STEVEN A.  
ENOMOTO, STANTON KEONE  
ESTENOZ, SHANNON A.  
ETHRIDGE, MAX M.  
FAETH, LORRAINE V.  
FERRERO, RICHARD C.  
FERRITER, OLIVIA B.  
FIELD, EDWARD H.  
FLANAGAN, DENISE A.  
FORD, JEROME E.  
FOSTER, MAUREEN D.  
FRANKEL, ARTHUR D.  
FRAZER, GARY D.  
FREEMAN, SHAREE M.  
FREIHAGE, JASON E.  
FROST, HERBERT C.  
FULP, TERRANCE J.  
GALLAGHER, KEVIN T.  
GIDNER, JEROLD L.  
GLENN, DOUGLAS A.  
GLOMB, STEPHEN J.  
GOKLANY, INDUR M.  
GOLDHABER, MARTIN B.  
GONZALES-SCHREINER, ROSEA  
GONZALEZ, MARIA E.  
GOULD, GREGORY J.  
GRACE, JAMES B.  
GUERTIN, STEPHEN D.  
HAIG, SUSAN M.  
HALL, ROBERT E.  
HAMLEY, JEFFREY L.  
HANKS, THOMAS C.  
HANNA, JEANETTE D.  
HART, PAULA L.  
HARTLEY, DEBORAH J.  
HARVEY, RONALD W.  
HAUGRUD, KEVIN JACK  
HAVELY, ANDREW W.  
HAWBECKER, KAREN S.  
HEIN, JAMES R.  
HERBST, LARS T.  
HILDEBRANDT, BETSY J.  
HILDRETH, EDWARD W.  
HITZMAN, MURRAY WALTER  
HOLLEY, AMY LIN  
HOLMES, TROY EDWARD  
HOPPER, ABIGAIL ROSS  
HOSKINS, DAVID WILLIAM  
HOUSEKNECHT, DAVID W.  
HUMBERT, HARRY L.  
HUNTER, TERESA R.  
HYUN, KAREN H.  
INGEBRITSEN, STEVEN E.  
ISEMAN, THOMAS M.  
IVERSON, RICHARD M.

JACKSON, JAMES K.  
JAMES, JAMES D. JR.  
JONES, EILEEN GAY  
JOSEPHSON, CLEMENTINE  
JOSS, LAURA  
JUPP, WILLIAM B.  
KALAVRITINOS, CHRISTINA S  
KEABLE, EDWARD T.  
KEELEY, JON E.  
KELLY, FRANCIS P.  
KELLY, KATHERINE P.  
KENDALL, JAMES J. JR.  
KINSINGER, ANNE E.  
KLEIN, ELIZABETH A.  
KRABbenhOFT, DAVID P.  
KROPP, RAMSEY LAURSOO  
KRUSE, MICHAEL  
KRYC, KELLY A.  
KURTH, JAMES W.  
LA COUNTE, DARRYL D. II  
LABSON, VICTOR F.  
LAFFERTY, KEVIN D.  
LAIRD, JOSHUA RADBILL  
LAKE, TIMOTHY CHARLES  
LANCE, LINDA L.  
LAPOINTE, TIMOTHY L.  
LAROCHE, DARRELL WILLIAM  
LAURO, SALVATORE R.  
LEE, LORRI J.  
LEHNERTZ, CHRISTINE S.  
LEITER, AMANDA C.  
LEITH, WILLIAM S.  
LILLIE, JULIETTE ANNE FAL  
LIMON, RAYMOND A.  
LIN, JANET H.  
LOCKNER, DAVID A.  
LODGE, CYNTHIA LOUISE  
LOFTIN, MELINDA J.  
LOHOEFENER, RENNE R.  
LORDS, DOUGLAS A.  
LOUDERMILK, WELDON B.  
LOVELAND, THOMAS R.  
LUEBKE, THOMAS A.  
LUEDERS, AMY L.  
LYNN, TIM K.  
LYONS, JAMES R.  
MABRY, SCOTT L.  
MARTIN, THOMAS E.  
MARTINEZ, CYNTHIA T.  
MASICA, SUE E.  
MASON, ROBERT R JR.  
MAYTUBBY, BRUCE W.  
MCCABE, GREGORY J. JR  
MCCAFFERY, JAMES G.  
MCCLANAHAN, JOHN H.  
MCCORMICK, STEPHEN D.  
MCDOWALL, LENA E.  
MCGUIRE, ANTHONY D.  
MCKEOWN, MATTHEW J.  
MECH, L. DAVID  
MEHLHOFF, JOHN J.  
MELIUS, THOMAS O.  
MILAKOFSKY, BENJAMIN E.  
MILLY, PAUL C. D.  
MONACO, JENNIFER ROMERO  
MORRIS, DOUGLAS W.  
MOSS, ADRIANNE L.  
MOURITSEN, KAREN E.  
MUHS, DANIEL R.  
MULLER, BRUCE C. JR  
MURILLO, DAVID G.  
MURPHY, TIMOTHY M.  
MUSSSENDEN, PAUL A.  
MYERS, DONNA N.  
NASSAR, JOSEPH W.  
NEDD, MICHAEL D.

NEIMEYER, SARAH C.  
 NOBLE, MICHAELA E.  
 NORDSTROM, DARRELL K.  
 OBERNESSER, RICHARD  
 OLSEN, MEGAN C.  
 ONEILL, KEITH JAMES  
 OREMLAND, RONALD S.  
 ORGAN, JOHN FRANCIS  
 ORR, L. RENEE  
 ORTIZ, HANKIE P.  
 OWENS, GLENDA HUDSON  
 PALUMBO, DAVID M.  
 PARSONS, THOMAS E.  
 PATINO, REYNALDO  
 PAYNE, GRAYFORD F.  
 PEREZ, JEROME E.  
 PETERSON, PENNY LYNN  
 PFEIFFER, TAMARAH NMN  
 PIDOT, JUSTIN ROBERT  
 PIERRE-LOUIS, ALESIA J.  
 PINTO, SHARON ANN  
 PLETCHER, MARY F.  
 PLUMLEE, GEOFFREY S.  
 PULA, NIKOLAO IULI  
 QUINLAN, MARTIN J.  
 QUINN, TIMOTHY S.  
 RAE, KAREN L.  
 RAFF, DAVID A.  
 RAMOS, PEDRO M.  
 RAUCH, PAUL A.  
 REYNOLDS, MICHAEL T.  
 REYNOLDS, THOMAS G.  
 RHEES, BRENT B.  
 RICE, BRYAN C.  
 RICHARDSON, KAREN K.  
 RICHARDSON, LIZETTE  
 RIDEOUT, STERLING J. JR  
 RIECHEL, SILVIA MARIA  
 RIGGS, HELEN  
 ROBERSON, EDWIN L.  
 ROBERTS, JAMES F.  
 ROBERTS, LAWRENCE SCOTT  
 ROMANIK, PEG A.  
 ROSS, JOHN W.  
 ROTH, BARRY N.  
 ROYLE, JEFFREY A.  
 RUFFIN, LAWRENCE K.  
 RUGWELL, MARY J.  
 RUHS, JOHN F.  
 RYAN, DENISE E.  
 RYAN, MICHAEL J.  
 SALERNO, BRIAN M.  
 SALOTTI, CHRISTOPHER P.  
 SANFORD, WARD E.  
 SANTOSA, DAUD  
 SAUER, JOHN R.  
 SAUVAJOT, RAYMOND MARC  
 SAXE, KEITH E.  
 SCHNEIDER, MARGARET N.  
 SCHOCK, JAMES H.  
 SCHRECK, CARL B.  
 SEAL, ROBERT R. II  
 SHAPIRO, ALLEN M.  
 SHEEHAN, DENISE E.  
 SHEPARD, ERIC N.  
 SHOLLY, CAMERON H.  
 SHOPE, THOMAS D.  
 SIEKANIEC, GREGORY EUGENE  
 SIMMONS, SHAYLA F.  
 SIMS, DAVID M.  
 SINGER, MICHELE F.  
 SLACK, JAMES J.  
 SMILEY, KARLA J.  
 SMITH, MARC ALAN  
 SMITH, MICHAEL R.  
 SOGGE, MARK K.

SONDERMAN, DEBRA E.  
 SOSIN, AMY B.  
 SOUZA, PAUL  
 SPEAKS, STANLEY M.  
 STEIGER, JOHN W.  
 STEWARD, JAMES D.  
 STREATER, EDDIE R.  
 SUAZO, RAYMOND  
 TAYLOR, KENNETH S.  
 TEITZ, ALEXANDRA ELIZABET  
 TEN BRINK, URI  
 THOMPSON, DIONNE E.  
 THORSON, ROBYN  
 TILLITT, DONALD E.  
 TISCHLER, MICHAEL ALLAN  
 TODD, RAYMOND K.  
 TOOTHMAN, STEPHANIE S.  
 TOUTON, MARIACAMILLE CALI  
 TUGGLE, BENJAMIN N.  
 TUPPER, MICHAEL H.  
 TYLER, PAUL GRAHAM  
 USERY, EDDY L.  
 VELA, RAYMOND DAVID  
 VELASCO, JANINE M.  
 VIETZKE, GAY E.  
 VOGEL, ROBERT A.  
 WAINMAN, BARBARA W.  
 WALD, DAVID J.  
 WALKER, WILLIAM T.  
 WALSH, NOREEN E.  
 WASHBURN, JULIA L.  
 WAYSON, THOMAS C.  
 WEBER, WENDI  
 WELCH, RUTH L.  
 WENGER, LANCE C.  
 WENK, DANIEL N.  
 WERKHEISER, WILLIAM H.  
 WEYERS, HOLLY S.  
 WHITE, JOHN ETHAN  
 WILLIAMS, LC  
 WILLIAMS, MARGARET C.  
 WINTON, JAMES R.  
 WOLF, ROBERT W.  
 WOODY, WILLIAM C.  
 WORONKA, THEODORE

**Authority:** 5 CFR 430.311(a)(4).

**Raymond Limon,**

*Director, Office of Human Resources.*

[FR Doc. 2016-28315 Filed 11-23-16; 8:45 am]

**BILLING CODE 4334-12-P**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**[NPS-WASO-HAFE-22459; PPWOWMADL3, PPMPAS1Y.TD0000 (177)]**

**Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; National Park Service Common Learning Portal**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. We may not conduct or sponsor

and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** You must submit comments on or before December 27, 2016.

**ADDRESSES:** Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or *OIRA Submission@omb.eop.gov* (email). Please provide a copy of your comments to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Mail Stop 242, Reston, VA 20192 (mail); or *madonna\_baucum@nps.gov* (email). Please include "1024-New CLP" in the subject line of your comments. You may review the ICR online at <http://www.reginfo.gov>. Follow the instructions to review Department of the Interior collections under review by OMB.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this IC, please contact Dale Carpenter at telephone (304) 535-6401 or via email at *dale\_carpenter@nps.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The legislative mandate of the National Park Service Organic Act, found at 54 U.S.C. 100101(a), 100301 *et seq.* is to conserve America's natural wonders unimpaired for future generations, while also making them available for the enjoyment of the visitor. Meeting this mandate requires the NPS to balance conservation with use. Maintaining a good balance requires information and limits, as well as providing effective training to those responsible for upholding this mandate. The NPS Common Learning Portal (CLP) is focused on increasing the visibility of training available to NPS employees and makes the site available to the public to allow NPS partners, retired NPS employees, and other interested persons not directly affiliated with the NPS access. The information we collect as part of the registration process for the CLP enables non-NPS persons to register and participate with others within the site. The creation of a personal profile provides those using the CLP with basic information that can be used to find others with similar jobs, learning interests or to solve learning problems. All personal information, with the exception of the person's name and email address are optional when creating the profile, and profile information may be edited or deleted at

any time, except for the name and email address.

## II. Data

*OMB Control Number:* None.

*Title:* National Park Service Common Learning Portal.

*Service Form Number(s):* None.

*Type of Request:* New.

*Description of Respondents:*

Individuals.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* One time.

*Estimated Number of Annual*

*Responses:* 6,000.

*Estimated Completion Time per*

*Response:* 5 minutes.

*Estimated Total Annual Burden*

*Hours:* 500.

*Estimated Annual Nonhour Burden*

*Cost:* None.

## III. Comments

On January 15, 2016, we published in the **Federal Register** (81 FR 2234) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on March 15, 2016. We received two comments in response to that Notice.

Comment received January 15, 2016, from Jean Public: "it is my opinion that the American public/taxpayers cannot continue to provide the vast array of alleged "training" that they formerly did. I am very much in favor of a vastly reduced "training" schedule" and do not favor a common portal so that more "training" can go on. I find the endless conferences where nothing really is accomplished an dhuge hotel and travel costs are involved when Skype is available to be utgter nonsense in sending taxpayers into poverty for the ever overprivileged fat cat bloated bureaucratic employees in this agency.

we pay for their travel where they plot against the interest of the public and for their own enrichment. we pay for this out of control training costs. its time to cut the budget. its time for those who want to learn to take out a book and read it and go to the library and get copies of journals that will educate them on their nights. the extensive training costs that are mangling the taxpayer class needs to be reduced. the out of control benefits of govt employhees needs to be reduced. the spending is out of control. we cant afford it. we have 4 levels of govt to fund. its just too much. the deficits are rolling in in the trillions of dollars. start some cutting please of all these funds. This comment is for the public record. please receipt. jean publicee  
jeanpublic1@yahoo.com

fat cat bloated bureaucrats should have the education themselves if they

want the job otherwise don't hire them in the first plac"

*NPS Response/Action Taken:* The NPS responded to thank Ms. Public for her comment and to explain the goal of the portal is to provide more training opportunities at reduced costs—with cost savings achieved through reductions in travel and shipping of training materials. We further explained the proposed system is designed to help reach the entire employee workforce and interested outside persons around the world. No changes were made in response to her comment.

Anonymous comment received March 4, 2016: "<http://www.nps.gov/training/clp/html/index.cfm>."

The above link mentions concept from CR Academy. Searching Google found this: <http://learning.nps.gov/cr/join-the-commons/>.

Where is the SORN for the CR Academy Web site to operate? Looks to be collecting a lot of data . . . security breach?

It also mentions it links to other systems like AD, links directly to LMS, and other Web sites . . . none of this is mentioned in the SORN.

More lies from NPS to the Public. More of the "We will do whatever we want, and ask for mercy later." I guess it's easier to say it was "oversight" than to ask for permission."

*NPS Response/Action Taken:* The CR Academy was not intended for public use and is no longer operational. The content that was available in the CR Academy Web site transferred into the CLP. We are currently working with the NPS Privacy Act Officer to develop the required Systems of Records Notice (SORN) for approval and publication by the Department of the Interior's Privacy Office. The portal will not be made available to the public until all requirements (such as compliance with the Paperwork Reduction Act and Privacy Act SORN requirements) have been met and the NPS has been granted an authority to operate (ATO) by the NPS Chief Information Officer.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB and us in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: November 21, 2016.

**Madonna L. Baucum,**

*Information Collection Clearance Officer,  
National Park Service.*

[FR Doc. 2016-28370 Filed 11-23-16; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

[RR83550000, 167R5065C6,  
RX.59389832.1009676]

### Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

**ADDRESSES:** The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Michelle Kelly, Reclamation Law Administration Division, Bureau of Reclamation, P.O. Box 25007, Denver,

Colorado 80225-0007; telephone 303-445-2888.

**SUPPLEMENTARY INFORMATION:** Consistent with section 9(f) of the Reclamation Project Act of 1939, and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

#### Definitions of Abbreviations Used in the Reports

ARRA American Recovery and Reinvestment Act of 2009  
BCP Boulder Canyon Project Reclamation Bureau of Reclamation  
CAP Central Arizona Project  
CUP Central Utah Project  
CVP Central Valley Project  
CRSP Colorado River Storage Project  
FR Federal Register  
IDD Irrigation and Drainage District  
ID Irrigation District  
M&I Municipal and industrial  
NMISC New Mexico Interstate Stream Commission  
O&M Operation and maintenance  
OM&R Operation, maintenance, and replacement  
P-SMBP Pick-Sloan Missouri Basin Program  
PPR Present Perfected Right  
RRA Reclamation Reform Act of 1982  
SOD Safety of Dams  
SRPA Small Reclamation Projects Act of 1956  
USACE U.S. Army Corps of Engineers  
WD Water District

*Pacific Northwest Region:* Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706-1234, telephone 208-378-5344.

*New contract action:*

19. Yakama Nation and Cascade ID, Yakima Project, Washington: Long-term

contract for an exchange of water and to authorize the use of capacity in Yakima Project facilities to convey up to 10 cubic feet per second of non-project water during the non-irrigation season for fish hatchery purposes.

*Mid-Pacific Region:* Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825-1898, telephone 916-978-5250.

*New contract action:*

50. State of Nevada, Newlands Project, Nevada: Title transfer of lands and features of the Carson Lake and Pasture.

*Modified contract action:*

16. Pershing County Water Conservation District, Pershing County, and Lander County; Humboldt Project; Nevada: Title transfer of lands and features of the Humboldt Project.

*Completed contract actions:*

7. El Dorado ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the amount of up to 17,000 acre-feet annually. The contract will allow CVP facilities to be used to deliver nonproject water to the District for M&I use within its service area. Contract executed August 2, 2016.

16. Pershing County Water Conservation District, Pershing County, Lander County, and the State of Nevada; Humboldt Project; Nevada: Title transfer of lands and features of the Humboldt Project. Quitclaim deed executed on August 19, 2015 for the Battle Mountain Title Transfer situated in the County of Lander, State of Nevada.

*Lower Colorado Region:* Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006-1470, telephone 702-293-8192.

*New contract actions:*

26. San Carlos Apache Tribe and the Pascua Yaqui Tribe, CAP, Arizona: Execute a CAP water lease in order for the San Carlos Apache Tribe to lease 2,230 acre-feet of its CAP water to the Pascua Yaqui Tribe during calendar year 2017.

27. City of Yuma, BCP, Arizona: Long-term consolidated contract with the City for delivery of its Colorado River water entitlement.

28. Imperial Irrigation District, BCP, California: Approve an assignment of 155 cubic feet per second of capacity in the All-American Canal and all obligations associated therewith to the District from the City of San Diego.

*Completed contract action:*

7. City of Yuma, BCP, Arizona: Amend the City's contract to extend the term (which expired October 2012) for 5 years during which time a

consolidated contract will be developed. Contract executed August 16, 2016.

*Upper Colorado Region:* Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138-1102, telephone 801-524-3864.

*New contract actions:*

38. Albuquerque Bernalillo County Water Utility Authority, Middle Rio Grande Project, New Mexico: Contract to satisfy the requirements of Reclamation's Agreed Order obligation contained in the October 5, 2000, "Supplement to Agreed Order Resolving Plaintiffs' Motion for Preliminary Injunction." The contract will comply with the provisions and requirements of the Agreed Order by replacement/pay back of 14,129 acre-feet of water in which Reclamation will pay \$100 per acre-foot for 9,129 acre-feet for a total payment of \$912,900 as well as transfer to the Authority 5,000 acre-feet of water acquired by Reclamation. The contract will terminate upon full satisfaction of the agreements contained within to include final payment of replacement water via wet water replacement and the monetary payments described therein.

39. Utah Ute Indian Tribe, CUP, Utah: The Utah Ute Indian Tribe has requested the use of excess capacity in the Strawberry Aqueduct and Collection System, as authorized in the Central Utah Project Completion Act legislation.

40. Utah Ute Indian Tribe; Flaming Gorge Unit, CRSP; Utah: As part of discussions on settlement of a potential compact, the Utah Ute Indian Tribe has indicated interest in storage of its potential water right in Flaming Gorge Reservoir.

41. State of Utah; Flaming Gorge Unit, CRSP; Utah: The State of Utah has indicated an interest in obtaining a contract (likely an exchange contract) that would allow the full development and use of the Central Utah Project Ultimate Phase water right which was previously assigned to the State of Utah. The water right involves 158,000 acre-feet of depletion, of which 86,000 acre-feet is for the State of Utah's proposed Lake Powell Pipeline Project.

42. Weber Basin Water Conservancy District, Weber Basin Project, Utah: The District has requested permission to install a low-flow hydro-electric generation plant at Causey Reservoir to take advantage of winter releases. This will likely be accomplished through a supplemental O&M contract.

43. Central Utah Water Conservancy District; Bonneville Unit, CUP; Utah: The District has received a request to convert 300 acre-feet of irrigation water in Wasatch County to M&I purposes. This will require an amended block notice.

44. Provo River Restoration Project, Utah: The Utah Reclamation Mitigation and Conservation Commission is amending Agreement No. 9-LM-40-01410 to include additional acreage in the boundaries of the Provo River Restoration Project.

45. East Wanship Irrigation Company, Weber Basin Project, Utah: The Company has requested a supplementary O&M agreement to modify the Federal facilities below Wanship Dam to install a pipe from its current point of delivery to the end of the Primary Jurisdiction Zone.

*Completed contract actions:*

38. Albuquerque Bernalillo County Water Utility Authority, Middle Rio Grande Project, New Mexico: Contract to satisfy the requirements of Reclamation's Agreed Order obligation contained in the October 5, 2000, "Supplement to Agreed Order Resolving Plaintiffs' Motion for Preliminary Injunction." The contract will comply with the provisions and requirements of the Agreed Order by replacement/pay back of 14,129 acre-feet of water in which Reclamation will pay \$100 per acre-foot for 9,129 acre-feet for a total payment of \$912,900 as well as transfer to the Authority 5,000 acre-feet of water acquired by Reclamation. The contract will terminate upon full satisfaction of the agreements contained within to include final payment of replacement water via wet water replacement and the monetary payments described therein. Contract executed August 22, 2016.

*Great Plains Region:* Bureau of Reclamation, P.O. Box 36900, Federal Building, 2021 4th Avenue North, Billings, Montana 59101, telephone 406-247-7752.

*New contract action:*

43. Dennis Williams and Daniel Davis; Canyon Ferry Unit, P-SMBP; Montana: Proposal to negotiate, execute, and administer a long-term water service contract to irrigate up to 15,000 acres of land with water from Canyon Ferry.

44. Oxbow Ranch; Canyon Ferry Unit, P-SMBP; Montana: Proposal to negotiate, execute, and administer a long-term water service contract for multiple purposes with water from Canyon Ferry.

45. Hickory Swings Golf Course; Canyon Ferry Unit, P-SMBP; Montana: Consideration to amend Contract No. 159E670039 to increase the water supply from 20 to 50 acre-feet.

*Discontinued contract actions:*

17. State of Colorado; Armel Unit, P-SMBP; Colorado: Consideration of a contract action to address future OM&R costs.

34. Power—Teton County Water and Sewer District; Canyon Ferry Unit, P-SMBP; Montana: Consideration of a long-term contract for up to 40 acre-feet of M&I water from Canyon Ferry Reservoir.

40. Nathan D. and Kindra Young; Canyon Ferry Unit, P-SMBP; Montana: Consideration to renew short-term M&I water service contract No. 129E670093.

*Completed contract actions:*

19. Harlan County Dam and Reservoir; Bostwick Division, P-SMBP; Nebraska and Kansas: Consideration of a contract with Bostwick ID in Nebraska and Kansas-Bostwick ID No. 2 for repayment of extraordinary O&M at Harlan County Dam and Reservoir. Contract executed June 22, 2016.

27. East Larimer County Water District, Fort Collins-Loveland Water District, North Weld County Water District, and Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Consideration of long-term excess capacity contracts. Contracts executed August 26, 2016.

38. City of Chinook, Milk River Project, Montana: Consideration to renew long-term M&I water service Contract No. 14-06-600-2034A. Contract executed August 16, 2016.

Dated: September 27, 2016.

**Roseann Gonzales,**

*Director, Policy and Administration.*

[FR Doc. 2016-28342 Filed 11-23-16; 8:45 am]

**BILLING CODE 4332-90-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

[RR83550000, 178R5065C6, RX.59389832.1009676]

### Change in Discount Rate for Water Resources Planning

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of change.

**SUMMARY:** The Bureau of Reclamation is announcing the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 2.875 percent for fiscal year 2017.

**DATES:** This discount rate is to be used for the period October 1, 2016, through and including September 30, 2017.

**FOR FURTHER INFORMATION CONTACT:** DeShawn Woods, Bureau of Reclamation, Reclamation Law Administration Division, Denver, Colorado 80225; telephone: 303-445-2900.

**SUPPLEMENTARY INFORMATION:** The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2017 is 2.875 percent. Discounting is to be used to convert future monetary values to present values. This rate has been computed in accordance with Section 80(a), Public Law 93-251 (88 Stat. 34), and 18 CFR 704.39, which: (1) Specify that the rate will be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate will not be raised or lowered more than one-quarter of 1 percent for any year. The U.S. Department of the Treasury calculated the specified average to be 2.3596 percent. This rate, rounded to the nearest one-eighth percent, is 2.375 percent, which is a change of more than the allowable one-quarter of 1 percent. Therefore, the fiscal year 2017 rate is 2.875 percent.

The rate of 2.875 percent will be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common-time basis.

Dated: October 13, 2016.

**Roseann Gonzales,**

*Director, Policy and Administration.*

[FR Doc. 2016-28339 Filed 11-23-16; 8:45 am]

**BILLING CODE 4332-90-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-984]

### Certain Computing or Graphics Systems, Components Thereof, and Vehicles Containing Same; Notice of 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 determined not to review the presiding administrative law judge's ("ALJ") initial determinations ("IDs") (Order Nos. 57-59), terminating the above-captioned investigation as to the remaining respondents Fujitsu Ten

Limited of Hyogo-ken, Japan and Fujitsu Ten Corp. of America, Inc. of Novi, Michigan (collectively, "Fujitsu Ten"); Renesas Electronics Corporation of Tokyo, Japan and Renesas Electronics America, Inc. of Santa Clara, California (collectively, "Renesas"); and Honda Motor Co., Ltd. of Tokyo, Japan; Honda North America, Inc., American Honda Motor Co., Inc., and Honda R&D Americas, Inc., all of Torrance, California; Honda Engineering North America, Inc. and Honda of America Mfg., Inc., both of Marysville, Ohio; Honda Manufacturing of Alabama, LLC of Lincoln, Alabama; and Honda Manufacturing of Indiana, LLC of Greensburg, Indiana (collectively, the "Honda respondents") based on patent license agreements. The Commission has also determined to terminate the investigation.

**FOR FURTHER INFORMATION CONTACT:**

Clint Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708-2310. 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 at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 February 3, 2016, based on a complaint filed by Advanced Silicon Technologies LLC of Portsmouth, New Hampshire. 81 FR 5782-84. The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent Nos. 6,339,428 ("the '428 patent"); 6,546,439 ("the '439 patent"); 6,630,935 ("the '935 patent"); and 8,933,945 ("the '945 patent"). The complaint further alleged that a domestic industry exists. The Commission's Notice of Investigation named several respondents including Fujitsu Ten, Renesas, and the Honda respondents. The Office of Unfair Import Investigations was also named as

a party to the investigation. Only Fujitsu, Renesas, and the Honda respondents remain in the investigation.

On July 12, 2016, the Commission authorized judicial enforcement of a subpoena *duces tecum* and *ad testificandum* issued by the ALJ to non-party NXP Semiconductors USA, Inc. of Austin, Texas and authorized its Office of the General Counsel to seek judicial enforcement of the subpoena. Subsequently, on September 14, 2016, the complainant withdrew its request for judicial enforcement of the subpoena.

On April 14, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 16) terminating the investigation as to claims 8-9 and 16-17 of the '428 patent; claim 11 of the '439 patent; and claim 2 of the '945 patent. On July 20, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 41) terminating the investigation as to: (1) Claims 7 and 14 of the '439 patent; (2) claim 6 of the '935 patent; and (3) claim 21 of the '945 patent as to all respondents; and (4) claims 8 and 16 of the '439 patent only as to Renesas. On August 9, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 45) terminating the investigation as to claims 25-29 of the '428 patent with respect to all respondents.

On June 1, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 33) terminating the investigation as to respondent NVIDIA Corporation of Santa Clara, California based on a settlement agreement. On August 18, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 49) terminating the investigation as to respondent Texas Instruments Inc. of Dallas, Texas based on a settlement agreement. On October 13, 2016, the Commission issued notice of its determination not to review the ALJ's IDs (Order Nos. 53-55) terminating the investigation as to the following respondents based on withdrawal of allegations in the complaint as to these respondents: Bayerische Motoren Werke AG of Munich, Germany; BMW of North America, LLC of Woodcliff Lake, New Jersey; and BMW Manufacturing Co., LLC of Greer, South Carolina; Harman International Industries Inc. of Stamford, Connecticut; Harman Becker Automotive Systems, Inc. of Farmington Hills, Michigan; and Harman Becker Automotive Systems GmbH of Karlsbad, Germany; and Toyota Motor Corporation of Aichi-ken, Japan; Toyota

Motor North America, Inc. of New York City, New York; Toyota Motor Sales, U.S.A., Inc. of Torrance, California; Toyota Motor Engineering & Manufacturing North America, Inc. of Erlanger, Kentucky; Toyota Motor Manufacturing, Indiana, Inc. of Princeton, Indiana; Toyota Motor Manufacturing, Kentucky, Inc. of Georgetown, Kentucky; and Toyota Motor Manufacturing, Mississippi, Inc. of Blue Springs, Mississippi. On October 19, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 56) terminating the investigation as to Volkswagen AG of Wolfsburg, Germany; Volkswagen Group of America, Inc. and Audi of America, LLC, both of Herndon, Virginia; Volkswagen Group of America Chattanooga Operations, LLC of Chattanooga, Tennessee; and Audi AG of Ingolstadt, Germany based on a settlement agreement.

On August 24, 2016, the complainant and Fujitsu Ten jointly moved to terminate the investigation as to Fujitsu Ten based on a patent license agreement. On August 25, 2016, the complainant and Renesas jointly moved to terminate the investigation as to Renesas based on a patent license agreement. On the same date, the complainant and the Honda respondents jointly moved to terminate the investigation as to the Honda respondents based on a patent license agreement. OUII filed responses supporting each motion and no other responses were received.

On October 24, 2016, the ALJ issued the subject IDs (Order Nos. 57–59) granting the joint motions for termination of the investigation as to Fujitsu Ten, Renesas, and the Honda respondents, and finding that the motions satisfy Commission Rules 210.21(a)(2), (b)(1) (19 CFR 210.21(a)(2), (b)(1)) and that each termination is in the public interest. No petitions for review were filed.

The Commission has determined not to review the subject IDs and has terminated the investigation.

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: November 21, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016–28358 Filed 11–23–16; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–929]

### Enforcement and Rescission Proceeding; Certain Beverage Brewing Capsules, Components Thereof, and Products Containing the Same; Notice of Institution of Rescission Proceeding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has instituted a rescission proceeding relating to the March 17, 2016 limited exclusion order and cease and desist order issued in the above-referenced investigation.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Needham, 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 (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 the original investigation on September 9, 2014, based on a complaint filed by Adrian Rivera and Adrian Rivera Maynez Enterprises, Inc. (collectively, “ARM”). 79 FR 53445–46 (Sept. 9, 2016). The complaint alleged 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 beverage brewing capsules, components thereof, and products containing the same, by reason of infringement of claims 5–8 and 18–20 of U.S. Patent No. 8,720,320 (“the ‘320 patent”). *Id.* The notice of institution of the investigation named as respondents Solofill, LLC (“Solofill”); DongGuan Hai Rui Precision Mould Co., Ltd.

(“DongGuan”); Eko Brands, LLC (“Eko Brands”); Evermuch Technology Co., Ltd. and Ever Much Company Ltd. (together, “Evermuch”); and several additional respondents who were terminated by reason of consent order or settlement. 79 FR 53445. The Office of Unfair Import Investigations (“OUII”) was also named as a party to the investigation. *Id.* The Commission found Eko Brands and Evermuch in default for failure to respond to the complaint and notice of investigation. Notice (May 18, 2015).

On March 17, 2016, the Commission found no violation of section 337 by Solofill and DongGuan because claims 5–7, 18, and 20 were invalid for a lack of written description and claims 5 and 6 were invalid as anticipated. 81 FR 15742–43 (Mar. 24, 2016). The Commission, however, presumed that the allegations were true with respect to the remaining allegations against the defaulted parties Eko Brands and Evermuch, and thus concluded that they violated section 337 with respect to claims 8 and 19. *Id.* at 15743. The Commission issued a limited exclusion order prohibiting Eko Brands and Evermuch from importing certain beverage brewing capsules, components thereof, and products containing the same that infringed claims 8 or 19 of the ‘320 patent. *Id.* The Commission also issued cease and desist orders against Eko Brands and Evermuch prohibiting the sale and distribution within the United States of articles that infringe claims 8 or 19. *Id.*

On June 1, 2016, ARM filed a complaint requesting that the Commission institute a formal enforcement proceeding under Commission Rule 210.75(b) to investigate violations of the March 17, 2016, limited exclusion order and cease and desist order by Eko Brands and Espresso Supply, Inc. The Commission instituted a formal enforcement proceeding on July 1, 2016. 81 FR 43242–43.

On September 12, 2016, Eko Brands petitioned the Commission to rescind its limited exclusion order and cease and desist orders, and to terminate the enforcement proceeding. Eko Brands contended that changed circumstances warranted such relief. On September 22, 2016, ARM opposed the petition. On September 22, 2016, OUII filed a response supporting the institution of a rescission proceeding but opposing the termination of the enforcement proceeding.

On September 30, 2016, Eko Brands moved for leave to file a reply in support of its petition. ARM opposed the motion on October 6, 2016.

Having examined the petition and the supporting documents, the Commission has determined to institute a rescission proceeding to determine whether the March 17, 2016 limited exclusion order and cease and desist order should be rescinded. The Commission has further determined to delegate the rescission proceeding to the presiding ALJ and to consolidate that proceeding with the ongoing enforcement proceeding. Finally, the Commission has determined to delegate Eko Brands's request to terminate the enforcement proceeding to the ALJ, and to deny Eko Brands's motion for leave to file a reply.

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 section 210.76 of the Commission's Rules of Practice and Procedure (19 CFR 210.76).

By order of the Commission.

Issued: November 18, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016-28314 Filed 11-23-16; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

#### Advisory Board on Toxic Substances and Worker Health: Subcommittee on Industrial Hygienists (IH) & Contract Medical Consultants (CMC) and Their Reports

**AGENCY:** Office of Workers' Compensation Programs.

**ACTION:** Announcement of meeting of the subcommittee on IH & CMC and their reports of the Advisory Board on Toxic Substances and Worker Health (Advisory Board) for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

**SUMMARY:** The subcommittee will meet via teleconference on December 16, 2016, from 12:00 p.m. to 1:30 p.m. Eastern Time.

*For Press Inquiries Contact:* For press inquiries: Ms. Amanda McClure, Office of Public Affairs, U.S. Department of Labor, Room S-1028, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-4672; email [mcclure.amanda.c@dol.gov](mailto:mcclure.amanda.c@dol.gov).

**SUPPLEMENTARY INFORMATION:** The Advisory Board is mandated by Section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699

(June 26, 2015). The purpose of the Advisory Board is to advise the Secretary with respect to: (1) The Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; and (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency. The Advisory Board sunsets on December 19, 2019. This subcommittee is being assembled to gather data and begin working on advice under Area #4, IH & CMC and Their Reports.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and its implementing regulations (41 CFR part 102-3).

*Agenda:* The tentative agenda for the Subcommittee on IH & CMC and Their Reports meeting includes: Update on initial recommendations forwarded to the Secretary of Labor; discussion about follow-up from the public comments; review of status of board requests; discussion of committee members' review of additional case files.

OWCP transcribes Advisory Board subcommittee meetings. OWCP posts the transcripts on the Advisory Board Web page, <http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm>, along with written comments and other materials submitted to the subcommittee or presented at subcommittee meetings.

#### Public Participation, Submissions, and Access to the Public Record

*Subcommittee meeting:* The subcommittee will meet via teleconference on Friday, December 16, 2016, from 12:00 p.m. to 1:30 p.m. Eastern Time. Advisory Board subcommittee meetings are open to the public. The teleconference number and other details for listening to the meeting will be posted on the Advisory Board's Web site no later than 72 hours prior to the meeting. This information will be posted at <http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm>.

*Requests for special accommodations:* Please submit requests for special accommodations to participate in the subcommittee meeting by email, telephone, or hard copy to Ms. Carrie Rhoads, OWCP, Room S-3524, U.S. Department of Labor, 200 Constitution

Avenue NW., Washington, DC 20210; telephone (202) 343-5580; email [EnergyAdvisoryBoard@dol.gov](mailto:EnergyAdvisoryBoard@dol.gov).

*Submission of written comments for the record:* You may submit written comments, identified by the subcommittee name and the meeting date of December 16, 2016, by any of the following methods:

- *Electronically:* Send to: [EnergyAdvisoryBoard@dol.gov](mailto:EnergyAdvisoryBoard@dol.gov) (specify in the email subject line, "Subcommittee on IH & CMC and Their Reports").

- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S-3522, 200 Constitution Ave. NW., Washington, DC 20210. Due to security-related procedures, receipt of submissions by regular mail may experience significant delays.

Comments must be received by December 9, 2016. OWCP will make available publically, without change, any written comments, including any personal information that you provide. Therefore, OWCP cautions interested parties against submitting personal information such as Social Security numbers and birthdates.

Electronic copies of this **Federal Register** notice are available at <http://www.regulations.gov>. This notice, as well as news releases and other relevant information, are also available on the Advisory Board's Web page at <http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm>.

**FOR FURTHER INFORMATION CONTACT:** You may contact Antonio Rios, Designated Federal Officer, at [rios.antonio@dol.gov](mailto:rios.antonio@dol.gov), or Carrie Rhoads, Alternate Designated Federal Officer, at [rhoads.carrie@dol.gov](mailto:rhoads.carrie@dol.gov), U.S. Department of Labor, 200 Constitution Avenue NW., Suite S-3524, Washington, DC 20210, telephone (202) 343-5580.

This is not a toll-free number.

**Leonard J. Howie III,**

*Director, Office of Workers' Compensation Programs.*

[FR Doc. 2016-28273 Filed 11-23-16; 8:45 am]

BILLING CODE 4510-24-P

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Recordkeeping, Reporting, and Disclosure Requirements Associated With the Truth in Lending Act (TILA), as Implemented by Regulation Z; Comment Request

**AGENCY:** National Credit Union  
Administration (NCUA).

**ACTION:** Notice and request for comment.

**SUMMARY:** NCUA, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the submission for reinstatement of a previously approved collection, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). NCUA is soliciting comment on the reinstatement of the information collection described below.

**DATES:** Comments should be received on or before January 24, 2017 to be assured consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on the information collection to Troy Hillier, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–519–8579; or Email at [PRAComments@ncua.gov](mailto:PRAComments@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the address above.

#### SUPPLEMENTARY INFORMATION:

*OMB Number:* 3133–0102.

*Title:* Recordkeeping, Reporting, and Disclosure Requirements Associated with the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, as implemented by Regulation Z, 12 CFR 1026.

*Abstract:* The Truth in Lending Act was enacted to foster comparison credit shopping and informed credit decision making by requiring accurate disclosure of the costs and terms of credit to consumers and to protect consumers against inaccurate and unfair credit billing practices. TILA has been revised numerous times since it took effect, notably by passage of the Fair Credit Billing Act of 1974, the Consumer Leasing Act of 1976, the Truth in Lending Simplification and Reform Act of 1980, the Fair Credit and Charge Card Disclosure Act of 1988, and the Home Equity Loan Consumer Protection Act of 1988. Historically, TILA was implemented by the Board of Governors of the Federal Reserve System's (FRB) Regulation Z, 12 CFR part 226. The Dodd-Frank Wall Street Reform and

Consumer Protection Act transferred FRB's rulemaking authority for TILA to the Consumer Financial Protection Bureau (CFPB).

Regulation Z contains several provisions that impose information collection requirements: The information collection requirements for open-end credit products; the information collection requirements for closed-end credit; the information collection requirements that apply to both open- and closed-end mortgage credit; the information collection requirements for specific residential mortgage types—namely, reverse mortgages and high cost mortgages with rates and fees above specified thresholds; the information collection requirements for private education loans; and information collection requirements related to Regulation Z's advertising and record retention rules.

The collection of information pursuant to Part 1026 is triggered by specific events and disclosures and must be provided to consumers within the time periods established under the regulation. To ease the compliance cost (particularly for small credit unions), model forms and clauses are appended to the regulation.

*Type of Review:* Reinstatement with change of a previously approved collection.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Number of Respondents:* 5,936.

*Frequency of Response:* Upon occurrence of triggering action.

*Estimated Total Annual Burden Hours:* 3,351,131. The one-time burden is estimated to be 340,783 hours and the ongoing burden, 3,010,349 (340,783 + 3,010,349 = 3,351,131).

*Request For Comments:* Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on November 18, 2016.

Dated: November 18, 2016.

**Troy S. Hillier,**

*NCUA PRA Clearance Officer.*

[FR Doc. 2016–28313 Filed 11–23–16; 8:45 am]

**BILLING CODE 7535–01–P**

## NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

### Institute of Museum and Library Services

### Sunshine Act Meeting of the National Museum and Library Services Board

**AGENCY:** Institute of Museum and  
Library Services (IMLS), NFAH.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Museum and Library Services Board, which advises the Director of the Institute of Museum and Library Services on general policies with respect to the duties, powers, and authority of the Institute relating to museum, library and information services, will meet on December 7, 2016.

**DATES:** Wednesday, December 7, 2016, from 2:00 p.m. to 4:00 p.m. EST.

**ADDRESSES:** The meeting will be held at the IMLS Offices, Panel Room, Suite 4000, 955 L'Enfant Plaza North SW., Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Katherine Maas, Program Specialist, Institute of Museum and Library Services, Suite 4000, 955 L'Enfant Plaza North SW., Washington, DC 20024. Telephone: (202) 653–4798. Please provide advance notice of any special needs or accommodations.

#### SUPPLEMENTARY INFORMATION:

**STATUS:** The meeting will be open to the public.

**AGENDA:** Thirty-Fourth Meeting of the National Museum and Library Service Board Meeting:

- I. Welcome and Director's Report
- II. Approval of Minutes and Office of General Counsel Update
- III. Financial and Operations Update
- IV. Office of Library Services Update
- V. Office of Museum Services Update
- VI. Office of Communications and Government Affairs Update
- VII. Office of Digital and Information Strategy Update
- VIII. Question and Answer Session
- IX. Adjourn

Dated: November 17, 2016.

**Calvin D. Trowbridge III,**

*Deputy General Counsel.*

[FR Doc. 2016–28223 Filed 11–23–16; 8:45 am]

**BILLING CODE 7036–01–M**

**NATIONAL SCIENCE FOUNDATION****Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978**

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 27, 2016. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nature McGinn, ACA Permit Officer, at the above address or [ACApermits@nsf.gov](mailto:ACApermits@nsf.gov).

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details:

**Permit Application: 2017-029****1. Applicant**

John Durban, Ph.D., Marine Mammal and Turtle Division, NOAA NMFS Southwest Fisheries Science Center, 8901 La Jolla Shores Dr. La Jolla, CA 92037.

**Activity for Which Permit Is Requested**

Take; Import into USA. The applicant's study of the health of whales, as a means to assess the health of Antarctic marine ecosystems, calls for

the use of aerial photogrammetry to collect data on whale morphometrics and condition. The applicant proposes to use unmanned aircraft systems (UAS), particularly small, radio-controlled hexacopters, for aerial photogrammetry, and to use handheld cameras for photo-identification. The hexacopters will be flown greater than 100 ft above the whales for identification and assessment purposes. The applicant also proposes to sample the exhaled blow (breath) of commonly encountered larger whales by briefly descending the hexacopter to as low as 6 ft above the whale and flying through the blow plume. The breath samples will be analyzed for microorganisms as an indicator of the whales' respiratory health. In previous studies, the applicant has noted no behavioral disturbances from the overflight of whales by hexacopters for photo- or breath-sampling. In addition to the photogrammetry and sampling via UAS, the study entails collecting tissue samples the size of a pencil eraser to be used for genetic investigations, for stable isotope analyses to describe diet and nutritional status, and for a comparison of the skin microbiome to respiratory samples. The tissue samples will also be used for steroid hormone analysis to infer pregnancy, as well as physiological and nutritional stress. The applicant's study includes the following whale species (both sexes) and number of takes per annum: Killer whales (photogrammetry, n = 5000; biopsy, n = 475); humpback whales (photogrammetry, n = 2000; breath sample, n = 100; biopsy, n = 235); Antarctic minke whales (photogrammetry, n = 1000; breath sample, n = 500; biopsy, n = 170); common minke whales (photogrammetry, n = 1000; breath sample, n = 500; biopsy, n = 170); Arnoux's beaked whales (photogrammetry, n = 500; biopsy, n = 55); southern bottlenose whales (photogrammetry, n = 200; biopsy, n = 85); and sperm whales (photogrammetry, n = 2000; biopsy, n = 90). Additionally, samples of dead marine mammals encountered by the applicant may be salvaged for chemical analysis or genetic determination of species (whales, n = 500 per annum; seals, n = 500). All samples will be imported into the USA for analysis and ultimate disposition at the Southwest Fisheries Science Center.

**Location**

Antarctic Peninsula region; southern Ross Sea;

**Dates**

January 1, 2017–May 31, 2021.

**Nadene G. Kennedy,**

*Polar Coordination Specialist, Division of Polar Programs.*

[FR Doc. 2016-28283 Filed 11-23-16; 8:45 am]

**BILLING CODE 7555-01-P**

**NATIONAL TRANSPORTATION SAFETY BOARD****Sunshine Act Meeting**

**TIME AND DATE:** 9:30 a.m., Tuesday, December 6, 2016.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

**STATUS:** The one item is open to the public.

**MATTERS TO BE CONSIDERED:**

8620A Railroad Accident Report: *Collision of Two Union Pacific Railroad Freight Trains in Hoxie, Arkansas, August 17, 2014.*

**NEWS MEDIA CONTACT:** Telephone: (202) 314-6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314-6305 or by email at [Rochelle.Hall@ntsb.gov](mailto:Rochelle.Hall@ntsb.gov) by Wednesday, November 30, 2016.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at [www.ntsbt.gov](http://www.ntsbt.gov).

Schedule updates, including weather-related cancellations, are also available at [www.ntsbt.gov](http://www.ntsbt.gov).

*For More Information Contact:* Candi Bing at (202) 314-6403 or by email at [bingc@ntsb.gov](mailto:bingc@ntsb.gov).

*For Media Information Contact:* Terry Williams at (202) 314-6100 or by email at [terry.williams@ntsb.gov](mailto:terry.williams@ntsb.gov).

Dated: Tuesday, November 22, 2016.

**Candi R. Bing,**

*Federal Register Liaison Officer.*

[FR Doc. 2016-28540 Filed 11-22-16; 4:15 pm]

**BILLING CODE 7533-01-P**

**NATIONAL TRANSPORTATION SAFETY BOARD****Investigative Hearing**

On July 30, 2016 at 7:42 a.m. central daylight time, a Kubicek BB85Z hot air balloon, operated by Heart of Texas Balloons, registration N2469L, impacted electrical transmission lines and crashed into a pasture near Lockhart,

TX. The pilot and 15 passengers were fatally injured by impact and fire. The balloon was destroyed. Witness and weather observation information indicated low clouds and fog in the general area. The flight was a commercial sightseeing tour flight, operated under the provisions of 14 CFR part 91.

The investigative hearing is being held to discuss the circumstances of the accident flight and safety issues regarding commercial balloon tour operations. Areas that will be discussed include operations of large passenger carrying balloons, balloon pilot training and decision-making, weather factors relevant to accident, FAA regulation and oversight of commercial balloons, tour operator best practices, and medical factors and certification requirements relevant to the accident.

Parties to the hearing include the Federal Aviation Administration, the Balloon Federation of America, and Kubicek Balloons.

#### Order of Proceedings

1. Opening Statement by the Chairman of the Board of Inquiry
2. Introduction of the Board of Inquiry and Technical Panel
3. Introduction of the Parties to the Hearing
4. Introduction of Exhibits by Hearing Officer
5. Overview of the incident and the investigation by Investigator-In-Charge
6. Calling of Witnesses by Hearing Officer
7. Closing Statement by the Chairman of the Board of Inquiry

Additional information can be found on the Web at: <http://www.nts.gov/news/events/Pages/2016-balloon-inv-hearing.aspx>.

The accident docket is DCA16MA204. The Investigative Hearing will be held in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza E. SW., Washington, DC, on Friday, December 9, 2016 at 9:00 a.m. The public can view the hearing in person or by live Webcast at [www.nts.gov](http://www.nts.gov). Webcast archives are generally available by the end of the next day following the hearing, and Webcasts are archived for a period of 3 months from after the date of the event.

Individuals requesting specific accommodations should contact Ms. Rochelle McCallister at (202) 314-6305 or by email at [Rochelle.McCallister@nts.gov](mailto:Rochelle.McCallister@nts.gov) by Wednesday, November 30, 2016.

NTSB Media Contact: Mr. Eric Weiss—[eric.weiss@nts.gov](mailto:eric.weiss@nts.gov).

NTSB Investigative Hearing Officer:  
Mr. William English—[bill.english@nts.gov](mailto:bill.english@nts.gov)

Dated: November 21, 2016.

**Candi R. Bing,**  
Federal Register Liaison Officer.

[FR Doc. 2016-28382 Filed 11-23-16; 8:45 am]  
BILLING CODE 7533-01-P

#### NEIGHBORHOOD REINVESTMENT CORPORATION

##### Regular Board of Directors Meeting; Sunshine Act

**TIME AND DATE:** 12:30 p.m., Tuesday, December 6, 2016.

**PLACE:** NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE., Washington DC 20002.

**STATUS:** Open (with the exception of Executive Session).

**CONTACT PERSON:** Jeffrey Bryson, EVP & General Counsel/Secretary, (202) 760-4101; [jbryson@nw.org](mailto:jbryson@nw.org).

#### AGENDA:

- I. CALL TO ORDER
- II. Approval of Minutes
- III. Executive Session: Report from CEO
- IV. Gift Acceptance Policy
- V. CounselorMax (CMS)
- VI. LIFT
- VII. Future Issues, Management Program Background and Updates
- VIII. Adjournment

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552 (b)(2) permit closure of the following portion(s) of this meeting:

- Report from CEO

**Jeffrey T. Bryson,**  
EVP & General Counsel/Corporate Secretary.

[FR Doc. 2016-28595 Filed 11-22-16; 4:15 pm]  
BILLING CODE 7570-02-P

#### NUCLEAR REGULATORY COMMISSION

[Docket No. 50-170; NRC-2012-0272]

##### Armed Forces Radiobiology Research Institute

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental assessment and finding of no significant impact; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is considering renewal of Facility Operating License No. R-84, held by the Armed Forces

Radiobiology Research Institute (AFRRI or the licensee) for the continued operation of its Training, Research, Isotope Production, General Atomics (GA) (TRIGA) research reactor. The NRC is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the renewal of the license.

**DATES:** The EA and FONSI are available as of November 25, 2016.

**ADDRESSES:** Please refer to Docket ID NRC-2012-0272 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0272. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto: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](mailto:pdr.resource@nrc.gov). For the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.

- **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:** Cindy K. Montgomery, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Rockville, MD 20852; telephone: 301-415-3398; email: [Cindy.Montgomery@nrc.gov](mailto:Cindy.Montgomery@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The NRC is considering issuance of a renewed Facility Operating License No. R-84, held by AFRRI, which would authorize continued operation of the AFRRI TRIGA research reactor, located in Bethesda, Montgomery County, Maryland. As required by section 51.21 of title 10 of the *Code of Federal*

*Regulations* (10 CFR), “Criteria for and identification of licensing and regulatory actions requiring environmental assessments,” the NRC performed an EA. Based on the results of the EA that follows, the NRC has determined not to prepare an environmental impact statement for the proposed license renewal and is issuing a FONSI.

## II. Environmental Assessment

### *Facility Site and Environs*

The AFRRRI complex and TRIGA Mark-F research reactor is located on the grounds of the Naval Support Activity Bethesda Military Installation, Montgomery County, Maryland. The AFRRRI lies 3 miles (4.8 kilometers) north of the Washington, DC–Maryland line. The AFRRRI site contains a moderate slope that declines northward towards a narrow creek valley, which feeds into Rock Creek. The nearest residence, 295 feet (90 meters) away, is Fisher House, a temporary home for families of patients of the medical center.

The AFRRRI complex includes six separate primary buildings arranged in an interconnected complex. The principal radiation facilities housed within AFRRRI are the TRIGA reactor facility, the linear accelerator facility, the Cobalt-60 facility, and the Low-Level Radiation Facility. In addition to these facilities, AFRRRI also houses research laboratories, a hot cell, a radiochemistry lab, an animal clinical research facility, office space, and related support areas. The reactor facility, which includes the Mark-F reactor and its associated equipment, is housed in a single building of reinforced concrete. A mat foundation under the building distributes floor and shielding loads and also provides shielding against potential soil activation. The roof of the building is constructed of lightweight concrete poured over a corrugated steel form supported by steel roof trusses. Access to the AFRRRI complex is controlled.

The AFRRRI TRIGA research reactor is used to study the effects of neutron and gamma radiation on living organisms and instruments and to produce radioisotopes. The reactor is an open pool-type light water reactor that can operate in either steady-state mode up to a power level of 1.1 megawatt (thermal) (MWt) or pulse mode with a step reactivity insertion of up to 2.45 percent  $\Delta k/k$ . The reactor utilizes standard design GA fuel elements. The AFRRRI TRIGA reactor has the capability of a horizontally movable core. The reactor pool contains approximately

15,000 gallons (56,800 liters) of light, demineralized water. The reactor tank is 19.5 feet (6 meters) deep and 13 feet (4 meters) wide in a clover leaf shape. The reactor core is positioned in the reactor tank under approximately 16 feet (5 meters) of water. The reactor tank water serves as radiation shielding, a neutron moderator and reflector, and reactor coolant. The AFRRRI TRIGA reactor tank is constructed of aluminum and is embedded in ordinary concrete with a protective coating between the aluminum and concrete. The core is shielded in the radial directions by the reactor tank water and a minimum of approximately 9 feet (2.75 meters) of ordinary concrete (with the exception of the exposure rooms). The reactor is fueled with special nuclear material enriched to less than 20 percent Uranium-235. A detailed description of the reactor can be found in the AFRRRI Safety Analysis Report (SAR).

The cooling systems for the AFRRRI TRIGA research reactor are the primary cooling system, the secondary cooling system, the primary water purification system, and the makeup water system for the primary coolant. Natural convection of the water in the reactor pool dissipates the heat generated by the reactor core. Heated coolant rises out of the core and into the bulk pool water. The large heat sink provided by the volume of primary coolant allows several hours of full-power operation without any secondary cooling. During prolonged operations at the upper range of power levels, the secondary cooling system is activated and the waste heat is released to the atmosphere through the facility’s mechanical draft wet cooling tower, which is located on the roof of the AFRRRI complex. The heat removal system transfers heat from the reactor pool and primary piping system to the secondary system via a 1.5 megawatt (MW) heat exchanger. The secondary system uses a cooling tower to discharge the heat directly to the atmosphere. Secondary coolant make-up water to the cooling tower is provided by municipal water and is automatically added as needed by a float-type valve. The addition of secondary coolant make-up water is based on the evaporative loss through the cooling tower and is minimal with respect to the total capacity of the municipal water system. The environmental effects of thermal effluents from the cooling tower at 1.1 MWt reactor power level are negligible. During operation, the secondary system is maintained at a higher pressure than the primary system to minimize the likelihood of primary system contamination entering the

secondary system and ultimately the environment. The reactor pool water level is monitored by a float activated switch. A drop in the reactor pool water level of 6 inches (15 centimeters) causes a reactor scram and activates several alarms. Instrumentation in the reactor tank, primary cooling water system, and primary water purification system permits the measurement of parameters important to the safe operation of the reactor and the associated cooling system. The licensee does not chemically treat the primary coolant.

### *Identification of the Proposed Action*

The proposed action would renew Facility Operating License No. R-84 for a period of 20 years from the date of issuance of the renewed license. The proposed action is in accordance with the licensee’s application dated June 24, 2004, as supplemented by letters dated March 4, August 13, September 27, October 21, and December 15, 2010; February 7, June 20, September 6, October 20, and November 28, 2011; January 17, April 20, and September 21, 2012; June 28, and August 27, 2013; December 4, 2014; March 30, 2015; and February 9, February 27, August 5, September 12, September 21, September 26, September 27, September 30, and November 16, 2016 (collectively referred to as “the renewal application”). In accordance with 10 CFR 2.109, “Effect of timely renewal application,” the existing license remains in effect until the NRC takes final action on the renewal application.

### *Need for the Proposed Action*

The proposed action is needed to allow the continued operation of the AFRRRI TRIGA research reactor to conduct radiobiology and related research, which relates to the mission of the armed forces of the United States in collaboration with other research entities, for a period of 20 years.

### *Environmental Impacts of the Proposed Action*

The environmental impacts of the proposed action are discussed below. As discussed below, the proposed action will not have a significant environmental impact. In addition, the proposed action will not require any physical changes to the facility and the impacts are similar to those occurring during past operations.

#### A. Radiological Impact

##### *Environmental Effects of Reactor Operations*

Gaseous radioactive effluents resulting from the operation of the AFRRRI TRIGA reactor released from the

facility are Nitrogen-16 (N-16) and Argon-41 (Ar-41). These nuclides are released to the environment from the reactor building ventilation system through the AFRRI stack, which has a normal air flow rate of approximately 31,000 cubic feet per minute (878 cubic meters per minute). Because the half-life of N-16 is approximately 7.4 seconds, the release from the reactor stack is insignificant considering the amount of time it would take for N-16 to reach the stack from its production point in the reactor core. Ar-41 is by far the most significant radionuclide released as a gaseous effluent during normal reactor operations. The maximum release of Ar-41 would occur from continuous operation at full power. Using the TS constraint of a maximum allowable 313.5 Ci release, the licensee calculated the dose to a member of the public using the Environmental Protection Agency COMPLY code to be 9.9 millirem/year (mrem/yr). The NRC staff reviewed these calculations and found them to be reasonable and conservative. The annual reports for the five years of operation from 2011 through 2015 show that the highest calculated actual release due to Ar-41, 6.21 Ci in 2011, would result in a dose of 0.2 mrem/yr to a member of the public, which is less than 1 percent of the 100 mrem/yr limit specified in 10 CFR 20.1301, "Dose limits for individual members of the public." Additionally, this potential radiation dose also demonstrates compliance with the as low as is reasonably achievable (ALARA) air emissions dose constraint of 10 mrem specified in 10 CFR 20.1101, "Radiation protection programs," paragraph (d).

There are no liquid radioactive wastes generated as a result of normal reactor operations, however, a liquid waste disposal system is available as a means to control the release of radioactive liquid waste from the AFRRI complex to the sanitary sewer system.

Low-level solid radioactive waste generated from reactor operations typically includes laboratory wastes such as glassware, paper, plastics, scintillation vials, disposable gloves, and radioactive biological samples. Low-level waste typically comprises a volume of one to five 55-gallon drums with less than 5 milliCuries per year, containing essentially all short-lived, radionuclides (*i.e.*, Na-24, Mn-56, Cu-64). Reactor demineralizer resins and particulate filters are typically changed at intervals of 6 to 18 months, and are disposed of as solid waste. Solid radioactive wastes are transferred to the AFRRI byproduct license and disposed of under the requirements of that license.

Reactor staff members of the AFRRI TRIGA research reactor and other AFRRI personnel who work with radioactive materials are assigned personal dosimeters which assess whole body and extremity doses. Personnel exposures are well within the limits set forth by 10 CFR 20.1201, "Occupational dose limits for adults." There are no changes in reactor operation associated with license renewal that would lead to an increase in occupational dose expected as a result of the proposed action.

The radiation monitoring systems associated with reactor operations at AFRRI are provided and maintained as a means of ensuring compliance with radiation limits established under 10 CFR part 20. "Standards for Protection Against Radiation." The AFRRI monitoring systems consist of radiation area monitors (RAMs), continuous air monitors (CAMs), cooling water monitors, AFRRI perimeter monitors, personnel monitors, and stack gas and particulate monitors. The RAMs, placed in various areas of the reactor building, utilize scintillation detectors which measure gamma radiation. The CAMs, utilized in the reactor room, exposure rooms, and prep-area provide continuous air sampling and monitoring (gross beta-gamma activity) primarily of airborne particulate matter. The stack particulate and gas monitoring systems measure the beta-gamma activity emitted by radioactive particulates and the activity of gaseous radioactive nuclides, respectively, that are exhausted through the AFRRI stack. Perimeter monitoring at AFRRI consists of several stations, each equipped with a thermoluminescent dosimeter (TLD) which detects X-ray and gamma radiation. Even with uncertainties in individual TLDs of  $\pm 10$  mrem, readings have been well under the regulatory limit.

The licensee takes environmental samples quarterly. Samples are taken of water, soil, and vegetation and have been below action levels specified in the AFRRI Health Physics Procedure. A review of licensee's annual reports for the five years of operation from 2011 through 2015 indicate that samples are generally indistinguishable from normal environmental background activity levels. Based on the NRC staff's review of data from the annual reports over the years from 2011 through 2015, the NRC staff concludes that operation of the AFRRI TRIGA research reactor does not have any significant radiological impact on the surrounding environment. The proposed renewal would not authorize any changes to reactor design or operation and thus would not change

off-site radiation levels. Therefore, the NRC staff concludes that the proposed action would not have a significant radiological impact.

#### *Environmental Effects of Accidents*

Accident scenarios are discussed in Chapter 13 of the AFRRI SAR. The accidents analyzed in Chapter 13 range from anticipated events to a postulated fission product release with radiological consequences that exceed those of any fission product accident considered to be credible. This limiting accident is referred to as the maximum hypothetical accident (MHA) and is the bounding, most significant radiological fission product release accident. The MHA analysis was supplemented by letter dated January 17, 2012 and NRC staff evaluated the analysis and performed confirmatory calculations. The MHA scenario for AFRRI is the failure of a fueled experiment in air. For the MHA analysis, the licensee assumed that all noble gasses and fission products that accumulated inside the experiment capsule would be directly released into the reactor room air without radioactive decay and be ultimately released to the unrestricted area. The licensee also assumed that the fueled experiment would contain one gram of 19.75 percent low enriched uranium (LEU) and be irradiated in the AFRRI reactor for 42 minutes at 1 megawatt thermal (MWt). The 42-minute sample irradiation time was assumed because it is the time required to reach the TS limit of 1 curie (Ci) for iodine isotopes—Iodine-131 through Iodine-135. Licensee calculations estimate the maximum concentration of fission products that might be present in the reactor room air following the MHA. This estimate is based on the actual percentage of fission product gases that escapes from the fuel and collects in the gap between the cladding and the fuel, as determined by experiments conducted by the reactor's designer, General Atomics. The licensee calculations show the Total Effective Dose Equivalent (TEDE) is within regulatory limits at all distances downwind from the AFRRI facility. The maximum calculated TEDE for a member of the public is calculated to be 76 mrem and the maximum calculated TEDE for an AFRRI occupational worker was calculated to be 508 mrem. The proposed license renewal would not significantly increase the probability or consequences of accidents. The NRC staff reviewed these calculations and found them to be performed using approved methods and are acceptable. The calculated public dose from an accidental release is less than the 10

CFR part 20 annual limit of 100 mrem and the occupational dose is a fraction of the 10 CFR part 20 annual limit of 5000 mrem.

The licensee has systems in place for controlling the release of radiological effluents and implements a radiation protection program to monitor personnel exposures and releases of radioactive effluents. The systems and radiation protection program are appropriate for the types and quantities of effluents expected to be generated by continued operation of the reactor. The NRC staff evaluated information in the licensee's application and data the licensee reported to the NRC for the last 5 years of operation to determine the projected radiological impact of the facility on the environment during the period of the renewed license. The NRC staff found that releases of radioactive material and personnel exposures have been well within applicable regulatory limits. Because the licensee has not requested any changes to the facility design or operating conditions, and no changes are being made in the types or quantities of effluents, there would be no significant change in the types or significant increase in the quantities of effluents that may be released off site and there would be no significant increases in individual or cumulative radiation exposure. Therefore, the proposed license renewal would not increase routine occupational or public radiation exposure and would not change the environmental impact of facility operation. Based on its evaluation, the NRC staff concluded that continued operation of the reactor would not have a significant radiological impact.

#### B. Non-Radiological Impacts

Given that the proposed action does not involve any change in the operation of the reactor, change in the emissions or heat load dissipated to the environment, or construction or other land disturbance activities, the proposed action would not have a significant impact on land use, visual resources, air quality, noise, or terrestrial or aquatic resources. Additionally, because the TRIGA reactor uses municipal water for its cooling system, the proposed action would have no effect on ground or surface waters. No release of potentially harmful chemical substances will occur during normal operations. No significant quantities of hazardous chemicals, toxins, or reactives are present at the facility. No significant quantities of strong acids or bases are used or stored at the facility. The facility does use small volumes (typically less than 50

milliliters) of standard laboratory-grade chemicals for experiments, but these chemicals have low toxicity, reactivity and corrosivity characteristics. These chemicals are disposed through an established procedure with the Uniformed Services University of the Health Science's Environment Health Office in accordance with the U.S. Environmental Protection Agency and state of Maryland requirements. Small amounts of chemicals and/or high-solid content water may be released from the facility through the sanitary sewer during periodic blowdown of the cooling tower or from laboratory experiments. For the secondary coolant system, a commercial cooling water treatment system is used to control growth of organisms, keep the stainless steel heat exchanger surfaces clean, and prevent corrosion and scale. These chemicals are highly diluted and pose minimal hazards to the environment and operating staff. Chemicals are disposed through an established procedure with the Uniformed Services University of the Health Science's Environment Health Office in accordance with the U.S. Environmental Protection Agency and state of Maryland requirements. Based on this information, the NRC staff concludes that the proposed action would not result in significant non-radiological waste impacts. Given that the proposed action does not involve any change in the design or operation of the reactor, does not use ground or surface waters for its cooling system, and involves limited chemical usage and releases, the NRC concludes that the proposed action would have no significant non-radiological impacts.

#### *Other Applicable Environmental Laws*

In addition to the National Environmental Policy Act, the NRC has responsibilities that are derived from other environmental laws, which include the Endangered Species Act, Coastal Zone Management Act, National Historic Preservation Act, Fish and Wildlife Coordination Act, and Executive Order 12898 on Environmental Justice. The following presents a brief discussion of impacts associated with these laws and other requirements.

##### 1. Endangered Species Act (ESA)

The ESA was enacted to prevent further decline of endangered and threatened species and to restore those species and their critical habitat. Section 7 of the ESA requires Federal agencies to consult with the U.S. Fish and Wildlife's (FWS) or National Marine Fisheries Service (NMFS) regarding

action that may affect listed species or designated critical habitats.

The NRC staff conducted a search of Federally listed species and critical habitats that have the potential to occur in the vicinity of the AFFRI site using the FWS Environmental Conservation Online System (ECOS) Information for Planning and Conservation (IPaC) system. The IPaC system report states that no Federally endangered or threatened species or critical habitats occur in the vicinity of the AFFRI site (ADAMS Accession No. ML16218A224). Accordingly, the NRC concludes that the proposed license renewal of the TRIGA reactor would have no effect on Federally listed species or critical habitats. Federal agencies are not required to consult with the FWS if they determine that an action will not affect listed species or critical habitats (ADAMS Accession No. ML16120A505). Thus, the ESA does not require the NRC to engage in consultation for the proposed TRIGA reactor license renewal, and the NRC considers its obligations under ESA Section 7 to be fulfilled for the proposed action.

##### 2. Coastal Zone Management Act (CZMA)

The CZMA, in part, encourages states to preserve, protect, develop, or restore coastal resources. Applicants for Federal licenses to conduct an activity that affects any land or water use or natural resource of the coastal zone of a state must provide a certification that the proposed activity complies with the state's approved coastal zone management program and will be conducted consistent with that program. Montgomery County is not located within Maryland's coastal zone. Because the AFFRI reactor is not located within or near any managed coastal zones, the proposed action would not affect any coastal zones and a Coastal Zone Management Act consistency certification is not required.

##### 3. National Historic Preservation Act (NHPA)

The NHPA requires Federal agencies to consider the effects of their undertakings on historic properties. As stated in the Act, historic properties are any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places (NRHP). The NHRP lists historic properties in the vicinity of the AFFRI and the National Naval Medical Center. The closest property is the Bethesda Naval Hospital Tower, (39°00'06" N, 77°05'41" W.), within 0.5 miles. Operation of the AFFRI reactor has not

likely had any impact on this property. The license renewal does not request any new construction or modifications to the facility. Based on this information, the NRC staff finds that the potential impacts of continued operation of AFRRI under the proposed license renewal would have no adverse effect on historic and archaeological resources at the National Naval Medical Center and AFRRI.

#### 4. Fish and Wildlife Coordination Act (FWCA)

The FWCA requires Federal agencies that license water development projects to consult with the FWS (or NMFS, when applicable) and state wildlife agencies regarding the potential impacts on fish and wildlife resources.

The licensee is not planning any water resource development projects, including any modifications relating to impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage. Therefore, no coordination or consultation with FWS, pursuant to the Fish and Wildlife Coordination Act, is required for the proposed action.

#### 5. Executive Order 12898—Environmental Justice

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 59 FR 7629 (February 16, 1994), directs agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law. The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the relicensing and the continued operation of the AFRRI. Such effects may include human health, biological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing around the AFRRI, and all are exposed to the same health and environmental effects generated from activities at the AFRRI.

*Minority Populations in the Vicinity of the AFRRI*—According to the U.S. Census Bureau’s 2010 Census, approximately 52 percent of the total population (approximately 1.5 million individuals) residing within a 10-mile radius of AFRRI identified themselves as minority. The largest minority populations were Black or African

American (approximately 355,000 persons or 23 percent) and persons of Hispanic, Latino, or Spanish origin of any race (approximately 261,000 persons or 17 percent). According to the 2010 Census, about 51 percent of the Montgomery County population identified themselves as minorities, with persons of Black or African American and Hispanic, Latino, or Spanish origin of any race comprising the largest minority populations (17.2 and 17 percent, respectively). According to the U.S. Census Bureau’s 2015 American Community Survey 1-Year Estimates, the minority population of Montgomery County, as a percent of the total population, had increased to about 55 percent.

*Low-income Populations in the Vicinity of the AFRRI*—According to the U.S. Census Bureau’s 2010–2014 American Community Survey 5-Year Estimates, approximately 157,000 persons and 21,000 families (approximately 10 and 6 percent, respectively) residing within a 10-mile radius of the AFRRI were identified as living below the Federal poverty threshold. The 2014 Federal poverty threshold was \$24,230 for a family of four.

According to the U.S. Census Bureau’s 2015 American Community Survey 1-Year Estimates, the median household income for Maryland was \$75,847, while 6.7 percent of families and 9.7 percent of the state population were found to be living below the Federal poverty threshold. Montgomery County had a much higher median household income average (\$98,917) and a lower percent of families (5.2 percent) and individuals (7.5 percent) living below the poverty level, respectively.

*Impact Analysis*—Potential impacts to minority and low-income populations would consist of radiological effects, however radiation doses from continued operations associated with the license renewal are expected to continue at current levels, and would be well below regulatory limits. No additional visual or noise impacts are expected to result from the proposed action.

Based on this information and the analysis of human health and environmental impacts presented in this EA, the proposed license renewal would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of the AFRRI.

#### *Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to license renewal, the NRC considered denying the proposed action. If the NRC denied the request for license renewal, reactor operations would cease and decommissioning would be required (sooner than if a renewed license were issued), and the environmental effects of decommissioning would occur. Decommissioning would be conducted in accordance with an NRC-approved decommissioning plan, which would require a separate environmental review under 10 CFR 51.21. Cessation of reactor operations would reduce or eliminate radioactive effluents and emissions associated with operations. However, as previously discussed in this EA, radioactive effluents and emissions from reactor operations are a small fraction of the applicable regulatory limits. Therefore, the environmental impacts of license renewal and the denial of the request for license renewal would be similar. In addition, denying the request for license renewal would eliminate the benefits of the research and services provided by the AFRRI TRIGA reactor.

#### *Alternative Use of Resources*

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously authorized in the issuance of License Amendment No. 18 to Facility Operating License No. R-84 for the AFRRI TRIGA research reactor dated August 1, 1984, as supplemented by Amendment No. 23, dated September 5, 2000, which renewed the Facility Operating License No. R-84 for a period of 20 years.

#### *Agencies and Persons Consulted*

The NRC staff did not enter into consultation with any other Federal agency or with the State of Maryland regarding the environmental impact of the proposed action. However, on October 28, 2016, the NRC staff notified the Maryland State official, Tom Levering, Emergency Response Director, Maryland Department of the Environment, of the proposed action. The State official had no comments.

### III. Finding of No Significant Impact

The NRC is considering renewal of Facility Operating License No. R-84, held by the AFRRI for the continued operation of its TRIGA research reactor. The NRC staff has prepared an EA as part of its review of the proposed action. On the basis of the EA included in Section II above and incorporated by reference in this finding, the NRC finds that there are the proposed action will

not have a significant effect on the quality of the human environment. The proposed action would result in no significant impacts on surface or groundwater resources, or the radiological environment. In addition, the proposed action will not affect Federally-protected species or affect any designated habitat. The NRC staff's evaluation considered information in

the application, as supplemented, and the staff's review of other environmental documents. Section IV below lists the environmental documents related to the proposed action and includes information on the availability of these documents. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

#### IV. Availability of Documents

The following table identifies the environmental and other documents cited in this document and related to the NRC's FONSI. These documents are available for public inspection online through ADAMS at <http://www.nrc.gov/reading-rm/adams.html> or in person at the NRC's PDR as described previously.

Document	Adams accession No.
Armed Forces Radiobiology Research Institute Renewal of Operating License R-84 for 1 MW TRIGA Research Reactor (June 24, 2004).	ML041800067
Reactor Operator Requalification Program for Armed Forces Radiobiology Research Institute (Financial Qualifications and Decommissioning Information for the AFRRRI TRIGA Reactor Facility; July 2004 Changes) (June 24, 2004).	ML041800071
Environmental Report for Armed Forces Radiobiology Research Institute (June 24, 2004) .....	ML041800068
Safety Analysis Report for Armed Forces Radiobiology Research Institute (AFRRRI) (redacted) (June 24, 2004) .....	ML101650415
Safety Analysis Report Chapters 4 and 13 for Armed Forces Radiobiology Research Institute (AFRRRI) (redacted) (March 4, 2010).	ML101650422
Request for Additional Information Regarding Financial Qualifications for the License Renewal Review (August 13, 2010) ...	ML102310075
Armed Forces Radiobiology Research Institute Response to Request for Additional Information dated July 19, 2010 Re: Technical Specifications (redacted) (September 27, 2010).	ML110260024
Letter re: Armed Forces Radiobiology Research Institute—Request for Additional Information Regarding the Application for License Renewal (TAC No. ME1587) (October 21, 2010).	ML103070121
Request for Additional Information Re: License Amendment, Separation of Byproduct Material. (December 15, 2010) .....	ML103560456
Request for Additional Information Regarding the Application for License Renewal (February 7, 2011) .....	ML110460687
Armed Forces Radiobiology Research Institute—Response to Request for Additional Information Regarding the Application for License Renewal (June 20, 2011).	ML112232300
Response to Request for Additional Information Regarding the Application for Renewal of License R-84. (September 6, 2011).	ML11269A030
Armed Forces Radiobiology Research Institute—Response to NRC Request for Additional Information Questions 14-41 and Resubmittal of Technical Specifications (redacted) (October 20, 2011).	ML113410120
Response to Request for Additional Information Regarding the Application for License Renewal (TAC No. ME1587). (November 28, 2011).	ML11341A133
Armed Forces Radiobiology Research Institute, Technical Responses to NRC Request for Additional Information Re: License Renewal (TAC No. ME1587) (redacted) (November 28, 2011).	ML113460085
Armed Forces Radiobiology Research Institute—2011 Annual Operating Report (March 30, 2012) .....	ML12100A162
Request For Additional Information Regarding The Application For License Renewal (TAC No. ME1587) (April 20, 2012) ....	ML12122A146
Response to Request for Additional Information Regarding the Application for License Renewal (TAC NO. ME1587) (January 17, 2012).	ML12032A054
Request for Additional Information Regarding the Application for License Renewal (September 21, 2012) .....	ML12272A303
Armed Forces Radiobiology Research Institute—2012 Annual Operating Report (March 25, 2013) .....	ML13092A107
Armed Forces Radiobiology Research Institute—Response to Request for Additional Information Regarding the Application for License Renewal (TAC ME1587) (June 28, 2013).	ML13182A084
U.S. Dept. of Defense, Uniformed Services University of the Health Sciences—Submittal of revised Technical Specifications, Docket 50-170. (August 27, 2013).	ML13254A064
Armed Forces Radiobiology Research Institute—2013 Annual Operating Report (March 25, 2014) .....	ML14093A931
Request for Additional Information Regarding the Renewal of Facility Operating License No. R-84 for the AFRRRI TRIGA Reactor Facility (December 4, 2014).	ML14349A319
Armed Forces Radiobiology Research Institute—2014 Annual Operating Report (March 25, 2015) .....	ML15091A256
Letter from Stephen L. Miller Enclosing revision of the Technical Specifications for the Armed Forces Radiobiology Research Institute reactor (License R-84, docket 50-170). (March 30, 2015).	ML15093A099
Request for Additional Information Regarding the Application for License Renewal. (February 9, 2016) .....	ML16040A310
Submittal of Technical Specifications for the Armed Forces Radiobiology Research Institute Facility. (February 26, 2016) ....	ML16060A210
Armed Forces Radiobiology Research Institute—2015 Annual Operating Report (March 23, 2016) .....	ML16089A373
U.S. Fish and Wildlife Service, Armed Forces Radiobiology Research Institute TRIGA Research Reactor Proposed License Renewal, IPaC Trust Resources Report, (August 5, 2016).	ML16218A224
U.S. Fish and Wildlife Service, Endangered Species Consultations Frequently Asked Questions, (July 15, 2013) .....	ML16120A505
Response to NRR Request for Additional Information Regarding the Application for License Renewal for AFRRRI Facility (August 5, 2016).	ML16232A177
U.S. Department of Defense, Armed Forces Radiobiology Research Institute (AFRRRI), Submittal of Request for Additional Information Regarding the Application for License Renewal (TAC No. ME1587) (September 12, 2016).	ML16258A463
Reactor Operator Requalification Program for the AFRRRI TRIGA Reactor Facility (September 12, 2016) .....	ML16258A464
Request for Additional Information Regarding the Application for License Renewal (TAC No. ME1587) (September 21, 2016).	ML16267A447
AFRRRI Email Regarding License Renewal Application (September 26, 2016) .....	ML16270A541
AFRRRI Email Response to Request for Additional Information for License Renewal (September 27, 2016) .....	ML16271A536
Letter from Stephen L. Miller Enclosing Revision of the Technical Specifications for the Armed Forces Radiobiology Research Institute Reactor (September 30, 2016).	ML16278A111

Document	Adams accession No.
U.S. Armed Forces Radiobiology Research Institute Letter Regarding Review of Draft License R-84 (November 16, 2016)	ML16321A461

Dated at Rockville, Maryland, this 18th day of November, 2016.

For the Nuclear Regulatory Commission.

**Alexander Adams, Jr.,**

*Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. 2016-28372 Filed 11-23-16; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030-37882 and 030-37957; EA-16-055 NRC-2016-0242]

### In the Matter of International Cyclotron

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Imposition order; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an Imposition Order to International Cyclotron, imposing a civil penalty of \$14,000. On August 30, 2016, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty—\$14,000 to International Cyclotron, for failing to comply with regulatory requirements regarding the decommissioning of its site.

**DATES:** The Imposition Order was issued on November 17, 2016.

**ADDRESSES:** Please refer to Docket ID NRC-2016-0242 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0242. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For questions about this Imposition Order, 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](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:**

Leelavathi Sreenivas, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-287-9249, email: [Leelavathi.Sreenivas@nrc.gov](mailto:Leelavathi.Sreenivas@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The text of the Imposition Order is attached.

Dated at Rockville, Maryland, this 17th of November, 2016.

For the Nuclear Regulatory Commission.

**Patricia K. Holahan,**

*Director, Office of Enforcement.*

### United States of America

#### Nuclear Regulatory Commission

#### In the Matter of International Cyclotron, Inc.

#### Hato Rey, Puerto Rico

**Docket Nos. 03037882 and 03037957**

**License Nos. 52-31352-01MD and 52-31352-02EA-16-055**

#### Order Imposing Civil Monetary Penalty I

International Cyclotron, Inc. (International Cyclotron or the Licensee) is the holder of Materials License Nos. 52-31352-01MD and 52-31352-02 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) on August 20, 2009, pursuant to Part 30 of Title 10 of the *Code of Federal Regulations* (10 CFR). The licenses authorized the Licensee to prepare and distribute fluorine-18 (F-18) radiopharmaceuticals for Positron Emission Tomography (PET) imaging studies and to operate a cyclotron which was used to produce the F-18, in accordance with the conditions specified therein. These activities were not regulated by the NRC until the Energy Policy Act of 2005 (EPA) expanded the definition of byproduct material to include naturally occurring and accelerator-produced radioactive material (NARM), including the use of

certain cyclotron activities and radioactive materials produced in cyclotrons for commercial purposes.

In a December 7, 2009, letter (ADAMS Accession No. ML093430005), the NRC informed the Licensee that in accordance with 10 CFR 30.35(b)(1), it was required to provide financial assurance and a decommissioning funding plan for the quantities of unsealed byproduct materials with half-lives greater than 120 days that International Cyclotron was authorized to possess under License No. 52-31352-02. Although the Licensee submitted an acceptable decommissioning funding plan with a decommissioning cost estimate on October 14, 2011 (non-public due to proprietary, financial information contained therein), the Licensee did not provide a financial assurance instrument. As a result, on December 19, 2011, the NRC issued a letter with a Notice of Violation (ADAMS Accession No. ML11347A256) and an Order (ADAMS Accession No. ML11353A417) requiring International Cyclotron to provide financial assurance within 60 days or to shut down operations of the cyclotron and the radiopharmacy. On February 17, 2012, when no financial assurance was provided to the NRC by International Cyclotron, the Order became effective, and International Cyclotron ceased operations. In a letter dated March 22, 2014 (ADAMS Accession No. ML14093A157), the Licensee provided written notification that International Cyclotron would begin decommissioning as soon as possible, but before April 18, 2014.

#### II

The NRC has continued to communicate with International Cyclotron by letter, telephone, and email, and has met with the Licensee on multiple occasions, including two site inspections and multiple site visits, to ascertain the status of site decommissioning. The results of these reviews indicated that the Licensee had not conducted its activities in full compliance with NRC requirements, in that International Cyclotron has neither begun nor completed decommissioning within the timeframes required by NRC regulations in 10 CFR 30.36(d). A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated August 30, 2016

(ADAMS Accession No. ML16238A071). The Notice states the nature of the violation, the provisions of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violation.

In a letter dated September 13, 2016 (ADAMS Accession No. ML16266A337), a representative of the Licensee stated that his firm was assisting International Cyclotron with establishing a financial assurance instrument and with arranging for another company to operate or purchase the cyclotron. The Licensee representative stated that, with more time, an arrangement could be made.

### III

After consideration of the letter from the Licensee's representative and the statements contained therein, the NRC staff has determined that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed. In reaching this determination, the NRC staff considered that the Licensee was informed of the requirement to obtain financial assurance nearly seven years ago, was issued the Order to cease operations more than four years ago, and was required to complete decommissioning of its site by April 18, 2016. During this timeframe, the Licensee has repeatedly informed the NRC that it was working to obtain financial assurance and was seeking to find an operator/buyer for the facility. However, neither of these actions have occurred and the Licensee has, to date, taken no actions towards site decommissioning.

### IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee shall pay a civil penalty in the amount of \$14,000 within 30 days of the issuance date of this Order, in accordance with NUREG/BR-0254, "Payment Methods" (*see <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0254/>*). In addition, at the time payment is made, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

### V

In accordance with 10 CFR 2.205(d), International Cyclotron and any other

person adversely affected by this Order may request a hearing on this Order within 30 days of the issuance date of this Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter "petition"), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. System requirements for accessing the E-Submittal server are available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support

unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at <http://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited

delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a petition will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

If a person other than International Cyclotron requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for a hearing or alternative dispute resolution (ADR), or written approval of an extension of time in which to request a hearing or ADR, the provisions specified in Section IV above shall be final 30 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing or ADR has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing or ADR request has not been received. If ADR is requested, the provisions specified in Section IV shall be final upon termination of an ADR process that did not result in issuance of an order. If payment has not been made by the time specified above, the matter may be referred to the Attorney General, for collection.

Dated at Rockville, Maryland, this 17th of November, 2016.

For the Nuclear Regulatory Commission.

**Patricia K. Holahan,**  
*Director, Office of Enforcement.*

[FR Doc. 2016-28374 Filed 11-23-16; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2016-0001]

### Sunshine Act Meeting Notice

**DATE:** November 28, December 5, 12, 19, 26, 2016, January 2, 2017.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

#### Week of November 28, 2016

*Tuesday, November 29, 2016*

9:00 a.m. Briefing on Uranium Recovery (Public Meeting) (Contact: Samantha Crane: 301-415-6380)

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

#### Week of December 5, 2016—Tentative

There are no meetings scheduled for the week of December 5, 2016.

#### Week of December 12, 2016—Tentative

*Thursday, December 15, 2016*

9:30 a.m. Briefing on Equal Employment Opportunity, Affirmative Employment, and Small Business (Public Meeting) (Contact: Larniece McKoy Moore: 301-415-1942)

This meeting will be webcast live at the Web address—<http://www.nrc.gov/>.

#### Week of December 19, 2016—Tentative

There are no meetings scheduled for the week of December 19, 2016.

#### Week of December 26, 2016—Tentative

There are no meetings scheduled for the week of December 26, 2016.

#### Week of January 2, 2017—Tentative

There are no meetings scheduled for the week of January 2, 2017.

\* \* \* \* \*

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 301-415-0981 or via email at [Denise.McGovern@nrc.gov](mailto:Denise.McGovern@nrc.gov).

\* \* \* \* \*

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/public-involve/public-meetings/schedule.html>.

\* \* \* \* \*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301-287-0739, by videophone at 240-428-3217, or by email at [Kimberly.Meyer-Chambers@nrc.gov](mailto: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](mailto:Brenda.Akstulewicz@nrc.gov) or [Patricia.Jimenez@nrc.gov](mailto:Patricia.Jimenez@nrc.gov).

Dated: November 22, 2016.

**Denise L. McGovern,**  
*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2016-28495 Filed 11-22-16; 4:15 pm]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 52-014 and 52-015; NRC-2008-0043]

### Tennessee Valley Authority Combined License Application for Bellefonte Nuclear Plant, Units 3 and 4

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Application for combined license; withdrawal.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is granting the Tennessee Valley Authority (TVA) request to withdraw its application for combined licenses (COLs) for Bellefonte Nuclear Plant, Units 3 and 4, located near the town of Scottsboro in Jackson County, Alabama.

**DATES:** The effective date of the withdrawal is November 16, 2016.

**ADDRESSES:** Please refer to Docket ID NRC-2008-0043 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-2008-0043. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto: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](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Donald Habib, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1035, email: [Donald.Habib@nrc.gov](mailto:Donald.Habib@nrc.gov).

**SUPPLEMENTARY INFORMATION:** By letter dated October 30, 2007 (ADAMS Accession No. ML073110527), as supplemented by letters dated November 2, 2007, January 8, 2008, and January 14, 2008 (ADAMS Accession Nos. ML073090428, ML080100104, and ML080160252), TVA submitted an application to the NRC for COLs for two

AP1000 advanced passive pressurized water reactors in accordance with the requirements contained in part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), "Licenses, Certifications and Approvals for Nuclear Power Plants." The two new reactors were identified as Bellefonte Nuclear Plant, Units 3 and 4 and would have been located near the town of Scottsboro in Jackson County, Alabama.

A notice acknowledging receipt and availability of this application was previously published in the **Federal Register** on November 27, 2007 (72 FR 66200). Subsequently, a notice announcing the acceptance for docketing of the COL application in accordance with 10 CFR part 2, "Agency Rules of Practice and Procedure" and 10 CFR part 52 was published in the **Federal Register** on January 28, 2008 (73 FR 4923). The docket numbers established for this application were 52-014 and 52-015.

By letter dated September 29, 2010 (ADAMS Accession No. ML102740476), TVA requested that the NRC suspend review of its COL application until further notice. The NRC granted the requested suspension (ADAMS Accession No. ML102930207). On October 28, 2013, and November 21, 2014 (ADAMS Accession Nos. ML13325B058 and ML14328A720), TVA requested exemptions from certain regulatory requirements that require it to submit updates to the Final Safety Analysis Report included in their COL application until requesting the NRC to resume its review of their COL application. The NRC granted the requested exemptions (ADAMS Accession Nos. ML13318A427 and ML15335A091). By letter dated March 28, 2016 (ADAMS Accession No. ML16088A258), TVA requested withdrawal of its Bellefonte Units 3 and 4 COL application. Pursuant to the requirements in 10 CFR part 2, the Commission grants TVA its request to withdraw the Bellefonte Units 3 and 4 COL application.

Dated at Rockville, Maryland, this 16th day of November 2016.

For the Nuclear Regulatory Commission.

**Anna Bradford,**

*Acting Director, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2016-28373 Filed 11-23-16; 8:45 am]

**BILLING CODE 7590-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79352; File No. SR-ISE-2016-26]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Reduce the Response Times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism and Price Improvement Mechanism

November 18, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 8, 2016, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule 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 Rules 716 (Block Trades) and 723 (Price Improvement Mechanism for Crossing Transactions) to reduce the response times in the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism. The text of the proposed rule change is available on the Exchange's 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend the time period allowed for member submission of responses in the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism ("PIM") from 500 milliseconds ( $\frac{1}{2}$  of one second) to a time period designated by the Exchange of no less than 100 milliseconds ( $\frac{1}{10}$  of one second) and no more than 1 second.<sup>3</sup>

Rule 716 contains the requirements applicable to the execution of orders using the Block Order Mechanism, Facilitation Mechanism, and Solicited Order Mechanism. The Block Order Mechanism allows members to obtain liquidity for the execution of a block-size order,<sup>4</sup> and the Facilitation and Solicited Order Mechanisms allow members to enter cross transactions seeking price improvement.<sup>5</sup> Rule 723 contains the requirements applicable to the execution of orders using the PIM. The PIM allows members to enter cross transactions of any size. The Facilitation, Solicited Order Mechanisms and PIM allow for members to designate certain customer orders for price improvement and submit such orders into one of the mechanisms with a matching contra order. Once the order is submitted, the Exchange commences an auction by broadcasting a message to all members that includes the series, price, size and side of the market.<sup>6</sup> Further, responses within the PIM (*i.e.*, Improvement Orders), are also broadcast to market participants during the auction. Orders entered into any of these mechanisms currently are exposed to all market participants for 500 milliseconds, giving them an opportunity to enter additional trading interest before the orders are automatically executed. Under the

<sup>3</sup> While the Exchange intends to decrease the time period allowed for responses, the proposed rule would also allow the Exchange to increase this time period up to 1 second, which is the time period previously allowed for the submission of responses. See Securities Exchange Act Release No. 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR-ISE-2007-94).

<sup>4</sup> Block-size orders are orders for 50 contracts or more. See Rule 716(a).

<sup>5</sup> Only block-size orders can be entered into the Facilitation Mechanism, whereas only orders for 500 contracts or more can be entered into the Solicited Order Mechanism. See Rule 716(d) and (e).

<sup>6</sup> Members may choose to hide the size, side, and price when entering orders into the Block Order Mechanism.

proposal, the Exchange would determine an appropriate exposure period for each of the four auction mechanisms that is no less than 100 milliseconds and no more than 1 second, consistent with exposure periods permitted on other exchanges such as NASDAQ BX ("BX") and NASDAQ PHLX ("Phlx").<sup>7</sup> When approving the previous change to exposure periods in these mechanisms the Securities and Exchange Commission concluded that reducing these time periods was consistent with the Securities Exchange Act of 1934 (the "Act").<sup>8</sup>

The Exchange is not proposing any change to the requirement in Rule 717(d) and (e) that requires an Electronic Access Member ("EAM") to expose its customer's order on the book for at least one second before either executing such agency order as principal or against orders solicited from members and non-members, unless the EAM submits the agency order to the Facilitation Mechanism, Solicited Order Mechanism, or PIM.<sup>9</sup> The Exchange believes this exception for the Facilitation Mechanism, Solicited Order Mechanism and PIM is appropriate because the customer order is guaranteed an execution at the National Best Bid/Offer ("NBBO") or a better price through the Facilitation Mechanism, Solicited Order Mechanism and PIM. Additionally, members are informed about the agency order starting the auction through receipt of the broadcast. Members have the opportunity to compete for participation in the execution of the customer order by responding to the broadcast with their best priced responses.

With respect to the Facilitation Mechanism, Solicited Order Mechanism, and PIM, the Exchange believes the proposed rule change could provide more customer orders an opportunity for price improvement because it will reduce the market risk for all members executing trades in these mechanisms. Members that submit orders into such mechanisms to initiate an auction ("Initiating Members") are required to guarantee an execution at the NBBO or a better price, and are subject to market risk while the order is exposed in one of the mechanisms to

<sup>7</sup> See Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) and Securities Exchange Act Release No. 77557 (April 7, 2016), 81 FR 21935 (April 13, 2016) (SR-PHLX-2016-40).

<sup>8</sup> See Exchange Act Release No. 68849 (February 6, 2013), 78 FR 9973 (February 12, 2013) (SR-ISE-2012-100).

<sup>9</sup> Since EAMs submitting orders into the Block Mechanism do not have the contra order, Rule 717(d) and (e) does not apply.

other members. While other members are also subject to market risk, the Initiating Member is most exposed because the market can move against them during the auction period and they have guaranteed the customer an execution at the NBBO or better based on the market prices prior to the commencement of the auction. In today's fast-paced markets, big price changes can occur in 100 milliseconds or less, leaving the Initiating Members vulnerable to trading losses due to their choice to seek price improvement for their customer. The Initiating Member acts in a critical role in the price improvement process and their willingness to guarantee the customer an execution at the NBBO or a better price is keystone to the customer order gaining the opportunity for price improvement. Therefore, limiting Initiating Members' market risk by reducing the exposure time in the mechanisms should increase the likelihood that an Initiating Member would seek price improvement for its customer by entering such orders into one of the mechanisms.

Additionally, the Exchange does not believe that requiring the auction to run for 500 milliseconds is necessary in today's market where, generally, members' systems have the capability to respond within 100 milliseconds or faster. As such, reducing the response time in the Block Order Mechanism is appropriate as members no longer need 500 milliseconds to respond to the auction. Reducing the auction time for the Block Order Mechanism from 500 milliseconds to as low as 100 milliseconds will allow members the opportunity to seek out liquidity in an expedient manner that is consistent with system capabilities.

Furthermore, although the Exchange currently plans to reduce the time period allowed for the submission of auction responses to 100 milliseconds, the Exchange believes that it is appropriate to provide the flexibility to choose a response period of up to 1 second as this is consistent with the rules of other options markets.<sup>10</sup>

The Exchange's members operate electronic systems that enable them to react and respond to orders in a meaningful way in fractions of a second. The Exchange anticipates that its members will continue to compete within the proposed auction duration designated by the Exchange. In particular, the Exchange believes that the proposed auction response times—which will be no less than 100 milliseconds and no more than 1

<sup>10</sup> See note 7 *supra*.

second—will continue to provide members with sufficient time to respond to, compete for, and provide price improvement for orders, and will provide investors and other market participants with more timely executions, and reduce their market risk.

Reducing the duration of the auctions from 500 milliseconds to as low as 100 milliseconds will benefit members trading in the mechanisms. It is in these members' best interest to minimize the auction time while continuing to allow members adequate time to electronically respond. Both the order being exposed and the members' responses are subject to market risk during the auction. While a limited number of members wait to respond until later in the auction, presumably to minimize their market risk, in more than 94% of executions occurring in the mechanisms members respond within the first 100 milliseconds. The Exchange believes that an auction time as low as 100 milliseconds will continue to provide market participants with sufficient time to respond, compete, and provide price improvement for orders and will provide investors and other market participants with more timely executions, thereby reducing their market risk.<sup>11</sup>

To substantiate that members can receive, process, and communicate a response to an auction broadcast within 100 milliseconds, the Exchange surveyed all members that responded to an auction in the period beginning July 1, 2015 and ending January 15, 2016. The Exchange received responses from all of the 21 members surveyed, and each member confirmed that they can receive, process, and communicate a response back to the Exchange within 100 milliseconds.

Also in consideration of this proposed rule change, the Exchange reviewed all executions occurring in the mechanisms by its Members from March 28, 2016—April 25, 2016. This review of executions in the mechanisms indicates that approximately 98% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 500 milliseconds. Approximately 94% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 100

milliseconds of the initial order, and 83% were submitted within 50 milliseconds of the initial order.

Accordingly, the Exchange believes that an auction time as low as 100 milliseconds will continue to provide members with sufficient time to respond to, compete for, and provide price improvement for orders, and will provide investors and other market participants with more timely executions, and reduce their market risk. Moreover, Supplementary Material .04 to Rule 723 provides that the PIM will not run simultaneously with or overlap another PIM in the same series. As a result, members may be unable to initiate PIMs on behalf of their customers. Reducing the auction time to as low as 100 milliseconds will decrease the likelihood that an auction is underway when a customer order is received. Accordingly, the Exchange believes it is likely that the number of PIM transactions will increase, thereby providing customers a greater opportunity to benefit from price improvement.

The Exchange believes that the information outlined above regarding price improving transactions in the mechanisms and the feedback provided by members provides substantial support for its assertion that reducing the auction from 500 milliseconds to as low as 100 milliseconds will continue to provide members with sufficient time to ensure competition for orders entered into the mechanisms, and could provide customer orders with additional opportunities for price improvement.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it has the necessary systems capacity to handle the potential additional traffic associated with the additional transactions that may occur with the implementation of the proposed reduction in the auction duration to no less than 100 milliseconds. Additionally, the Exchange represents that its systems will be able to sufficiently maintain an audit trail for order and trade information with the reduction in the auction duration. Further, although the Exchange and its members are fully capable of handling a response time of 100 milliseconds, the Exchange proposes to reduce the auction time over a period of weeks ending at 100 milliseconds. This will ensure a smooth implementation of the faster timers and that the Exchange's and its members' systems are working properly given the faster response times.

Upon effectiveness of the proposal, and at least six weeks prior to

implementation of the proposed rule change, the Exchange will issue a circular to members, informing them of the implementation date of the reduction of the auction from 500 milliseconds to the auction time designated by the Exchange to allow members the opportunity to perform systems changes. This will give members an opportunity to make any necessary modifications to coincide with the implementation date. The Exchange also represents that it will issue a circular at least four weeks prior to any future changes, as permitted by its rules, to the auction time.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>12</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>13</sup> because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change will provide investors with more timely execution of their options orders, while ensuring that there is an adequate exposure of orders in the mechanisms. Additionally, the proposed change will allow more investors the opportunity to receive price improvement through the mechanisms, and will reduce market risk for members using the mechanisms. Finally, as mentioned above, other exchanges such as BX and Phlx, have already amended their rules to permit response times consistent with those proposed here—*i.e.*, no less than 100 milliseconds and no more than 1 second.<sup>14</sup> As such, the Exchange believes the proposed rule change would help perfect the mechanism for a free and open national market system, and generally help protect investors' and the public's interest.

The Exchange believes the proposed rule change is not unfairly discriminatory because the auction duration would be the same for all members. All members in the mechanisms have today, and will continue to have, an equal opportunity to receive the broadcast and respond with their best prices during the

<sup>11</sup> With Block Orders, the member enters one side of the order in an effort to find contra-side liquidity. While this order is exposed, the member is exposed to market risk. Therefore, reducing the exposure time will reduce the market risk for Block Orders just as it will reduce the market risk with respect to orders entered into the Facilitation Mechanism, Solicited Order Mechanism, and PIM.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See note 7 *supra*.

auction. Additionally, the Exchange believes the reduction in the auction duration reduces the market risk for all members. The reduction in time period reduces the market risk for the Initiating Member as well as any members providing orders in response to a broadcast. Moreover, based on the feedback the Exchange received from its members, the Exchange believes that a reduction in the auction period to a low of 100 milliseconds would not impair members' ability to compete in the mechanisms. The Exchange believes these results support the assertion that a reduction in the auction duration would not be unfairly discriminatory and would benefit investors.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act<sup>15</sup> in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, but instead would continue to provide market participants with sufficient time to respond, compete, and provide price improvement for orders in the Exchange's auction mechanisms. The proposed rule also provides investors and other market participants with more timely executions, thereby reducing their market risk. As proposed, the rule does not impose an undue burden on members because they are all currently capable of responding to these mechanisms in under 100 milliseconds. Finally, the proposed rule change offers the same exposure period to all members and would not impose a competitive burden on any particular participant.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the publication date of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be

appropriate and publishes its reasons for so finding or (ii) as to which the 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2016-26 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-2016-26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-

2016-26 and should be submitted on or before December 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2016-28308 Filed 11-23-16; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-79353; File No. SR-ISEGemini-2016-14]

### **Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing of Proposed Rule Change To Reduce the Response Times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism and Price Improvement Mechanism**

November 18, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 8, 2016, ISE Gemini, LLC (the "Exchange" or the "ISE Gemini") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule 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 Rules 716 (Block Trades) and 723 (Price Improvement Mechanism for Crossing Transactions) to reduce the response times in the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism. The text of the proposed rule change is available on the Exchange's 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 self-regulatory organization included statements concerning the purpose of,

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>15</sup> 15 U.S.C. 78f(b)(8).

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 the proposed rule change is to amend the time period allowed for member submission of responses in the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism ("PIM") from 500 milliseconds ( $\frac{1}{2}$  of one second) to a time period designated by the Exchange of no less than 100 milliseconds ( $\frac{1}{10}$  of one second) and no more than 1 second.<sup>3</sup>

Rule 716 contains the requirements applicable to the execution of orders using the Block Order Mechanism, Facilitation Mechanism, and Solicited Order Mechanism. The Block Order Mechanism allows members to obtain liquidity for the execution of a block-size order,<sup>4</sup> and the Facilitation and Solicited Order Mechanisms allow members to enter cross transactions seeking price improvement.<sup>5</sup> Rule 723 contains the requirements applicable to the execution of orders using the PIM. The PIM allows members to enter cross transactions of any size. The Facilitation, Solicited Order Mechanisms and PIM allow for members to designate certain customer orders for price improvement and submit such orders into one of the mechanisms with a matching contra order. Once the order is submitted, the Exchange commences an auction by broadcasting a message to all members that includes the series, price, size and

side of the market.<sup>6</sup> Further, responses within the PIM (*i.e.*, Improvement Orders), are also broadcast to market participants during the auction. Orders entered into any of these mechanisms currently are exposed to all market participants for 500 milliseconds, giving them an opportunity to enter additional trading interest before the orders are automatically executed. Under the proposal, the Exchange would determine an appropriate exposure period for each of the four auction mechanisms that is no less than 100 milliseconds and no more than 1 second, consistent with exposure periods permitted on other exchanges such as NASDAQ BX ("BX") and NASDAQ PHLX ("Phlx").<sup>7</sup> When approving the previous change to exposure periods in these mechanisms on its affiliated market, ISE, the Securities and Exchange Commission concluded that reducing these time periods was consistent with the Securities Exchange Act of 1934 (the "Act").<sup>8</sup>

The Exchange is not proposing any change to the requirement in Rule 717(d) and (e) that requires an Electronic Access Member ("EAM") to expose its customer's order on the book for at least one second before either executing such agency order as principal or against orders solicited from members and non-members, unless the EAM submits the agency order to the Facilitation Mechanism, Solicited Order Mechanism, or PIM.<sup>9</sup> The Exchange believes this exception for the Facilitation Mechanism, Solicited Order Mechanism and PIM is appropriate because the customer order is guaranteed an execution at the National Best Bid/Offer ("NBBO") or a better price through the Facilitation Mechanism, Solicited Order Mechanism and PIM. Additionally, members are informed about the agency order starting the auction through receipt of the broadcast. Members have the opportunity to compete for participation in the execution of the customer order by responding to the broadcast with their best priced responses.

With respect to the Facilitation Mechanism, Solicited Order Mechanism, and PIM, the Exchange believes the proposed rule change could provide more customer orders an opportunity for price improvement because it will reduce the market risk for all members executing trades in these mechanisms. Members that submit orders into such mechanisms to initiate an auction ("Initiating Members") are required to guarantee an execution at the NBBO or a better price, and are subject to market risk while the order is exposed in one of the mechanisms to other members. While other members are also subject to market risk, the Initiating Member is most exposed because the market can move against them during the auction period and they have guaranteed the customer an execution at the NBBO or better based on the market prices prior to the commencement of the auction. In today's fast-paced markets, big price changes can occur in 100 milliseconds or less, leaving the Initiating Members vulnerable to trading losses due to their choice to seek price improvement for their customer. The Initiating Member acts in a critical role in the price improvement process and their willingness to guarantee the customer an execution at the NBBO or a better price is keystone to the customer order gaining the opportunity for price improvement. Therefore, limiting Initiating Members' market risk by reducing the exposure time in the mechanisms should increase the likelihood that an Initiating Member would seek price improvement for its customer by entering such orders into one of the mechanisms.

Additionally, the Exchange does not believe that requiring the auction to run for 500 milliseconds is necessary in today's market where, generally, members' systems have the capability to respond within 100 milliseconds or faster. As such, reducing the response time in the Block Order Mechanism is appropriate as members no longer need 500 milliseconds to respond to the auction. Reducing the auction time for the Block Order Mechanism from 500 milliseconds to as low as 100 milliseconds will allow members the opportunity to seek out liquidity in an expedient manner that is consistent with system capabilities.

Furthermore, although the Exchange currently plans to reduce the time period allowed for the submission of auction responses to 100 milliseconds, the Exchange believes that it is appropriate to provide the flexibility to choose a response period of up to 1

<sup>3</sup> While the Exchange intends to decrease the time period allowed for responses, the proposed rule would also allow the Exchange to increase this time period up to 1 second, which is the time period previously allowed for the submission of responses on its affiliated market, the International Securities Exchange, LLC ("ISE"). See Securities Exchange Act Release No. 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR-ISE-2007-94).

<sup>4</sup> Block-size orders are orders for 50 contracts or more. See Rule 716(a).

<sup>5</sup> Only block-size orders can be entered into the Facilitation Mechanism, whereas only orders for 500 contracts or more can be entered into the Solicited Order Mechanism. See Rule 716(d) and (e).

<sup>6</sup> Members may choose to hide the size, side, and price when entering orders into the Block Order Mechanism.

<sup>7</sup> See Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) and Securities Exchange Act Release No. 77557 (April 7, 2016), 81 FR 21935 (April 13, 2016) (SR-PHLX-2016-40).

<sup>8</sup> See Exchange Act Release No. 68849 (February 6, 2013), 78 FR 9973 (February 12, 2013) (SR-ISE-2012-100).

<sup>9</sup> Since EAMs submitting orders into the Block Mechanism do not have the contra order, Rule 717(d) and (e) does not apply.

second as this is consistent with the rules of other options markets.<sup>10</sup>

The Exchange's members operate electronic systems that enable them to react and respond to orders in a meaningful way in fractions of a second. The Exchange anticipates that its members will continue to compete within the proposed auction duration designated by the Exchange. In particular, the Exchange believes that the proposed auction response times—which will be no less than 100 milliseconds and no more than 1 second—will continue to provide members with sufficient time to respond to, compete for, and provide price improvement for orders, and will provide investors and other market participants with more timely executions, and reduce their market risk.

Reducing the duration of the auctions from 500 milliseconds to as low as 100 milliseconds will benefit members trading in the mechanisms. It is in these members' best interest to minimize the auction time while continuing to allow members adequate time to electronically respond. Both the order being exposed and the members' responses are subject to market risk during the auction. While a limited number of members wait to respond until later in the auction, presumably to minimize their market risk, in more than 94% of executions occurring in the mechanisms members respond within the first 100 milliseconds. The Exchange believes that an auction time as low as 100 milliseconds will continue to provide market participants with sufficient time to respond, compete, and provide price improvement for orders and will provide investors and other market participants with more timely executions, thereby reducing their market risk.<sup>11</sup>

To substantiate that members can receive, process, and communicate a response to an auction broadcast within 100 milliseconds, the Exchange surveyed all members that responded to an auction in the period beginning July 1, 2015 and ending January 15, 2016. The Exchange received responses from all of the 15 members surveyed, and each member confirmed that they can receive, process, and communicate a

response back to the Exchange within 100 milliseconds.

Also in consideration of this proposed rule change, the Exchange reviewed all executions occurring in the mechanisms by its Members from March 28, 2016–April 25, 2016. This review of executions in the mechanisms indicates that approximately 98% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 500 milliseconds. Approximately 94% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 100 milliseconds of the initial order, and 83% were submitted within 50 milliseconds of the initial order.

Accordingly, the Exchange believes that an auction time as low as 100 milliseconds will continue to provide members with sufficient time to respond to, compete for, and provide price improvement for orders, and will provide investors and other market participants with more timely executions, and reduce their market risk. Moreover, Supplementary Material .04 to Rule 723 provides that the PIM will not run simultaneously with or overlap another PIM in the same series. As a result, members may be unable to initiate PIMs on behalf of their customers. Reducing the auction time to as low as 100 milliseconds will decrease the likelihood that an auction is underway when a customer order is received. Accordingly, the Exchange believes it is likely that the number of PIM transactions will increase, thereby providing customers a greater opportunity to benefit from price improvement.

The Exchange believes that the information outlined above regarding price improving transactions in the mechanisms and the feedback provided by members provides substantial support for its assertion that reducing the auction from 500 milliseconds to as low as 100 milliseconds will continue to provide members with sufficient time to ensure competition for orders entered into the mechanisms, and could provide customer orders with additional opportunities for price improvement.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it has the necessary systems capacity to handle the potential additional traffic associated with the additional transactions that may occur with the implementation of the proposed reduction in the auction duration to no less than 100 milliseconds. Additionally, the Exchange represents that its systems

will be able to sufficiently maintain an audit trail for order and trade information with the reduction in the auction duration. Further, although the Exchange and its members are fully capable of handling a response time of 100 milliseconds, the Exchange proposes to reduce the auction time over a period of weeks ending at 100 milliseconds. This will ensure a smooth implementation of the faster timers and that the Exchange's and its members' systems are working properly given the faster response times.

Upon effectiveness of the proposal, and at least six weeks prior to implementation of the proposed rule change, the Exchange will issue a circular to members, informing them of the implementation date of the reduction of the auction from 500 milliseconds to the auction time designated by the Exchange to allow members the opportunity to perform systems changes. This will give members an opportunity to make any necessary modifications to coincide with the implementation date. The Exchange also represents that it will issue a circular at least four weeks prior to any future changes, as permitted by its rules, to the auction time.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>12</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>13</sup> because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change will provide investors with more timely execution of their options orders, while ensuring that there is an adequate exposure of orders in the mechanisms. Additionally, the proposed change will allow more investors the opportunity to receive price improvement through the mechanisms, and will reduce market risk for members using the mechanisms. Finally, as mentioned above, other exchanges such as BX and Phlx, have already amended their rules to permit response times consistent with those proposed here—*i.e.*, no less than 100 milliseconds and no more than 1

<sup>10</sup> See note 7 *supra*.

<sup>11</sup> With Block Orders, the member enters one side of the order in an effort to find contra-side liquidity. While this order is exposed, the member is exposed to market risk. Therefore, reducing the exposure time will reduce the market risk for Block Orders just as it will reduce the market risk with respect to orders entered into the Facilitation Mechanism, Solicited Order Mechanism, and PIM.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

second.<sup>14</sup> As such, the Exchange believes the proposed rule change would help perfect the mechanism for a free and open national market system, and generally help protect investors' and the public's interest.

The Exchange believes the proposed rule change is not unfairly discriminatory because the auction duration would be the same for all members. All members in the mechanisms have today, and will continue to have, an equal opportunity to receive the broadcast and respond with their best prices during the auction. Additionally, the Exchange believes the reduction in the auction duration reduces the market risk for all members. The reduction in time period reduces the market risk for the Initiating Member as well as any members providing orders in response to a broadcast. Moreover, based on the feedback the Exchange received from its members, the Exchange believes that a reduction in the auction period to a low of 100 milliseconds would not impair members' ability to compete in the mechanisms. The Exchange believes these results support the assertion that a reduction in the auction duration would not be unfairly discriminatory and would benefit investors.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act<sup>15</sup> in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, but instead would continue to provide market participants with sufficient time to respond, compete, and provide price improvement for orders in the Exchange's auction mechanisms. The proposed rule also provides investors and other market participants with more timely executions, thereby reducing their market risk. As proposed, the rule does not impose an undue burden on members because they are all currently capable of responding to these mechanisms in under 100 milliseconds. Finally, the proposed rule change offers the same exposure period to all members and would not impose a competitive burden on any particular participant.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the publication date of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISEGemini-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-ISEGemini-2016-14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing 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-ISEGemini-2016-14 and should be submitted on or before December 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Brent J. Fields,**  
*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-79357; File Nos. SR-NASDAQ-2016-127; SR-BX-2016-051; SR-ISE-2016-22; SR-ISEGemini-2016-10; SR-ISEMercury-2016-16; SR-PHLX-2016-93; SR-BSECC-2016-001; SR-SCCP-2016-01]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; NASDAQ BX, Inc.; International Securities Exchange, LLC; ISE Gemini, LLC; ISE Mercury, LLC; NASDAQ PHLX LLC; Boston Stock Exchange Clearing Corporation; Stock Clearing Corporation of Philadelphia; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1, Amending Bylaws of Nasdaq, Inc. To Implement Proxy Access**

November 18, 2016.

### **I. Introduction**

On September 15, 2016, each of The NASDAQ Stock Market LLC ("Nasdaq"), NASDAQ BX, Inc. ("BX"), International Securities Exchange, LLC ("ISE"), ISE Gemini, LLC ("ISE Gemini"), ISE Mercury, LLC ("ISE Mercury"), NASDAQ PHLX LLC ("PHLX"), Boston Stock Exchange Clearing Corporation ("BSECC"), and Stock Clearing

<sup>14</sup> See note 7 supra.

<sup>15</sup> 15 U.S.C. 78f(b)(8).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

Corporation of Philadelphia (“SCCP,” and, together with Nasdaq, BX, ISE, ISE Gemini, ISE Mercury, PHLX, and BSECC, “SROs”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the Bylaws (the “Bylaws”) of their parent company, Nasdaq, Inc., to implement proxy access. The proposed rule changes were published for comment in the **Federal Register** on October 5, 2016.<sup>3</sup> No comment letters were received in response to the proposals. On November 9, 2016, the SROs each filed Amendment No. 1 to the proposed rule changes.<sup>4</sup> This order

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release Nos. 78979 (Sept. 29, 2016), 81 FR 69145 (Oct. 5, 2016) (SR-NASDAQ-2016-127); 78986 (Sept. 29, 2016), 81 FR 69152 (Oct. 5, 2016) (SR-BX-2016-051); 78985 (Sept. 29, 2016), 81 FR 69102 (Oct. 5, 2016) (SR-ISE-2016-22); 78981 (Sept. 29, 2016), 81 FR 69165 (Oct. 5, 2016) (SR-ISEGemini-2016-10); 78980 (Sept. 29, 2016), 81 FR 69127 (Oct. 5, 2016) (SR-ISEMercury-2016-16); 78978 (Sept. 29, 2016), 81 FR 69133 (Oct. 5, 2016) (SR-PHLX-2016-93); 78982 (Sept. 29, 2016), 81 FR 69159 (Oct. 5, 2016) (SR-BSECC-2016-001); and 78984 (Sept. 29, 2016), 81 FR 69093 (Oct. 5, 2016) (SR-SCCP-2016-01) (collectively, “Notices”).

<sup>4</sup> In Amendment No. 1, the SROs clarified the circumstances under which proxy access nominees may be excluded from the proxy materials. Pursuant to Proposed Rule 3.6(h)(ii), Nasdaq, Inc. may disregard and exclude from proxy materials those proxy access nominees who are not independent under the listing standards of Nasdaq, any applicable rules of the Commission, and any publicly disclosed standards used by the Board of Directors for Nasdaq, Inc. (the “Board”) in determining and disclosing the independence of Nasdaq, Inc.’s directors. Amendment No. 1 clarified that, other than the listing standards of Nasdaq and any applicable rules of the Commission, the Board has not adopted any additional publicly disclosed independence standards, as described in this provision. The SROs further represented that, if the Board adopts any such standards in the future, such standards will be in addition to, more stringent than, and not in conflict with the listing standards of Nasdaq or any applicable rules of the Commission. The SROs also represented that any such standards will be used to determine and disclose the independence of all directors, but the SROs noted that the Nominating and Governance Committee and/or the Board may still nominate a candidate who does not qualify as “independent” under these standards so long as such nomination does not cause Nasdaq, Inc. to fall out of compliance with the Bylaws, the listing standards of Nasdaq, any applicable rules of the SEC and any other applicable policies or regulations. Finally, the SROs stated that any such standards will be filed with and approved by the Commission pursuant to Section 19(b) of the Act prior to becoming effective and that any such standards will be at least referenced in the Corporate Governance Guidelines, available at: [http://files.shareholder.com/downloads/NDAQ/2006703005x0x21344/9019EBAF-60B7-4340-8AE3-F377D313AF55/Corp\\_gov\\_guide.pdf](http://files.shareholder.com/downloads/NDAQ/2006703005x0x21344/9019EBAF-60B7-4340-8AE3-F377D313AF55/Corp_gov_guide.pdf). To promote transparency of the proposed amendment, the SROs submitted Amendment No. 1 as comment letters to their filings, which the Commission posted on its Web

provides notice of filing of Amendment No. 1 and approves the proposed rule changes, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposed Rule Changes

By way of background, the SROs explained that the stockholders of Nasdaq, Inc. considered and approved a stockholder proposal submitted under Rule 14a-8 under the Act at Nasdaq, Inc.’s 2016 annual meeting.<sup>5</sup> The proposal, which the SROs noted passed with 73.52% of the votes cast, requested that the Board take steps to implement a “proxy access” by-law.<sup>6</sup> Accordingly, the SROs proposed to amend the Bylaws to adopt a new Section 3.6 in order to permit stockholders to nominate director nominees for election to the Board and to require Nasdaq, Inc. to include such director nominations in its proxy materials for the next annual meeting of stockholders.<sup>7</sup>

### *Proposed Section 3.6(a) of the Bylaws*

The SROs proposed to amend the Bylaws to require Nasdaq, Inc. to include in its proxy statement, its form proxy and any ballot distributed at the stockholder meeting, the name of, and certain required information<sup>8</sup> about, any person nominated for election (the “Stockholder Nominee”) to the Board by a stockholder or group of stockholders (the “Eligible Stockholder”) that satisfies the requirements set forth in the proxy

site and placed in the appropriate public comment files. See, e.g., Letter from Erika Moore, Senior Associate General Counsel, Nasdaq, to Brent J. Fields, Secretary, Commission (Nov. 9, 2016), available at: <https://www.sec.gov/comments/sr-nasdaq-2016-127/nasdaq2016127-1.pdf>.

<sup>5</sup> See Notices, *supra* note 3, at 81 FR 69146, 69152, 69103, 69166, 69127, 69134, 69159, and 69093, respectively; see also 17 CFR 240.14a-8, which establishes procedures pursuant to which stockholders of a public company may have their proposals placed alongside management’s proposals to the company’s proxy materials for presentation to a vote at a meeting of stockholders.

<sup>6</sup> See Notices, *supra* note 3, at 81 FR 69146, 69152, 69103, 69166, 69127, 69134, 69159, and 69093, respectively.

<sup>7</sup> The SROs also proposed to make conforming changes to Sections 3.1(a), 3.3(a), 3.3(c) and 3.5 of the Bylaws to provide clarifications and prevent confusion. See Notices, *supra* note 3, at 81 FR 69151, 69158, 69108, 69171, 69132, 69139, 69164, and 69098-99, respectively, for a description of these changes.

<sup>8</sup> The required information includes information provided to Nasdaq, Inc.’s Corporate Secretary about the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the proxy materials by the regulations promulgated under the Act, and if the Eligible Stockholder so elects, a written statement, not to exceed 500 words, in support of the Stockholder Nominee(s) candidacy (the “Statement”). See Proposed Section 3.6(a).

access provision of the Bylaws.<sup>9</sup> To utilize this provision, the Eligible Stockholder must expressly elect, at the time of providing a required notice to Nasdaq, Inc. of the proxy access nomination (the “Notice of Proxy Access Nomination”), to have its nominee included in the Company’s proxy materials.<sup>10</sup> If Nasdaq, Inc. includes proxy access nominees in the proxy materials, stockholders meeting all of the requirements outlined in proposed Section 3.6 will be eligible to submit proxy access nominations only at annual meetings of stockholders when the Board solicits proxies with respect to the election of directors.<sup>11</sup>

The proposed bylaws further state that, in calculating the number of stockholders in a group seeking to qualify as an Eligible Stockholder, two or more of the following types of funds shall be counted as one stockholder: (i) Funds under common management and investment control, (ii) funds under common management and funded primarily by the same employer, or (iii) funds that are a “group of investment companies” as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended.<sup>12</sup> Moreover, in the event that the Eligible Stockholder consists of a group of stockholders, the proposed bylaws state that any and all requirements and obligations for an individual Eligible Stockholder shall apply to each member of the group, except that the Required Ownership Percentage (discussed further below) shall apply to the ownership of the group in the aggregate.<sup>13</sup>

<sup>9</sup> See *id.* The SROs explained that, when Nasdaq, Inc. includes proxy access nominees in the proxy materials, such individuals will be included in addition to any persons nominated for election to the Board or any committee thereof. See Notices, *supra* note 3, at 81 FR 69146 n.6, 69153 n.6, 69153 n.6, 69166 n.6, 69127 n.6, 69134 n.6, 69159 n.6, and 69094 n.6, respectively.

<sup>10</sup> See Proposed Section 3.6(a).

<sup>11</sup> *Id.*; see also Proposed Section 3.6(i)(ii) (noting that a proxy access nomination may be declared invalid if the Eligible Stockholder or a qualified representative thereof does not appear at the meeting of stockholders to present its nomination).

<sup>12</sup> See Proposed Section 3.6(a); see also 15 U.S.C. 80a-12(d)(1)(G)(ii), which defines “group of investment companies” as any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services.

<sup>13</sup> See Proposed Section 3.6(a). The applicable requirements and obligations generally relate to information that each member of the nominating group must provide to Nasdaq, Inc. about itself. The SROs asserted that it is reasonable to require each member of the nominating group to provide such information so that both Nasdaq, Inc. and its stockholders are fully informed about the entire group maxing the nomination. See Notices, *supra* note 3, at 81 FR 69146, 69153, 69103, 69166, 69128, 69134, 69160, and 69094, respectively.

Proposed Section 3.6(a) also specifically allows Nasdaq, Inc. to omit from its proxy materials any information or Statement (or portion thereof) that it, in good faith, believes is untrue in any material respect (or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading) or that would violate any applicable law or regulation.<sup>14</sup> In their filing, the SROs stated that this provision allows Nasdaq, Inc. to comply with Rule 14a-9 under the Act<sup>15</sup> and to protect its stockholders from information that is materially untrue or that violates any law or regulation.<sup>16</sup> Finally, proposed Section 3.6(a) explicitly allows Nasdaq, Inc. to solicit against, and include in the proxy statement its own statement relating to, any Stockholder Nominee.<sup>17</sup>

#### *Proposed Section 3.6(b) of the Bylaws*

Proposed Section 3.6(b) of the Bylaws establishes the deadline for a timely Notice of Proxy Access Nomination. Under the proposed bylaws, such a notice must be addressed to, and received by, Nasdaq, Inc.'s Corporate Secretary no earlier than one hundred fifty (150) days and no later than one hundred twenty (120) days before the anniversary of the date that Nasdaq, Inc. issued its proxy statement for the previous year's annual meeting of stockholders.<sup>18</sup> The SROs asserted in their filings that this notice period would provide stockholders with an adequate window to submit nominees via proxy access, while also providing Nasdaq, Inc. with adequate time to complete due diligence on a proxy access nominee before including them in the proxy statement for the next annual meeting of stockholders.<sup>19</sup>

#### *Proposed Section 3.6(c) of the Bylaws*

Proposed Section 3.6(c) specifies that the maximum number of Stockholder Nominees that will be included in Nasdaq, Inc.'s proxy materials with respect to an annual meeting of stockholders shall not exceed the greater

of two and 25% of the total number of directors in office (rounded down to the nearest whole number) as of the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with the proxy access provision of the Bylaws (the "Final Proxy Access Nomination Date").<sup>20</sup> In the event that one or more vacancies for any reason occur after the Final Proxy Access Nomination Date but before the date of the annual meeting and the Board resolves to reduce the size of the Board in connection therewith, the proposed bylaws state that the maximum number of Stockholder Nominees included in Nasdaq, Inc.'s proxy materials shall be calculated based on the number of directors in office as so reduced.<sup>21</sup> Any individual nominated by an Eligible Stockholder for inclusion in the proxy materials pursuant to the proxy access provision of the Bylaws whom the Board decides to nominate as a nominee of the Board, and any individual nominated by an Eligible Stockholder for inclusion in the proxy materials pursuant to the proxy access provision but whose nomination is subsequently withdrawn, shall be counted as one of the Stockholder Nominees for purposes of determining when the maximum number of Stockholder Nominees has been reached.<sup>22</sup>

Proposed Section 3.6(c) further states that any Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the proxy materials shall rank such Stockholder Nominees based on the order that the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the proxy statement in the event that the total number of Stockholder Nominees submitted by Eligible Stockholders pursuant to the proxy access provision exceeds the maximum number of nominees allowed.<sup>23</sup> In such event, the proposed bylaws state that the highest ranking Stockholder Nominee who meets the requirements of the proxy access provision of the Bylaws from each Eligible Stockholder will be selected for inclusion in the proxy materials until the maximum number is reached, going in order of the amount (largest to smallest) of shares of Nasdaq, Inc.'s outstanding common stock each Eligible Stockholder disclosed as owned in its respective Notice of Proxy Access Nomination submitted to Nasdaq, Inc.<sup>24</sup> If the maximum number is not reached

after the highest ranking Stockholder Nominee who meets the requirements of the proxy access provision of the Bylaws from each Eligible Stockholder has been selected, proposed Section 3.6(c) indicates that this process will continue as many times as necessary, following the same order each time, until the maximum number is reached.<sup>25</sup> Following such determination, if any Stockholder Nominee who satisfies the eligibility requirements thereafter is nominated by the Board, or is not included in the proxy materials or is not submitted for election as a director as a result of the Eligible Stockholder becoming ineligible or withdrawing its nomination, the Stockholder Nominee becoming unwilling or unable to serve on the Board, or the Eligible Stockholder or the Stockholder Nominee failing to comply with the proxy access provision of the Bylaws, proposed Section 3.6(c) states that no other nominee or nominees shall be included in the proxy materials or otherwise submitted for director election in substitution thereof.<sup>26</sup>

The SROs stated in their filings that it was reasonable to limit the Board seats available to proxy access nominees, to establish procedures for selecting candidates if the nominee limit is exceeded, and to exclude further proxy access nominees in the cases set forth above.<sup>27</sup> The SROs asserted that the limitation on Board seats available to proxy access nominees would ensure that proxy access cannot be used to take over the entire Board, which is not the purpose of proxy access campaigns.<sup>28</sup> The SROs further asserted that the proposed procedures establish clear and rational guidelines for an orderly nomination process that will help Nasdaq, Inc. to avoid arbitrary judgments among candidates.<sup>29</sup> Finally, the SROs argued that the exclusion of proxy access nominees where the proxy access nominee has been nominated by the Board, or where the Eligible Stockholder or Stockholder Nominee has somehow failed to comply with the Bylaws, will avoid further time and expense to Nasdaq, Inc.<sup>30</sup>

#### *Proposed Section 3.6(d) of the Bylaws*

Under proposed Section 3.6(d), an Eligible Stockholder shall be deemed to

<sup>14</sup> *Id.*

<sup>15</sup> See 17 CFR 240.14a-9, which generally prohibits proxy solicitations that contain any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.

<sup>16</sup> See Notices, *supra* note 3, at 81 FR 69146-47, 69153, 69103, 69166, 69128, 69134, 69160, and 69094, respectively.

<sup>17</sup> See Proposed Section 3.6(a).

<sup>18</sup> See Proposed Section 3.6(b).

<sup>19</sup> See Notices, *supra* note 3, at 81 FR 69147, 69153, 69104, 69167, 69128, 69135, 69160, and 69094, respectively.

<sup>20</sup> See Proposed Section 3.6(c).

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> See *id.*

<sup>25</sup> See *id.*

<sup>26</sup> See *id.*

<sup>27</sup> See Notices, *supra* note 3, at 81 FR 69147, 69154, 69104, 69167, 69128, 69135, 69160 and 69095, respectively.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*, at 81 FR 69147, 69154, 69104, 69167, 69128, 69135, 69160-61, and 69095, respectively.

<sup>30</sup> *Id.*, at 81 FR 69147, 69154, 69104, 69167, 69128-29, 69135, 69161, and 69095, respectively.

“own” only those outstanding shares of Nasdaq, Inc.’s common stock as to which the stockholder possesses both: (i) The full voting and investment rights pertaining to the shares; and (ii) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares:

- Sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, including any short sale;

- borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell; or

- subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of Nasdaq, Inc.’s outstanding common stock, in any such case which instrument or agreement has, or is intended to have, or if exercised by either party would have, the purpose or effect of:
  - reducing in any manner, to any extent or at any time in the future, such stockholder’s or its affiliates’ full right to vote or direct the voting of any such shares; and/or
  - hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or its affiliates.<sup>31</sup>

Further, proposed Section 3.6(d) states that a stockholder shall “own” shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares.<sup>32</sup> Additionally, under the proposed bylaws, a stockholder’s ownership of shares shall be deemed to continue during any period in which the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder.<sup>33</sup> A

<sup>31</sup> See Proposed Section 3.6(d). For purposes of the proxy access provision, the proposed bylaws state that the term “affiliate” or “affiliates” shall have the meaning ascribed thereto under the rules and regulations of the Act. *Id.*; see also 17 CFR 240.12b-2.

<sup>32</sup> See Proposed Section 3.6(d).

<sup>33</sup> See *id.*

stockholder’s ownership of shares shall also be deemed to continue during any period in which the stockholder has loaned such shares provided that the stockholder has the power to recall such loaned shares on three (3) business days’ notice, has recalled such loaned shares as of the date of the Notice of Proxy Access Nomination and holds such shares through the date of the annual meeting.<sup>34</sup> Whether outstanding shares of Nasdaq, Inc.’s common stock are “owned” for these purposes shall be determined by the Board or any committee thereof, in each case, in its sole discretion.<sup>35</sup> Proposed Section 3.6(d) further notes that an Eligible Stockholder shall include in its Notice of Proxy Access Nomination the number of shares it is deemed to own for the purposes of the proxy access provision of the Bylaws.<sup>36</sup>

#### *Proposed Section 3.6(e) of the Bylaws*

The first paragraph of proposed Section 3.6(e) establishes certain requirements for an Eligible Stockholder to make a proxy access nomination. Specifically, an Eligible Stockholder must have owned 3% or more (the “Required Ownership Percentage”) of Nasdaq’s outstanding common stock (the “Required Shares”) continuously for 3 years (the “Minimum Holding Period”) as of both the date the Notice of Proxy Access Nomination is received by Nasdaq, Inc.’s Corporate Secretary and the record date for determining the stockholders entitled to vote at the annual meeting, and an Eligible Stockholder must continue to own the Required Shares through the meeting date.<sup>37</sup>

Proposed Section 3.6(e) also sets forth the information that an Eligible Stockholder must provide to Nasdaq, Inc.’s Corporate Secretary in writing in order to submit a proxy access nomination. Under the proposed bylaws, this information includes:

- One or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven calendar days prior to the date the Notice of Proxy Access Nomination is delivered to, or mailed to and received by, Nasdaq, Inc.’s Corporate Secretary, the Eligible Stockholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares, and the Eligible Stockholder’s

<sup>34</sup> See *id.*

<sup>35</sup> See *id.*

<sup>36</sup> See Proposed Section 3.6(d).

<sup>37</sup> See Proposed Section 3.6(e).

agreement to provide, within five (5) business days after the record date for the annual meeting, written statements from the record holder and intermediaries verifying the Eligible Stockholder’s continuous ownership of the Required Shares through the record date;<sup>38</sup>

- a copy of the Schedule 14N that has been filed with the Commission as required by Rule 14a-18 under the Act;<sup>39</sup>

- the information, representations and agreements with respect to the Eligible Stockholder that are the same as those that would be required to be set forth in a stockholder’s notice of nomination with respect to a “Proposing Person” pursuant to the “advance notice” provisions of Section 3.1(b)(i) and Section 3.1(b)(iii) of the Bylaws;<sup>40</sup>

- the consent of each Stockholder Nominee to being named in the proxy statement as a nominee and to serving as a director if elected;<sup>41</sup>

- a representation that the Eligible Stockholder:
  - Acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of Nasdaq, Inc., and does not presently have such intent;<sup>42</sup>
  - presently intends to maintain qualifying ownership of the Required Shares through the date of the annual meeting;<sup>43</sup>
  - has not nominated and will not nominate for election any individual as a director at the annual meeting, other than its Stockholder Nominee(s);<sup>44</sup>
  - has not engaged and will not engage in, and has not and will not be a participant in another person’s, “solicitation” within the meaning of Rule 14a-1(l) under the Act in support of the election of any individual as a director at the annual meeting, other than its Stockholder Nominee(s) or a nominee of the Board;<sup>45</sup>

- has not engaged and will not engage in, and has not and will not be a participant in another person’s, “solicitation” within the meaning of Rule 14a-1(l) under the Act in support of the election of any individual as a director at the annual meeting, other than its Stockholder Nominee(s) or a nominee of the Board;<sup>45</sup>

- has not engaged and will not engage in, and has not and will not be a participant in another person’s, “solicitation” within the meaning of Rule 14a-1(l) under the Act in support of the election of any individual as a director at the annual meeting, other than its Stockholder Nominee(s) or a nominee of the Board;<sup>45</sup>

- has not engaged and will not engage in, and has not and will not be a participant in another person’s, “solicitation” within the meaning of Rule 14a-1(l) under the Act in support of the election of any individual as a director at the annual meeting, other than its Stockholder Nominee(s) or a nominee of the Board;<sup>45</sup>

- has not engaged and will not engage in, and has not and will not be a participant in another person’s, “solicitation” within the meaning of Rule 14a-1(l) under the Act in support of the election of any individual as a director at the annual meeting, other than its Stockholder Nominee(s) or a nominee of the Board;<sup>45</sup>

<sup>38</sup> See Proposed Section 3.6(e)(i).

<sup>39</sup> See Proposed Section 3.6(e)(ii); see also 17 CFR 240.14n-101 and 17 CFR 240.14a-18, which generally require a Nominating Stockholder to provide notice to Nasdaq, Inc. of its intent to submit a proxy access nomination on a Schedule 14N and file that notice, including the required disclosure, with the Commission on the date first transmitted to Nasdaq, Inc.

<sup>40</sup> See proposed Section 3.6(e)(iii). The “advance notice” provisions of Sections 3.1(b)(i) and 3.1(b)(iii) of the Bylaws provide another method by which a stockholder may nominate a person for election to the Board. The proxy access provisions proposed by the SROs are in addition to these “advance notice” provisions.

<sup>41</sup> See Proposed Section 3.6(e)(iv).

<sup>42</sup> See Proposed Section 3.6(e)(v)(A).

<sup>43</sup> See Proposed Section 3.6(e)(v)(B).

<sup>44</sup> See Proposed Section 3.6(e)(v)(C).

<sup>45</sup> See Proposed Section 3.6(e)(v)(D); see also 17 CFR 240.14a-1(l), which defines the related terms “solicit” and “solicitation.”

○ agrees to comply with all applicable laws and regulations with respect to any solicitation in connection with the meeting or applicable to the filing and use, if any, of soliciting material;<sup>46</sup>

○ will provide facts, statements and other information in all communications with Nasdaq, Inc. and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;<sup>47</sup> and

○ as to any two or more funds whose shares are aggregated to count as one stockholder for the purpose of constituting an Eligible Stockholder, within five business days after the date of the Notice of Proxy Access Nomination, will provide to Nasdaq, Inc. reasonably satisfactory documentation that demonstrates that the funds satisfy the requirements in the Bylaws for the funds to qualify as one Eligible Stockholder;<sup>48</sup>

- a representation as to the Eligible Stockholder's intentions with respect to maintaining qualifying ownership of the Required Shares for at least one year following the annual meeting;<sup>49</sup>

- an undertaking that the Eligible Stockholder agrees to:

- Assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with Nasdaq, Inc.'s stockholders or out of the information that the Eligible Stockholder provided to Nasdaq, Inc.;<sup>50</sup>

- indemnify and hold harmless Nasdaq, Inc. and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against Nasdaq, Inc. or any of its directors, officers or employees arising out of any nomination submitted by the Eligible Stockholder pursuant to the proxy access provision;<sup>51</sup> and

- file with the Commission any solicitation or other communication with Nasdaq, Inc.'s stockholders relating to the meeting at which the Stockholder Nominee will be nominated, regardless of whether any such filing is required under Regulation 14A of the Act or

whether any exemption from filing is available thereunder;<sup>52</sup> and

- in the case of a nomination by a group of stockholders that together is an Eligible Stockholder, the designation by all group members of one group member that is authorized to act on behalf of all such members with respect to the nomination and matters related thereto, including withdrawal of the nomination.<sup>53</sup>

In proposing the Required Ownership Percentage and the Minimum Holding Period, the SROs explained that they seek to ensure that the Eligible Stockholder has had a sufficient stake in Nasdaq, Inc. for a sufficient amount of time and is not pursuing a short-term agenda.<sup>54</sup> In proposing the informational requirements for the Eligible Stockholder, the SROs stated that their goal is to gather sufficient information about the Eligible Stockholder for Nasdaq, Inc. and its stockholders.<sup>55</sup> Among other things, the SROs stated that this information would ensure that Nasdaq, Inc. is able to comply with its disclosure and other requirements under applicable law and that Nasdaq, Inc., its Board and its stockholders would be able to assess the proxy access nomination adequately.<sup>56</sup>

#### *Proposed Section 3.6(f) of the Bylaws*

Proposed Section 3.6(f) establishes the information the Stockholder Nominee must deliver to Nasdaq, Inc.'s Corporate Secretary within the time period specified for delivering the Notice of Proxy Access Nomination. This information includes:

- The information required with respect to persons whom a stockholder proposes to nominate for election or reelection as a director pursuant to the "advance notice" provisions of Section 3.1(b)(i) of the Bylaws including, but not limited to, the signed questionnaire, representation and agreement required by Section 3.1(b)(i)(D) of the Bylaws;<sup>57</sup> and

- a written representation and agreement that such person:

- Will act as a representative of all of Nasdaq, Inc.'s stockholders while serving as a director; and

- will provide facts, statements and other information in all

<sup>52</sup> See Proposed Section 3.6(e)(vii)(C); see also 17 CFR 240.14a-1—14b-2, which governs solicitations of proxies.

<sup>53</sup> See Proposed Section 3.6(e)(viii).

<sup>54</sup> See Notices, *supra* note 3, at 81 FR 69149, 69155, 69106, 69169, 69130, 69137, 69162, and 69096, respectively.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*, at 81 FR 69149, 69155–56, 69106, 69169, 69130, 69137, 69162, and 69096, respectively.

<sup>57</sup> See Proposed Section 3.6(f)(i).

communications with Nasdaq, Inc. and its stockholders that are or will be true and correct in all material respects (and shall not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading).<sup>58</sup>

Proposed Section 3.6(f) additionally states that, at the request of Nasdaq, Inc., the Stockholder Nominee(s) must submit all completed and signed questionnaires required of Nasdaq, Inc.'s directors and officers. Nasdaq, Inc. may also request such additional information as necessary to permit the Board to determine if each Stockholder Nominee satisfies the requirements of the proxy access provision of the Bylaws or if each Stockholder Nominee is independent under the listing standards of Nasdaq, any applicable rules of the SEC and any publicly disclosed standards used by the Board in determining and disclosing the independence of Nasdaq, Inc.'s directors<sup>59</sup> and/or permit Nasdaq, Inc.'s Corporate Secretary to determine the classification of such nominee as an Industry, Non-Industry, Issuer or Public Director, if applicable, in order to make the certification referenced in Section 4.13(h)(iii) of the Bylaws.<sup>60</sup>

In their filings, the SROs represented that the informational requirements for the Stockholder Nominee ensure that both Nasdaq, Inc. and its stockholders will have sufficient information about the Stockholder Nominee.<sup>61</sup> Among other things, the SROs stated that this information will ensure that Nasdaq,

<sup>58</sup> See Proposed Section 3.6(f)(ii).

<sup>59</sup> Currently, the independence of Nasdaq, Inc.'s directors is determined pursuant to the definition of "Independent Director" in Listing Rule 5605(a)(2) of The NASDAQ Stock Market, under which certain categories of individuals cannot be deemed independent and with respect to other individuals, the Board must make an affirmative determination that such individual has no relationship that, in the opinion of the Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. Other independence standards under the SEC rules and the Listing Rules of The NASDAQ Stock Market apply to members of certain of the Board's committees. To date, the Board has not adopted any additional standards, in compliance with Amendment No. 1. See note 4, *supra*; see also note 68, *infra*.

<sup>60</sup> Section 4.13(h)(iii) of the Bylaws requires Nasdaq, Inc.'s Corporate Secretary to collect from each nominee for director such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Non-Industry, Issuer, or Public Director, if applicable, and to certify to the Committee each nominee's classification, if applicable. Detailed definitions of the terms "Industry Director," "Non-Industry Director," "Issuer Director" and "Public Director" are included in Article I of the Bylaws.

<sup>61</sup> See Notices, *supra* note 3, at 81 FR 69149, 69156, 69106, 69169, 69131, 69137, 69163, and 69097, respectively.

<sup>46</sup> See Proposed Section 3.6(e)(v)(E).

<sup>47</sup> See Proposed Section 3.6(e)(v)(F).

<sup>48</sup> See Proposed Section 3.6(e)(v)(G).

<sup>49</sup> See Proposed Section 3.6(e)(vi).

<sup>50</sup> See Proposed Section 3.6(e)(vii)(A).

<sup>51</sup> See Proposed Section 3.6(e)(vii)(B).

Inc. is able to comply with its disclosure and other requirements under applicable law and that Nasdaq, Inc., its Board and its stockholders are able to assess the proxy access nomination adequately.<sup>62</sup>

#### *Proposed Section 3.6(g) of the Bylaws*

Pursuant to proposed Section 3.6(g), each Eligible Stockholder or Stockholder Nominee must promptly notify Nasdaq, Inc.'s Corporate Secretary of any information or communications provided by the Eligible Stockholder or Stockholder Nominee to Nasdaq, Inc. or its stockholders that ceases to be true and correct in all material respects or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading and of the information that is required to correct any such defect.<sup>63</sup> This provision further states that providing any such notification shall not be deemed to cure any defect, or, with respect to any defect that Nasdaq, Inc. determines is material, limit Nasdaq, Inc.'s rights to omit a Stockholder Nominee from its proxy materials.<sup>64</sup> The SROs asserted that this provision is intended to protect Nasdaq, Inc.'s stockholders from information previously provided that may be materially untrue.<sup>65</sup>

#### *Proposed Section 3.6(h) of the Bylaws*

Proposed Section 3.6(h) provides that Nasdaq, Inc. shall not be required to include a Stockholder Nominee in its proxy materials for any meeting of stockholders under certain circumstances. In these situations, the proxy access nomination shall be disregarded and no vote on such Stockholder Nominee will occur, even if Nasdaq, Inc. has received proxies in respect of the vote.<sup>66</sup> These circumstances occur when the Stockholder Nominee:

- Has been nominated by an Eligible Stockholder who has engaged in or is currently engaged in, or has been or is a participant in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Act in support of the election of any individual as a director at the annual meeting other

than its Stockholder Nominee(s) or a nominee of the Board;<sup>67</sup>

- is not independent under the listing standards of Nasdaq, any applicable rules of the SEC and any publicly disclosed standards used by the Board in determining and disclosing independence of Nasdaq's directors, in each case as determined by the Board in its sole discretion;<sup>68</sup>

- would, if elected as a member of the Board, cause Nasdaq, Inc. to be in violation of the Bylaws (including but not limited to the compositional requirements of the Board set forth in Section 4.3 of the Bylaws), its Amended and Restated Certificate of Incorporation, the rules and listing standards of Nasdaq, or any applicable state or federal law, rule or regulation;<sup>69</sup>
- is or has been, within the past three (3) years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914;<sup>70</sup>

<sup>67</sup> See Proposed Section 3.6(h)(i); see also 17 CFR 240.14a-1(l), which defines the related terms "solicit" and "solicitation."

<sup>68</sup> See Proposed Section 3.6(h)(ii); see also note 59, *supra*. In Amendment No. 1, the SROs made clear that the Board does not currently use any "publicly disclosed standards" to determine and disclose the independence of Nasdaq, Inc.'s directors, other than the listing standards of Nasdaq and any applicable rules of the Commission. If the Board adopts any such standards in the future, the SROs further represented that such standards will be in addition to, more stringent than, and not in conflict with the listing standards of Nasdaq or any applicable rules of the Commission. The SROs stated that any such standards will be used to determine and disclose the independence of all of Nasdaq, Inc.'s directors. However, the SROs noted that the Committee and/or Board may nominate a candidate who does not qualify as "independent" under any such standards, provided that such nomination does not cause Nasdaq, Inc. to fall out of compliance with the Bylaws, the listing standards of Nasdaq, and any other applicable policies and regulations. The SROs asserted that any "publicly disclosed standards" will be filed with and approved by the Commission prior to becoming effective. Moreover, the SROs stated that any such standards will be at least referenced in Nasdaq, Inc.'s Corporate Governance Guidelines following implementation. See Amendment No. 1, *supra* note 4.

<sup>69</sup> See Proposed Section 3.6(h)(iii); see also Section 4.3 of the Bylaws, which provides that the number of Non-Industry Directors on the Board must equal or exceed the number of Industry Directors. In addition, the Board must include at least two Public Directors and may include at least one, but no more than two, Issuer Directors. Finally, the Board shall include no more than one Staff Director, unless the Board consists of ten or more directors, in which case, the Board shall include no more than two Staff Directors. Detailed definitions of the terms "Non-Industry Director," "Industry Director," "Public Director," "Issuer Director" and "Staff Director" are included in Article I of the Bylaws.

<sup>70</sup> See Proposed Section 3.6(h)(iv); see also 15 U.S.C. 19(a)(1), which generally provides that "[n]o person shall, at the same time, serve as a director or officer in any two corporations" that are "competitors" such that "the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws."

- is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten (10) years;<sup>71</sup>

- is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended;<sup>72</sup>

- is subject to "statutory disqualification" under Section 3(a)(39) of the Act;<sup>73</sup>

- has, or the applicable Eligible Stockholder has, provided information to Nasdaq, Inc. in respect of the proxy access nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, as determined by the Board or any committee thereof, in each case, in its sole discretion;<sup>74</sup> or

- breaches or fails, or the applicable Eligible Stockholder breaches or fails, to comply with its obligations pursuant to the Bylaws, including, but not limited to, the proxy access provisions and any agreement, representation or undertaking required by the proxy access provisions.<sup>75</sup>

The SROs stated their belief that these provisions will protect Nasdaq, Inc. and its stockholders by allowing it to exclude Stockholder Nominees that they view as objectionable from the proxy statement.<sup>76</sup>

#### *Proposed Section 3.6(i) of the Bylaws*

Under proposed Section 3.6(i), the Board or the chairman of the meeting of stockholders shall declare a proxy access nomination invalid, and such nomination shall be disregarded even if proxies in respect of such nomination have been received by Nasdaq, Inc., if:

- The Stockholder Nominee(s) and/or the applicable Eligible Stockholder have breached its or their obligations under the proxy access provision of the

<sup>71</sup> See Proposed Section 3.6(h)(v).

<sup>72</sup> See Proposed Section 3.6(h)(vi); see also 17 CFR 230.506(d), which generally disqualifies offerings involving certain felons and other bad actors from relying on the "safe harbor" in Rule 506 of Regulation D from registration under the Securities Act of 1933, as amended.

<sup>73</sup> See Proposed Section 3.6(h)(vii); see also 15 U.S.C. 78c(a)(39), which disqualifies certain categories of individuals who generally have engaged in misconduct from membership or participation in, or association with a member of, a self-regulatory organization.

<sup>74</sup> See Proposed Section 3.6(h)(viii).

<sup>75</sup> See Proposed Section 3.6(h)(ix).

<sup>76</sup> See Notices, *supra* note 3, at 81 FR 69150, 69157, 69107, 69169, 69131, 69138, 69163, and 69098, respectively.

Bylaws, as determined by the Board or the chairman of the meeting of stockholders, in each case, in its or his sole discretion; or

- the Eligible Stockholder (or a qualified representative thereof) does not appear at the meeting of stockholders to present the proxy access nomination.<sup>77</sup>

The SROs stated in their filings that this provision protects Nasdaq, Inc. and its stockholders by providing the Board or the chairman of the stockholder meeting limited authority to disqualify a proxy access nominee when that nominee or the sponsoring stockholder(s) have breached an obligation under the proxy access provision, including the obligation to appear at the stockholder meeting to present the proxy access nomination.<sup>78</sup>

#### *Proposed Section 3.6(j) of the Bylaws*

Proposed Section 3.6(j) states that the following Stockholder Nominees who are included in Nasdaq, Inc.'s proxy materials for a particular annual meeting of stockholders will be ineligible to be a Stockholder Nominee for the next two annual meetings:

- A Stockholder Nominee who withdraws from or becomes ineligible or unavailable for election at the annual meeting; or
- a Stockholder Nominee who does not receive at least 25% of the votes cast in favor of such Stockholder Nominee's election.<sup>79</sup>

The SROs asserted that this provision will save Nasdaq, Inc. and its stockholders the time and expense of analyzing and addressing subsequent proxy access nominations regarding individuals who were included in the proxy materials for a particular annual meeting but ultimately did not stand for election or receive a substantial amount of votes.<sup>80</sup> Under the proposed bylaws, Stockholder Nominees excluded under this provision would again be eligible for nomination through the proxy access provisions after the next two annual meetings.<sup>81</sup>

#### *Proposed Section 3.6(k) of the Bylaws*

Proposed Section 3.6(k) states that the Board (or any other person or body authorized by the Board) shall have exclusive power and authority to

interpret the proxy access provisions of the Bylaws and to make all determinations deemed necessary or advisable as to any person, facts or circumstances.<sup>82</sup> In addition, all actions, interpretations and determinations of the Board (or any person or body authorized by the Board) with respect to the proxy access provisions shall be final, conclusive and binding on Nasdaq, Inc., the stockholders and all other parties.<sup>83</sup> In their filings, the SROs noted that they have attempted to implement a clear, detailed and thorough proxy access provision, but acknowledged there may be matters about future proxy access nominations that are open to interpretation.<sup>84</sup> In these cases, the SROs stated that, in their view, it is reasonable and necessary to designate an arbiter to make final decisions on these points and that they believed the Board is best-suited to act as that arbiter.<sup>85</sup>

#### *Proposed Section 3.6(l) of the Bylaws*

Proposed Section 3.6(l) prohibits a stockholder from joining more than one group of stockholders to become an Eligible Stockholder for purposes of submitting a proxy access nomination for each annual meeting of stockholders.<sup>86</sup> The SROs analogized this provision to Article IV, Paragraph C(1) of Nasdaq, Inc.'s Amended and Restated Certificate of Incorporation, under which each holder of Nasdaq, Inc.'s common stock shall be entitled to one vote per share on all matters presented to the stockholders for a vote.<sup>87</sup> In light of that provision, the SROs believed it was reasonable for each share to count only once in submitting a proxy access nomination.<sup>88</sup>

#### *Proposed Section 3.6(m) of the Bylaws*

Proposed Section 3.6(m) states that the proxy access provisions outlined in the proposal shall be the exclusive means for stockholders to include nominees in Nasdaq, Inc.'s proxy materials.<sup>89</sup> The SROs noted that stockholders may continue to propose nominees to the Committee and Board through other means, but that the Committee and Board will have final authority to determine whether to

include those nominees in Nasdaq, Inc.'s proxy materials.<sup>90</sup>

### **III. Discussion and Commission Findings**

The Commission finds, after careful review, that the proposed rule changes, as modified by Amendment No. 1, are consistent with the requirements of Section 6 of the Act<sup>91</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>92</sup> In particular, the Commission finds that the proposed rule changes, as modified by Amendment No. 1, are consistent with the requirements of Section 6(b)(5) of the Act, which requires, among other things, that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.<sup>93</sup>

A stockholder who wishes to nominate his or her own candidate for director may initiate a proxy contest in order to solicit proxies from fellow shareholders, but doing so requires the preparation and dissemination of separate proxy materials and entails substantial cost. Proposed Section 3.6 of the Bylaws provides Nasdaq, Inc. stockholders an alternative path for having their nominees considered through the proxy process. This proposal is intended to respond to a stockholder proposal, submitted under Rule 14a-8 of the Act and approved by Nasdaq, Inc. stockholders, requesting that the Board take steps to implement a proxy access bylaw.<sup>94</sup>

The SROs stated that the proposal, by providing a process for certain stockholders to nominate directors to be included in Nasdaq, Inc.'s proxy materials,<sup>95</sup> should help to strengthen

<sup>90</sup> See Notices, *supra* note 3, at 81 FR 69151, 69157, 69108, 69171, 69132, 69139, 69164, and 69098, respectively.

<sup>91</sup> 15 U.S.C. 78f(b).

<sup>92</sup> In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>93</sup> 15 U.S.C. 78f(b)(5).

<sup>94</sup> See note 5-7, *supra*, and accompanying text.

<sup>95</sup> As discussed above, however, the number of permitted director nominees under Section 3.6 may constitute less than twenty-five percent of the number of directors currently serving on the Board and, under certain circumstances, could be less than two nominees. See notes 20-26, *supra*, and accompanying text; see also Proposed Section 3.6(c).

<sup>77</sup> See Proposed Section 3.6(i).

<sup>78</sup> See Notices, *supra* note 3, at 81 FR 69150, 69157, 69107, 69170, 69132, 69138, 69164, and 69098, respectively.

<sup>79</sup> See Proposed Section 3.6(j).

<sup>80</sup> See Notices, *supra* note 3, at 81 FR 69150-51, 69157, 69107, 69170, 69132, 69138, 69164, and 69098, respectively.

<sup>81</sup> See Proposed Section 3.6(j); see also Notices, *supra* note 3, at 81 FR 69151, 69157, 69107, 69170, 69132, 69138, 69164, and 69098, respectively.

<sup>82</sup> See Proposed Section 3.6(k).

<sup>83</sup> *Id.*

<sup>84</sup> See Notices, *supra* note 3, at 81 FR 69151, 69157, 69108, 69171, 69132, 69139, 69164, and 69098, respectively.

<sup>85</sup> *Id.*

<sup>86</sup> See Proposed Section 3.6(l).

<sup>87</sup> See Notices, *supra* note 3, at 81 FR 69151, 69157, 69108, 69171, 69132, 69139, 69164, and 69098, respectively.

<sup>88</sup> *Id.*

<sup>89</sup> See Proposed Section 3.6(m).

the corporate governance of Nasdaq, Inc., thereby protecting investors and the public interest.<sup>96</sup> The Commission believes that the proposal to provide a process for stockholder proxy access in the Bylaws should help to provide the stockholders of Nasdaq, Inc. that meet the stated requirements of proposed Section 3.6 with an alternative opportunity to exercise their right to nominate directors for the Board, consistent with the Act.

The proposed rule changes will require Nasdaq, Inc. to include in its proxy materials information regarding a director nominee nominated pursuant to proposed Section 3.6, including disclosures regarding the nominee and nominating stockholder(s), any statement in support of the nominee provided by the nominating stockholder(s), and any other information that Nasdaq, Inc. or the Board determines to include relating to the nomination.<sup>97</sup> The Commission believes that the provision of such information could help stockholders to assess whether a nominee submitted pursuant to proposed Section 3.6 possesses the necessary qualifications and experience to serve as a director.

The proposed rule changes to Nasdaq, Inc.'s Bylaws limit the availability of proxy access in certain circumstances. For example, in order to be eligible to submit a nomination to be included in the proxy materials pursuant to proposed Section 3.6, a stockholder (or group of stockholders) is required to own at least three percent of Nasdaq, Inc.'s outstanding shares of common stock continuously for at least three years.<sup>98</sup> Furthermore, a stockholder may only nominate a director to be included in the proxy materials pursuant to proposed Section 3.6 if he or she represents that he or she did not acquire and is not holding Nasdaq, Inc.'s securities with the intent of effecting a change of control of Nasdaq, Inc.<sup>99</sup> The proposed rule changes also limit the number of director nominees submitted pursuant to proposed Section 3.6 that may be included in the proxy materials to twenty-five percent of the total number of directors of the Board.<sup>100</sup> The proposed rule changes would allow Nasdaq, Inc. to disregard or omit nominees submitted pursuant to proposed Section 3.6 from the proxy materials in certain circumstances, including where there is a material

defect in the information provided by the Stockholder Nominee or Eligible Stockholder to the Board.<sup>101</sup> Such limitations on proxy access seem designed to balance the ability of Nasdaq, Inc. stockholders to participate more fully in the nomination and election process against the potential cost and practical difficulties of requiring inclusion of stockholder nominations in proxy materials.

As noted above, the proposed proxy access provisions include safeguards that will help to ensure that any director nominees submitted pursuant to proposed Section 3.6 would qualify as independent directors and that the nominating shareholder's nomination of the nominee, and the nominee's membership on the Board, if elected, would not violate any applicable laws, rules or regulations of any government entity or relevant self-regulatory organization. Specifically, the proposed rule changes permit Nasdaq, Inc. to disregard and omit from the proxy materials any candidate whose election to the Board would cause Nasdaq, Inc. to be in violation of the Bylaws, the Certificate of Incorporation, the rules and listing standards of Nasdaq, or any applicable state or federal law, rule or regulation.<sup>102</sup>

In addition, Nasdaq, Inc. may disregard or omit from the proxy materials any candidate who does not qualify as independent under the listing standards of Nasdaq, any applicable rules of the Commission, and any publicly disclosed independence standards used by the Board to determine and disclose the independence of Nasdaq, Inc.'s directors.<sup>103</sup> Aside from the independence listing standards of Nasdaq and any applicable rules of the Commission, Nasdaq, Inc. does not currently use any other standards to evaluate the independence of its directors.<sup>104</sup>

The SROs have represented, however, that any such standards adopted in the future will be in addition to, more stringent than, and not in conflict with the listing standards of Nasdaq or any applicable rules of the Commission.<sup>105</sup> The SROs have also represented that any such standards adopted by the

Board will be used to determine and disclose the independence of all of Nasdaq, Inc.'s director nominees, including proxy access nominees and Board nominees.<sup>106</sup> However, while stockholder nominees could be omitted from the proxy materials if they do not meet any such future independence standards, a candidate submitted by the Committee and/or the Board would not have to meet these standards, and could remain on the ballot, provided that the election of such candidate would not cause Nasdaq, Inc. to fall out of compliance with the listing standards of Nasdaq, any applicable rules of the Commission, the Bylaws, or any other applicable policies or regulations.<sup>107</sup> The Commission notes that this difference seems acceptable because, while the proxy access candidates must meet all applicable independence requirements—including any future standards adopted by Nasdaq, Inc.—in order to be a proxy access nominee for the Board, a candidate submitted by the Committee and/or the Board could potentially be a nominee and Board member if that does not cause the Board to fall out of compliance with the Bylaws or the above-listed standards, rules, policies or regulations.<sup>108</sup>

The Commission believes that the safeguards and limitations described above should help to ensure that Nasdaq, Inc. can comply with its Bylaws and any applicable laws, rules, regulations, including, among others, exchange listing standards on independent directors, consistent with Section 6(b)(5) of the Act. Based on the foregoing, the Commission finds that the proposed rule changes, as modified by Amendment No. 1, are consistent with the Act.

The Commission also finds that the proposed rule changes by BSECC and SCCP are consistent with the requirements of the Act and the rules and regulations thereunder applicable to clearing agencies. Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to protect investors and the public interest.<sup>109</sup> In addition, Rule 17Ad-22(d)(8) under the Act requires registered clearing agencies to establish, implement, maintain, and enforce

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> While a Board-nominated candidate's compliance with any applicable independence standards would be disclosed, that candidate would not necessarily be excluded if filling a non-independent Board seat. *See, e.g.,* Nasdaq, Inc. Corporate Governance Guidelines, available at: [http://files.shareholder.com/downloads/NDAQ/2006703005x0x21344/9019EBAF-60B7-4340-8AE3-F377D313AF55/Corp\\_guide.pdf](http://files.shareholder.com/downloads/NDAQ/2006703005x0x21344/9019EBAF-60B7-4340-8AE3-F377D313AF55/Corp_guide.pdf).

<sup>109</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>101</sup> *See* Proposed Section 3.6(h)(viii).

<sup>102</sup> *See* Proposed Section 3.6(h)(iii).

<sup>103</sup> *See* Proposed Section 3.6(h)(ii).

<sup>104</sup> *See* Amendment No. 1, *supra* note 4. If such standards were to be adopted in the future, the SROs have represented that they will be filed with an approved by the Commission prior to becoming effective and, following implementation, that such standards will be at least referenced in Nasdaq, Inc.'s Corporate Governance Guidelines.

<sup>105</sup> *Id.*

<sup>96</sup> *See* Notices, *supra* note 3, at 81 FR 69151, 69158, 69108, 69171, 69132, 69164, and 69069, respectively.

<sup>97</sup> *See, e.g.,* Proposed Section 3.6(a).

<sup>98</sup> *See* Proposed Section 3.6(e).

<sup>99</sup> *See* Proposed Section 3.6(e)(v)(A).

<sup>100</sup> *See* Proposed Section 3.6(c).

written policies and procedures reasonably designed to have governance arrangements that are clear and transparent.<sup>110</sup> Here, BSECC and SCCP filed proposed rule changes to highlight changes being made to the Bylaws of Nasdaq, Inc.,<sup>111</sup> which indirectly owns BSECC and SCCP. Therefore, the proposed rule changes by BSECC and SCCP help make clear and transparent the governance arrangements of Nasdaq, Inc. and, thus, BSECC and SCCP, which helps ensure investor protection and the public interest.

Finally, the Commission finds that the proposed conforming changes to Sections 3.1(a), 3.3(a), 3.3(c), and 3.5 of the Bylaws are consistent with the Act because these changes prevent stockholder confusion by clarifying the operation of the proposed proxy access provision and other provisions by which stockholders may nominate directors to the Board.

#### IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the filings, as modified by Amendment No. 1, are 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](mailto:rule-comments@sec.gov). Please include File Nos. SR-NASDAQ-2016-127; SR-BX-2016-051; SR-ISE-2016-22; SR-ISEGemini-2016-10; SR-ISEMercury-2016-16; SR-PHLX-2016-93; SR-BSECC-2016-001; SR-SCCP-2016-01 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 Nos. SR-NASDAQ-2016-127; SR-BX-2016-051; SR-ISE-2016-22; SR-ISEGemini-2016-10; SR-ISEMercury-2016-16; SR-PHLX-2016-93; SR-BSECC-2016-001; SR-SCCP-2016-01. These file numbers should be included

<sup>110</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>111</sup> Certain provisions of the Bylaws are considered rules of BSECC and SCCP if they are stated policies, practices, or interpretations, as defined in Rule 19b-4 under the Act, of BSECC and SCCP, and must be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder. 15 U.S.C. 78q-1(b); 17 CFR 40.19b-4.

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 submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings 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 Nos. SR-NASDAQ-2016-127; SR-BX-2016-051; SR-ISE-2016-22; SR-ISEGemini-2016-10; SR-ISEMercury-2016-16; SR-PHLX-2016-93; SR-BSECC-2016-001; SR-SCCP-2016-01, and should be submitted on or before December 16, 2016.

#### V. Accelerated Approval of Proposed Rule Changes, as Modified by Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule changes, as modified by Amendment No. 1, prior to the 30th day after the date of publication of Amendment No. 1 in the **Federal Register**. As discussed above, Amendment No. 1 clarifies the circumstances under which proxy access nominees may be excluded from the proxy materials and clarifies that the Board does not currently have in place the publicly disclosed independence standards described in this provision.<sup>112</sup> The Commission believes that these revisions provide needed clarity to the proposed rule changes.

Accordingly, the Commission finds good cause for approving the proposed rule changes, as modified by Amendment No. 1, on an accelerated

basis, pursuant to Section 19(b)(2) of the Act.<sup>113</sup>

#### VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>114</sup> that the proposed rule changes (SR-NASDAQ-2016-127; SR-BX-2016-051; SR-ISE-2016-22; SR-ISEGemini-2016-10; SR-ISEMercury-2016-16; SR-PHLX-2016-93; SR-BSECC-2016-001; SR-SCCP-2016-01), as modified by Amendment No. 1, be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>115</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-28319 Filed 11-23-16; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79355; File No. SR-NYSE-2016-55]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Adopting Maximum Fees Member Organizations May Charge in Connection With the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission

November 18, 2016.

#### I. Introduction

On August 15, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt maximum fees NYSE member organizations may charge in connection with the distribution of investment company shareholder reports pursuant to any "notice and access" electronic delivery rules adopted by the Commission. The proposed rule change was published for comment in the **Federal Register** on August 22, 2016.<sup>3</sup> The Commission received fourteen comment letters on

<sup>113</sup> 15 U.S.C. 78s(b)(2).

<sup>114</sup> 15 U.S.C. 78s(b)(2).

<sup>115</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 78589 (August 16, 2016), 81 FR 56717 ("Notice").

<sup>112</sup> See *supra*, note 4.

the proposal.<sup>4</sup> On October 5, 2016, the Commission extended the time period for Commission action on the proposal to November 20, 2016.<sup>5</sup> This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

### A. Background

Pursuant to NYSE Rule 451, NYSE member organizations that hold securities in street name<sup>6</sup> are required to deliver, on behalf of an issuer, proxy and other materials to beneficial owners if they are assured they will receive reasonable reimbursement of expenses for such distributions from the issuer.<sup>7</sup> For this service, issuers reimburse NYSE

member organizations for all out-of-pocket expenses, including reasonable clerical expenses, as well as actual postage costs and other actual costs incurred for a particular distribution.<sup>8</sup>

NYSE Rule 451 establishes the maximum approved rates<sup>9</sup> that a member organization can charge an issuer for distribution of proxies and other materials absent prior notification to and consent of the issuer.<sup>10</sup> Although member organizations may seek reimbursement from an issuer for less than the established rates,<sup>11</sup> the Commission understands that in practice most issuers are billed at the established rates.<sup>12</sup>

The vast majority of broker-dealers that distribute issuer proxy and other materials to beneficial owners are entitled to reimbursement at the NYSE fee schedule rates because most are NYSE members, and those that are not are members of the Financial Industry Regulatory Authority (“FINRA”), which has similar rules.<sup>13</sup> Over time, NYSE member organizations increasingly have outsourced their proxy delivery and other distribution obligations to third-

party service providers, which are generally called “intermediaries,” rather than handling this processing internally.<sup>14</sup>

In addition to the distribution of proxy materials, the reimbursement rates set forth in NYSE Rule 451 apply to the distribution of annual and semi-annual shareholder reports.<sup>15</sup> In this regard, the reimbursement rates set forth in Rule 451 apply to the distribution of investment company (“fund”) shareholder reports and other materials to the beneficial owners of fund shares.<sup>16</sup> For example, as the Exchange noted, a fund pays an interim report fee of 15 cents per account when a broker distributes an annual or semi-annual report to the accounts of shareholders holding its shares as beneficial owners. Funds also pay a preference management fee of 10 cents for every account with respect to which a member organization has eliminated the need to send paper materials.<sup>17</sup>

While NYSE Rule 451 also establishes the fees that member firms can charge issuers for proxy materials distributed through the notice and access method,<sup>18</sup> those fees would not apply to the

<sup>4</sup> See letters to Brent J. Fields, Secretary, Commission from: James R. Rooney, Chief Financial Officer and Treasurer, Ariel Investment Trust, dated September 8, 2016 (“Ariel Letter”); Mortimer J. Buckley, Chief Investment Officer, Vanguard, dated September 12, 2016 (“Vanguard Letter”); Barbara Novick, Vice Chairman, and Benjamin Archibald, Managing Director, BlackRock, Inc., dated September 12, 2016 (“BlackRock Letter”); Charles V. Callan, SVP Regulatory Affairs, Broadridge Financial Solutions, Inc., dated September 12, 2016 (“Broadridge Letter”); John Zerr, Managing Director and General Counsel, Invesco Advisers, Inc., dated September 12, 2016 (“Invesco Letter”); Amy B.R. Lancellotta, Managing Director, Independent Directors Council, dated September 12, 2016 (“IDC Letter”); David G. Booth, President and Co-Chief Executive Officer, Dimensional Fund Advisers LP, dated September 12, 2016 (“Dimensional Letter”); David W. Blass, General Counsel, Investment Company Institute, dated September 12, 2016 (“ICI Letter”); Darrell N. Bramer, Vice President & Managing Counsel, T. Rowe Price Associates, Inc., dated September 12, 2016 (“T. Rowe Letter”); Mark N. Polebaum, Executive Vice President and General Counsel, MFS Investment Management, dated September 12, 2016 (“MFS Letter”); Thomas E. Faust Jr., Chairman and Chief Executive Officer, Eaton Vance Corp., dated September 15, 2016 (“Eaton Vance Letter”); Ellen Greene, Managing Director, Securities Industry and Financial Markets Association, dated September 15, 2016 (“SIFMA Letter”); Christopher O. Petersen, President, Columbia Mutual Funds, Columbia Threadneedle Investments, dated September 15, 2016 (“Columbia Letter”); and Rodney D. Johnson, Chairman, The Independent Directors of the Blackrock Equity-Liquidity Funds, dated September 27, 2016 (“Blackrock Directors Letter”).

<sup>5</sup> See Securities Exchange Act Release No. 79051 (October 5, 2016), 81 FR 70449 (October 12, 2016).

<sup>6</sup> The ownership of shares in street name means that a shareholder, or “beneficial owner,” holds the shares through a broker-dealer or bank, also known as a “nominee.” In contrast to registered ownership (also known as record holders), where shares are registered in the name of the shareholder, shares held in street name are registered in the name of the nominee, or in the nominee name of a depository, such as the Depository Trust Company. For more detail regarding share ownership, see Securities Exchange Act Release No. 62495 (July 14, 2010), 75 FR 42982 (July 22, 2010) (Concept Release on the U.S. Proxy System) (“Proxy Concept Release”).

<sup>7</sup> In this order, we refer to “issuer” to mean an investment company registered under the Investment Company Act of 1940 (the “Investment Company Act”) and an issuer of a class of securities registered pursuant to Section 12 of the Exchange Act.

<sup>8</sup> See NYSE Rules 451(a)(2) and 451.90. See also *infra* note 9.

<sup>9</sup> In addition to the specified charges discussed in this order and as set forth in NYSE Rule 451, member organizations also are entitled to receive reimbursement for: (i) Actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically. See NYSE Rule 451.90.

<sup>10</sup> See NYSE Rules 451.90 (schedule of approved charges by member organizations in connection with proxy solicitations and the processing of proxy and other material) and 451.93 (stating that a member organization may request reimbursement of expenses at less than the approved rates; however, no member organization may seek reimbursement at rates higher than the approved rates without the prior notification and consent of the person soliciting proxies or the company). In adopting the direct shareholder communications rules in the early 1980s, the Commission left the determination of reasonable costs to the self-regulatory organizations (“SROs”) (subject to submission of an SRO rule proposal to the Commission pursuant to Section 19(b) of the Exchange Act), stating that “the Commission continues to believe that, because the [SROs] represent the interests of both issuers and brokers, they are in the best position to make a fair allocation of all the expenses associated with the amendments, including start-up and overhead costs.” See Securities Exchange Act Release No. 20021 (July 28, 1983), 48 FR 35082 (August 3, 1983); see also Securities Exchange Act Release No. 45644 (March 25, 2002), 67 FR 15440, 15440, n.8 (April 1, 2002) (order approving NYSE program revising reimbursement rates) (“2002 Approval Order”).

<sup>11</sup> See NYSE Rule 451.93.

<sup>12</sup> See Securities Exchange Act Release No. 70720 (October 18, 2013), 78 FR 63530, 63531 (October 24, 2013) (order approving an amendment to the fees set forth in NYSE Rules 451 and 465).

<sup>13</sup> See FINRA Rule 2251. See also Proxy Concept Release, 75 FR at 42995, n.110.

<sup>14</sup> See 2002 Approval Order, 67 FR at 15540. According to the NYSE, this shift was attributable to the fact that NYSE member firms believed that these distributions were not a core broker-dealer business and that capital could be better used elsewhere. *Id.* At the present time, a single intermediary, Broadridge Financial Solutions, Inc. (“Broadridge”), handles almost all processing and distribution of proxy and other material to beneficial owners holding shares in the United States. See Notice, 81 FR at 56719; see also Proxy Concept Release, 75 FR at 42988, n. 57, and at 42996, n.129.

<sup>15</sup> See NYSE Rules 451.10 and 451.90(3); see also NYSE Rule 465 (Processing and Transmission of Interim Reports and Other Material).

<sup>16</sup> See Notice, 81 FR at 56718. In its filing, NYSE stated that mutual funds are not listed on NYSE but that the fees in Rule 451 are applied by NYSE members in relation to distributions in beneficial owners of mutual funds and operating company shares. See also 402.07 (A) under the NYSE’s Listed Company Manual, which states that Exchange Rules 450–460 apply to both listed and unlisted securities unless the context otherwise limits application.

<sup>17</sup> See NYSE Rule 451.90(4); see also Notice, 81 FR at 56718. The preference management fee applies to each shareholder account for which the nominee has eliminated the need to send materials in paper format through the mails or by courier service. See NYSE Rule 451.90(4); see also Notice, 81 FR at 56719.

<sup>18</sup> See NYSE Rule 451.90(3); see also Notice, 81 FR at 56718. Pursuant to Rule 14a–16 under the Exchange Act, issuers may distribute proxy material electronically through the “notice and access” method. See 17 CFR 240.14a–16; see also Proxy Concept Release, 75 FR at 42986, n.32. The “notice and access” method for proxy distributions permits issuers to send shareholders what is called a “Notice of Internet Availability of Proxy Materials” in lieu of the traditional paper mailing of proxy materials. See Proxy Concept Release, 75 FR at 42986, n.32. The notice and access model works in tandem with electronic delivery—although an issuer electing to send a notice in lieu of a full

electronic distribution of investment company shareholder reports. With respect to notice and access distributions of proxy materials, NYSE Rule 451 sets forth an incremental, tiered fee structure based on the number of nominee broker-dealer accounts through which the issuer's securities are beneficially owned.<sup>19</sup>

On May 20, 2015, the Commission proposed new Rule 30e-3 under the Investment Company Act, which, among other things, would permit, but not require, funds to satisfy their annual and semi-annual shareholder report delivery obligations by making shareholder reports available electronically on a Web site.<sup>20</sup> Funds relying on this provision would be required, among other things, to meet conditions relating to the provision of notice to shareholders of the internet availability of shareholder reports.<sup>21</sup>

#### B. Proposed Changes to NYSE Rule 451.90(5)

Accordingly, the Exchange has proposed to amend Rule 451.90(5) to specify that the notice and access fees set forth therein for distribution of proxy materials also will be charged with respect to distributions of fund shareholder reports pursuant to any notice and access rules adopted by the Commission in relation to such distributions.<sup>22</sup> The Exchange noted that the notice and access process under proposed Rule 30e-3 is similar to the existing proxy notice and access process for which the Exchange has already adopted a fee schedule in Rule 451, and thus the Exchange believes that it would be appropriate to apply the existing notice and access fees, with certain

proxy package would be required to send a paper copy of that notice, it may send that notice electronically to a shareholder who has provided to its broker an affirmative consent to electronic delivery. *Id.*

<sup>19</sup> Specifically, when an issuer elects to utilize notice and access for a proxy distribution, there is an incremental fee based on all nominee accounts through which the issuer's securities are beneficially owned as follows: (1) 25 cents for each account up to 10,000 accounts; (2) 20 cents for each account over 10,000 accounts, up to 100,000 accounts; (3) 15 cents for each account over 100,000 accounts, up to 200,000 accounts; (4) 10 cents for each account over 200,000 accounts, up to 500,000 accounts; (5) 5 cents for each account over 500,000 accounts. Under this schedule, every issuer will pay the tier one rate for the first 10,000 accounts, or portion thereof, with decreasing rates applicable only on additional accounts in the additional tiers. See NYSE Rule 451.90(5).

<sup>20</sup> See Notice, 81 FR at 56718; see also Securities Act Release No. 9776, Securities Exchange Act Release No. 75002, Investment Company Act Release No. 316180, 80 FR 33590 (June 12, 2015) (Investment Company Reporting Modernization; Proposed Rule).

<sup>21</sup> See Notice, 81 FR at 56718.

<sup>22</sup> See proposed NYSE Rule 451.90(5).

modifications, to fund shareholder report distributions, if the Commission ultimately adopts proposed Rule 30e-3.<sup>23</sup>

The Exchange also has proposed to set forth in Rule 451 that the notice and access fee will not be charged for any account with respect to which a fund pays a "preference management fee" in connection with a distribution of fund reports.<sup>24</sup> As a result, funds would be charged notice and access fees only with respect to accounts that actually receive a notice and access mailing.<sup>25</sup>

In addition, because funds often issue multiple classes of shares, the Exchange believes it is necessary to be clear how the pricing tiers in Rule 451 would be applied to fund shareholder reports.<sup>26</sup> Specifically, the Exchange has proposed to set forth in Rule 451 that, in calculating the rates at which a fund will be charged notice and access fees for shareholder report distributions, all accounts holding shares of any class of stock of the fund eligible to receive the same report distribution will be aggregated in determining the appropriate pricing tier.<sup>27</sup>

#### III. Summary of Comments Received

As noted above, the Commission received a total of fourteen comment letters on the Exchange's proposed rule change.<sup>28</sup> In general, commenters broadly supported the proposed rule change.<sup>29</sup> Two commenters, however, expressed concern about making a determination on the fees without a final Commission rule in place that permitted notice and access for fund report distributions.<sup>30</sup>

Several commenters took the position that the proposed rates set forth in NYSE's proposal would help realize the cost savings meant to be achieved through notice and access delivery of fund shareholder reports.<sup>31</sup> Some

<sup>23</sup> See Notice, 81 FR at 56718-19. The Exchange stated that the proposed notice and access fees for fund distributions will be effective only if the Commission adopts Rule 30e-3. See Notice, 81 FR at 56718, n.8.

<sup>24</sup> See proposed Rule 451.90(5).

<sup>25</sup> See Notice, 81 FR at 56719. The Exchange stated that this is a departure from the current practice under NYSE Rule 451.90(5), where an issuer utilizing notice and access for proxy distributions pays the notice and access fee for all shareholder accounts, including those for which it also pays a preference management fee. *Id.* See also *supra* note 17 (describing the current application of the preference management fee).

<sup>26</sup> See Notice, 81 FR at 56719.

<sup>27</sup> See proposed Rule 451.90(5).

<sup>28</sup> See *supra* note 4.

<sup>29</sup> *Id.*

<sup>30</sup> See SIFMA Letter; Broadridge Letter.

<sup>31</sup> See ICI Letter; Eaton Vance Letter; Vanguard Letter; Blackrock Letter; Invesco Letter; IDC Letter; Dimensional Letter; MFS Letter; Blackrock Directors Letter.

pointed out that shareholder report delivery is an expense that fund shareholders bear, and asserted that the cost savings would directly benefit fund shareholders.<sup>32</sup> One commenter also noted that the three changes being proposed by the NYSE would resolve ambiguity in the NYSE's fee schedule as it would apply to notice and access delivery of fund shareholder reports, potentially paving the way for the Commission to move forward with its proposal.<sup>33</sup> According to this commenter, the NYSE's proposal would ensure significant cost savings for fund shareholders if the Commission were to adopt a notice and access proposal.<sup>34</sup> This commenter also suggested that, absent NYSE's proposed rule change, these cost savings could be erased.<sup>35</sup> Similarly, another commenter asserted that, absent adoption of NYSE's proposal, Rule 451 would be applied in a manner that diminished Rule 30e-3 shareholder cost savings, or even increased shareholder costs.<sup>36</sup> In addition, this commenter was of the view that each element of proposed Rule 451.90(5) was logical and fair.<sup>37</sup> Another commenter believed that the proposed rule would ensure cost savings under proposed Rule 30e-3 and provide needed explanation on how Rule 451 would apply to electronic delivery of fund shareholder reports.<sup>38</sup>

Two commenters, however, expressed concerns about commenting on the NYSE fee proposal before proposed Rule 30e-3 was finally adopted. One commenter indicated that it could not definitively conclude whether the proposed fee structure was appropriate without a final rule specifying the details of the broker-dealer processing requirements for notice and access delivery.<sup>39</sup> Another commenter, the largest provider of shareholder communication services, stated that it performed an analysis in order to estimate the costs of a notice and access distribution of fund shareholder reports, but noted that it had to make certain assumptions that could change based on the final requirements of proposed Rule 30e-3.<sup>40</sup>

<sup>32</sup> See ICI Letter; Blackrock Directors Letter; Blackrock Letter; Invesco Letter; Colombia Letter.

<sup>33</sup> See ICI Letter. See also MFS Letter (stating that NYSE's proposal would clarify certain ambiguities of Rule 451 and provide a reasonable means of conformance to proposed Rule 30e-3).

<sup>34</sup> See ICI Letter.

<sup>35</sup> *Id.* See also Eaton Vance Letter.

<sup>36</sup> See MFS Letter.

<sup>37</sup> *Id.*

<sup>38</sup> See Vanguard Letter.

<sup>39</sup> See SIFMA Letter.

<sup>40</sup> See Broadridge Letter. While the commenter stated that NYSE's proposal would generally

Continued

Finally, several commenters commented on issues concerning the fees and the Exchange's role in setting those fees that are outside the scope of the Exchange's proposal.<sup>41</sup>

#### IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and rules and regulations thereunder applicable to a national securities exchange.<sup>42</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Exchange Act,<sup>43</sup> which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities; Section 6(b)(5) of the Exchange Act,<sup>44</sup> which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers; and Section 6(b)(8) of the Exchange

support the development of notice and access services for annual and semi-annual fund reports held by beneficial owners, the commenter noted that ultimately the work and costs involved are dependent on several factors including the final requirements of proposed Rule 30e-3, the number and size of fund distributions pursuant to a notice and access method, and the number and mode of investor requests for hard copy reports.

<sup>41</sup> Several commenters supported the transition of responsibility for setting shareholder distribution fees from the NYSE to FINRA. *See* ICI Letter; Ariel Letter; T. Rowe Letter; MFS Letter; Invesco Letter; Dimensional Letter; Columbia Letter. The other comments outside the scope of the proposal are as follows: Invesco Letter (the reasonableness and application of the current fee structure); Ariel Letter (reasonableness of the current fee structure); Columbia Letter (reasonableness of the current fee structure); MFS Letter (preference management fee in the context of managed accounts); Dimensional Letter (due to a virtual monopoly in the market for third-party service providers, funds have little to no control over the fees incurred for shareholder report distribution). Further, the Blackrock Directors Letter commented about providing a one year or reasonable transition period for to shift to on-line delivery of reports and providing a phone number for shareholders to call if they prefer to receive paper. We note that this comment also does not refer to the NYSE fee proposal being considered herein.

<sup>42</sup> In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>43</sup> 15 U.S.C. 78f(b)(4).

<sup>44</sup> 15 U.S.C. 78f(b)(5).

Act,<sup>45</sup> which prohibits any exchange rule from imposing a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.

Under the Exchange's proposal, the reimbursement rates set forth in NYSE Rule 451.90(5), which currently only apply to proxy distributions where the issuer elects to use notice and access, would become applicable to distributions of fund shareholder reports, pursuant to any notice and access rules adopted by the Commission.<sup>46</sup> Although the Commission has not adopted a notice and access rule, the Commission believes that it is appropriate and consistent with the Exchange Act to have in place rules that set forth the maximum reimbursement rates that funds may be charged for notice and access distributions should the Commission adopt a notice and access rule for fund shareholder reports.

The Commission believes that the application of the currently approved reimbursement rates for notice and access proxy distributions to fund shareholder report distributions, with the proposed amendments described herein, should establish a reasonable and practical reimbursement structure, if notice and access distribution of fund shareholder reports is authorized. In this regard, the Commission notes that the notice and access process for proxy distributions is similar in many respects to the notice and access process for fund shareholder report distributions proposed under Rule 30e-3.<sup>47</sup> In addition, the approval of the NYSE's fee proposal should facilitate any future Commission consideration of notice and access distributions for fund shareholder reports, by providing clarity on the maximum reimbursement rates for such distributions.

The Commission also believes that it is reasonable and appropriate for proposed Rule 451.90(5) to specify that funds utilizing notice and access will not be charged a notice and access fee for any account with respect to which they are being charged a preference management fee in connection with a distribution of shareholder reports.

<sup>45</sup> 15 U.S.C. 78f(b)(8).

<sup>46</sup> *See* proposed NYSE Rule 451.90(5). The Commission notes that the proposed fees for notice and access delivery of fund shareholder reports would only become applicable if the Commission adopts rules providing for notice and access delivery of investment company shareholder reports. Such rules could be in the form of Rule 30e-3, if adopted, or another Commission rulemaking establishing notice and access as an acceptable distribution method for fund reports, should Rule 30e-3 not be adopted.

<sup>47</sup> *See* Notice, 81 FR at 56718-19.

Today under NYSE Rule 451.90(4), issuers, including funds, are charged a preference management fee for each account for which the need to send materials in paper format through the mails (or by courier service) has been eliminated.<sup>48</sup> In the context of notice and access distributions of proxy materials under Rule 451.90(5), however, issuers are charged a notice and access fee for *all* accounts through which the issuer's securities are beneficially owned, with the result that issuers could be charged both preference management fees and notice and access fees with respect to the same account. The Exchange's proposal would eliminate this potential double-charging in the context of fund distributions of shareholder reports, in that the notice and access fee will not be charged for any account for which a preference management fee is already paid due to the elimination of the need for a paper mailing.<sup>49</sup> The Commission understands that the preference management fee generally is intended to reimburse intermediaries for the processing work and costs involved in keeping track of each account holder's election to eliminate paper mailings.<sup>50</sup> Accordingly, as the Exchange noted, funds will only pay notice and access fees with respect to accounts that actually receive notice and access mailings.<sup>51</sup> The Commission believes that this result is consistent with Section 6(b) of the Exchange Act.

In addition, the Commission believes that it is consistent with the Exchange Act for proposed Rule 451.90(5) to clarify that, in determining the appropriate pricing tier for notice and access fees in connection with investment company shareholder report distributions, all accounts holding shares of any share class that is eligible to receive the same report distribution will be aggregated. This clarification should resolve the ambiguity as to whether pricing tiers would be calculated by share class, resulting in potentially higher fees than if the accounts are aggregated as proposed. The Commission further believes this clarification is reasonable because it

<sup>48</sup> *See* Notice, 81 FR at 56719; *see also* NYSE Rule 451.90(4); Securities Exchange Act Release No. 68936 (February 15, 2013), 78 FR 12381, 12386 ("2013 Proxy Fee Notice").

<sup>49</sup> *See supra* note 17. For example, if a beneficial account holder has affirmatively consented to receive fund shareholder material electronically, such accounts would, under the NYSE's proposal, be charged a preference management fee, but not a notice and access fee, since no paper mailings of a notice of internet availability would be sent to such account holder.

<sup>50</sup> *See* 2013 Proxy Fee Notice, 78 FR at 12386.

<sup>51</sup> *See* Notice, 81 FR at 56719.

recognizes the unique nature of the fund industry in treating distributions with respect to a common group of shareholders as a single distribution for purposes of the fee tiers.

The Commission understands that, in setting the reimbursement rates in Rule 451.90, the Exchange balances the competing interests of issuers who must pay for distributions of shareholder reports and brokers who need assurance of adequate reimbursement for making such distributions on their behalf.<sup>52</sup> The Commission notes that all commenters broadly supported NYSE's proposal.<sup>53</sup> As discussed above, two commenters expressed some concern with assessing the details of the NYSE's proposal before a final decision is made on proposed Rule 30e-3. However, given that the Exchange's rule is applicable to the "distribution of investment company shareholder reports pursuant to any 'notice and access' rules adopted by the [Commission] in relation to such distributions" as well as the functional similarities between notice and access processing for proxy and investment company report distributions,<sup>54</sup> the Commission believes, for the reasons discussed above, that it is appropriate at this time to approve substantially similar reimbursement rates, with the proposed amendments described herein, which should establish a reasonable and practical reimbursement structure, if notice and access distribution of investment company shareholder reports is authorized.

For the reasons discussed above, the Commission believes that the proposed rule change is consistent with the Exchange Act.

<sup>52</sup> The Commission notes that the Exchange and certain commenters suggested that FINRA may be better positioned than the Exchange to perform the regulatory role of setting the reimbursement rates for mutual fund report distributions. See Notice, 81 FR at 56718; see also ICI Letter; Ariel Letter; T. Rowe Letter; MFS Letter; Invesco Letter; Dimensional Letter; Columbia Letter. The issue of whether FINRA would be better positioned than the Exchange to perform this regulatory role is outside the scope of the Commission's consideration of whether to approve the Exchange's proposed rule change. See Section 19(b)(2)(C) of the Exchange Act ("The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this title and the rules and regulations applicable to such organization.").

<sup>53</sup> See *supra* note 4.

<sup>54</sup> See Broadridge Letter (stating that processing work for investment company shareholder report distribution using notice and access is functionally similar in many respects to proxy report distribution through notice and access, although many of the underlying systems and production operations would be different).

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act<sup>55</sup> that the proposed rule change (SR–NYSE–2016–55) be, and *hereby is*, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>56</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–28311 Filed 11–23–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79351; File No. SR–DTC–2016–008]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Relating to Processing of Transactions in Money Market Instruments

November 18, 2016.

On September 23, 2016, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–DTC–2016–008 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> to establish a change in the processing of transactions in money market instruments.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on October 11, 2016.<sup>4</sup> To date, the Commission has not received any comments on the proposed rule change.

Section 19(b)(2) of the Act<sup>5</sup> provides that, within 45 days of the publication

<sup>55</sup> 15 U.S.C. 78f(b)(2).

<sup>56</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> On September 23, 2016, DTC also filed this proposed rule change as an advance notice (SR–DTC–2016–802) with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). Notice of filing of and extension of the review period of the advance notice was published for comment in the **Federal Register** on November 9, 2016. Securities Exchange Act Release No. 79224 (November 3, 2016), 81 FR 78884 (November 9, 2016) (SR–DTC–2016–802). The Commission shall have until January 21, 2017 to object or not object to the advance notice.

<sup>4</sup> See Securities Exchange Act Release No. 79046 (October 5, 2016), 81 FR 70200 (October 11, 2016) (SR–DTC–2016–008).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 25, 2016. The Commission is extending this 45-day time period.

In order to provide the Commission with sufficient time to consider 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. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> designates January 9, 2017 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–DTC–2016–008).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–28307 Filed 11–23–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79354; File No. SR–ISEMercury–2016–21]

### Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing of Proposed Rule Change To Reduce the Response Times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism and Price Improvement Mechanism

November 18, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on November 8, 2016, ISE Mercury, LLC (the "Exchange" or the "ISE Mercury") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have

<sup>6</sup> *Id.*

<sup>7</sup> 17 CFR 200.30–3(a)(31).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Rules 716 (Block Trades) and 723 (Price Improvement Mechanism for Crossing Transactions) to reduce the response times in the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism. The text of the proposed rule change is available on the Exchange's 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 the proposed rule change is to amend the time period allowed for member submission of responses in the Block Order Mechanism, Facilitation Mechanism, Solicited Order Mechanism, and Price Improvement Mechanism ("PIM") from 500 milliseconds ( $\frac{1}{2}$  of one second) to a time period designated by the Exchange of no less than 100 milliseconds ( $\frac{1}{10}$  of one second) and no more than 1 second.<sup>3</sup>

Rule 716 contains the requirements applicable to the execution of orders using the Block Order Mechanism,

Facilitation Mechanism, and Solicited Order Mechanism. The Block Order Mechanism allows members to obtain liquidity for the execution of a block-size order,<sup>4</sup> and the Facilitation and Solicited Order Mechanisms allow members to enter cross transactions seeking price improvement.<sup>5</sup> Rule 723 contains the requirements applicable to the execution of orders using the PIM. The PIM allows members to enter cross transactions of any size. The Facilitation, Solicited Order Mechanisms and PIM allow for members to designate certain customer orders for price improvement and submit such orders into one of the mechanisms with a matching contra order. Once the order is submitted, the Exchange commences an auction by broadcasting a message to all members that includes the series, price, size and side of the market.<sup>6</sup> Further, responses within the PIM (*i.e.*, Improvement Orders), are also broadcast to market participants during the auction. Orders entered into any of these mechanisms currently are exposed to all market participants for 500 milliseconds, giving them an opportunity to enter additional trading interest before the orders are automatically executed. Under the proposal, the Exchange would determine an appropriate exposure period for each of the four auction mechanisms that is no less than 100 milliseconds and no more than 1 second, consistent with exposure periods permitted on other exchanges such as NASDAQ BX ("BX") and NASDAQ PHLX ("Phlx").<sup>7</sup> When approving the previous change to exposure periods in these mechanisms on its affiliated market, ISE, the Securities and Exchange Commission concluded that reducing these time periods was consistent with the Securities Exchange Act of 1934 (the "Act").<sup>8</sup>

The Exchange is not proposing any change to the requirement in Rule 717(d) and (e) that requires an Electronic Access Member ("EAM") to

<sup>4</sup> Block-size orders are orders for 50 contracts or more. See Rule 716(a).

<sup>5</sup> Only block-size orders can be entered into the Facilitation Mechanism, whereas only orders for 500 contracts or more can be entered into the Solicited Order Mechanism. See Rule 716(d) and (e).

<sup>6</sup> Members may choose to hide the size, side, and price when entering orders into the Block Order Mechanism.

<sup>7</sup> See Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) and Securities Exchange Act Release No. 77557 (April 7, 2016), 81 FR 21935 (April 13, 2016) (SR-PHLX-2016-40).

<sup>8</sup> See Exchange Act Release No. 68849 (February 6, 2013), 78 FR 9973 (February 12, 2013) (SR-ISE-2012-100).

expose its customer's order on the book for at least one second before either executing such agency order as principal or against orders solicited from members and non-members, unless the EAM submits the agency order to the Facilitation Mechanism, Solicited Order Mechanism, or PIM.<sup>9</sup> The Exchange believes this exception for the Facilitation Mechanism, Solicited Order Mechanism and PIM is appropriate because the customer order is guaranteed an execution at the National Best Bid/Offer ("NBBO") or a better price through the Facilitation Mechanism, Solicited Order Mechanism and PIM. Additionally, members are informed about the agency order starting the auction through receipt of the broadcast. Members have the opportunity to compete for participation in the execution of the customer order by responding to the broadcast with their best priced responses.

With respect to the Facilitation Mechanism, Solicited Order Mechanism, and PIM, the Exchange believes the proposed rule change could provide more customer orders an opportunity for price improvement because it will reduce the market risk for all members executing trades in these mechanisms. Members that submit orders into such mechanisms to initiate an auction ("Initiating Members") are required to guarantee an execution at the NBBO or a better price, and are subject to market risk while the order is exposed in one of the mechanisms to other members. While other members are also subject to market risk, the Initiating Member is most exposed because the market can move against them during the auction period and they have guaranteed the customer an execution at the NBBO or better based on the market prices prior to the commencement of the auction. In today's fast-paced markets, big price changes can occur in 100 milliseconds or less, leaving the Initiating Members vulnerable to trading losses due to their choice to seek price improvement for their customer. The Initiating Member acts in a critical role in the price improvement process and their willingness to guarantee the customer an execution at the NBBO or a better price is keystone to the customer order gaining the opportunity for price improvement. Therefore, limiting Initiating Members' market risk by reducing the exposure time in the mechanisms should increase the likelihood that an Initiating Member

<sup>9</sup> Since EAMs submitting orders into the Block Mechanism do not have the contra order, Rule 717(d) and (e) does not apply.

<sup>3</sup> While the Exchange intends to decrease the time period allowed for responses, the proposed rule would also allow the Exchange to increase this time period up to 1 second, which is the time period previously allowed for the submission of responses on its affiliated market, the International Securities Exchange, LLC ("ISE"). See Securities Exchange Act Release No. 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR-ISE-2007-94).

would seek price improvement for its customer by entering such orders into one of the mechanisms.

Additionally, the Exchange does not believe that requiring the auction to run for 500 milliseconds is necessary in today's market where, generally, members' systems have the capability to respond within 100 milliseconds or faster. As such, reducing the response time in the Block Order Mechanism is appropriate as members no longer need 500 milliseconds to respond to the auction. Reducing the auction time for the Block Order Mechanism from 500 milliseconds to as low as 100 milliseconds will allow members the opportunity to seek out liquidity in an expedient manner that is consistent with system capabilities.

Furthermore, although the Exchange currently plans to reduce the time period allowed for the submission of auction responses to 100 milliseconds, the Exchange believes that it is appropriate to provide the flexibility to choose a response period of up to 1 second as this is consistent with the rules of other options markets.<sup>10</sup>

The Exchange's members operate electronic systems that enable them to react and respond to orders in a meaningful way in fractions of a second. The Exchange anticipates that its members will continue to compete within the proposed auction duration designated by the Exchange. In particular, the Exchange believes that the proposed auction response times—which will be no less than 100 milliseconds and no more than 1 second—will continue to provide members with sufficient time to respond to, compete for, and provide price improvement for orders, and will provide investors and other market participants with more timely executions, and reduce their market risk.

Reducing the duration of the auctions from 500 milliseconds to as low as 100 milliseconds will benefit members trading in the mechanisms. It is in these members' best interest to minimize the auction time while continuing to allow members adequate time to electronically respond. Both the order being exposed and the members' responses are subject to market risk during the auction. While a limited number of members wait to respond until later in the auction, presumably to minimize their market risk, in more than 94% of executions occurring in the mechanisms members respond within the first 100 milliseconds. The Exchange believes that an auction time as low as 100

milliseconds will continue to provide market participants with sufficient time to respond, compete, and provide price improvement for orders and will provide investors and other market participants with more timely executions, thereby reducing their market risk.<sup>11</sup>

To substantiate that members can receive, process, and communicate a response to an auction broadcast within 100 milliseconds, the Exchange surveyed all International Securities Exchange, LLC ("ISE") and ISE Gemini, LLC ("ISE Gemini") members that responded to an auction in the period beginning July 1, 2015 and ending January 15, 2016.<sup>12</sup> The Exchange received responses from all of the 21 ISE and ISE Gemini members surveyed, and each member confirmed that they can receive, process, and communicate a response back to the Exchange within 100 milliseconds. The Exchange believes that the survey results apply equally to ISE Mercury as all current ISE Mercury members are also members of the ISE and/or ISE Gemini, and the same functionality for responses offered on ISE Mercury is also offered on these affiliated exchanges. In addition, the Exchange notes that the ISE Mercury trading system has comparable latency to both ISE and ISE Gemini. As a result, the Exchange does not believe that ISE Mercury members will have any difficulty in responding to an auction broadcast within the 100 milliseconds permitted under this proposed rule change.

Also in consideration of this proposed rule change, the Exchange reviewed all executions occurring in the mechanisms by its Members from March 28, 2016–April 25, 2016. This review of executions in the mechanisms indicates that approximately 98% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 500 milliseconds. Approximately 94% of responses that resulted in price improving executions at the conclusion of an auction were submitted within 100 milliseconds of the initial order, and 83% were submitted within 50 milliseconds of the initial order.

<sup>11</sup> With Block Orders, the member enters one side of the order in an effort to find contra-side liquidity. While this order is exposed, the member is exposed to market risk. Therefore, reducing the exposure time will reduce the market risk for Block Orders just as it will reduce the market risk with respect to orders entered into the Facilitation Mechanism, Solicited Order Mechanism, and PIM.

<sup>12</sup> ISE Mercury launched on February 16, 2016 after the survey had been completed. ISE and ISE Gemini are affiliates of ISE Mercury that also offer the auction functionality described in this filing.

Accordingly, the Exchange believes that an auction time as low as 100 milliseconds will continue to provide members with sufficient time to respond to, compete for, and provide price improvement for orders, and will provide investors and other market participants with more timely executions, and reduce their market risk. Moreover, Supplementary Material .04 to Rule 723 provides that the PIM will not run simultaneously with or overlap another PIM in the same series. As a result, members may be unable to initiate PIMs on behalf of their customers. Reducing the auction time to as low as 100 milliseconds will decrease the likelihood that an auction is underway when a customer order is received. Accordingly, the Exchange believes it is likely that the number of PIM transactions will increase, thereby providing customers a greater opportunity to benefit from price improvement.

The Exchange believes that the information outlined above regarding price improving transactions in the mechanisms and the feedback provided by members provides substantial support for its assertion that reducing the auction from 500 milliseconds to as low as 100 milliseconds will continue to provide members with sufficient time to ensure competition for orders entered into the mechanisms, and could provide customer orders with additional opportunities for price improvement.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it has the necessary systems capacity to handle the potential additional traffic associated with the additional transactions that may occur with the implementation of the proposed reduction in the auction duration to no less than 100 milliseconds. Additionally, the Exchange represents that its systems will be able to sufficiently maintain an audit trail for order and trade information with the reduction in the auction duration. Further, although the Exchange and its members are fully capable of handling a response time of 100 milliseconds, the Exchange proposes to reduce the auction time over a period of weeks ending at 100 milliseconds. This will ensure a smooth implementation of the faster timers and that the Exchange's and its members' systems are working properly given the faster response times.

Upon effectiveness of the proposal, and at least six weeks prior to implementation of the proposed rule change, the Exchange will issue a circular to members, informing them of

<sup>10</sup> See note 7 supra.

the implementation date of the reduction of the auction from 500 milliseconds to the auction time designated by the Exchange to allow members the opportunity to perform systems changes. This will give members an opportunity to make any necessary modifications to coincide with the implementation date. The Exchange also represents that it will issue a circular at least four weeks prior to any future changes, as permitted by its rules, to the auction time.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>13</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>14</sup> because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change will provide investors with more timely execution of their options orders, while ensuring that there is an adequate exposure of orders in the mechanisms. Additionally, the proposed change will allow more investors the opportunity to receive price improvement through the mechanisms, and will reduce market risk for members using the mechanisms. Finally, as mentioned above, other exchanges such as BX and Phlx, have already amended their rules to permit response times consistent with those proposed here—*i.e.*, no less than 100 milliseconds and no more than 1 second.<sup>15</sup> As such, the Exchange believes the proposed rule change would help perfect the mechanism for a free and open national market system, and generally help protect investors' and the public's interest.

The Exchange believes the proposed rule change is not unfairly discriminatory because the auction duration would be the same for all members. All members in the mechanisms have today, and will continue to have, an equal opportunity to receive the broadcast and respond with their best prices during the auction. Additionally, the Exchange believes the reduction in the auction duration reduces the market risk for all

members. The reduction in time period reduces the market risk for the Initiating Member as well as any members providing orders in response to a broadcast. Moreover, based on the feedback the Exchange received from its members, the Exchange believes that a reduction in the auction period to a low of 100 milliseconds would not impair members' ability to compete in the mechanisms. The Exchange believes these results support the assertion that a reduction in the auction duration would not be unfairly discriminatory and would benefit investors.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act<sup>16</sup> in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, but instead would continue to provide market participants with sufficient time to respond, compete, and provide price improvement for orders in the Exchange's auction mechanisms. The proposed rule also provides investors and other market participants with more timely executions, thereby reducing their market risk. As proposed, the rule does not impose an undue burden on members because they are all currently capable of responding to these mechanisms in under 100 milliseconds. Finally, the proposed rule change offers the same exposure period to all members and would not impose a competitive burden on any particular participant.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the publication date of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISEMercury-2016-21 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-ISEMercury-2016-21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISEMercury-2016-21 and should be

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See note 7 supra.

<sup>16</sup> 15 U.S.C. 78f(b)(8).

submitted on or before December 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Brent J. Fields,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79356; File No. SR-NSCC-2016-007]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Accommodate Shorter Standard Settlement Cycle and Make Other Changes

November 18, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 7, 2016, National Securities Clearing Corporation (“NSCC”) 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 clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to NSCC’s Rules & Procedures (“Rules”)<sup>3</sup> in order to ensure that the Rules are consistent with the anticipated industry-wide move to a shorter standard settlement cycle for certain securities<sup>4</sup> from the third business day after the trade date (“T+3”) to the second business day after the trade date (“T+2”), as described below.

The proposed rule change would not become effective until NSCC has submitted a subsequent proposed rule change under Rule 19b-4.<sup>5</sup> Therefore, NSCC would not implement this version of the Rules until an effective date is established by the subsequent proposed rule change.<sup>6</sup>

#### II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### (A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

###### (i) Background

The standard settlement cycle has not changed since 1993, when the Commission adopted the current version of Rule 15c6-1(a) under the Securities Exchange Act of 1934, as amended (the “Act”), which (subject to certain exceptions) prohibits any broker-dealer from entering into a contract for the purchase or sale of a security that provides for payment and delivery later than three business days after the trade date, unless otherwise expressly agreed to by the parties at the time of the transaction.<sup>7</sup>

In an effort to reduce counterparty risk, decrease clearing capital requirements, reduce liquidity demands and harmonize the settlement cycle globally, the financial services industry has been working on shortening the standard settlement cycle from T+3 to T+2. In connection therewith, the Commission has proposed a rule change to shorten the standard settlement cycle from T+3 to T+2.<sup>8</sup>

A number of provisions in the Rules currently define “regular way” settlement as occurring on T+3 and, as such, would need to be amended in

connection with shortening the standard settlement cycle to T+2. Further, certain timeframes or cutoff times in the Rules key off the current settlement date of T+3, either expressly or indirectly. In such cases, these timeframes and cutoff times would also need to be amended in connection with the Shortened Settlement Cycle. Therefore, to facilitate the anticipated industry-wide move to the Shortened Settlement Cycle, NSCC proposes to make certain amendments to the Rules.

###### (ii) Proposed Changes to the Rules

The primary purpose of the proposed rule change is to modify the Rules to accommodate the anticipated industry-wide move to a two-day settlement cycle.<sup>9</sup> While the core functions of NSCC will continue to operate in the same way in the Shortened Settlement Cycle, NSCC has determined that the move to T+2 would necessitate certain amendments to the Rules because currently the Rules are designed to accommodate a T+3 settlement cycle. In particular, NSCC has identified and is proposing to change (i) rules that have timeframes and/or cutoff times that are tied to the standard settlement cycle and (ii) rules affected by process changes relating to the Shortened Settlement Cycle. In addition, NSCC is proposing to make a number of technical changes and corrections to the Rules.

##### A. Rules Tied to the Standard Settlement Cycle

Certain provisions in the Rules are tied to the standard settlement cycle because they reference timeframes and/or cutoff times that are based on the timing of settlement. These are provisions that (i) directly track the timeframe and/or Settlement Date of the standard settlement cycle, (ii) address non-standard settlement cycles or (iii) provide for timeframes and/or cutoff times that are connected to or are affected by the timing of the standard settlement cycle, and they would need to be changed in order to accommodate the Shortened Settlement Cycle. As an example, the Rules contain a number of provisions that refer to “three days” or “T+3” as the timeframe and Settlement Date of the standard settlement cycle. These provisions would need to be updated to reflect “two days” or “T+2” to be in conformance with the Shortened Settlement Cycle. Similarly, a number of provisions in the Rules refer to timeframes and Settlement Dates that are intended to be shorter or earlier, as applicable, than the timeframe and/or Settlement Date of the standard

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Capitalized terms not defined herein are defined in the Rules, available at [http://dtcc.com/~media/Files/Downloads/legal/rules/nscc\\_rules.pdf](http://dtcc.com/~media/Files/Downloads/legal/rules/nscc_rules.pdf).

<sup>4</sup> The financial services industry, in coordination with its regulators, is planning to shorten the standard settlement cycle for equities, corporate and municipal bonds, unit investment trusts and financial instruments comprised of the foregoing products traded on the secondary market from T+3 to T+2 (the “Shortened Settlement Cycle”). See Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (S7-22-16) (Amendment to Securities Transaction Settlement Cycle).

<sup>5</sup> 17 CFR 240.19b-4.

<sup>6</sup> NSCC will post a version of the relevant sections of the Rules reflecting the changes as they would appear upon the effectiveness of the subsequent proposed rule change mentioned above and will include a note on the cover page of the Rules to advise Members of these changes.

<sup>7</sup> 17 CFR 240.15c6-1.

<sup>8</sup> *Supra* note 4.

<sup>9</sup> *Id.*

settlement cycle. These provisions would also need to be changed in order to accommodate the Shortened Settlement Cycle. Likewise, the length and timing of certain cutoff times are based on either a standard settlement cycle or a non-standard settlement cycle. Therefore, when the timeframe and Settlement Date of the standard settlement cycle and non-standard settlement cycle are changed, these cutoff times would also need to be revised accordingly.

NSCC is proposing changes to the following Rules because they contain provisions that are tied to the standard settlement cycle and would need to be changed to facilitate the move to Shortened Settlement Cycle:

1. Rule 4A (Supplemental Liquidity Deposits)

In Section 2, delete references to the “third Settlement Day” and replace them with references to the “second Settlement Day” in the definition of “Options Expiration Activity Period.”

2. Procedure II (Trade Comparison and Recording Service)

In Section C.1.(p), with regards to trade input and comparison of debt securities transactions submitted for non-standard settlement, delete the reference to “T+2 and T+1 settlement” and replace it with “T+1 settlement.”

In Section D.2.(A)(1)(b), with regards to municipal and corporate debt securities, delete the reference to “two days” and replace it with “one day.”

In Section F.2, with regards to the Settlement Date for the Index Receipts, delete the reference to “T+1, T+2 or T+3” and replace it with “T+1 or T+2.”

In Section G, with regards to the eligibility of trades to be settled in the normal settlement cycle and the cutoff time for updating the totals reported for such trades, delete references to “T+3” and replace them with “T+2.”

3. Procedure III (Trade Recording Service (Interface With Qualified Clearing Agencies))

In Section B, with regards to the Settlement Date for the exercise or assignment of options at OCC, delete the reference to “three days” and replace it with “two days.”

4. Procedure V (Balance Order Accounting Operation)

In Section C, (i) with regards to the timing for the netting of trades in Balance Order Securities, delete references to “T and T+1” and replace them with “T” and (ii) with regards to the listing of the Clearance Cash Adjustment amount for all Balance

Orders on the Consolidated Trade Summary, delete the reference to the Consolidated Trade Summary being available on T+2.

5. Procedure VII (CNS Accounting Operation)

In Section B, (i) with regards to the timing of the comparison or recording of trades in CNS Securities for inclusion on the Consolidated Trade Summary, delete the words “T+1 up to” and (ii) with regards to the timing of as-of trades in CNS Securities that are reported on the Consolidated Trade Summary, delete references to “T+2” and “T+3” and replace them with “T+1” and “T+2,” respectively.

In Section G.3, with regards to the time period for determining the rate of the split for adjustments to Current Market Price in the case of stock splits, delete the reference to “last two days” and replace it with “one day.”

In Section H.4(b), (i) with regards to timing related to securities subject to voluntary reorganizations, delete references to protect periods of “two days”, “three days” and “greater than three days” and replace them with “one day”, “two days” and “greater than two days”, respectively and delete references to “E+2”, “E+3” and “E+4” and replace them with “E+1”, “E+2” and “E+3,” respectively, (ii) in the table listing the time frames for the processing of securities subject to voluntary reorganizations with a protect period, delete the reference to “two days or less” and replace it with “one day or less” as well as delete the entries for the 2 day protect period and (iii) with regards to the timing for the recording of ID Net Service eligible transactions on the Miscellaneous Activity Report, delete the words “on the night of T+2.”

In Section K, with regards to the timing for advising a Member about its potential liability with respect to a short position or a short Settling Trade position in a security to which an exercise privilege attaches, delete the reference to “T+2” and replace it with “T+1.”

6. Procedure XIII (Definitions)

In the definition for “T,” delete the reference to “T+3” and replace it with “T+2.”

7. Procedure XVI (ID Net Service)

In Procedure XVI, with regards to the timing for processing by NSCC of ID Net Service transactions, delete references to “the evening of T+2” and “the night of T+2” and replace them with “the evening prior to Settlement Date” and “the night prior to Settlement Date,” respectively.

8. Addendum A (Fee Structure)

In Section E.1, with regards to the fee for Index Creation and Redemption instructions submitted for regular way settlement, delete the explanatory parenthetical “(T+3)” and replace it with “(T+2).”

9. Addendum K (Interpretation of the Board of Directors Application of Clearing Fund)

In Section I.2, with regards to the endpoint of NSCC’s guaranty for balance order transactions, delete the reference to “T+3” and replace it with “T+2.”

*B. Rules Covering Processes Affected by a Shortened Settlement Cycle*

NSCC conducted an in-depth review of its internal operational processes to identify those processes that would require changes in order to accommodate the Shortened Settlement Cycle. In connection with that review, NSCC has identified the following provisions in the Rules that would need to be updated in connection with such process changes:

1. Procedure V (Balance Order Accounting Operation)

In Section B, with regards to trades that are to be processed on a trade-for-trade basis, clarify that such processing occurs for trades that are compared or otherwise entered into the Balance Order Accounting Operation on SD–1, “after the cutoff time established by the Corporation.” This is because under the Shortened Settlement Cycle, trades that are compared or otherwise entered into the Balance Order Accounting Operation on SD–1 would be processed as multilaterally netted balance orders when reported on the Consolidated Trade Summary issued at approximately 12:00 p.m. ET on SD–1. Trades compared and reported thereafter would continue to be processed on a trade-for-trade basis.

Similarly, in Section B, with regards to trades that are to be processed on a trade-for-trade basis, clarify that such process occurs for securities that are subject to a voluntary corporate reorganization which have a trade date on or before the expiration of the voluntary corporate reorganization and which are compared or received “on SD–1, after the cutoff time established by the Corporation” and not “after SD–1.” This shift in cutoff time is because “as of” regular way trades compared and received prior to 11:30 a.m. on SD–1 would be processed as multilaterally netted balance orders when reported on the Consolidated Trade Summary issued at approximately 12:00 p.m. ET on SD–1. “As of” regular way trades compared

and reported thereafter would continue to be processed on a trade-for-trade basis.

## 2. Procedure VII (CNS Accounting Operation)

In Section D.1, with regards to the timing of the distribution of Projection Reports, delete the reference to “[e]ach morning” and replace it with “[t]wice a day” because currently NSCC distributes the Projection Report only once a day; however, after the implementation of the Shortened Settlement Cycle, NSCC would be distributing the Projection Reports twice a day to enable Members to view their updated positions on a more timely basis.

## C. Other Technical Changes and Corrections

During its review of the Rules in connection with the Shortened Settlement Cycle, NSCC has identified the following technical changes and/or corrections that it proposes to make to the Rules in order to ensure that the Rules remain consistent and accurate.

1. In Rule 3, Section 1(c), add a footnote that identifies the term “CUSIP” as a registered trademark of the American Bankers Association.
2. In Procedure II, Section G, correct a grammatical error.
3. In Procedure VII, Sections B and D, correct grammatical errors.
4. In Procedure X, Section B, delete the reference to the timeframe for the delivery of Liability Notices to the contra party by Members holding the receive balance orders for warrants, rights, convertible securities or certain other securities so the Members would remain solely subject to the schedules of the relevant exchanges.
5. In Procedure XIII, delete the incorrect reference to “Settlement Day” and replace it with “Settlement Date” in the definition for “T” to clarify that T+2 would normally be the Settlement Date after the implementation of the Shortened Settlement Cycle.
6. In Procedure XVI, correct a grammatical error.

## Implementation Timeframe

The proposed rule change would not become effective until NSCC has submitted a subsequent proposed rule change under Rule 19b-4.<sup>10</sup> Therefore, NSCC would not implement this version of the Rules until an effective date is established by the subsequent proposed rule change. NSCC anticipates that the implementation date would correspond with the industry’s transition to a T+2

settlement cycle, which is currently anticipated to be in September 2017.

## 2. Statutory Basis

NSCC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC.

In particular, Section 17A(b)(3)(F) of the Act requires, in part, that NSCC’s Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.<sup>11</sup> NSCC believes that the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) because by changing the timeframes and/or cutoff times that are based on timing of settlement to accommodate the Shortened Settlement Cycle, the proposal would ensure that securities transactions would be promptly and accurately cleared and settled within the industry standard settlement cycle. Similarly, the related process changes proposed are designed to update NSCC’s operations in order to facilitate the move to the Shortened Settlement Cycle and, by extension, facilitate the prompt and accurate clearance and settlement of securities transactions submitted to NSCC for clearing and settlement. Therefore, NSCC believes the proposed rule change promotes the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.<sup>12</sup>

In addition, the proposed changes to (i) update the Rules to remove references to the settlement timeframes or Settlement Dates that would be rendered incorrect by the Shortened Settlement Cycle and (ii) make other technical changes and corrections as described in detail above would provide additional clarity to Members of their rights and obligations under the Rules and ensure technical accuracy of the Rules. Therefore, NSCC believes these proposed changes would protect investors and the public interest, consistent with the requirements of Section 17A(b)(3)(F) of the Act.<sup>13</sup>

For the reasons noted above, NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC.

## (B) Clearing Agency’s Statement on Burden on Competition

NSCC does not believe that the proposed rule changes would impose

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>14</sup> While the anticipated industry-wide move to the Shortened Settlement Cycle would likely have an impact on competition because the cost of required system changes for individual firms to shift from a T+3 to T+2 settlement may have a disproportionate impact on those firms with relatively smaller revenue bases, NSCC does not believe that the proposed rule changes themselves would have a significant impact on competition because they are operational in nature and consist of changes to processing timeframes and cutoff times for NSCC’s services. Moreover, NSCC believes that the proposed rule changes are necessary because they are required to facilitate and accommodate the anticipated move to the Shortened Settlement Cycle and are appropriate in that they have been specifically tailored to be in conformance with the requirements of the Shortened Settlement Cycle. Therefore, NSCC does not believe that the proposed rule changes would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

## (C) Clearing Agency’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NSCC has not received any written comments relating to this proposal. NSCC will notify the Commission of any written comments received.

## III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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.

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>10</sup> 17 CFR 240.19b-4.

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](mailto:rule-comments@sec.gov). Please include File Number SR–NSCC–2016–007 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–NSCC–2016–007. 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 NSCC and on DTCC's Web site (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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–NSCC–2016–007 and should be submitted on or before December 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–28312 Filed 11–23–16; 8:45 am]

**BILLING CODE 8011–01–P**

**DEPARTMENT OF STATE**

**[Public Notice: 9797]**

**Notice of Meeting of Advisory Committee on International Law**

A meeting of the Department of State's Advisory Committee on International Law will take place on Tuesday, December 13, from 9:30 a.m. to 5:00 p.m. at the George Washington University Law School, Michael K. Young Faculty Conference Center, 716 20th Street NW., 5th Floor, Washington, DC. Legal Adviser Brian Egan will chair the meeting, which will be open to the public up to the capacity of the conference room. It is anticipated that the meeting will include discussions on the Foreign Sovereign Immunities Act, state and individual responsibility for arms sales, "Brexit," and effective international lawyering during transitions.

Members of the public who wish to attend should contact the Office of the Legal Adviser by December 9 at [simcockjc@state.gov](mailto:simcockjc@state.gov) or (202) 776–8477 and provide their name, professional affiliation, address, and phone number.

A valid photo ID is required for admission to the meeting. Attendees who require reasonable accommodation should make their requests by December 7. Late requests will be considered but might not be possible to accommodate.

Dated: November 17, 2016.

**Julian C. Simcock, Office of the Legal Adviser,**

*Executive Director, Advisory Committee on International Law, United States Department of State.*

[FR Doc. 2016–28398 Filed 11–23–16; 8:45 am]

**BILLING CODE 4710–08–P**

**DEPARTMENT OF STATE**

**[Public Notice: 9798]**

**E.O. 13224 Designation of Basil Hassan as a Specially Designated Global Terrorist**

Acting under the authority of and in accordance with section 1(b) of E.O. 13224 of September 23, 2001, as amended by E.O. 13268 of July 2, 2002, and E.O. 13284 of January 23, 2003, I hereby determine that the person known as Basil Hassan committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be

subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: October 6, 2016.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2016–28404 Filed 11–23–16; 8:45 am]

**BILLING CODE 4710–AD–P**

**DEPARTMENT OF STATE**

**[Public Notice: 9800]**

**E.O. 13224 Designation of Abdelilah Himich, aka Abu Suleyman al-Faransi, aka Abu Suleyman al-Firansi, aka Abu Sulaiyman al Fransi, aka Abu Sulaiyman, aka Abu Suleyman, aka Abou Souleiman Al-Firansi, aka Abu Sulayman al-Faransi, aka Abu Souleymane, aka Abu Souleymane al-Faransi, aka Abu Souleymane the Frenchman, aka Abu Suleiman as a Specially Designated Global Terrorist**

Acting under the authority of and in accordance with section 1(b) of E.O. 13224 of September 23, 2001, as amended by E.O. 13268 of July 2, 2002, and E.O. 13284 of January 23, 2003, I hereby determine that the person known as Abdelilah Himich, also known as Abu Suleyman al-Faransi, also known as Abu Suleyman al-Firansi, also known as Abu Sulaiyman al Fransi, also known as Abu Sulaiyman, also known as Abou Souleiman Al-Firansi, also known as Abu Sulayman al-Faransi, also known as Abu Souleymane, also known as Abu Souleymane al-Faransi, also known as Abu Souleymane the Frenchman, also known as Abu Suleiman, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to

<sup>15</sup> 17 CFR 200.30–3(a)(12).

transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: November 4, 2016.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2016-28408 Filed 11-23-16; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF STATE

[Public Notice: 9799]

### **E.O. 13224 Designation of Victor Quispe Palomino, aka Comrade Jose as a Specially Designated Global Terrorist**

Acting under the authority of and in accordance with section 1(b) of E.O. 13224 of September 23, 2001, as amended by E.O. 13268 of July 2, 2002, and E.O. 13284 of January 23, 2003, I hereby determine that the person known as Victor Quispe Palomino, also known as Comrade Jose, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: October 31, 2016.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2016-28401 Filed 11-23-16; 8:45 am]

**BILLING CODE 4710-AD-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Sixteenth Meeting of the RTCA Tactical Operations Committee

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

**ACTION:** Sixteenth Meeting of the RTCA Tactical Operations Committee.

**SUMMARY:** The FAA is issuing this notice to advise the public of the Sixteenth Meeting of the RTCA Tactical Operations Committee.

**DATES:** The meeting will be held December 13, 2016, 01:00 p.m.–03:00 p.m.

**ADDRESS:** The meeting will be held at: RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC 20036.

**FOR FURTHER INFORMATION, CONTACT:** Trin Mitra at [tmitra@rtca.org](mailto:tmitra@rtca.org) or 202-330-0655, the RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833-9339, fax at (202) 833-9434, or Web site at <http://www.rtca.org>.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.), notice is hereby given for the Fifteenth Meeting of the RTCA Tactical Operations Committee. The agenda will include the following:

**Tuesday, December 13, 2016—1:00 p.m.–3:00 p.m.**

1. Opening of Meeting/Introduction of TOC Members—Co-Chairs Dale Wright and Bryan Quigley
2. Official Statement of Designated Federal Official—Elizabeth Ray
3. Approval of October 27, 2016 Meeting Summary
4. Graphical TFR Task Group—Recommendation
5. GPS Adjacent Band Compatibility Task Group—Ligado Proposal Review Recommendation
6. Updates on Future TOC Tasks
7. Other Business
8. Adjourn

Attendance is open to the interested public but limited to space availability. Given limited space on-site, members of the public that wish to participate virtually can request dial-in and online meeting information by contacting Trin Mitra, TOC Secretary, at [tmitra@rtca.org](mailto:tmitra@rtca.org). With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER**

**INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time. Issued in Washington, DC on November 18, 2016.

**Mohannad Dawoud,**

*Management & Program Analyst, Partnership Contracts Branch, ANG-A17, NextGen, Procurement Services Division, Federal Aviation Administration.*

[FR Doc. 2016-28286 Filed 11-23-16; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[FHWA Docket No. FHWA-2016-0025]

#### Surface Transportation Project Delivery Program; TxDOT Audit #3 Report

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Surface Transportation Project Delivery Program allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. Prior to the Fixing America's Surface Transportation (FAST) Act of 2015, the Program required semiannual audits during each of the first 2 years of State participation to ensure compliance by each State participating in the Program. This notice announces and solicits comments on the third audit report for the Texas Department of Transportation's (TxDOT) participation in accordance to these pre-FAST Act requirements.

**DATES:** Comments must be received on or before December 27, 2016.

**ADDRESSES:** Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590. You may also submit comments electronically at [www.regulations.gov](http://www.regulations.gov). All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-

addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). The DOT posts these comments, without edits, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Dr. Owen Lindauer, Office of Project Development and Environmental Review, (202) 366-2655, [owen.lindauer@dot.gov](mailto:owen.lindauer@dot.gov), or Mr. Alan Strasser, Office of the Chief Counsel, (202) 366-1356, [alan.strasser@dot.gov](mailto:alan.strasser@dot.gov), Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

An electronic copy of this notice may be downloaded from the specific docket page at [www.regulations.gov](http://www.regulations.gov).

**Background**

The Surface Transportation Project Delivery Program (or NEPA Assignment Program) allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. This provision has been codified at 23 U.S.C. 327. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. The TxDOT published its application for assumption under the National Environmental Policy Act (NEPA) Assignment Program on March 14, 2014, at Texas Register 39(11): 1992, and made it available for public comment for 30 days. After considering public comments, TxDOT submitted its application to FHWA on May 29, 2014. The application served as the basis for developing the Memorandum of Understanding (MOU) that identifies the responsibilities and obligations TxDOT would assume. The FHWA published a notice of the draft of the MOU in the **Federal Register** on October 10, 2014, at 79 FR 61370 with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of

the comment period, FHWA and TxDOT considered comments and proceeded to execute the MOU. Since December 16, 2014, TxDOT has assumed FHWA's responsibilities under NEPA and the responsibilities for reviews under other Federal environmental requirements.

Prior to December 4, 2015, 23 U.S.C. 327(g) required the Secretary to conduct semiannual audits during each of the first 2 years of State participation, annual audits during years 3 and 4, and monitoring each subsequent year of State participation to ensure compliance by each State participating in the Program. The results of each audit were required to be presented in the form of an audit report and be made available for public comment. On December 4, 2015, the President signed into law the FAST Act, Public Law 114-94, 129 Stat. 1312 (2015). Section 1308 of the FAST Act amended the audit provisions by limiting the number of audits to one audit each year during the first 4 years of a State's participation. However, FHWA had already conducted the second audit for TxDOT's participation. This notice announces the availability of the report for the third audit for TxDOT conducted prior to the FAST Act and solicits public comment on same.

**Authority:** Section 1313 of Public Law 112-141; Section 6005 of Public Law 109-59; Public Law 114-94; 23 U.S.C. 327; 49 CFR 1.85.

Issued on: November 17, 2016.

**Gregory G. Nadeau,**  
*Administrator, Federal Highway Administration.*

**Draft**

**Surface Transportation Project Delivery Program FHWA Audit #3 of the Texas Department of Transportation, December 17, 2015 to June 16, 2016**

**Executive Summary**

This report summarizes the findings of FHWA's third audit review (Audit #3) to assess the performance by the Texas Department of Transportation (TxDOT) regarding its assumption of responsibilities and obligations, as assigned by Federal Highway Administration (FHWA), under a memorandum of understanding (MOU) which took effect on December 16, 2014. From that date, TxDOT assumed FHWA National Environmental Policy Act (NEPA) responsibilities assigned for the environmental review and compliance, and for other environmental laws related to NEPA for highway projects in Texas (NEPA Assignment Program). The status of FHWA's observations from the second audit review (Audit #2), including any TxDOT self-imposed

corrective actions, is detailed at the end of this report.

The FHWA Audit #3 team (team) was formed in February 2016 and met regularly to prepare for the on-site portion of the audit. Prior to the on-site visit, the team: (1) Performed reviews of project files in TxDOT's Environmental Compliance Oversight System (ECOS), (2) examined TxDOT's responses to FHWA's information requests, and (3) developed interview questions. The on-site portion of this audit, comprised of TxDOT and other agency interviews, was conducted on April 11-15, 2016.

The TxDOT continues to develop, revise, and implement procedures and processes required to carry out the NEPA Assignment Program. Overall, the team found continued evidence that TxDOT is committed to establishing a successful program. This report summarizes the team's assessment of the current status of several aspects of the NEPA Assignment Program, including numerous successful practices and six observations that represent opportunities for TxDOT to improve its program. The team identified four non-compliance observations that TxDOT will need to address as corrective actions, if not already addressed, in FHWA's next review or audit.

The TxDOT has continued to make progress toward meeting the responsibilities it has assumed in accordance with the MOU. Through this report, FHWA is notifying TxDOT of several non-compliance observations that require TxDOT to take corrective action. By taking corrective action and considering changes based on the observations in this report, TxDOT should continue to move the NEPA Assignment Program forward successfully.

**Background**

The Surface Transportation Project Delivery Program allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for highway projects. This Program is codified at 23 U.S.C. 327. When a State assumes these Federal responsibilities for NEPA project decisionmaking, the State becomes solely responsible and liable for carrying out these obligations in lieu of and without further approval by FHWA.

The State of Texas was assigned the responsibility for making NEPA project approvals and the responsibility for making other related environmental decisions for highway projects on December 16, 2014. In enacting Texas Transportation Code, § 201.6035, the

State has waived its sovereign immunity under the 11th Amendment of the U.S. Constitution and consents to defend any actions brought by its citizens for NEPA decisions it has made in Federal court.

The FHWA responsibilities assigned to TxDOT are specified in the MOU. These responsibilities include: Compliance with the Endangered Species Act (ESA) Section 7 consultations with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service, and Section 106 consultations with the Texas Historical Commission (THC) regarding impacts to historic properties. Other responsibilities may not be assigned and remain with FHWA. They include: (1) Responsibility for project-level conformity determinations under the Clean Air Act and (2) the responsibility for government-to-government consultation with federally-recognized Indian tribes. Based on 23 U.S.C. 327(a)(2)(D), any responsibility not explicitly assigned in the MOU is retained by FHWA.

The TxDOT's MOU specifies that FHWA is required to conduct six audit reviews. These audits are part of FHWA's oversight responsibility for the NEPA Assignment Program. The reviews are to assess a State's compliance with the provisions of the MOU as well as all applicable Federal laws and policies. They also are used to evaluate a State's progress toward achieving its performance measures as specified in the MOU; to evaluate the success of the NEPA Assignment Program; and to inform the administration of the findings regarding the NEPA Assignment Program. In December 2015, statutory changes in Section 1308 of the Fixing America's Surface Transportation Act (FAST Act), reduced the frequency of these audit reviews to one audit per year during the first four years of state participation in the program.

### Scope and Methodology

The overall scope of this audit review is defined both in statute (23 U.S.C. 327) and the MOU (Part 11). An audit generally is defined as an official and careful examination and verification of accounts and records, especially of financial accounts, by an independent unbiased body. With regard to accounts or financial records, audits may follow a prescribed process or methodology, and be conducted by "auditors" who have special training in those processes or methods. The FHWA considers this review to meet the definition of an audit because it is an unbiased, independent,

official, and careful examination and verification of records and information about TxDOT's assumption of environmental responsibilities. Principal members of the team that conducted this audit have completed special training in audit processes and methods.

The diverse composition of the team, the process of developing the review report, and publishing it in the **Federal Register** help maintain an unbiased review and establish the audit as an official action taken by FHWA. The team for Audit #3 included NEPA subject-matter experts from the FHWA Texas Division Office, as well as FHWA offices in Washington, DC, Atlanta, GA, and Tallahassee, FL. In addition to the NEPA experts, the team included FHWA planners, engineers, and air quality specialists from the Texas Division office.

Audits, as stated in the MOU (Parts 11.1.1 and 11.1.5), are the primary mechanism used by FHWA to oversee TxDOT's compliance with the MOU and ensure compliance with applicable Federal laws and policies, evaluate TxDOT's progress toward achieving the performance measures identified in the MOU (Part 10.2), and collect information needed for the Secretary's annual report to Congress. These audits also must be designed and conducted to evaluate TxDOT's technical competency and organizational capacity, adequacy of the financial resources committed by TxDOT to administer the responsibilities assumed, quality assurance/quality control process, attainment of performance measures, compliance with the MOU requirements, and compliance with applicable laws and policies in administering the responsibilities assumed. The four performance measures identified in the MOU are: (1) Compliance with NEPA and other Federal environmental statutes and regulations, (2) quality control and quality assurance for NEPA decisions, (3) relationships with agencies and the general public, and (4) increased efficiency, timeliness, and completion of the NEPA process.

The scope and focus of this audit included reviewing the processes and procedures (*i.e.*, toolkits) used by TxDOT to reach and document its independent project decisions. The team conducted a careful examination of highway project files in TxDOT's ECOS and verified information on the TxDOT NEPA Assignment Program through inspection of other records and through interviews of TxDOT and other staff. The team gathered information that served as the basis for this audit

from three primary sources: (1) TxDOT's response to a pre-audit #3 information request, (2) a review of both a judgmental and random sample of project files in ECOS with approval dates subsequent to the execution of the MOU, and (3) interviews with TxDOT, the USFWS, U.S. Environmental Protection Agency (USEPA), and THC staff. The TxDOT provided information in response to FHWA pre-audit questions and requests for documents. That material covered the following six topics: Program management, documentation and records management, quality assurance/quality control, legal sufficiency review, performance measurement, and training. The team subdivided into working groups that focused on considering TxDOT's performance according to each of the six topics.

The intent of the review was to check that TxDOT has the proper procedures in place to implement the responsibilities assumed through the MOU, ensure that the staff is aware of those procedures, and that staff implements the procedures appropriately to achieve compliance with NEPA and other assigned responsibilities. The review did not evaluate the substance of project-specific decisions or second guess those decisions, as such decisions are the sole responsibility of TxDOT. The team focused on whether the procedures TxDOT followed complied with Federal statutes, regulation, policy, procedure, process, guidance, and guidelines.

The team defined the timeframe for highway project environmental approvals subject to this third audit to be between July 1, 2015, and January 29, 2016. The third audit intended to: (1) Evaluate whether TxDOT's NEPA decisionmaking and other actions comply with all the responsibilities it assumed in the MOU, and (2) determine the current status of observations in the Audit #2 report, as well as required corrective actions (see summary at end of this report). The population of environmental approvals included 1489 projects based on certified lists of NEPA approvals reported monthly by TxDOT. The NEPA approvals included 1423 categorical exclusion determinations (CEs), approvals to circulate Environmental Assessments (EAs), findings of no significant impacts (FONSI), re-evaluations of EAs, Section 4(f) decisions, approvals of a draft environmental impact statement (EIS), and records of decision (RODs). The team drew a sample with a 95 percent confidence interval with a 10 percent margin of error. This sample included 93 randomly selected CE projects and

all 66 approvals that were not CEs. The team reviewed 159 project files in this review.

The interviews conducted by the team focused on TxDOT's leadership and staff at the Environmental Affairs Division (ENV) Headquarters in Austin and staff in ten of TxDOT's Districts. The team divided into three groups to complete the face-to-face interviews of District staff in El Paso and Odessa; Pharr and Yoakum; and San Angelo, Abilene, and Brownwood. Staff from the Wichita Falls, Atlanta, and Lufkin Districts completed interviews via remote tele-conference. The team continued to use the same review form and interview questions for Districts as used in Audits #1 and 2. With these last 10 interviews completed, staff from all 25 TxDOT Districts were interviewed as part of FHWA's audits.

### Overall Audit Opinion

The TxDOT continues to make progress in the implementation of its program that assumes FHWA's NEPA project-level decision authority and other environmental responsibilities. The team acknowledges TxDOT's effort to refine, and when necessary, establish internal policies and procedures. The team found ample evidence of TxDOT's continuing efforts to train staff in clarifying the roles and responsibilities of TxDOT staff, and in educating staff in an effort to assure compliance with all of the assigned responsibilities.

The team identified several non-compliant observations in this review that TxDOT will need to address through corrective actions. These observations come from a review of TxDOT procedures, project file documentation, and interview information. This report also identifies several notable good practices that we recommend be expanded upon.

### Non-Compliance Observations

#### Audit #3

Non-compliance observations are instances where the team found the TxDOT was out of compliance or deficient with regard to a Federal regulation, statute, guidance, policy, the terms of the MOU, or TxDOT's procedures for compliance with the NEPA process. Such observations may also include instances where TxDOT has failed to maintain technical competency, adequate personnel, and/or financial resources to carry out the assumed responsibilities. Other non-compliance observations could suggest a persistent failure to adequately consult, coordinate, or take into account the concerns of other Federal, State, tribal,

or local agencies with oversight, consultation, or coordination responsibilities. The FHWA expects TxDOT to develop and implement corrective actions to address all non-compliance observations. As part of information gathered for this audit, TxDOT has informed the team they are still implementing some recommendations made by FHWA on Audit #2 to address non-compliance. The FHWA will conduct follow up reviews of non-compliance observations.

The MOU (Part 3.1.1) states that "[p]ursuant to 23 U.S.C. 327(a)(2)(A), on the Effective Date, FHWA assigns, and TxDOT assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all of the USDOT Secretary's responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* with respect to the highway projects specified under subpart 3.3. This includes statutory provisions, regulations, policies, and guidance related to the implementation of NEPA for Federal highway projects such as 23 U.S.C. 139, 40 CFR 1500–1508, DOT Order 5610.1C, and 23 CFR 771 as applicable." Also, the performance measure in MOU Part 10.2.1(A) for compliance with NEPA and other Federal environmental statutes and regulations commits TxDOT to maintaining documented compliance with requirements of all applicable statutes and regulations, as well as procedures and processes set forth in the MOU. The following four non-compliance observations were found by the team based on review of TxDOT ENV toolkit/handbook procedures, documentation in project files, and other sources.

#### Audit #3 Non-Compliance Observation #1

##### Section 7 Consultation

The TxDOT has assumed the responsibilities for compliance with the ESA of 1973 (16 U.S.C. 1531–1544) and developed a procedure, as part of the TxDOT environmental toolkit, for staff to make ESA determinations. Through project file reviews, the team found that TxDOT's toolkit procedures do not comply with the ESA requirements and USFWS policy<sup>1</sup> in circumstances where an endangered species or its habitat is

present. Pursuant to MOU part 3.1.1 (see above), TxDOT's procedures must also be consistent with FHWA guidance and the USFWS & NMFS 1998 Endangered Species Consultation Handbook. Specifically, when a species or its habitat is present within a project's impact area and impact is possible, the project file needs to show consultation with USFWS or provide documentation explaining how the project impacts will have no effect on either species or their habitat. The TxDOT needs to take action to revise its ESA procedures when an endangered species or its habitat is present to make those procedures consistent with Federal policy and guidance. The team urges TxDOT staff to meet with USFWS staff to discuss how the revised procedures would result in more a consistent set of determinations.

In four of the five project files reviewed, where an endangered species or its habitat was present, TxDOT's procedure allowed for a professional biologist's judgment in making an ESA determination of "no effect," without either supporting documentation or consultation with USFWS. The team has informed TxDOT of this deficiency and TxDOT has indicated it has reviewed similarly-made ESA determinations to check for errors.

#### Audit #3 Non-Compliance Observation #2

##### Noise Policy

Non-compliance observation #2 results from 11 project files where the template letter fails to inform about the non-eligibility for Federal-aid participation in Type II traffic noise abatement projects as required by 23 CFR 772.17(a)(3). Three of those same projects did not follow TxDOT's noise wall policy previously approved by FHWA. The FHWA complies with its noise regulations (23 CFR 772) by reviewing and approving each State's noise guidance and then relying on the State to follow those procedures. For Texas, its noise guidelines (Guidelines for Analysis and Abatement of Roadway Traffic Noise, 2011) represents the noise policy reviewed and approved by FHWA that serves as the basis for compliance with 23 CFR 772. In 2016, TxDOT updated its noise guidelines but did not submit that material to FHWA for review and approval pursuant to 23 CFR 772.7(b). Therefore, TxDOT cannot use these guidelines as a basis for compliance with 23 CFR 772. The team found inconsistencies and incorrect information in the ECOS project file of record such as: notification to locals with jurisdiction occurring before a

<sup>1</sup> USFWS & NMFS 1998 Endangered Species Consultation Handbook, Standard Operating Procedure for Accessing USFWS Ecological Services for Technical Assistance and Section 7 Consultations; 300.01 SOP Version 2, September 2015.

NEPA decision was made; the date of public knowledge improperly occurring before the NEPA decision; and holding a noise workshop before the public hearing. Two of the three projects followed the unapproved 2016 noise policy rather than the 2011 noise policy and were found to be non-compliant with the 2011 policy. These non-compliant observations result from TxDOT having two noise policies, one that has been FHWA approved (2011) and another more recent version that has not been approved. If TxDOT intends to update its 2011 noise policy, FHWA must review and approve the new policy before TxDOT may apply it to projects. Until then, TxDOT needs to take action to ensure compliance with the 2011 policy.

### *Audit #3 Non-Compliance Observation #3*

#### Public Involvement

Non-compliance observation #3 is based upon evidence in files for four projects reviewed that TxDOT did not follow its public involvement procedure and toolkit requirements.<sup>2</sup> The FHWA's regulation at 23 CFR 771.111(h)(1) requires that each State have FHWA approved public involvement procedures to implement the public involvement/public hearing requirements in law and regulation. The review team found that TxDOT inconsistently applied its public involvement procedures. Although TxDOT has detailed public involvement procedures in place, TxDOT staff sometimes fails to follow those procedures. In one project file, TxDOT did not hold a public hearing for a project on new alignment as required in the State's procedures.<sup>3</sup> Another project file lacked documentation of public involvement required by the TxDOT procedures.<sup>4</sup>

In addition, the team reviewed a project file showing that TxDOT made a finding of no significant impact (FONSI) for an action described in 23 CFR 771.115(a) without evidence of a required additional public notification. The FHWA's regulation at 23 CFR 771.119(h) requires public notification to occur 30 days prior to issuing a FONSI. The team reviewed the TxDOT public involvement toolkit and found no mention of the Federal requirement for public notification under these circumstances. The TxDOT is currently modifying its public involvement procedures and has requested that

FHWA review and approve those procedures pursuant to 23 CFR 771.111(h). The TxDOT needs to take corrective action to comply with the regulatory requirements for public involvement consistent with either its 2015 handbook or a revised public involvement policy that has been reviewed and approved by FHWA.

### *Audit #3 Non-Compliance Observation #4*

#### Section 4(f)

Non-compliance observation #4 results from the review of one project file that lacked the required documentation for compliance with Section 4(f) as specified in 23 CFR 774.7 and TxDOT's Environmental Handbook/ U.S. Department of Transportation Act: Section 4(f); 810.01 GUI Version 1 dated May 2015. The project file lacked the date and identity of the individual who made a *de minimis* impact determination. The TxDOT did not follow established Section 4(f) toolkit procedures. The TxDOT should ensure that all required Section 4(f) documentation is complete and included in a project's file.

### **Successful Practices and Other Observations**

This section summarizes the team's observations about issues or practices that TxDOT may consider as areas to improve. It also summarizes practices that the team believes are successful, so that TxDOT can consider continuing or expanding those programs in the future. Further information on these observations and successful practices is contained in the following subsections that address these six topic areas: Program management; documentation and records management; quality assurance/quality control; legal sufficiency; performance management; and training.

Throughout the following subsections, the team lists nine remaining observations that FHWA recommends TxDOT consider in order to make improvements. The FHWA's suggested implementation methods of action include: Corrective action, targeted training, revising procedures, continued self-assessment, or some other means. The team acknowledges that, by sharing the preliminary draft audit report with TxDOT, TxDOT has begun the process of implementing actions to address these observations to improve its program prior to the publication of this report.

## **1. Program Management**

### **Successful Practices and Observations**

Over the course of interviewing all 25 Districts over the past 18 months, the team noted that District staff welcomed the opportunity to be responsible for making CE approvals. Additionally, TxDOT District staff members and management have said in interviews that they are more diligent with their documentation because they know that these approvals will be internally assessed and the District held accountable by the TxDOT ENV Self-Assessment Branch (SAB). District staff indicated in interviews that the SAB detailed reviews are highly valued because they can learn from their mistakes and improve. Accountability, in part, is driving an enhanced desire for TxDOT staff to correctly document environmental compliance.

The team recognizes enhanced communication among individuals in the project development process as a successful practice. Information gained from interviews and materials provided by TxDOT demonstrate improved communication amongst Districts and between Districts and ENV. Staff interviewed in Rural Districts indicated that in the past they received less attention from ENV than Metropolitan Districts. The team noted that "NEPA Chats" (regular conference calls led by ENV, providing a platform for Districts to discuss complex NEPA implementation issues) have helped remove any perceived disparity. Urban and Rural Districts feel more included and a part of the conversation. The team noted that Rural District staff developed their own networks to keep each other informed. District environmental and planning staff told the team that they take initiative and break down internal District silos between planning, design, construction, and maintenance. This includes providing internal self-initiated training across disciplines so everyone in the District Office is aware of TxDOT procedures to ensure that staff follows NEPA-related processes and either keeps projects on-schedule or ensures that there are no surprises if projected schedules slip. Finally, the ENV Division Director initiated a new approach to effective ENV-District staff communication. The Director established an informal three-member advisory board with rotating representatives from each of the Metropolitan, Urban, and Rural Districts. This board meets with the Director to identify and discuss issues and concerns that should be addressed by ENV. This exchange and feedback loop should prove informative, enable

<sup>2</sup> TxDOT's Environmental Handbook/Public Involvement; 760.01 GUI Version 2, August 2015.

<sup>3</sup> See *id.*, Part 5.1.

<sup>4</sup> See *id.*, Part 11.

the success of the NEPA Assignment Program, and allow for any needed changes or adaptations based on District input.

The team noted that the Air Quality reviewers at TxDOT ENV work extremely well with FHWA in processing this unassigned component of the program. The ENV reviewers are empowered to perform their own QA/QC review of District-produced material before it is sent to FHWA for approval. Retaining and using highly skilled, technical expertise in-house at ENV promotes an efficient and consistent interpretation of Federal regulations and a successful procedure-driven process. This ensures compliance from the outset and should be seen as a model to be duplicated in other areas.

#### *Audit #3 Observation #1*

The team identified one project file that showed that the NEPA review was incomplete despite the project appearing on a list of projects certifying that all environmental requirements had been completed pursuant to the MOU (See Part 8.2.6.). Projects that TxDOT reports as certified may be processed to receive Federal-aid funding from FHWA. Through follow up conversations with TxDOT, the team learned that reporting this project was an error that has since been rectified. The team urges TxDOT to include a quality control review step as part of its process to ensure that only projects that have satisfied all environmental requirements are certified and reported to FHWA.

## **2. Documentation and Records Management**

The team relied on information in ECOS, TxDOT's official file of record, to evaluate project documentation and records management practices. Many TxDOT toolkit and handbook procedures mention the requirement to store official documentation in ECOS. The ECOS is also a tool for storage and management of information records, as well as for disclosure within TxDOT District Offices, between Districts and ENV, and between TxDOT and the public. The TxDOT staff noted that ECOS is both adaptable and flexible. The TxDOT must maintain and update the ECOS operating protocols (for consistency of use and document/data location) and educate its users on updates in a timely manner.

### **Successful Practices and Observations**

A number of best practices demonstrated by TxDOT were evident as a result of the documentation and records management review.

The team learned through interviews that many TxDOT staff members routinely use and are becoming increasingly comfortable with the (still optional) scope development tool. Some staff indicated that they also utilized the scope development tool to develop their own checklists to ensure that all environmental requirements have been met prior to making a NEPA approval.

The team noted from interviews of USFWS and ENV subject matter staff that Biological Assessment (BA) and Biological Opinion (BO) documentation is more detailed and provides for supportable conclusions. Specifically, the team learned that information in the BA was formatted so that it could be incorporated directly into a BO, which results in faster completion of ESA compliance and thus reduced review timeframes.

#### *Audit #3 Observation #2*

The team continued to find instances in which individual project files contained inconsistent and, in some cases, contradictory Environmental Permits Issues and Commitments (EPICs) information. The TxDOT procedures allow for documentation to be uploaded into the documentation tab as well as into an EPIC tab. The EPIC tab indicates "No EPICs exist for this project" as the default statement. The ENV management stated that an updated procedure allows for this discrepancy. The team urges TxDOT to develop a procedure where EPIC information may be consistently documented and found in ECOS.

## **3. Quality Assurance/Quality Control (QA/QC)**

### **Successful Practices and Observations**

The team observed several successful practices currently in place that align with TxDOT's QA/QC Control Procedures for Environmental Documents.

The team found evidence that TxDOT's approach to Quality Assurance by SAB is functioning well as a post-NEPA approval review. The team once again heard positive feedback in District staff interviews regarding the SAB, noting that the SAB's comments are very helpful and timely. According to TxDOT's self-assessment report, the SAB group reviewed 100 percent of all CE documents in January 2016 and reported the results to all Districts via webinars to ensure that all District personnel were up to date on proper procedures and a consistent message regarding corrective actions were relayed to all District environmental staff. The TxDOT also reports that there

was a SAB effort to train District staff in public involvement procedures and to provide information on the new Section 106 programmatic agreement. During our interviews, we also learned that close out meetings have been held for EA projects to share lessons learned among District, ENV, and TxDOT subject matter expert environmental staff. As a result of this team effort, since Audit #1, we observed that Districts have welcomed the opportunity to be responsible for CE decisions that are delegated to their level. Additionally those Districts are more careful with their documentation and reviews because they know that the TxDOT ENV SAB will internally assess those decisions and hold them accountable.

## **4. Legal Sufficiency Review**

Based on the interviews and review of documentation, the requirements for legal sufficiency under the MOU are being adequately fulfilled.

The level of legal expertise available for reviews appears to be sufficient, based on information gained from interviews. Currently there are three attorneys in TxDOT's General Counsel Division (GCD) (previously referred to as Office of General Counsel, OGC) with two of the attorneys having been hired in the last six months. One of the new attorneys has environmental law experience (primarily in water quality and water utilities issues) but no highway or NEPA experience. Both new attorneys have attended four NEPA training courses that ENV provided (via the FHWA Resource Center) and are scheduled to attend two more. One of the new attorneys was very complimentary of the quality of the training and its usefulness in guiding her reviews. The GCD also has contracts with three outside law firms on an "as needed" basis and an outside contract attorney who has provided legal assistance on environmental issues for a number of years to ENV.

The GCD assistance continues to be guided by ENV's Project Delivery Manual Sections 303.080 through 303.086. These sections provide guidance on conducting legal sufficiency review of FHWA-funded projects and publishing a Notice of Intent to prepare an EIS and a Notice of Availability in the **Federal Register**.

In February 2016, TxDOT received a notice of intent to sue by a Non-Governmental Organization for a Federal project for which they made the environmental decision. The TxDOT notified the FHWA Office of the Chief Counsel, as required by the MOU.

Based on a report provided by GCD, since April 2015, GCD had reviewed or been involved in legal review for six project actions. These included four 139(l) notices, an FEIS, and one NOI. The ENV project managers make requests for review of a document to the lead attorney, who then assigns that document for formal legal review. That lead attorney then assigns the document to one of the attorneys based on workload and complexity. Attorney comments are provided in the standard comment response matrix back to ENV. All comments must be satisfactorily addressed for GCD to complete its legal sufficiency review. The GCD does not issue conditional legal sufficiency determinations.

#### **Successful Practice**

Based on our discussions, GCD is very involved with the Districts and ENV throughout the NEPA project development process and legal issues. The team did note more open communication between all GCD, ENV, and District staff. All of the attorneys are regular participants in the monthly ENV NEPA Chats.

#### **5. Performance Measurement**

As TxDOT explained in its response to FHWA's pre-audit #3 information request, performance measurement (evaluating how well TxDOT is managing the program and determining the value delivered for customers and stakeholders) is a complex issue. The TxDOT devotes a high level of effort developing the metrics to measure performance. Despite the challenges of complexity and effort, TxDOT informed the team that it uses performance measurements to identify potential risk, review areas needing improvement, and recognize successful practices.

#### **Successful Practices and Observations**

The team acknowledges the utility of TxDOT's performance measures for quality control and quality assurance in its CE determinations. As explained in their self-assessment summary report and their response to FHWA's pre-audit #3 information request, TxDOT conducted an extensive analysis of whether project file errors were substantive or not substantive. The team generally found substantive errors to be non-compliant with respect to the validity of environmental decisions, whereas non-substantive errors were flaws in information that substantiated those decisions. The TxDOT's analysis of these errors demonstrates that non-substantive errors largely affect TxDOT efficiency in reporting and data analysis. The TxDOT's procedures

result in the identification and correction of substantive errors. This careful consideration of performance regarding CE determination errors and corrective actions demonstrates how measurement and application of corrective actions improved overall performance. In addition, TxDOT is applying this information to design specific ECOS upgrades to eliminate several categories of errors.

The specific consideration of errors is just one example of what the team learned from interviewing TxDOT's ENV Director and assessing TxDOT leadership's review measures to monitor continuous improvement. The TxDOT's leadership, consultants, and District staff all noted an improvement and a higher consistency in the quality of environmental decisions and environmental documentation for CE determinations. The TxDOT identified issues that may require policy or program attention. These issues are memorialized in the self-assessment report's root cause analysis for substantive and non-substantive errors.

#### *Audit #3 Observation #3*

The team considered TxDOT's QA/QC target measure of 95 percent of project files determined to be complete and accurate and TxDOT's reported measure of 77.7 percent. While the target of any performance measure should be at or close to 100 percent, FHWA acknowledges that attaining this measure may be extremely difficult, especially given that the project class is an EA or EIS. The TxDOT has analyzed the range of errors and identified missing or incomplete information as a persistent problem. Given TxDOT's efforts to date and careful consideration of FHWA's observations on QA/QC, TxDOT may consider error rates and/or different measure(s) that demonstrate continuous improvement.

#### *Audit #3 Observation #4*

Timeliness measures reported by TxDOT in their recent self-assessment summary report identify time frames for completion of EA and EIS projects. Most of these projects were initiated prior to December 2014, when TxDOT was assigned FHWA's NEPA responsibilities. The average time to complete a FONSI before and after assignment dropped from 1060 days to 686 days (eliminating an outlier project that took 2590 days). While one expects projects initiated and completed under assignment to finish faster than any previous average time frame, even TxDOT recognizes that complex EAs require more time to reach a FONSI than projects with fewer impacts or

complexities. The TxDOT's summary report contains too few data points to determine trends, and there is no control to differentiate between "complex" and "simple" EAs. The team urges TxDOT to consider a timeliness measure for CEs, recognizing the issues of consistency within and among CE actions listed in 23 CFR 771.117(c) and 23 CFR 771.117(d). Meaningful timeliness measures should accommodate the time TxDOT takes to initiate and complete environmental reviews, given that some reviews will take less time and entail fewer tasks or steps than others. The TxDOT could consider ways to "control" for project complexity, perhaps by stratifying their data or by measuring the timeliness to complete certain tasks (such as defining purpose and need, the range of alternatives, or the time to prepare an Draft EIS, Final EIS, or ROD).

#### **6. Training Program**

The TxDOT has specifically designed an environmental professional training program for its environmental professional staff and others. This program was updated for 2016 and the team learned about it through a four-page description and share point site information provided in TxDOT's response to FHWA's pre-audit #3 information request. This information was supplemented through interviews with TxDOT ENV staff responsible for the training program. This program, FHWA was told, must satisfy requirements in State law (Texas Administrative Code, or TAC, title 43, part 1, chapter 2, subchapter A, rule § 2.11) as well as requirements specified in Part 12 of the MOU. Texas law requires that TxDOT individuals be "certified" before they may make environmental decisions and must maintain "certification" to continue to make decisions. It follows then that TxDOT's training focus is TxDOT staff's initial certification and continuing certification. The MOU training requirements establish ongoing competency requirements for TxDOT's staff.

#### **Successful Practices and Observations**

The team recognizes the following successful training practices and observations. The team learned from an interview that TxDOT's new hire "onboarding" process is extraordinarily responsive to delivering the ENV 207 training course. This course, which provides a general overview of environmental considerations in project development, also entails practical ECOS training in how to create a project, use the optional scope

development tool, how to assign a task, and how to complete a form. Additionally, an interviewee told the team that training updates to the ENV 207 course were continuous.

Another successful practice is to open up the full range of TxDOT's training classes to enrollment by local government and consultant staff (after TxDOT staff has been provided an initial opportunity to enroll). And finally, TxDOT is archiving and providing easy access of recordings from all NEPA Chats/informal training including, notes, and handouts from those offerings/training.

#### *Audit #3 Observation #5*

The team learned through interviews that TxDOT oversight and tracking of environmental competency training/competency assurance is de-centralized. This means that individual TxDOT staff and supervisors are responsible for maintaining environmental "certification" under State law, as well as general competencies and capabilities to carry out MOU responsibilities (see MOU Part 4.2.2). The team was unable to assess the overall staff competency and exposure to training because information was spread across all 25 TxDOT Districts. These audit reviews require details demonstrating that TxDOT staff are capable, competent, qualified, and certified (from the perspective of TAC and the MOU) to perform these assigned responsibilities. Thus, TxDOT's ability to monitor the certification and competency status of their qualified staff is important. The TxDOT should consider at least an annual assessment that compiles all the environmental competency information from across all Districts and ENV.

#### *Audit #3 Observation #6*

The TxDOT acknowledged in its recent self-assessment summary report that many of the errors it detects in project files (both substantive and non-substantive) are tied to staff knowledge and use of the ECOS program. In many ways, TxDOT has demonstrated that updating ECOS is the most efficient way to head off errors and increase consistency in TxDOT's environmental review process. The team learned from interviews that the first wave of ECOS changes will coincide with new training. In addition to the other recommendations made by FHWA, TxDOT should engage its subject matter experts, the self-assessment team, as well as its overall policy and program staff in crafting and delivering this training to address the non-compliance observations noted above. In addition, TxDOT should take any lessons learned

from the corrective actions taken as a result of this audit and incorporate them into future training.

### **Status of Non-Compliance Observations and Other Observations From Audit #2 (September 2015) and FHWA Responses to TxDOT's Audit #2 Comments**

#### *Audit #2 Non-Compliance Observations*

1. *CE determination prior to regulatory criteria being met*—The TxDOT indicated in its comment on the **Federal Register** notice of the draft Audit #2 report that it (1) circulated a memo to its staff regarding conditional clearances, (2) revised its standard operating procedures to remove the discussion of conditional clearances, and (3) completed informal training on this issue utilizing the NEPA Chats. The TxDOT's comment included discussion on the timing of NEPA approvals, but after FHWA discussed these comments with TxDOT, TxDOT chose to withdraw comments regarding the timing of NEPA approvals.

2. *NEPA Decision reporting*—The TxDOT reported to FHWA that it revised its method of monthly NEPA Approval certification reporting in an effort to eliminate errors. The recurrence of a reporting error in Audit #3 indicates that under current reporting procedures, it is still possible for TxDOT to erroneously certify projects that are still being processed as being complete. The FHWA relies upon TxDOT's independent NEPA decision to advance federally funded projects. If FHWA advances a project that has been improperly processed by TxDOT, this may jeopardize Federal-aid reimbursement or eligibility of Federal funds on that project.

3. *Project file records and missing information*—The TxDOT acknowledged the concern for incomplete project files in its comments on Audit #2. The TxDOT states that it has reviewed the projects under this observation and has provided corrective actions in the form of (1) individual communications with staff affected, and (2) through NEPA Chats.

#### *Audit #2 Observations*

All observations are purely for TxDOT's consideration only and should not be deemed non-compliance observations unless otherwise noted.

1. *Relationships between TxDOT and other Federal Agency staff*—The TxDOT indicated in its comments on Audit #2 that it has conducted follow up meetings with U.S. Coast Guard staff. It also disagrees with the characterization

that TxDOT's relationship with the Texas SHPO is "strained." The FHWA has continued to include interviews with outside agency staff as part of this and future reviews/audits to seek information about relationships and to convey information back to TxDOT. The FHWA provides information for TxDOT to consider in maintaining and/or improving its working relationship with both Federal and State regulatory agencies. The FHWA interviews these agencies in order to (1) provide feedback about those relationships that TxDOT may not otherwise hear directly and (2) to review and assess TxDOT's procedures. The FHWA is also able to observe program-level interactions between TxDOT and other agencies and to convey observations back to TxDOT for consideration purposes.

2. *Legacy projects and TxDOT's "no effect" determinations for ESA*—The TxDOT stated in its comments on Audit #2 that it met with FHWA staff on this matter and has assessed existing procedures, rules, and policies related to ESA consultation and reviewed related training. The team found a deficiency in the TxDOT procedure on making ESA determinations as a result of Audit #3. Since the procedure for making ESA determinations is non-compliant, TxDOT will need to implement a corrective action, which will be considered as part of FHWA's next review or audit.

3. *Consistency in TxDOT's approach to defining 23 CFR 771.117(e)(4) for major traffic disruption*—This TxDOT response to the draft Audit #2 report downplays the need for an agreed upon standard or threshold on how to apply the constraint in 23 CFR 771.117(e)(4) regarding traffic disruption. The TxDOT indicated that the decision is made by "professional judgement" according to the criteria the CEQ has identified for a determination of significant impact (*i.e.*, context and intensity). However, TxDOT's approach does not fulfill FHWA policy on how to set the threshold for this constraint, stated in the preamble to the notice of the final rule (79 FR 60110, Oct. 6, 2014). Thus, TxDOT should, at the minimum, identify examples of instances of substantial traffic disruption and instances that do not arise to the level of substantial disruption.

4. *Addressing errors and corrections to NEPA decisions in ECOS*—This TxDOT comment on Audit #2 acknowledges that a specific CE determination was incorrect, attributable to a typographical error. Thus, TxDOT completed a new CE determination for that project. As part of the project file reviews for Audit #4,

FHWA proposes to engage with TxDOT to have a shared set of expectations on the process or procedures that addresses various errors or omissions in TxDOT's NEPA decisionmaking at a program-level, both before and after TxDOT requests that FHWA approve Federal-aid. The integrity of data in ECOS is paramount to retaining an official file of record for Federal-aid projects. It is anticipated that ECOS upgrades will also help to fully address this issue with an improved quality control process improvement by TxDOT.

5. *Inadequate project description or report scope*—The TxDOT stated in its comments on Audit #2 that discussions of adequate project descriptions have been the subject of several NEPA Chats and will continue to be discussed as long as this issue persists. The FHWA and TxDOT collaborated to develop a shared set of expectations for project development that was presented at the September 2015 TxDOT Environmental Conference.

6. *EPIC documentation and decisionmaking*—The TxDOT indicated in its comment on the Audit #2 report that TxDOT ECOS procedures allow information to be loaded in two ways that can be confusing for reviewers. The TxDOT acknowledged this issue and stated that it has established an EPIC workgroup with the purpose of identifying a more consistent method to record and track EPICs. The results of this workgroup will be incorporated into a series of ECOS upgrades scheduled over the next 2 years.

7. *Multiple CE approval documents in ECOS*—The TxDOT stated in its comment on Audit #2 that the project file for this observation contained a typographical error that made the initial CE determination incorrect. The TxDOT then made a new CE determination. Having a shared set of expectations (see number 4, above) between TxDOT and FHWA on how to address errors and omissions should improve both the program and the review process.

8. *Multiple reevaluations of a NEPA approval*—The TxDOT indicated in its comment on Audit #2 that the multiple reevaluations resulted from a design-build project, where changes may occur often. The TxDOT prefers to respond to changes within a set time frame to keep the project moving especially on design-build projects. Reevaluations must look at the entire project. This situation will also be considered as part of the shared set of FHWA-TxDOT expectations on how to handle project changes.

9. *ECOS upgrades schedule too slow*—This TxDOT response to Audit #2 disagreed that the pace of ECOS upgrades might increase litigation risk.

Based on information from Audit #3 interviews, this observation is tied to TxDOT's commitment of resources to assume responsibilities under the MOU (Part 4.2). This was presented as a continued observation from previous audits and is restated to draw TxDOT's attention to an identified problem. This observation is not a statement of non-compliance, although it could lead to a non-compliance observation in the future. As ECOS is the official file of record, FHWA is concerned that TxDOT has not improved ECOS quickly enough. The TxDOT should consider making database updates more timely and related procedures mandatory in relation to documentation storage within ECOS.

10. *Difficulty locating information in project files*—This TxDOT comment on Audit #2 states that it formed a workgroup in the summer of 2015 for the purpose of developing statewide guidance regarding filing and naming conventions in ECOS. The TxDOT Districts themselves had issues locating documentation within their own ECOS project files during site visits in Audit #2. The team continued to have difficulty (and ENV management and staff also confirmed the same difficulty) finding key project documentation for this audit, especially for large and complex projects. The FHWA looks forward to reviewing the recommendations of this workgroup and assessing any changes as part of a future review or audit.

11. *Evidence of recurring Non-Compliance Observations related to QA and QC application to individual projects*—This TxDOT comment on Audit #2 commits to making project specific comments in SAB feedback reports available for Audit #3. These reports were made available and the TxDOT self-assessment report included an extensive analysis of QC outcomes for CE project reviews. The QC is still an issue prior to NEPA decisions being finalized for larger scale CEs as well as for EAs and EISs.

12. *Expectation for the timeframe necessary for a legal review*—This TxDOT comment on Audit #2 commits to revising the standard operating procedure to establish an expected review time for the TxDOT's Office of General Counsel (OGC) (now General Counsel Division—GCD) to conduct a legal sufficiency review. As recommended during Audit #2, OGC has issued a procedure establishing legal review times for FEIS (30 days) and for NOI and 139(l) documents (3 days). If necessary, OGC can request additional time for the review.

13. *Measure for the TxDOT relationship with the public*—The TxDOT continued to report the number of complaints received year-to-year as its performance measure for its relationship with the public. None were received, and the measure reported was unchanged from the prior self-assessment summary report. The team learned from interviews that it is possible that the public may not distinguish between performance pre- and post-assignment. The team was told that TxDOT is still getting feedback from the public and agencies and plans to include the measures into a continuous improvement process. The TxDOT also noted, in its **Federal Register** comment on the draft Audit #2 report, that (1) assessing change in communication with the general public is inherently difficult, (2) NEPA assignment presents little external differentiation to the general public, and (3) finding success in measuring this variable has proven difficult.

14. *Implement ways to train local government staff*—The TxDOT's Environmental Professional Training Program is described in a four-page report provided to the team as part of TxDOT's pre-audit information request response. That report identifies a series of workshops and training events jointly held with Texas Historical Commission staff. The team learned through interviews and the training program report that TxDOT has established an ENV training SharePoint site that is accessible to the public for local government staff to register for training at no cost.

#### Next Steps

The FHWA provided a preliminary draft audit report to TxDOT for a 14-day review and comment period. The team has considered TxDOT comments in developing this draft Audit #3 report. As the next step, FHWA will publish a notice in the **Federal Register** to make it available to the public for a 30-day comment period review [23 U.S.C. 327(g)]. No later than 60 days after the close of the comment period, FHWA will respond to all comments submitted in finalizing this draft audit report [pursuant to 23 U.S.C. 327(g)(2)(B)]. Once finalized, the audit report will be published in the **Federal Register**.

[FR Doc. 2016-28353 Filed 11-23-16; 8:45 am]

BILLING CODE 4910-22-P

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–2016–0379]

**Qualification of Drivers; Exemption Applications; Diabetes Mellitus****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA).**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 39 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before December 27, 2016.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0379 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want

acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, [fmcamedical@dot.gov](mailto:fmcamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****I. Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 39 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

**II. Qualifications of Applicants***Mitchell G. Aucoin*

Mr. Aucoin, 24, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Aucoin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Aucoin meets the

requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Hampshire.

*Nelson T. Barninger*

Mr. Barninger, 67, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Barninger understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Barninger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

*Thomas J. Bonura*

Mr. Bonura, 60, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bonura understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bonura meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

*Todd M. Boughter*

Mr. Boughter, 40, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Boughter understands diabetes management and monitoring,

has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boughter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Pennsylvania.

*Bradley J. Brown*

Mr. Brown, 26, has had ITDM since 1997. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Ohio.

*Alex Caterson*

Mr. Caterson, 40, has had ITDM since 1977. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Caterson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Caterson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

*Kimberly J. Davis*

Ms. Davis, 60, has had ITDM since 2015. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no

recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Davis understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Connecticut.

*Earl C. Duke, 2nd*

Mr. Duke, 47, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Duke understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Duke meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

*David A. Evans*

Mr. Evans, 62, has had ITDM since 2006. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Evans understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Evans meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Robert H. Haines*

Mr. Haines, 55, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function

that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Haines understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Haines meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Pennsylvania.

*Anthony L. Hamilton*

Mr. Hamilton, 49, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hamilton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hamilton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

*Jeremy E. Hartig*

Mr. Hartig, 35, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hartig understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hartig meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

*Donovan K. Helton*

Mr. Helton, 46, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting

in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Helton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Helton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Virginia.

*Thomas M. Howie, 3rd*

Mr. Howie, 59, has had ITDM since 2002. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Howie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Howie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arkansas.

*Gary A. Kestner*

Mr. Kestner, 58, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kestner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kestner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from West Virginia.

*Ricky W. Knudsen*

Mr. Knudsen, 57, has had ITDM since 1978. His endocrinologist examined him in 2016 and certified that he has had no

severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Knudsen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Knudsen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Brandon S. Koehn*

Mr. Koehn, 36, has had ITDM since 1985. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Koehn understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Koehn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

*Victor R. Lanza-Contreras*

Mr. Lanza-Contreras, 41, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lanza-Contreras understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lanza-Contreras meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

*Oscar A. Lazo*

Mr. Lazo, 26, has had ITDM since 1995. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lazo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lazo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

*Stephen B. Macisaac*

Mr. Macisaac, 44, has had ITDM since 1981. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Macisaac understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Macisaac meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from New York.

*Corey M. McCormack*

Mr. McCormack, 21, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McCormack understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McCormack meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that

he does not have diabetic retinopathy. He holds an operator's license from California.

*William D. Meier*

Mr. Meier, 66, has had ITDM since 2006. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Meier understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Meier meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Kentucky.

*Melvin W. Miller*

Mr. Miller, 55, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

*Lyman D. Myron*

Mr. Myron, 61, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Myron understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Myron meets the requirements of the vision standard at

49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Arizona.

*Anthony H. Patrick*

Mr. Patrick, 42, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Patrick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Patrick meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kentucky.

*Danny L. Peterson*

Mr. Peterson, 60, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Peterson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Peterson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Eugene P. Roever*

Mr. Roever, 68, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Roever understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Roever meets the

requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Arkansas.

*William P. Rossi*

Mr. Rossi, 28, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rossi understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rossi meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

*Jim W. Royer*

Mr. Royer, 52, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Royer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Royer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Robert L. Rich, Jr.*

Mr. Rich, 70, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rich understands diabetes management and monitoring, has stable control of his diabetes using

insulin, and is able to drive a CMV safely. Mr. Rich meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*George H. Saenz*

Mr. Saenz, 62, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Saenz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Saenz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Oregon.

*David E. Schoch, Jr.*

Mr. Schoch, 58, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schoch understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schoch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

*Bobbie G. Sharp, Sr.*

Mr. Sharp, 55, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sharp understands

diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sharp meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

*George A. Skelton*

Mr. Skelton, 57, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Skelton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Skelton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

*Joshua D. Taylor*

Mr. Taylor, 43, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Taylor understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Taylor meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

*Daniel G. Van Listenborgh*

Mr. Van Listenborgh, 63, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the

last 5 years. His endocrinologist certifies that Mr. Van Listenborgh understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Van Listenborgh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wyoming.

*Clyde L. Weaver*

Mr. Weaver, 55, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Weaver understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Weaver meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

*Jason A. Weiss*

Mr. Weiss, 38, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Weiss understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Weiss meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

*John R. Wilson*

Mr. Wilson, 59, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the

past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wilson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Georgia.

### III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).<sup>1</sup> The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

<sup>1</sup> Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

### IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA 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 FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2016-0379 and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

### V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2016-0379 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to this notice.

Issued on: November 16, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016-28368 Filed 11-23-16; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2011-0382; FMCSA-2011-0383; FMCSA-2013-0194; FMCSA-2014-0012; FMCSA-2014-0013]

### Qualification of Drivers; Exemption Applications; Diabetes

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions of 47 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. FMCSA has statutory authority to exempt individuals from this rule if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

**DATES:** Each group of renewed exemptions are effective from the dates stated in the discussions below. Comments must be received on or before December 27, 2016.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. FMCSA-2011-0382; FMCSA-2011-0383; FMCSA-2013-0194; FMCSA-2014-0012; FMCSA-2014-0013, using any of the following methods:

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

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 1-202-493-2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a

comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, 202-366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-113, Washington, DC 20590-0001. Office hours are from 8 a.m. to 5:30 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the Federal Motor Carrier Safety Regulations 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 47 individuals listed in this notice have recently become eligible for a renewed exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. The drivers remain in good standing with the Agency, have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period.

**Exemption Decision**

This notice addresses 47 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. These 47 drivers remain in good standing with the Agency, have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. Therefore, FMCSA has decided to extend each exemption for a renewable two-year period. Each individual is identified according to the renewal date.

The exemptions are renewed subject to the following conditions: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual submit an annual ophthalmologist's or optometrist's report; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. The following groups of drivers received renewed exemptions in the month of April and are discussed below.

As of April 1, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 24 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce. (79 FR 6987; 79 FR 18388):

Dana A. Albert (NY)  
John R. Benshoff (OH)  
George A. Blanda (NY)  
Terrence K. Cannon (IL)  
Trisha J. Davis (ME)  
Paul D. Ferris (NY)

Larry Gaskill (RI)  
Thomas H. Gaskins (NC)  
Gary A. Grant (WA)  
Brian C. Halcomb (IL)  
Gerald Lee (CA)  
Timothy R. Lewis (OR)  
Gregory J. Littlefield (MN)  
Glen H. Miller (MI)  
Ryan M. Ottis (ND)  
Steven M. Parsons (WV)  
William L. Reece (ND)  
Jay R. Rude (AZ)  
Denise D. Ruffin (MS)  
Ryan E. Stretch (MO)  
William F. Sullivan, IV (NY)  
John R. Thompson (WI)  
Everette L. Twyman (MO)  
John F. Whitesides (NC)

The drivers were included in Docket No. FMCSA-2013-0194. Their exemptions are effective as of April 1, 2016 and will expire on April 1, 2018.

As of April 6, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 10 individuals, have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (77 FR 10612; 77 FR 20874):

Rick J. Birdsall (NE)  
Steven L. Drake (CA)  
Benjamin J. Duea (MN)  
Steven E. Greer (MN)  
Jonathan E. Hunsaker (OR)  
William D. Larsen (SD)  
Lee A. Richardson (NC)  
William W. Simmons (FL)  
Ronald O. Snyder (OH)  
Douglas J. Wood (NY)

The drivers were included in Docket Nos. FMCSA-2011-0382. Their exemptions are effective as of April 6, 2016 and will expire on April 6, 2018.

As of April 15, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual, Maximo E. Gaytan (CO) has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce. (79 FR 14579; 79 FR 28590):

The driver was included in Docket No. FMCSA-2014-0013. His exemption is effective as of April 15, 2016 and will expire on April 15, 2018.

As of April 27, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 10 individuals, have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (77 FR 13686; 77 FR 25227):

Alvin Acevedo (NJ)  
Bobby D. Bennett (GA)  
Mark S. Clemence (KS)

Elwood F. Gorom (WA)  
 Mike W. Holland (IL)  
 Dan M. McAllister (WI)  
 Paul F. Rivers (MN)  
 Marcus V. Romo (ID)  
 Wayne L. Snyder (OH)  
 Justin K. Zimmerschied (KS)

The drivers were included in Docket Nos. FMCSA–2011–0383. Their exemptions are effective as of April 27, 2016 and will expire on April 27, 2018.

As of April 30, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 2 individuals, have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (79 FR 10612; 79 FR 14579; 79 FR 28590; 79 FR 27685):

Charles L. Bryant (PA)  
 Christopher P. Martin (NH)

The drivers were included in Docket Nos. FMCSA–2014–0012; FMCSA–2014–0013. Their exemptions are effective as of April 30, 2016 and will expire on April 30, 2018.

Each of the 47 drivers in the aforementioned groups qualifies for a renewal of the exemption. They have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of the 47 drivers for a period of two years is likely to achieve a level of safety equal to that existing without the exemption. The drivers were included in docket numbers FMCSA–2011–0382; FMCSA–2011–0383; FMCSA–2013–0194; FMCSA–2014–0012; FMCSA–2014–0013.

#### Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 27, 2016.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed,

subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 47 individuals from rule prohibiting persons with ITDM from operating CMVs in interstate commerce in 49 CFR 391.41(b)(3). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the medical condition of each applicant for an exemption from rule prohibiting persons with ITDM from operating CMVs in interstate commerce. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidencesubmitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

#### Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA 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 FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket numbers FMCSA–2011–0382; FMCSA–2011–0383; FMCSA–2013–0194; FMCSA–2014–0012; FMCSA–2014–0013 and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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. If you submit comments by mail and would like to know that they reached the

facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

#### Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA–2011–0382; FMCSA–2011–0383; FMCSA–2013–0194; FMCSA–2014–0012; FMCSA–2014–0013 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to this notice.

Issued on: November 16, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016–28369 Filed 11–23–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Environmental Impact Statement for the Baltimore-Washington Superconducting Maglev (SCMAGLEV) Project, Between Baltimore, Maryland and Washington, DC

**AGENCY:** Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** FRA announces its intent to prepare an EIS for the Baltimore-Washington Superconducting Magnetic Levitation (Maglev) (SCMAGLEV) Project (Proposed Action) jointly with the Maryland Department of Transportation (MDOT). The Proposed Action consists of the construction and operation of a high-speed SCMAGLEV train system between Washington, DC and Baltimore, MD with an intermediate stop at Baltimore/Washington International Thurgood Marshall (BWI) Airport. FRA and MDOT will develop the EIS in compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*

**DATES:** Written comments on the scope of the Project EIS should be provided to the address below by December 27, 2016. Public scoping meetings are anticipated for December 2016 and January 2017. Additional updated information and scoping materials is available through the Project Web site:

<http://www.BaltimoreWashingtonSCMAGlevProject.com>.

**ADDRESSES:** The public and other interested parties are encouraged to submit written scoping comments by mail, by email, or in person at the scoping meetings. Scoping comments can be sent by mail to Bradley M. Smith, Director of the Office of Freight and Multimodalism, Maryland Department of Transportation, 7201 Corporate Center Drive, Hanover, Maryland 21076, 410-865-1097; or via email to: [bsmith9@mdot.state.md.us](mailto:bsmith9@mdot.state.md.us).

Comments may also be provided orally or in writing at scoping meetings. See the **SUPPLEMENTARY INFORMATION** section for meeting times and addresses.

**FOR FURTHER INFORMATION CONTACT:**

Brandon Bratcher, Environmental Protection Specialist, USDOT Federal Railroad Administration, Office of Program Delivery, 1200 New Jersey Avenue SE., MS-20, Washington, DC 20590; 202-493-0844; [brandon.bratcher@dot.gov](mailto:brandon.bratcher@dot.gov).

**SUPPLEMENTARY INFORMATION:** FRA is an operating administration of DOT and is responsible for overseeing the safety of railroad operations, including the safety of any proposed rail ground transportation system. FRA is also authorized to provide, subject to appropriations, funding for intercity passenger rail and rail capital investments. In 2016, FRA awarded MDOT a grant to prepare an EIS for the Proposed Action. No funding, however, has been appropriated at this time to fund construction of the Proposed Action.

FRA is the lead Federal agency under NEPA; MDOT is the joint lead agency (40 CFR 1501.5(b) and 1506.2(a)). FRA and MDOT will prepare the EIS in compliance with: NEPA; the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500-1508); FRA Procedures for Considering Environmental Impacts (FRA's Environmental Procedures) (64 FR 28545, May 26, 1999; 78 FR 2713, Jan. 14, 2013); 23 U.S.C. 139; and 49 U.S.C. 24201. After release and circulation of a Draft EIS for public comment, FRA intends to issue a single document that consists of the Final EIS and Record of Decision under the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141, Section 1319(b)) unless it determines the statutory criteria or practicability considerations preclude issuing a combined document.

The EIS will document compliance with applicable Federal, state, and local environmental laws and regulations, including: Section 106 of the National

Historic Preservation Act; the Clean Air Act; the Clean Water Act; Section 4(f) of the U.S. Department of Transportation Act of 1966 (Section 4(f)); the Endangered Species Act; Executive Order 11988 and DOT Order 5650.2 on Floodplain Management; Executive Order 11990 on Protection of Wetlands; the Magnuson-Stevens Act; the Coastal Zone Management Act; and Executive Order 12898 on Environmental Justice. The EIS is intended to be a project-level EIS and will serve as the NEPA compliance for potential future funding or other federal, state, and local approvals of the Proposed Action as appropriate.

**Project Background**

Sections 1101(a)(18) and 1307 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59), as amended by section 102 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244), authorized funding for pre-construction planning activities for eligible Maglev transportation projects located east of the Mississippi River and between Las Vegas and Primm, Nevada. In 2016 FRA awarded \$27.8 million in SAFETEA-LU Maglev funds to MDOT to prepare preliminary engineering and a NEPA analysis for the Proposed Action.

Previously, in 2003, FRA and the Maryland Transit Administration (MTA) prepared a Draft EIS and Section 4(f) Evaluation (2003 Draft EIS) for a similar proposed project authorized under the Magnetic Levitation Transportation Technology Deployment Program (23 U.S.C. 322). The 2003 Draft EIS studied the potential impacts of construction of a Maglev alignment between Washington, DC and Baltimore, MD, as well as potential station locations: One in downtown Washington, DC; one at BWI; and one in downtown Baltimore, MD. FRA and MTA published a Final EIS in 2007 (2007 Final EIS), but FRA did not issue a Record of Decision and the project was not advanced further.

In November 2015, the Maryland Public Service Commission approved the Baltimore-Washington Rapid Rail's (BWRR) application to acquire a passenger railroad franchise to deploy a SCMAGLEV system between Baltimore, MD and Washington, DC. BWRR is a private corporation and, as the Project sponsor and developer of the proposed SCMAGLEV service between Baltimore, MD and Washington, DC, will work with Federal and state agencies, including FRA and MDOT, to carry out the project.

**Project Description**

FRA and MDOT will complete the environmental and engineering studies for a proposed Baltimore-Washington SCMAGLEV train system between Washington, DC and Baltimore, MD, with an intermediate stop at BWI Airport. FRA and MDOT anticipate the study area will be approximately 40 miles long and 10 miles wide. The proposed study area is roughly bounded on the west by Interstate 95 and on the east by the former Washington-Baltimore & Annapolis Electric Railroad alignment. It includes portions of the City of Baltimore, Baltimore County, Howard County, Anne Arundel County, and Prince George's County in Maryland, and Washington, DC. BWRR has indicated it wishes to develop a SCMAGLEV system, potentially extending as far north as Boston, MA and south to Charlotte, NC. Such a project or projects will not be addressed in the EIS FRA and MDOT are preparing, but could be subject to separate NEPA review in the future, as appropriate.

BWRR's proposed SCMAGLEV system would be designed to provide approximately 15-minute service between the new Baltimore and Washington stations, and would run on a new, high-quality guideway with bi-directional service, an automatic train control system, and no at-grade crossings. BWRR anticipates the project would be funded by a mix of federal, international, and private funding, and would include construction of the new SCMAGLEV guideway, stations, and maintenance facilities.

**Purpose and Need Statement**

The purpose of BWRR's Proposed Action is to increase capacity, reduce travel time, and improve both reliability and mobility options between Baltimore and Washington. The population in the Baltimore-Washington area makes up one of the largest and densest population centers in the United States. Over the next 30 years the population in the area is projected to increase by approximately 30 percent. Similarly, the demand on the transportation infrastructure between Baltimore and Washington will continue to increase along major roadways and railways including Interstate 95, the Baltimore-Washington Parkway (MD 295), US 29, US 1, and the Northeast Corridor (NEC) thereby decreasing the level of service, reliability, mobility, and potentially decreasing safety.

The Baltimore-Washington area is served by the NEC rail network that runs parallel to Interstate 95 in the area

and spans from Washington, DC to Boston, MA. Amtrak, commuter railroads, and freight railroads operate a variety of services on the NEC. In the Baltimore-Washington area, Amtrak runs intercity passenger rail service, Maryland Area Regional Commuter operates commuter rail service, and CSX Transportation and Norfolk Southern Railway run freight trains during off-peak times over portions of the NEC between Baltimore and Washington. Each of these services competes for operational times for service on the existing NEC and demand continues to increase.

Without additional transportation improvements and capacity within the Baltimore-Washington area, economic development and growth opportunities will be restricted. As congestion increases on the NEC and on the region's highways, the demand for continued economic development will be impacted, including, for example, tourism.

To address these issues, in 2012 FRA launched the NEC FUTURE program to consider the role of rail passenger service in the context of current and future transportation demands and to evaluate the appropriate level of capacity improvements to make across the NEC. Through NEC FUTURE, FRA will determine a long-term vision and investment program for the NEC documented in a Tier 1 EIS and Service Development Plan. FRA published a Tier 1 Draft EIS in November 2015; however, the Draft EIS evaluated steel-wheel technologies as a way to serve the passenger rail needs of the region. It left open the possibility and did not preclude the study of and investment in advanced guideway and other new technologies, such as SCMAGLEV, to meet the transportation needs of the Northeast, including the Baltimore-Washington area. Additional information on the NEC FUTURE Program is available at: <http://www.necfuture.com/>.

#### Proposed Alternatives To Consider

The EIS evaluating the SCMAGLEV proposal will consider a range of reasonable alternatives that FRA and MDOT will develop based on the purpose and need for the Proposed Action, information obtained through the scoping process, and previous studies, including the 2003 Draft EIS and 2007 Final EIS. The 2003 Draft EIS identified three concepts that FRA and MDOT have included in the initial range of alternatives to be considered in the EIS. FRA and MDOT will evaluate and screen those earlier concepts as well as additional options for

elimination or further refinement during the NEPA process. Alternatives will include a no-build alternative and a reasonable range of build alternatives. Each build alternative will include alignments that serve Washington, DC, Baltimore, MD, and BWI Airport. A final alignment has not been determined.

#### Possible Effects

The EIS will analyze the potential direct, indirect, and cumulative effects of the alternatives on the social, economic, and environmental resources in the study area. This analysis will include identification of study areas appropriate for each resource, documentation of the affected environment, and identification of measures to avoid and/or mitigate significant adverse impacts.

FRA and MDOT will evaluate the impacts of the Proposed Action using data and field analyses. The analysis of resources will be consistent with NEPA, CEQ regulations and FRA's Environmental Procedures.

#### Scoping, Public Involvement, and Agency Coordination

This Notice initiates the scoping process under NEPA. FRA and MDOT invite comments from the public and encourage broad public participation throughout the NEPA process. In particular, FRA and MDOT invite comments from the public, Federal, state, and local agencies, and all interested parties on the scope of the EIS including: The purpose and need for the Project; alternatives to study; the selection of alternatives; environmental effects to consider and evaluate; methodologies to use for evaluating effects; the approach for public and agency involvement; and mitigation measures associated with the potential future construction, operation, and maintenance of the Proposed Action. This will ensure all relevant issues, constraints, and reasonable alternatives are addressed early in the development of the EIS. FRA and MDOT will contact directly the appropriate Federal, state, and local agencies as well as private organizations with a known interest in the Proposed Action. FRA and MDOT will request federal agencies with jurisdiction by law or special expertise with respect to potential environmental issues to act as a cooperating agency in accordance with 40 CFR 1501.16.

At various milestones during the development of the EIS, FRA and MDOT will provide additional opportunities for public involvement, such as public meetings and hearings, open houses, and requests for comment on the Draft EIS.

Currently, scoping meetings for this Project are scheduled for the dates and locations below:

December 10, 2016: 10 a.m.–12 p.m.,  
Lindale Middle School, 415 Andover Rd., Linthicum Heights, MD  
December 12, 2016: 5 p.m.–7 p.m.,  
Arundel Middle School, 1179 Hammond Ln., Odenton, MD  
December 13, 2016: 5 p.m.–7 p.m., Du Burns Coppermine Fieldhouse, 3100 Boston St., Baltimore, MD  
December 14, 2016: 5 p.m.–7 p.m.,  
Martin Luther King Jr. Memorial Library, 901 G St. NW., Washington, DC

Additional information, including updated meeting schedule, is located on the Project Web site (<http://www.BaltimoreWashingtonSCMaglevProject.com>).

**Jamie Rennet,**

*Director, Office of Program Delivery.*

[FR Doc. 2016–28285 Filed 11–23–16; 8:45 am]

**BILLING CODE 4910–06–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA–2016–0002–N–27]

#### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the Paperwork Reduction Act of 1995 (PRA), this notice announces that the renewals and reinstatements of the information collection requests (ICRs) abstracted below are being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the information collections and their expected burden. On September 23, 2016, FRA published a notice providing a 60-day period for public comment on the ICRs.

**DATES:** Comments must be submitted on or before December 27, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Safety Regulatory Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590, (202) 493–6292, or Ms. Kimberly Toone, Information Collection Clearance Officer, Office of

Administration, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590, (202) 493-6132. These telephone numbers are not toll-free.

**SUPPLEMENTARY INFORMATION:** The PRA, 44 U.S.C. 3501-3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), and 1320.12. On September 23, 2016, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs for which it is now seeking OMB approval. 81 FR 65698-656701. FRA received no comments in response to that notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b), 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, August 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the ICRs and their expected burdens.

**Title:** Alleged Violation Reporting Form.

**OMB Control Number:** 2130-0590.

**Abstract:** The Alleged Violation Reporting Form is a response to section 307(b) of the Rail Safety Improvement Act of 2008, signed into law by President George W. Bush on October 16, 2008, which requires FRA to "provide a mechanism for the public to submit written reports of potential violations of Federal railroad safety and hazardous materials transportation laws, regulations, and orders to the Federal Railroad Administration." The Alleged Violation Reporting Form allows the general public to submit alleged violations directly to FRA. The form allows FRA to collect information necessary to investigate the alleged violation and to follow up with the submitting party.

The Alleged Violation Reporting Form collects the name, telephone number and email address of the person submitting the alleged violations; the preferred method to contact the person; the railroad or company name that committed the alleged violation, the date and time the alleged violation occurred; the location the alleged violation occurred; and details about the alleged violation. All information is voluntary. FRA collects the information via a form on the FRA public Web site. FRA may share the information collected with FRA employees, State DOT partners, and law enforcement agencies.

**Type of Request:** Extension with change of a currently approved information collection.

**Affected Public:** General Public.

**Form(s):** FRA F 6180.151.

**Total Annual Estimated Burden:** 80 hours.

**Total Annual Estimated Responses:** 480.

**Status:** Regular Review.

**Title:** Remotely Controlled Switch Operations.

**OMB Control Number:** 2130-0516.

**Abstract:** The regulations at 49 CFR 218.30 and 218.77 ensure remotely controlled switches are properly lined to protect workers who are vulnerable to being struck by moving cars as they inspect or service rolling equipment on a particular track or, alternatively, occupy camp cars. FRA believes that creating required notifications promotes safety by minimizing mental lapses of workers who are simultaneously handling several tasks. Sections 49 CFR 218.30 and 218.77 require the operator of remotely controlled switches to maintain a record of each notification requesting Blue Signal Protection for 15 days. Operators of remotely controlled switches use the information as a record documenting Blue Signal Protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

**Type of Request:** Extension with change of a currently approved information collection.

**Affected Public:** Businesses (Railroads).

**Form(s):** N/A.

**Total Annual Estimated Burden:** 30,420 hours.

**Total Annual Estimated Responses:** 1,825,150.

**Status:** Regular Review.

**Title:** Bad Order and Home Shop for Repair Card/Tag.

**OMB Control Number:** 2130-0519.

**Abstract:** Under 49 CFR part 215, each railroad must inspect freight cars placed

in service and take necessary remedial action when defects are identified. Part 215 defects are items that have caused accidents or incidents by freight cars being inadvertently left in service when not properly tagged. A railroad freight car which has any component described as defective in part 215 may be moved to another location for repair only after the railroad has complied the process in § 215.9 to ensure the movement is done safely. Section 215.9 requires railroads to attach a "bad order" or "home shop for repair" card/tag (tag) describing each defect to each side of the freight car. It is imperative that a defective freight car be tagged so it may be readily identified as defective and moved to another location for repair purposes only. At the repair location, the tag serves as a record that the notification requirements under § 215.9(a)(3) have been provided to ensure proper handling of freight cars. Railroads must retain each tag for 90 days to verify proper repairs were made at the designated location. When inspecting a freight car, FRA and State inspectors also review tags to determine whether defective cars are being properly moved according to § 215.9.

**Type of Request:** Extension without change of a currently approved information collection.

**Affected Public:** Businesses (Railroads).

**Form(s):** N/A.

**Total Annual Estimated Burden:** 15,750 hours.

**Total Annual Estimated Responses:** 270,000.

**Status:** Regular Review.

**Title:** Stenciling Freight Cars.

**OMB Control Number:** 2130-0520.

**Abstract:** The requirements for stenciling freight cars that are placed in service are under 49 CFR 215.301. Section 215.301 requires railroads and private car owners to stencil or otherwise display identification marks on freight cars. The identification marks are used by both FRA and the railroads. FRA uses the identification marks to determine the railroads affected, the number and type of cars involved, the commodities being carried, and the territorial and speed limits within which the cars will be operated. FRA reviews this information to determine if the freight car is safe to operate, if the operation qualifies for dedicated service, and is excluded from part 215. Railroads use the required information to provide identification and control so that dedicated cars remain in the prescribed service. In addition, it indicates to FRA that the car is in special service and certain exceptions have been provided for, with respect to part 215.

*Request:* Reinstatement without change of a previously approved collection that expired.

*Affected Public:* Businesses (Railroads).

*Form(s):* N/A.

*Total Annual Estimated Burden:* 18,750 hours.

*Total Annual Estimated Responses:* 25,000.

*Status:* Regular Review.

*Title:* Grade Crossing Safety.

*OMB Control Number:* 2130-0534.

*Abstract:* FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced. Accordingly, FRA's regulations require railroads to take specific responses in the event of an activation failure (when a grade crossing warning system fails to indicate the arrival of a train at least 20 seconds prior to the train's arrival at the crossing or to indicate the presence of a train occupying the crossing). Specifically, railroads must report to FRA every impact between on-track railroad equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at a highway-rail grade crossing involving a crossing warning system activation failure. Notification must be provided to the National Response Center within 24 hours of occurrence at the stipulated toll-free telephone number. Additionally, railroads must report to FRA within 15 days each activation failure of a highway-rail grade warning system. Form FRA F 6180.83, "Highway-Rail Grade Crossing Warning System Report," must be used for this purpose and completed using the instructions printed on the form. With this information, FRA can correlate accident data and equipment malfunctions with the types of circuits and age of equipment. FRA can then identify the causes of activation malfunctions and investigate them to determine whether periodic maintenance, inspection, and testing standards are effective.

*Type of Request:* Reinstatement with change of a previously approved collection that expired.

*Affected Public:* Businesses (Railroads).

*Form(s):* N/A.

*Total Annual Estimated Burden:* 3,425 hours.

*Total Annual Estimated Responses:* 15,372.

*Status:* Regular Review.

*Title:* Bridge Worker Safety Rules.

*OMB Control Number:* 2130-0535.

*Abstract:* Under 49 U.S.C. 20139, FRA must issue rules, regulations, orders, and standards for the safety of

maintenance-of-way employees on railroad bridges, including for "bridge safety equipment" such as nets, walkways, handrails, and safety lines, along with requirements for using vessels when work is performed on bridges located over bodies of water. FRA added 49 CFR part 214 to establish minimum workplace safety standards for railroad employees performing work on railroad bridges. Specifically, 49 CFR 214.105(c) establishes standards and practices for safety net systems. Safety nets and net installations must be drop-tested at the job site after initial installation and before being used as a fall-protection system, after major repairs, and at 6-month intervals if left at one site. If a drop-test is not feasible and is not performed, then the railroad or railroad contractor, or designated competent person, must certify the net and its installation comply with the provisions of this section by preparing a certification record prior to the use of the net. The certification must identify the net, the date it was determined the net was in compliance with this section, and the signature of the person making this determination. Such person's signature must certify the net and its installation comply with this section. The most recent certification for each net installation must be available at the jobsite where the subject net is located. FRA and State inspectors use the information to enforce Federal regulations. The information maintained at the job site promotes safe bridge worker practices.

*Type of Request:* Extension without change of a currently approved information collection.

*Affected Public:* Businesses (Railroads).

*Form(s):* N/A.

*Total Annual Estimated Burden:* 1 hour.

*Total Annual Estimated Responses:* 6.

*Status:* Regular Review.

*Addressee:* Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: [oir-submissions@omb.eop.gov](mailto:oir-submissions@omb.eop.gov).

*Comments are invited on the following:* Whether the proposed collections of information are necessary for DOT to properly perform its functions, including: (1) Whether the information will have practical utility; the accuracy of DOT's estimates of the burden of the proposed information collections; (2) ways to enhance the

quality, utility, and clarity of the information to be collected; and (3) ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501-3520.

**Patrick Warren,**

*Acting Executive Director.*

[FR Doc. 2016-28394 Filed 11-23-16; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2016-0108; Notice 1]

#### Reflex & Allen USA, Incorporated, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Reflex & Allen USA, Incorporated (RAUS), has determined that certain Reflex & Allen air brake tubing products do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 106, *Brake Hoses*. RAUS filed a defect report dated September 1, 2016, and amended it on September 13, 2016. RAUS also petitioned NHTSA on September 30, 2016, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

**DATES:** The closing date for comments on the petition is December 27, 2016.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to 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 comments by hand to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket

Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

- *Electronically*: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov/> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477-78).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Overview**

Reflex & Allen USA, Incorporated (RAUS), has determined that certain Reflex & Allen air brake tubing products do not fully comply with paragraph S7.2.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 106, Brake Hoses. RAUS filed a report dated September 1, 2016, and amended it on September 13, 2016, pursuant to 49 CFR part 573, Defect and Noncompliance Responsibility and Reports. RAUS also

petitioned NHTSA on September 30, 2016, under 49 CFR part 556 for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, RAUS submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of RAUS's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

##### **II. Hoses Involved**

Approximately 4,500 Reflex & Allen air brake tubing products manufactured between October 16, 2015 and August 30, 2016 are potentially involved.

##### **III. Noncompliance**

RAUS explains that the noncompliance is that the subject brake hoses are labeled at intervals ranging from 6.5 inches to 11.5 inches, thereby exceeding 6-inch maximum spacing required by paragraph S7.2.1 of FMVSS No. 106.

##### **IV. Rule Text**

Paragraph S7.2.1 of FMVSS No. 106 states:

S7.2.1 Hose. Each air brake hose shall be labeled, or cut from bulk hose that is labeled, at intervals of not more than 6 inches, measured from the end of one legend to the beginning of the next, in block capital letters and numerals at least one-eighth of an inch high, with the information listed in paragraphs (a) through (e) of this section. The information need not be present on hose that is sold as part of a brake hose assembly or a motor vehicle.

##### **V. Summary of RAUS's Petition**

RAUS described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, RAUS submitted the following reasoning:

(a) RAUS notified NHTSA in a 573 report in early September of 2016 of a potential noncompliance within a population of air brake tubing products. The report was subsequently amended to correct affected part numbers. As described in RAUS's noncompliance notification, the subject air brake tubing is labeled with the complete and correct identifying data, but due to a production error, the labelling appears at intervals that exceed the 6-inch maximum spacing required by the standard.

(b) RAUS noted that all of the affected products are labeled in accordance with the requirements of FMVSS No. 106 S7.2.1 with the exception of print legend spacing.

(c) These products are sold only to one Original Equipment Manufacturer, Volvo Trucks North America (VTNA), which then paints the complete chassis to include painting over the tubing. All of these products meet all of the applicable performance requirements of FMVSS No. 106. These products perform exactly as designed. The safety of the vehicle is uncompromised.

(d) The noncompliant products were produced between October 16, 2015 and August 30, 2016. VTNA first notified RAUS of the noncompliance on August 30, 2016. Immediately on that date, RAUS recalibrated the equipment to ensure compliance on all future tubing products and is conducting initial and secondary quality checks to guarantee compliance prior to shipment to VTNA. VTNA is the only customer that receives this product and is fully aware of the situation. RAUS fully believes that these labeling errors are inconsequential to motor vehicle safety because the tubing is properly identified with all required identifiers and meets the standards in every other way. The only noncompliance is the spacing in which the print legends exceed 6 inch intervals in various measurements ranging from 6.5 inches to 11.5 inches.

(e) This noncompliance does not create an unreasonable risk of death or injury in an accident, nor does it create any operational issues or safety concerns regarding the vehicle. The Safety Act allows for exemptions for manufacturers from the Safety Act's notice and remedy requirements particularly when the noncompliance does not create an unreasonable risk of death or injury in an accident.

(f) The subject brake tubing was marked correctly with all required identifiers yet the print legends fell beyond the maximum 6 inch intervals. This error is inconsequential to motor vehicle safety. One of the main purposes FMVSS No. 106, S7.2.1 is to identify the manufacturer of the brake tubing in the event of a product recall. If a recall of this air brake tubing were to become necessary in the future, the affected products could still be easily identified by the markings which are conspicuously printed on all of the tubing.

(g) There are several examples of NHTSA granting petitions from the reporting and notification requirements based on determinations of inconsequential noncompliance for similar marking/labeling issues

including the granting of the Grote Industries LLC petition on January 23, 2015.

RAUS concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject hoses that RAUS no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant hoses under their control after RAUS notified them that the subject noncompliance existed.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

**Jeffrey M. Giuseppe,**  
Director, Office of Vehicle Safety Compliance.  
[FR Doc. 2016-28119 Filed 11-23-16; 8:45 am]

**BILLING CODE 4910-59-P**

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**Hazardous Materials: Notice of Applications for Special Permits**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications delayed more than 180 days.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before December 27, 2016.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 2, 2016.

**Donald Burger,**  
Chief, Office of the Special Permits and Approvals.

**SPECIAL PERMITS DATA**

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
8451-R .....	.....	Capco, Inc .....	172.320, 173.54(a), 173.54(j), 173.56(b), 173.57, 173.58, 173.60.	To authorize the transportation in commerce of not more than 25 grams of solid explosive or pyrotechnic material, including waste containing explosives that has energy density not significantly greater than that of pentaerythritol tetranitrate, classed as Division 1.4E, when packed in a special shipping container.
11180-M .....	.....	Affival Inc .....	173.24(c) .....	To modify the special permit to authorize metal tubes with a decreased diameter and an increased length to be authorized under the special permit.
12412-P .....	.....	Delmarva Custom Applicators LLC.	177.834(h), 172.203(a), 172.302(c).	To authorize the discharge of liquid hazardous materials from certain UN intermediate Bulk Containers (IBCs) and DOT Specification 57 portable tanks without removing them from the vehicle on which they are transported.
12412-R .....	.....	Enova Solutions, Inc .....	177.834(h), 172.203(a), 172.302(c).	To consolidate the exemptions that currently authorize the discharge of hazardous materials in UN intermediate Bulk Containers (IBC) without removing the IBC from the motor vehicle on which it is transported.
12412-R .....	.....	Green Touch Systems, LLC.	177.834(h), 172.203(a), 172.302(c).	To consolidate the exemptions that currently authorize the discharge of hazardous materials on UN Intermediate Bulk Containers (IBC) without removing the IBC from the motor vehicle on which it is transported.

## SPECIAL PERMITS DATA—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
13583-M .....	.....	Structural Composites Industries LLC.	180.205, 173.302a(a)(1), 173.304a(a)(1), 175.3.	To authorize an increase in the maximum water volume of the non-specification cylinders manufactured under the special permit.
14566-R .....	.....	Nantong CIMC Tank Equipment Co., LTD.	178.274(b), 178.276(b)(1), 18.276(a)(2).	To authorize the manufacture, marking, sale and use of certain UN T50 steel portable tanks manufactured in accordance with Section VIII, Division 1 of the ASME Code.
14920-M .....	.....	Nordco Rail Services LLC.	173.302a(b), 172.203(a), 172.301(c), 180.205.	To modify the special permit to authorize requalification of DOT specification 3A and 3AA cylinders with 24 inch outside diameters and to indicate that Ultrasonic Examination (UE) is not required on the sidewall-to-base transitions (SBT) region of a cylinder if the cylinder design does not permit.
16081-M .....	.....	Cabela's Incorporated ....	178.602 .....	To modify the special permit to authorize additional Division 1.4 materials, and no longer require a copy of the special permit must be furnished to the carrier.
20220-N .....	.....	Agility Fuel Systems, Inc	173.220(a) .....	To authorize the transportation in commerce of compressed natural gas fuel systems that are not part of an internal combustion engine.
20222-N .....	.....	Trinity Containers, LLC ..	178.337-3(g)(3) .....	To authorize the transportation in commerce of certain DOT Specification MC-331 cargo tank motor vehicles with a water capacity greater than 3,500 gallons, manufactured to the DOT MC-331 specification, constructed of non-quenched and tempered ("NQT") steel except that the cargo tanks have baffle support clips welded directly to the inside of the cargo tank wall without the use of pads.
20226-N .....	.....	Awesome Flight LLC .....	173.27(b)(3) .....	To authorize the transportation of lithium ion batteries in excess of the authorized quantity limitations via passenger and cargo aircraft.
20228-N .....	.....	Worthington Cylinder Corporation.	173.302(f)(3), 173.302(f)(4), 173.302(f)(5), 173.302a(a)(1), 173.304a(a)(1), 175.501(e)(3).	To authorize the manufacture, marking, sale, and use of non-DOT specification fully wrapped carbon fiber reinforced steel lined cylinders for the transportation in commerce.
20235-N .....	.....	Union Pacific Railroad Company, Inc.	174.83(c), 174.83(d), 174.83(e).	To authorize the transportation in commerce of flatcars carrying bulk packagings containing certain Division 4.3 materials without restricting its ability to couple with another railcar while moving under its own momentum.
20237-N .....	.....	DSM Nutritional Products, Inc.	172.500(a), 107.601(a) ..	To authorize the transportation in commerce of bulk packagings containing Division 4.2 materials without displaying placards.
20239-N .....	.....	Paklook Air, Inc .....	172.101(j)(1), 172.301(c)	To authorize the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within and around the State of Alaska when other means of transportation are impracticable or not available.
20251-N .....	.....	Salco Products, Inc .....	172.203(a), 178.345-1, 180.413.	To authorize the manufacture, mark, sale and use of manway assemblies constructed from stabilized polyethylene for installation on certain DOT specification cargo tank motor vehicles in transporting certain hazardous materials.
20252-N .....	.....	Luxfer Inc. ....	173.302(a), 180.205 .....	To authorize the manufacture, marking, sale and use of a non-DOT specification fully wrapped carbon fiber composite cylinder with a non-load sharing polymer liner for the transport of certain hazardous materials.
20258-N .....	.....	Winco Fireworks .....	173.62(c), 172.301(c) .....	To authorize the one-way transportation in commerce of Division 1.4G consumer fireworks in non-DOT specification fiberboard non-bulk out packagings under the terms and conditions specified when transported by private, contract or common carrier.

## SPECIAL PERMITS DATA—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20261-N .....	.....	Saft S.A .....	173.185(a) .....	To authorize the transportation in commerce of proto-type and low production lithium ion cells and batteries and lithium metal cells and batteries by cargo-only aircraft.

[FR Doc. 2016-27727 Filed 11-23-16; 8:45 am]

BILLING CODE 4909-60-M

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****Hazardous Materials: Notice of Applications for Special Permits**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications for modification of special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office

of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before December 27, 2016.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of

Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 2, 2016.

**Donald Burger,**

*Chief, Office of the Special Permits and Approvals.*

## SPECIAL PERMITS DATA

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
12074-M .....	.....	Van Hool NV .....	178.276(b) .....	To modify the special permit to authorize an increase in the maximum USWG.
13220-M .....	.....	Entegris, Inc .....	173.192, 173.302, 173.304	To modify the special permit to authorize an increase in the maximum vacuum brake temperature.
13301-M .....	.....	United Technologies Corporation.	172.200, 172.300, 172.400	To authorize the transportation in commerce of certain hazardous materials for a distance of approximately 1700 feet without proper hazard communication.
14039-M .....	.....	Van Hool NV .....	178.274(b), 178.276(b) .....	To modify the special permit to authorize an increase in the maximum USWG.
14206-M .....	.....	Digital Wave Corporation ..	172.203, 180.205, 172.301, 173.302A.	To modify the special permit to authorize Ultrasonic Examination of certain DOT UN refillable pressure receptacles and cylinders.
14335-M .....	.....	Rinchem Company, Inc ....	177.848(d), 172.301(c), 172.302(c).	To modify the special permit to authorize a change in ventilation requirements to allow for a refrigeration/blower ventilation system.
16343-M .....	.....	Digital Wave Corporation ..	180.205(g) .....	To modify the special permit to clarify some of the language in the permit pertaining to use of the approved packaging.
20248-M .....	.....	Total Feuerschultz GmbH	173.309(c)(4) .....	To modify the special permit to authorize the transportation in commerce of previously produced fire extinguishers which are not marked with the "MEETS DOT REQUIREMENTS" stamp.
20255-M .....	.....	Stericycle Specialty Waste Solutions, Inc.	171.1, 180.1 .....	To modify the special permit originally issued as an emergency to a permanent one.

[FR Doc. 2016-27725 Filed 11-23-16; 8:45 am]

BILLING CODE 4909-60-M

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**Hazardous Materials—Notice of Applications for Special Permits**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications for special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation’s Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for

which a particular special permit is requested is indicated by a number in the “Nature of Application” portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before December 27, 2016.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and

Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 1, 2016.

**Donald Burger,**  
*Chief, Office of the Special Permits and Approvals.*

**SPECIAL PERMITS DATA**

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20351–N .....	.....	Roeder Cartage Company, Incorporated.	180.407(c), 180.407(e), 180.407(f).	To authorize the transportation in commerce of Acetonitrile and Acetonitrile, crude in dedicated DOT Specification 407 and 412 cargo tanks which are not required to have periodic internal visual inspections. (mode 1)
20356–N .....	.....	Tesla Motors, Inc .....	172.101 Column (9B), 173.185(b)(3).	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft. (mode 4)
20357–N .....	.....	Jingmen Hongtu Special Aircraft Manufacturing Co., Ltd.	178.274(b), 178.276(a)(2), 178.276(b)(1).	To authorize the manufacture, marking, sale and use of certain DOT Specification 50 steel portable tanks or UN steel portable tanks conforming with Section VIII, Division 2 of the ASME Code instead of Section VIII, Division 1, for the transportation in commerce of Division 2.1 and 2.2 materials. (modes 1, 2, 3)
20360–N .....	.....	Scott’s Helicopter Service Inc.	172.101 Column (9B), 172.200, 172.204(c)(3), 172.301(c), 173.27(b)(2), 175.30, 175.75.	To authorize the transportation in commerce of certain hazardous materials by 14 Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the US only, without being subject to hazard communication requirements, quantity limitations, and certain loading and stowage requirements. (mode 4)
20361–N .....	.....	Keith Huber Corporation	178.345–3(f)(3) .....	To authorize the manufacture, mark, sale, and use of non-DOT specification cargo tanks to transport gasoline. (mode 1)
20362–N .....	.....	FSC Metal Corporation ..	178.35(b) .....	To authorize the mark, sale, and use of cylinders manufactured by a foreign company prior to obtaining manufacturing approval. (mode 1)
20366–N .....	.....	ATS–MER, LLC .....	173.185(a) .....	To authorize the transportation in commerce of prototype and low production lithium batteries via cargo-only aircraft. (mode 4)

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**Hazardous Materials: Notice of Applications for Special Permits**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of actions on special permit applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for

which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before December 27, 2016.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and

Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 2, 2016.

**Donald Burger,**  
Chief, Office of the Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
<b>SPECIAL PERMITS DATA</b>				
14636-M .....	.....	Department of Defense (Military Surface Deployment & Distribution Command).	180.209, 172.301(c) .....	To modify the special permit to remove and add cylinder serial numbers and add cargo vessel as an authorized mode.
20317-N .....	.....	Roylco, Inc .....	173.185(f) .....	To authorize the transportation in commerce of defective lithium batteries.
20325-N .....	.....	Samsung Electronics America, Inc.	172.500, 172.600, 172.700(a), 173.185(f), 172.200, 172.300.	To authorize the manufacture, mark, sale and use of alternative packagings for the transportation of recalled lithium ion batteries contained in equipment.
20334-N .....	.....	.....	Reliable Pharmaceutical Returns, LLC.	To authorize the manufacture, mark, sale and use of non-DOT specification packaging for the transportation in commerce of certain materials authorized to be disposed of under 21 CFR part 1317, Subpart B.
20341-N .....	.....	Air Products and Chemicals, Inc.	180.209(a), 180.209(b), 180.209(b)(1)(iv).	To authorize the transportation in commerce of certain Division 2.1 and 2.2 materials in DOT Specification 3A, 3AA, 3AX, 3AAX and 3T cylinders (tubes) having a water capacity over 125 lbs that are requalified every ten years rather than every five years. The 3AX, 3AAX, and 3T cylinders (tubes) must be mounted in an ISO frame or on a trailer frame. 3A or 3AA tubes may also be mounted in an ISO frame or tube trailer frame.
20354-N .....	.....	Kalitta Air, L.L.C .....	173.27(b)(2), 173.27(b)(3)	To authorize the transportation in commerce of explosives by cargo only aircraft which is forbidden in the regulations.
20358-N .....	.....	Battle LP Gas Co .....	173.315(j) .....	To authorize the transportation of consumer propane tanks in support of post-hurricane clean-up efforts.

[FR Doc. 2016-27726 Filed 11-23-16; 8:45 am]

**DEPARTMENT OF THE TREASURY****Bureau of the Fiscal Service****Proposed Collection of Information: Application for Recognition as Natural Guardian of a Minor Not Under Legal Guardianship and for Disposition of Minor's Interest in Registered Securities**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Application for Recognition as Natural Guardian of a Minor Not Under Legal Guardianship and for Disposition of Minor's Interest in Registered Securities.

**DATES:** Written comments should be received on or before January 24, 2017 to be assured of consideration.

**ADDRESSES:** Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4-A, Parkersburg, WV 26106-1328, or [bruce.sharp@fiscal.treasury.gov](mailto:bruce.sharp@fiscal.treasury.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Recognition as Natural Guardian of a Minor Not Under Legal Guardianship and for Disposition of Minor's Interest in Registered Securities.

*OMB Number:* 1530-0041.

*Form Number:* FS Form 2481.

*Abstract:* The information is collected to apply for recognition as a natural guardian and request disposition of securities belonging to a minor in situations where a natural guardian is no longer acting or a legal representative is not appointed.

*Current Actions:* Extension of a previously approved collection.

*Type of Review:* Regular.

*Affected Public:* Households and Individuals.

*Estimated Number of Respondents:* 1,250.

*Estimated Time per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 208.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All

comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 21, 2016.

**Bruce A. Sharp,**

*Bureau Clearance Officer.*

[FR Doc. 2016-28412 Filed 11-23-16; 8:45 am]

**BILLING CODE 4810-AS-P**

**DEPARTMENT OF THE TREASURY****Office of Foreign Assets Control****Sanctions Actions Pursuant to the Foreign Narcotics Kingpin Designation Act and Executive Order 12978**

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act), or Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers." Additionally, OFAC is publishing an update to the identifying information of persons currently included in the list of Specially Designated Nationals and Blocked Persons (SDN List).

**DATES:** OFAC's actions described in this notice were effective on November 18, 2016.

**FOR FURTHER INFORMATION CONTACT:** The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202-622-2480, Assistant Director for Regulatory Affairs, tel.: 202-622-4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets

Control), Office of the General Counsel, tel.: 202-622-2410.

**SUPPLEMENTARY INFORMATION:****Electronic Availability**

The list of Specially Designated Nationals and Blocked Persons (SDN List) and additional information concerning OFAC sanctions programs are available from OFAC's Web site at <http://www.treasury.gov/ofac>.

**Notice of OFAC Actions**

On November 18, 2016, OFAC removed from the SDN List the persons listed below, whose property and interests in property were blocked pursuant to the Kingpin Act or Executive Order 12978.

*Individuals*

1. ABAROA DIAZ, Victor Manuel, c/o TIENDA MARINA ABAROA, La Paz, Baja California Sur, Mexico; C. Antonio Navarro S/N, Col. Centro, La Paz, Baja California Sur 23000, Mexico; DOB 30 May 1955; POB La Paz, Baja California Sur, Mexico; nationality Mexico; citizen Mexico; R.F.C. AADV550530UQ0 (Mexico); C.U.R.P. AADV550530HBSBZC00 (Mexico) (individual) [SDNTK].

2. ABAROA PRECIADO, Aristoteles (a.k.a. ABAROA PRECIADO, Aristoteles Alejandro), La Paz, Baja California Sur, Mexico; DOB 29 Sep 1981; POB La Paz, Baja California Sur, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. AAPA810929HBSBRR19 (Mexico) (individual) [SDNTK].

3. ABAROA PRECIADO, Rosa Yolanda Nabila, Ave. Mariano Abasolo S/N Barr, La Paz, Baja California Sur 23060, Mexico; DOB 19 May 1985; POB Baja California Sur, Mexico; nationality Mexico; citizen Mexico; Passport 05070005312 (Mexico); C.U.R.P. AAPR850519MBSBRS00 (Mexico) (individual) [SDNTK].

4. ABAROA PRECIADO, Victor Hussein, C. Antonio Navarro S/N, La Paz, Baja California Sur 23000, Mexico; DOB 23 Jun 1978; POB La Paz, Baja California Sur, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. AAPV780623HBSBRC09 (Mexico) (individual) [SDNTK].

5. GRAJALES HERNANDEZ, Alvaro Octavio, c/o C.A.D. S.A., Bogota, Colombia; c/o CRETA S.A., La Union, Valle Colombia; c/o GRAJALES S.A., La Union, Valle, Colombia; Cedula No. 19465707 (Colombia) (individual) [SDNT].

6. PRECIADO GAMEZ, Elia Yolanda, La Paz, Baja California Sur, Mexico; DOB 25 Feb 1954; POB Ahome, Sinaloa, Mexico; nationality Mexico; citizen Mexico; C.U.R.P.

PEGE540225MSLRML03 (Mexico) (individual) [SDNTK].

7. TORRES GOMEZ, Enrique (a.k.a. TORRES TORRES, Enrique), Sanchez Colin No. 34 102-B, Providencia Azcapotzalco, Delegacion Azcapotzalco, Mexico City, Distrito Federal, Mexico; Guadalajara, Jalisco, Mexico; DOB 14 Mar 1956; POB Veracruz, Mexico; nationality Mexico; citizen Mexico; Passport 9844001514 (Mexico); R.F.C. TOGE-560314 (Mexico); C.U.R.P. TOGE560314HVZRMN09 (Mexico) (individual) [SDNTK].

8. VELARDE SARABIA, Antonio, Calle Hidalgo No. 537 Oriente, Col. Centro, Culiacan, Sinaloa, Mexico; c/o COMERCIAL JOANA, S.A. DE C.V., Guadalajara, Jalisco, Mexico; c/o COMERCIALIZADORA TOQUIN, S.A. DE C.V., Guadalajara, Jalisco, Mexico; c/o COMERCIAL DOMELY, S.A. DE C.V., Toluca, Mexico, Mexico; DOB 27 Oct 1977; nationality Mexico; citizen Mexico; R.F.C. VESA771027B50 (Mexico) (individual) [SDNTK].

#### Entities

1. IMPORTADORA MADURO, S.A., Panama; RUC # 558-472-101708 (Panama) [SDNTK].

2. LUZAAIR, S.A. DE C.V., Mexico City, Mexico; Folio Mercantil No. 354246 (Mexico) [SDNTK].

3. MADURO INTERNACIONAL, S.A., Panama; RUC # 5651-184-69069 (Panama) [SDNTK].

4. TIENDA MARINA ABAROA (a.k.a. ABAROA FOX MARINE; a.k.a. MATERIALES Y REFACCIONES ABAROA), Abasolo S/N, Col. El Manglito, La Paz, Baja California Sur 23060, Mexico; Leona Vicario 1000 E/ Alvaro Obregon, Benito Juarez, Cabo San Lucas, Baja California Sur 23469, Mexico; R.F.C. AADV55053OUQO (Mexico) [SDNTK].

Additionally, on November 18, 2016, OFAC updated the SDN List for the persons listed below, whose property and interests in property continue to be blocked pursuant to the Kingpin Act.

#### Individuals

1. BRICENO SUAREZ, Jorge (a.k.a. BRICENO SUAREZ, Jorge Enrique; a.k.a. MONO JOJOY; a.k.a. OSCAR RIANO; a.k.a. SUAREZ ROJAS, Victor Julio; a.k.a. SUAREZ, Luis); DOB Jan 1953; alt. DOB 01 Feb 1949; alt. DOB 02 Jan 1951; alt. DOB 05 Feb 1953; POB Santa Marta, Magdalena, Colombia; alt. POB Cabrera, Cundinamarca, Colombia; Cedula No. 12536519 (Colombia); alt. Cedula No. 19208210 (Colombia); alt. Cedula No. 17708695 (Colombia); alt. Cedula No. 70753211 (Colombia) (individual) [SDNTK].

-to-

BRICENO SUAREZ, Jorge (a.k.a. BRICENO SUAREZ, Jorge Enrique; a.k.a. "MONO JOJOY"; a.k.a. "OSCAR RIANO"; a.k.a. SUAREZ ROJAS, Victor Julio; a.k.a. "SUAREZ, Luis"); DOB Jan 1953; alt. DOB 01 Feb 1949; alt. DOB 02 Jan 1951; alt. DOB 05 Feb 1953; POB Santa Marta, Magdalena, Colombia; alt. POB Cabrera, Cundinamarca, Colombia; Cedula No. 12536519 (Colombia); alt. Cedula No. 19208210 (Colombia); alt. Cedula No. 17708695 (Colombia) (individual) [SDNTK].

2. TONCEL REDONDO, Milton De Jesus (a.k.a. "EL NEGRO"; a.k.a. "JOAQUIN GOMEZ"; a.k.a. "ORO CHURCO"; a.k.a. "USURRIAGA"); DOB 18 Mar 1947; alt. DOB Feb 1949; POB Barrancas, La Guajira, Colombia; alt. POB Ubita, Boyaca, Colombia; Cedula No. 15237742 (Colombia); alt. Cedula No. 70753211 (Colombia) (individual) [SDNTK].

-to-

TONCEL REDONDO, Milton De Jesus (a.k.a. "EL NEGRO"; a.k.a. "JOAQUIN GOMEZ"; a.k.a. "ORO CHURCO"; a.k.a. "USURRIAGA"); DOB 18 Mar 1947; alt. DOB Feb 1949; POB Barrancas, La Guajira, Colombia; alt. POB Ubita, Boyaca, Colombia; Cedula No. 15237742 (Colombia) (individual) [SDNTK].

#### Entity

1. V.P. PROPERTIES, INC., Panama; RUC # 2384195-1-802594 (Panama) [SDNTK].

-to-

V.P. PROPERTIES, INC., Panama; RUC # 2088592-1-754706 (Panama) [SDNTK].

Dated: November 18, 2016.

**Gregory T. Gatjanis,**

Associate Director, Office of Global Targeting, Office of Foreign Assets Control.

[FR Doc. 2016-28282 Filed 11-23-16; 8:45 am]

**BILLING CODE 4810-AL-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

November 21, 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 December 27, 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](mailto:OIRA_Submission@OMB.EOP.gov) and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

#### FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622-0934, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

#### SUPPLEMENTARY INFORMATION:

#### Community Development Financial Institutions (CDFI) Fund

*OMB Control Number:* 1559-0021.

*Type of Review:* Revision of a currently approved collection.

*Title:* CDFI Program and NACA Program Applications.

*Form:* 1559-0021-201611-1, 1559-0021-201611-2.

*Abstract:* The CDFI Fund provides financial assistance in the form of grants, loans, equity investments and deposits to community development financial institutions providing capital and financial services to underserved markets.

*Affected Public:* Business or other for-profits, Not-for-profit institutions.

*Estimated Total Annual Burden Hours:* 65,200.

*OMB Control Number:* 1559-0032.

*Type of Review:* Revision of a currently approved collection.

*Title:* Use of Award Report Form.

*Form:* 1559-0032-201611, CDFI Form 0002.

*Abstract:* The CDFI Fund administers the BEA Program, CDFI Program, and NACA Program. In an effort to create uniformity in reporting across the CDFI Fund, the CDFI Fund revised the BEA Program Award Report Form so it may be used by the BEA Program as well as the CDFI Program and NACA Program. The revised form has been renamed the "Uses of Award Report Form." The BEA Program provides incentives to insured depository institutions to increase their support of CDFIs and their activities in economically distressed communities. The CDFI Program uses federal resources to invest in and build the capacity of CDFIs to serve low income people and communities lacking adequate access to affordable financial products and services. The CDFI Fund created the Native Initiatives, which

includes the NACA Program, to further support the creation and expansion of Native CDFIs.

*Affected Public:* Business or other for-profits, Not-for-profit institutions.

*Estimated Total Annual Burden Hours:* 325.

**Bob Faber,**

*Acting Treasury PRA Clearance Officer.*

[FR Doc. 2016-28397 Filed 11-23-16; 8:45 am]

**BILLING CODE 4810-70-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

November 21, 2016.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before December 27, 2016 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at [PRA@treasury.gov](mailto:PRA@treasury.gov).

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission may be obtained by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622-0934, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

### Internal Revenue Service (IRS)

*OMB Control Number:* 1545-1036.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Form 8716—Election to Have a Tax Year Other Than a Required Tax Year.

*Form:* 8716.

*Abstract:* Form 8716 is filed by partnerships, S Corporations, and personal service corporations, under section 444(a), to elect to retain or to adopt a tax year that is not a required tax year. The form provides the IRS with information to determine that the section 444(a) election is properly made and identifies the tax year to be retained, changed, or adopted.

*Affected Public:* Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 204,400.

**Bob Faber,**

*Acting Treasury PRA Clearance Officer.*

[FR Doc. 2016-28390 Filed 11-23-16; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### Cooperative Studies Scientific Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Cooperative Studies Scientific Evaluation Committee will hold a meeting on January 11, 2017, at the American Association of Airport Executives, 601 Madison Street, Alexandria, VA. The meeting will begin at 8:30 a.m. and end at 2:30 p.m.

The Committee advises the Chief Research and Development Officer through the Director of the Clinical

Science Research and Development Service on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion, and evaluation of research and development applications. As provided by section 10(d) of Public Law 92-463, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee will not accept oral comments from the public for the open portion of the meeting. Those who plan to attend or wish additional information should contact Dr. Grant Huang, Acting Director, Cooperative Studies Program (10P9CS), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 443-5700 or by email at [grant.huang@va.gov](mailto:grant.huang@va.gov). Those wishing to submit written comments may send them to Dr. Huang at the same address and email.

Dated: November 21, 2016.

**LaTonya L. Small,**

*Committee Management Officer.*

[FR Doc. 2016-28391 Filed 11-23-16; 8:45 am]

**BILLING CODE P**



# FEDERAL REGISTER

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Vol. 81

Friday,

No. 227

November 25, 2016

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Part II

Commodity Futures Trading Commission

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17 CFR Parts 1, 38, 40, et al.

Regulation Automated Trading; Proposed Rule

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1, 38, 40, and 170

RIN 3038-AD52

#### Regulation Automated Trading

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** On December 17, 2015, the Commodity Futures Trading Commission (“CFTC” or “Commission”) published in the *Federal Register* a notice of proposed rulemaking (“NPRM”) proposing a series of risk controls, transparency measures, and other safeguards to enhance the safety and soundness of automated trading on all designated contract markets (“DCMs”) (collectively, “Regulation Automated Trading” or “Regulation AT”). Through this supplemental notice of proposed rulemaking for Regulation AT (“Supplemental NPRM”), the Commission is proposing to modify certain rules set forth in the NPRM. Any new or amended rules proposed in this Supplemental NPRM reflect only those areas where the Commission believes that additional notice and comment may be appropriate before enacting final rules. Procedurally, this Supplemental NPRM is *not* a replacement or withdrawal of rules proposed in the NPRM. Unless specifically amended herein, all regulatory text proposed in the NPRM remains under active consideration for adoption as final rules. The Commission welcomes public comment on all aspects of the Supplemental NPRM.

**DATES:** Comments must be received on or before January 24, 2017.

**ADDRESSES:** You may submit comments, identified by RIN 3038-AD52, by any of the following methods:

- *CFTC Web site:* <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Comments Online process on the Web site.
  - *Mail:* Send to 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.
- Please submit comments by only one method. All comments should be

submitted in English or accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act (“FOIA”), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in 17 CFR 145.9. The Commission reserves the right, but shall have no obligation, to review, prescreen, 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 so treated that contain comments on the merits of the rulemaking 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 FOIA.

#### FOR FURTHER INFORMATION CONTACT:

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## I. Introduction: The NPRM and Supplemental NPRM for Regulation AT

Regulation Automated Trading is a comprehensive Commission effort to reduce risk and increase transparency in algorithmic order origination and electronic trade execution on all U.S. futures exchanges. The proposed rules, both in the NPRM and the Supplemental NPRM, modernize the Commission's regulatory regime, promote the safety and soundness of trading on all contract markets, and seek to keep pace with evolving technologies. This Supplemental NPRM builds on the Commission's December 2015 NPRM for Regulation AT,<sup>1</sup> and is a continuation of

the underlying policies and objectives reflected therein. The Supplemental NPRM responds to persuasive public comments to help ensure appropriate final rules for Regulation AT.<sup>2</sup>

Procedurally, the Supplemental NPRM is a continuation of the NPRM. All rules in the NPRM remain under

<sup>2</sup> Sections I–III of the NPRM provided a fulsome discussion of the policy considerations, market events, existing best practices, and procedural history that informed the Commission's development of Regulation AT. The Commission explained that “the basic structure of [open-outcry trading] remained constant for decades, and produced a parallel regulatory framework also premised on natural persons and human decision-making speeds.” See NPRM at 78825. It contrasted now-obsolete manual processes against the “wide array of electronic systems for the generation, transmission, management, and execution of orders” used today by DCMs and DCM market participants, including high-speed communication networks to confirm transactions, communicate market data, and link markets and market participants. See *id.*

The Commission provided information indicating that over 95% of all on-exchange futures trading was electronic by 2014, with many exchanges having closed their open-outcry trading pits well before then. It also indicated that by 2014, ATSs were present on at least one side of almost 80% of trading volume in some asset classes. The Commission noted that “[t]he largely complete transition of DCMs to electronic trade matching platforms has occurred alongside an equally important shift in the technologies used by market participants to place and manage orders.” These include ATSs, high-speed communication networks, and the use of direct access and colocation services to “minimize latencies between ATS, market data systems, and DCMs' electronic trading platform[s].” See NPRM at 78826.

The Commission explained that “an overarching goal” of Regulation AT is to update its rules in response to the evolution from pit to electronic trading, including by focusing on “algorithmic order origination or routing by market participants, and electronic trade execution by DCMs.” It also observed that “[m]arket participants using automated trading include an important population of proprietary traders that, while responsible for significant volume and liquidity in key futures products, are not registered with the Commission.” The Commission emphasized that Regulation AT is focused on the “automation of order generation, transmission, and execution, and the risks that may arise from such activity.” It identified “appropriate pre-trade and other risk controls” as an important element in “ensur[ing] the integrity of Commission-regulated markets” and fostering market participants' confidence in the transactions being executed. See NPRM at 78827–78828.

The Commission also summarized the broad array of resources that it consulted in preparing the NPRM for Regulation AT, including “industry practices, measures taken by other U.S. and foreign regulators, and best practices or guidance set forth by other informed parties.” It noted the “emerging consensus around pre-trade risk controls for automated trading and supervision standards for ATSs.” Finally, the Commission emphasized that “Regulation AT attempts to balance flexibility in a rapidly changing technological landscape with the need for a regulatory baseline that provides a robust and sufficiently clear standard for pre-trade risk controls, supervision standards, and other safeguards for automated trading environments.” See NPRM at 78828. This Supplemental NPRM continues to build on the policy determinations and regulatory objectives set forth in the NPRM for Regulation AT.

consideration as originally proposed unless specifically modified in the proposed rule text in this Supplemental NPRM.<sup>3</sup> Accordingly, this Supplemental NPRM begins with an overview of Regulation AT across the NPRM and the Supplemental NPRM (Section I(A)). It continues with a summary of the opportunities for public comment provided by the Commission (Section I(B)), and an overview of the comments received (Section I(C)). Sections II through VII discuss specific proposed rules in the Supplemental NPRM that add to, remove, or otherwise amend the Commission's original proposals in the NPRM. Sections II through VII also provide a summary of the comments and policy considerations that led to the Commission's new or amended proposals. Section VIII provides preamble discussion and seeks comment regarding additional areas where the Commission's final rules for Regulation AT may amend the NPRM. However, such potential amendments are not included as proposed regulatory text in this Supplemental NPRM. The Commission believes that the further amendments under consideration do not impact new parties, create new obligations, or otherwise increase burdens. Section IX includes the Commission's Paperwork Reduction Act, Regulatory Flexibility Act, and Cost-Benefit discussions for the regulatory text proposed herein. Finally, the Commission presents the proposed new or modified regulatory text following the end of the preamble. Any sections or paragraphs marked as “Reserved” are not addressed in this Supplemental NPRM. The provisions proposed for such sections or paragraphs in the NPRM are unchanged from that document and remain under active consideration by the Commission. (Note, however, that proposed reserved § 1.3(aaaa) is not the subject of either this Supplemental NPRM or the NPRM. That definitions paragraph is the subject of another pending unrelated Commission rulemaking proposal.) Please note also that the provisions proposed in the NPRM for §§ 38.401 and 40.1(i), and for Appendix B to part 38, are not shown as reserved in this Supplemental NPRM for technical reasons. Nonetheless, the provisions proposed in the NPRM for those two sections and that appendix are unchanged and remain under active consideration by the Commission.

<sup>3</sup> The Commission's new proposed regulatory text is presented in this document following the end of the preamble.

<sup>1</sup> Regulation Automated Trading, Proposed Rule, 80 FR 78824 (Dec. 17, 2015) (hereinafter “NPRM”).

*A. Basic Structure of Regulation AT: The NPRM and the Supplemental NPRM*

The basic structure of Regulation Automated Trading is set forth in the NPRM, and remains largely intact. However, through this Supplemental NPRM, the Commission is proposing certain changes to Regulation AT to address comments received in response to the NPRM and during a day-long staff roundtable on Regulation AT held in June 2016. This Section I(A) provides an overview of Regulation AT by summarizing several of the principal changes that the Supplemental NPRM proposes to make to the NPRM.

First, Regulation AT would require pre-trade risk controls and other measures for the Algorithmic Trading of AT Person customers in order to promote the continued safety and soundness of Commission-regulated markets. In the NPRM, the Commission proposed placing such risk controls at three levels: The AT Person, the FCM and the DCM. Many commenters asserted that a three-layer structure could be redundant and costly, and some indicated that a two-level structure would be preferable. After careful consideration, the Commission is proposing to move Regulation AT from a three-level risk control structure to a modified two-level structure, with risk controls set at the levels of (1) the AT Person<sup>4</sup> or its FCM; and (2) the DCM. Under the two-level structure proposed in the Supplemental NPRM, an AT Person would have the option of delegating its pre-trade risk control requirements to an FCM rather than implementing its own controls.

Second, the NPRM proposed requiring risk controls only with respect to the Algorithmic Trading of AT Persons. In contrast, the Supplemental NPRM addresses not only Algorithmic Trading, but also Electronic Trading at the AT Person, FCM, and DCM levels. The Commission's amended proposal is consistent with comments stating that all electronic trading—not just the narrower set of Algorithmic Trading—should pass through pre-trade risk controls.

Third, in the NPRM, the Commission proposed requiring that pre-trade risk controls be set at the level of each AT Person or market participant, or other

more granular levels as the AT Person, FCM or DCM determined appropriate. The Supplemental NPRM responds to comments that it may not be efficient or possible for DCMs and FCMs to set controls at the level of individual market participants. Accordingly, in the Supplemental NPRM, the Commission revises the risk control provisions to provide AT Persons, FCMs and DCMs greater flexibility regarding the level at which pre-trade controls must be set.

Fourth, Regulation AT would require the registration of certain market participants who are not already registered with the Commission. Such market participants would be required to register as “floor traders,” as defined in the Supplemental NPRM in proposed § 1.3(x)(1)(iii) (“New Floor Traders”), and would also be required to become members of a registered futures association (“RFA”). Together with certain existing registrants, New Floor Traders would be considered AT Persons and be subject to all relevant requirements of Regulation AT. Pursuant to the NPRM, the proposed registration criteria for New Floor Traders<sup>5</sup> were that such persons be engaged in (1) proprietary, (2) Algorithmic Trading (3) through Direct Electronic Access (“DEA”) on a DCM. The Supplemental NPRM retains these requirements but also incorporates a volume-based quantitative test for registration as a New Floor Trader. This amendment responds to concerns that the NPRM would have imposed registration and its consequent obligations on too large a population of market participants. The Commission also proposes to apply this same volume-based quantitative test to existing registrants and persons otherwise required to register with the Commission to determine whether they are AT Persons.<sup>6</sup>

The Commission estimates that its proposed volume-based criteria would result in approximately 120 AT Persons, including some of who are already registered with the Commission in some capacity. This stands in contrast to some commenters' estimates that the NPRM could have required thousands of

persons to register. While any volume-based metric has limitations, the Commission believes that this is the best way to focus the registration-related obligations on the appropriate class of persons. This approach, coupled with other changes in the Supplemental NPRM regarding the obligations of AT Persons as discussed below, also addresses many of the concerns expressed about the NPRM registration requirement.

Fifth, in the NPRM, the Commission proposed requiring that AT Persons provide the DCMs on which they operate with annual reports containing information on the AT Persons' compliance with requirements concerning risk controls. The NPRM further would have required DCMs to establish a program for effective review and evaluation of the reports. The Commission received comments that the proposed reporting requirements were overly burdensome and would provide little benefit in mitigating the risks of Algorithmic Trading. In the Supplemental NPRM, the Commission proposes replacing the annual compliance report requirement for AT Persons with a streamlined annual certification requirement. The Commission also proposes to retain certain recordkeeping requirements, as well as the requirement that DCMs establish a program for effective periodic review and evaluation of AT Persons' compliance with elements of Regulation AT. Similarly, the NPRM imposed annual reporting requirements on FCMs and required DCMs to review these reports. The Supplemental NPRM also replaces the annual reporting obligations for FCMs with a certification requirement, and also retains the requirement that FCMs maintain certain records. As with AT Persons, the Supplemental NPRM requires DCMs to establish a program for effective periodic review and evaluation of FCMs' compliance with Regulation AT.

Sixth, Regulation AT requires that algorithmic trading source code be preserved and made available to the Commission when necessary.<sup>7</sup> The NPRM required that AT Persons maintain a “source code repository” and make it available for inspection in accordance with the Commission's general recordkeeping requirements. These provisions provoked extensive

<sup>5</sup> For purposes of this Supplemental NPRM, registrants under Supplemental proposed § 1.3(x)(1)(iii) are deemed “New Floor Traders.”

<sup>6</sup> To be considered AT Persons, existing registrants and persons otherwise required to register with the Commission must be engaged in Algorithmic Trading on our subject to the rules of a DCM. Unlike for New Floor Traders, however, direct electronic access is not a relevant consideration for existing registrants and persons otherwise required to register with the Commission (e.g., FCMs, floor brokers, swap dealers, major swap participants, commodity pool operators, commodity trading advisors, and introducing brokers).

<sup>7</sup> “Algorithmic Trading Source Code” is defined in Supplemental proposed § 1.3(ccccc). The Commission notes that source code was not defined in the NPRM. In this Supplemental NPRM, the Commission uses “source code” in connection with its proposal in the NPRM, and uses the term “Algorithmic Trading Source Code” when referring to Supplemental proposed § 1.3(ccccc).

<sup>4</sup> “AT Person” is defined in proposed § 1.3(xxxx) of the NPRM, and includes existing Commission registrants engaged in “Algorithmic Trading” on a DCM, as well as market participants required to register as floor traders pursuant to proposed § 1.3(x)(3) of the NPRM. Algorithmic Trading is defined in proposed § 1.3(zzzz) of the NPRM. Electronic Trading is defined in Supplemental NPRM in proposed § 1.3(ddddd).

comments. Notably, commenters may have misunderstood the Commission's intent, which was never to require that all source code be provided routinely to a Commission or third-party repository. The Supplemental NPRM acknowledges the concerns regarding the confidentiality and proprietary value of Algorithmic Trading Source Code and revises these provisions extensively. While Algorithmic Trading Source Code and related records are still required to be preserved, they are not subject to the Commission's general recordkeeping provisions. Instead, preservation and access obligations are set forth in new provisions in the Supplemental NPRM that reflect market participants' concerns. The Supplemental NPRM provides that the Commission would have access to Algorithmic Trading Source Code and related records only via a subpoena or a special call approved by the Commission itself, not by staff, and that any such access would be subject to policies and procedures to protect confidentiality.

Seventh, the Supplemental NPRM discusses a number of changes to certain defined terms proposed in the NPRM, as well as other provisions that the Commission is considering in response to comments from market participants. These include limiting the scope of "Algorithmic Trading Compliance Issue," "Algorithmic Trading Disruption," and "Algorithmic Trading Event."

Eighth, Regulation AT includes a number of additional rules focused specifically on DCMs. As reflected in the NPRM, these proposals include: (1) Greater transparency around DCMs' electronic trade matching platforms and (2) promoting the use of self-trade prevention tools.<sup>8</sup> The Commission is

<sup>8</sup> The NPRM proposed amendments to existing § 38.255, to require DCMs to have in place systems reasonably designed to facilitate the FCM's management of the risks that may arise from their customers' Algorithmic Trading using DEA. Regulation AT would also amend existing § 38.401(a) to require DCMs to provide additional public disclosure regarding their electronic matching platforms. In part 40, the NPRM proposed the following new regulations: § 40.20—requiring DCMs to implement pre-trade risk controls and other related measures; § 40.21—requiring DCMs to provide a test environment to AT Persons; § 40.22—requiring DCMs to implement a review program for compliance reports regarding Algorithmic Trading submitted by AT Persons and clearing member FCMs, require that certain books and records be maintained by such persons, and review such books and records as necessary; § 40.23—requiring DCMs to implement self-trade prevention tools, mandate their use, and publish statistics concerning self-trading; and §§ 40.25–40.28—requiring DCMs to provide disclosure and implement other controls regarding their market maker and trading incentive programs. Regulation AT would amend the

contemplating deferring further consideration of such provisions to a second phase of rules to be finalized at a later date. The Commission seeks comments regarding deferral of these two provisions to a later date.

Finally, specific regulatory provisions addressed in the Supplemental NPRM include a number of new or revised defined terms, such as revised § 1.3(x)—Floor trader; revised § 1.3(www)—AT Order Message; revised § 1.3(xxxx)—AT Person; revised § 1.3(yyyy)—Direct Electronic Access; new § 1.3(ddddd)—Electronic Trading; new § 1.3(bbbbb)—Electronic Trading Order Message; and new § 1.3(ccccc)—Algorithmic Trading Source Code. Other new or revised regulatory provisions include: (1) New § 1.80(d)—Delegation of pre-trade risk controls by AT Persons; (2) new § 1.80(g)—AT Persons' pre-trade risk controls for Electronic Trading; (3) revised § 1.81—Standards for the development, monitoring, and compliance of Algorithmic Trading systems; (4) revised § 1.82—FCM pre-trade risk controls and other related measures for orders from their AT Person customers; (5) revised § 1.83—AT Person and executing FCM recordkeeping; (6) new § 1.84—Maintenance of Algorithmic Trading Source Code and related records; (7) new § 1.85—Use of third-party Algorithmic Trading systems or components;<sup>9</sup> (8) revised §§ 38.255 and 40.20—Risk controls for trading; (9) revised § 40.22—DCM requirements for AT Persons and executing FCMs, and DCM review program; and (10) revised § 170.18—AT Person registration for membership in at least one "RFA".

This Supplemental NPRM modifies some, but not all, of the NPRM. Where this Supplemental NPRM proposes rule text in full, such text replaces what was proposed in the NPRM. With the exceptions noted in this paragraph, where this Supplemental NPRM reserves a section or paragraph for which provisions were proposed in the NPRM, the previously proposed provisions of such section or paragraph remain unchanged from the NPRM and continue to be under active consideration by the Commission. For technical reasons, §§ 38.401 and 40.1(i), and Appendix B to part 38, are not shown as reserved in this Supplemental NPRM; however, the amended provisions proposed for those sections

definition of "rule" in § 40.1(i) in response to certain of the changes proposed above.

<sup>9</sup> Including, for example, options for complying with elements of NPRM § 1.81—"Standards for the development, monitoring, and compliance of Algorithmic Trading systems." See Section V below.

and that appendix in the NPRM also remain unchanged and under active consideration. (Please note that proposed reserved § 1.3(aaaaa) is not the subject of either this Supplemental NPRM or the NPRM. That definitions paragraph is the subject of another pending unrelated Commission rulemaking proposal.)

#### *B. Opportunities for Public Comment on NPRM Proposals During Two Public Comment Periods and Public Staff Roundtable*

In response to the NPRM, the Commission received 54 comment letters from an array of market participants, exchanges, industry trade associations, public interest organizations, and others.<sup>10</sup> During the initial comment period, Commission staff also met in person and via telephone with interested parties who requested meetings. Market participants and other interested parties were also provided extensive opportunities to comment on the Commission's 2013 Concept Release on Risk Controls and

<sup>10</sup> During the 90-day comment period following the Commission's issuance of the NPRM, the Commission received comment letters from: Aesthetic Integration Ltd. ("AI"); Allen, Theo ("Allen"); Alternative Investment Management Association ("AIMA"); American Gas Association ("AGA"); Americans for Financial Reform ("AFR"); Anonymous (non-responsive comment); Asset Management Group of the Securities Industry and Financial Markets Association ("SIFMA"); National Introducing Broker Association ("NIBA"); Barnard, Chris ("Barnard"); Better Markets Inc. ("Better Markets"); Bloomberg Tradebook LLC ("Bloomberg"); CBOE Futures Exchange, LLC ("CBOE"); Citadel LLC ("Citadel"); CME Group Inc. ("CME"); Commercial Energy Working Group and Commodity Markets Council (collectively, the "Commercial Alliance"); Committee on Capital Markets Regulation ("CCMR"); Cordova, Alex ("Cordova"); CTC Trading Group, L.L.C. ("CTC"); Futures Industry Association ("FIA"); Hudson River Trading LLC ("Hudson Trading"); Information Technology Industry Council and U.S. Chamber of Commerce ("ITI and Commerce"); Institute for Agriculture and Trade Policy ("IATP"); Intercontinental Exchange, Inc. ("ICE"); International Energy Credit Association ("IECA"); International Swaps and Derivatives Association, Inc. ("ISDA"); Investment Adviser Association ("IAA"); LCHF Capital Management, Inc. ("LCHF"); Lelli, Carmen ("Lelli"); Leuchtkafer, RT ("Leuchtkafer"); Managed Funds Association ("MFA"); Mercatus Center at George Mason University ("Mercatus"); Minneapolis Grain Exchange, Inc. ("MGEX"); Modern Markets Initiative ("MMI"); NASDAQ Futures, Inc. ("NASDAQ"); National Grain and Feed Association ("NGFA"); Nodal Exchange, LLC ("Nodal"); North American Derivatives Exchange, Inc. ("Nadex"); Olam International Limited ("Olam"); OneChicago, LLC ("OneChicago"); Quantitative Investment Management, LLC ("QIM"); Schwartz, Peter ("Schwartz"); Shatto, Suzanne ("Shatto"); Summers, Neil ("Summers"); TraderServe Limited ("TraderServe"); Trading Technologies International, Inc. ("TT"); trueEX LLC ("trueEX"); Two Sigma Investments, LP ("Two Sigma"); Virtu Financial, Inc. ("Virtu"); Weaver, Jack ("Weaver"); and XTX Markets Limited ("XTX").

System Safeguards for Automated Trading Environments (“Concept Release”), which included an initial 90-day comment period and a subsequent three-week comment period in conjunction with a public meeting of the Commission’s Technology Advisory Committee.<sup>11</sup> The Concept Release and comments thereto helped inform a number of the proposals reflected in Regulation AT.

Comments received during the initial comment period described above helped to identify areas that warranted further consideration by staff. Accordingly, on June 10, 2016, Commission staff held a public roundtable (“Roundtable”) to discuss certain elements of the NPRM. The topics discussed at the Roundtable included (1) the definition of DEA; (2) quantitative measures to establish the population of AT Persons; (3) alternatives to imposing pre-trade risk controls and development, testing, and monitoring standards on AT Persons; (4) AT Persons’ compliance with elements of the proposed rules when using third-party algorithms or systems; and (5) Algorithmic Trading Source Code access and retention. The Roundtable included representatives from a broad cross-section of entities potentially impacted by Regulation AT.<sup>12</sup> A transcript of the Roundtable proceedings is available on the Commission’s Web site at *CFTC.gov*.<sup>13</sup> In connection with the staff Roundtable, the Commission reopened the comment period for elements of Regulation AT for an additional two weeks. The Commission received an additional 19 comment letters during the reopened comment period.<sup>14</sup>

<sup>11</sup> Concept Release on Risk Controls and System Safeguards for Automated Trading Environments, 78 FR 56542 (Sept. 12, 2013); Reopening of Comment Period, 79 FR 4104 (Jan. 24, 2014).

<sup>12</sup> The participants at the Roundtable included CME; Deutsche Bank; ICE; QIM; Tethys Technology (“Tethys”); Virtu; OneChicago; European Securities and Markets Authority (“ESMA”); ABN AMRO Clearing Chicago LLC (“ABN AMRO”); AFR; Shell Energy North America (U.S.), L.P. (“Shell”); Hartree Partners (“Hartree”); J.P. Morgan; KCG Holdings (“KCG”); AQR Capital Management (“AQR”); TT; Optiver US LLC (“Optiver”); and Hudson Trading.

<sup>13</sup> See [http://www.cftc.gov/PressRoom/Events/opaevent\\_cftcstaff061016](http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff061016).

<sup>14</sup> In response to the NPRM, the Commission received: (i) Written comments submitted during the initial 90 day comment period (“Initial Comment Period”); comments by Roundtable participants; and (iii) written comments submitted during the reopened comment period (“Second Comment Period”). Some commenters submitted multiple comments. Accordingly, this Supplemental NPRM identifies Roundtable comments with a Roman numeral “II” and Second Comment Period comments with a Roman numeral “III.” For example, CME’s comments are identified as CME (its Initial Comment Period comment letter); CME II (its Roundtable comments); and CME III (its Second Comment Period comment letter). During the Second Comment Period, the

### C. Overview of Comments Received

The comments that the Commission received in written letters and at the Roundtable addressed a range of matters in Regulation AT. For purposes of this Supplemental NPRM, the Commission is focusing solely on comments related to new or amended rules proposed herein.<sup>15</sup> For example, several commenters suggested that the proposed rules could impact a larger number of market participants (including new and existing Commission registrants) than would be appropriate or than the Commission estimated in the NPRM.<sup>16</sup> The Commission found these comments persuasive, as a result of which it developed the volume-based quantitative test for AT Persons described in Section II below and reflected in Supplemental proposed § 1.3(x)(2) (the “volume threshold test”). Some commenters also expressed concern regarding the NPRM’s proposal to require risk controls for Algorithmic Trading at three levels (*i.e.*, at the DCM, FCM and AT Person levels).<sup>17</sup> Although most saw value in pre-trade risk controls administered by DCMs, some commenters encouraged the Commission to limit any further risk control requirements to either AT Persons or FCMs, but not both. After careful consideration, the Commission is proposing the hybrid two-level risk control structure in which the first level would be at the level of the AT Person or FCM, as reflected in Supplemental proposed §§ 1.80(d) and (g), 1.82, and 1.3(xxxx)(2).<sup>18</sup>

Commission received comment letters from: AIMA; Chilton; Bart; Better Markets; the Chamber of Commerce (together with ISDA, FIA and others); CME; Commercial Alliance; an industry group consisting of FIA, FIA Principal Traders Group, MFA, ISDA, and SIFMA Asset Management Group (collectively, the “Industry Group”); Hartree; Hudson Trading; ICE; KCG; MFA; MGEX; Milliman Financial Risk Management LLC (“Milliman”); MMI; Nadex; QIM; Schwartz; and TT.

<sup>15</sup> The preamble to any final rules that the Commission may adopt for Regulation AT would provide a more complete summary of all comments received, including in response to the NPRM.

<sup>16</sup> *E.g.*, CME A–7; ICE 6; MFA 34; Nadex 1–2.

<sup>17</sup> FIA 5; CME 6, A–14; ICE 5; MFA 4–5; Nadex 3; SIFMA 20; NIBA 1–2.

<sup>18</sup> As explained in Sections II and VI below, these provisions would establish a framework where FCMs act as one of two pre-trade risk control layers for all electronic trading *not* originating with an AT Person (*see* Supplemental proposed § 1.82). AT Persons would remain responsible for their own pre-trade risk controls in lieu of any FCM (*see* NPRM proposed § 1.80). However, the Supplemental NPRM provides additional flexibility by permitting AT Persons to delegate their pre-trade risk control functions to an FCM, while retaining legal responsibility for such controls (*see* Supplemental proposed § 1.80(d) and (g)). The Supplemental NPRM would also permit a non-AT Person to administer its own pre-trade risk controls if it so desired by voluntarily assuming AT Person

A significant source of discussion in response to the NPRM focused on the source code provisions in NPRM proposed § 1.81(a)(vi). Commenters raised confidentiality, intellectual property, and information security as primary concerns. Many recommended that registrants’ source code should be available to the Commission only through subpoena.<sup>19</sup> Some commenters also noted that source code by itself may be of limited value to the Commission, and noted the importance of records such as log files in understanding the market behavior of an ATS.

The Commission is sensitive to commenters’ confidentiality and information security concerns as summarized above and in Section IV of this Supplemental NPRM. As explained above, the Commission believes that its intent with respect to source code was misunderstood. Specifically, the Commission did not intend for a source code repository be maintained at the Commission or with third-parties. However, the Commission also emphasizes that preservation of source code, and Commission access to such source code, is vital. Recordkeeping and access to records are and have always been central to the Commodity Exchange Act’s (“Act” or “CEA”) statutory framework for regulated derivatives markets. Further, as a civil law enforcement agency, the Commission already handles sensitive, proprietary and trade secret information on a daily basis under strict retention and use requirements. Cybersecurity and the protection of confidential information are a top priority for the Commission, and all current and former CFTC employees are prohibited by 17 CFR 140.735–5 from disclosing confidential or non-public commercial, economic or official information.

Through this Supplemental NPRM, the Commission seeks to balance commenters’ concerns against its legitimate regulatory interest in ensuring that the Algorithmic Trading Source Code that is often essential for transacting in modern electronic markets is preserved and is available to the Commission when necessary. Source code related provisions are now reflected in a new Supplemental proposed § 1.84, which provides that any CFTC access to Algorithmic Trading Source Code must be authorized by the Commission itself through either the part 11 subpoena process or through a

status pursuant to Supplemental proposed § 1.3(xxxx)(2).

<sup>19</sup> *E.g.*, AIMA 10–11; Barnard 2; Citadel 2; FIA 48; Hudson Trading 3; ICE 7; ISDA 6; MFA 23; MGEX 24–25; MMI 5; Commercial Alliance 12; QIM 5; TraderServe 1; TT 7; Two Sigma 4–5.

new “special call” process set forth in the proposal. Supplemental proposed § 1.84 also addresses records required to be maintained, confidentiality protections, and the time period for which records must be maintained. Supplemental proposed § 1.84 would replace NPRM proposed § 1.81(a)(vi) in its entirety.

Other amendments in the Supplemental NPRM address commenters’ concerns regarding the proposed definition of DEA, AT Persons’ compliance with rules when using third-party providers for their Algorithmic Trading technology, and other areas. With respect to third-party providers, for example, the Commission is adding Supplemental proposed § 1.85, which would permit AT Persons to rely on certifications from their third-party providers to meet certain requirements in Regulation AT. Such certifications would be permitted primarily with respect to NPRM proposed § 1.81(a), which requires AT Persons to follow certain standards in the development and testing of their ATs.

Comments received in response to specific proposals in the NPRM are discussed in greater detail below.

## II. AT Person Status and Requirements for AT Persons

### A. Overview and Policy Rationale for New Proposal

The proposed rules in Regulation AT apply in large part to market participants who meet the requirements to be an “AT Person” as defined in NPRM proposed § 1.3(xxx).<sup>20</sup> AT Persons include existing Commission registrants engaged in Algorithmic Trading,<sup>21</sup> as well as certain

<sup>20</sup> In addition to AT Persons, Regulation AT also includes requirements for FCMs, DCMs, and RFAs.

<sup>21</sup> Algorithmic Trading is defined in NPRM proposed § 1.3(zzzz) to mean trading in any commodity interest as defined in paragraph (yy) of this section on or subject to the rules of a designated contract market, where: (1) One or more computer algorithms or systems determines whether to initiate, modify, or cancel an order, or otherwise makes determinations with respect to an order, including but not limited to: The product to be traded; the venue where the order will be placed; the type of order to be placed; the timing of the order; whether to place the order; the sequencing of the order in relation to other orders; the price of the order; the quantity of the order; the partition of the order into smaller components for submission; the number of orders to be placed; or how to manage the order after submission; and (2) Such order, modification or order cancellation is electronically submitted for processing on or subject to the rules of a designated contract market; provided, however, that Algorithmic Trading does not include an order, modification, or order cancellation whose every parameter or attribute is manually entered into a front-end system by a natural person, with no further discretion by any

unregistered market participants who would be required to register as New Floor Traders pursuant to NPRM proposed § 1.3(x)(1)(iii). Registration criteria proposed in NPRM § 1.3(x)(1)(iii) for currently unregistered market participants include that such market participant be engaged in: (1) Proprietary (2) Algorithmic Trading (3) through DEA on a DCM. In the NPRM, the Commission preliminarily determined that these criteria could function as “filters” on the population of AT Persons, and therefore on the overall scope of the proposed rules. The Commission estimated that this definition would result in a total of 420 potential AT Persons, and believed that this would represent the top end of the range of AT Persons. The Commission based its proposal, in part, on the view that proprietary trading, DEA, and Algorithmic Trading together could appropriately identify those market participants, including new and existing registrants, that any rulemaking should encompass to effectively address risks associated with Algorithmic Trading.

The Commission’s estimates notwithstanding, a number of commenters have opined that the NPRM would capture substantially more than 420 AT Persons. Commenters indicated that DEA is a widespread practice, including potentially among proprietary retail market participants. Some commenters also suggested that the Commission’s proposed definition of Algorithmic Trading may be of limited value in filtering the number of AT Persons because, for example, it incorporates certain automated order routing systems (“AORs”). At one end of the comment spectrum, several commenters stated that AT Persons could number in the thousands.<sup>22</sup>

The Commission has carefully considered all comments regarding the number of potential AT Persons pursuant to the proposed rules, particularly those comments indicating that the NPRM’s defined terms and other elements may not successfully filter the scope of the rules. The Commission is therefore proposing in this Supplemental NPRM the addition

computer system or algorithm, prior to its electronic submission for processing on or subject to the rules of a designated contract market.

<sup>22</sup> See, e.g., MFA 6, 12–13 (indicating that potentially thousands of market participants would be subject to Regulation AT); Nadex 1–2 (indicating that estimated number of affected participants would be significantly higher than 100, potentially in the thousands); FIA 91 (stating that “DCMs will be flooded by hundreds, if not thousands, of annual reports” pursuant to NPRM proposed §§ 1.83 and 40.22); CME A–7 (indicating that the DEA definition would capture trading activity of thousands of firms).

of a volume threshold test to the definition of AT Person. In doing so, the Commission has also considered comments that any volume of trading potentially could pose risks. However, status as an AT Person involves compliance costs due to Regulation AT risk control, testing, recordkeeping and other requirements, and accordingly the Commission has determined that, at this time, it is appropriate to limit the population of AT Persons to larger market participants, including those responsible for significant trading volumes and liquidity in CFTC-regulated markets. The Commission emphasizes that its proposed framework requires FCMs to act as one of two pre-trade risk control layers for all Electronic Trading not originating with an AT Person (see Supplemental proposed § 1.82). Accordingly, the proposed risk control framework is not limited to the trading of AT Persons who satisfy a quantitative threshold (*i.e.*, the volume threshold test described in Section II below).

The Commission emphasizes, as stated above, that Regulation AT is not intended to capture large swaths of new or existing registrants. The focus on Algorithmic Trading and DEA, among other criteria, reflects the Commission’s interest in sophisticated market participants that can bring significant human capital, information technology, or other resources to bear on trading in modern markets. The definition of AT Person in Regulation AT is centered on larger market participants, including, those “responsible for significant trading volumes and liquidity.”<sup>23</sup> Such market participants include existing Commission registrants, and an important population of proprietary traders who heretofore have remained outside of the Commission’s registration regime. The Commission has determined to address both sets of market participants through a straightforward test for potential AT Persons that measures all market participants’ presence on DCMs: Total trading volume for all products across all DCMs, as described below.

Taking these considerations into account, the Commission has determined that a quantitative volume threshold test is best suited to identifying larger market participants who should be brought within the Commission’s regulatory purview. To that end, the Commission is proposing a new approach that includes quantitative metrics based on a market participant’s average daily trading volume across all products. Specifically,

<sup>23</sup> See NPRM at 78827.

the Commission is proposing a volume threshold of 20,000 contracts traded on average per day, including for a firm's own account, the accounts of customers, or both, over a six month period. The Commission believes that this approach will facilitate the identification of AT Persons through the use of clear, numerical standards that can be calculated easily by market participants and are verifiable in the Commission's data. The Commission further believes that the proposed volume threshold test is an appropriate vehicle to define the scope of AT Persons, in combination with the proposed definition of Algorithmic Trading and the proposed amended definition of DEA.<sup>24</sup> As discussed below, the Commission also considered a variety of quantitative thresholds in formulating the Supplemental NPRM proposal, including order related measurements and frequency metrics.

#### B. NPRM Proposal and Comments

The term "AT Person," as defined in the NPRM, involves several interrelated terms, including AT Person, floor trader, DEA, and Algorithmic Trading. The definitions proposed in the NPRM for each of those terms are discussed below, and changes thereto are noted where applicable.

*AT Person.* The NPRM proposed to define AT Person as an existing Commission registrant that engages in Algorithmic Trading on or subject to the rules of a DCM, or a New Floor Trader. In this Supplemental NPRM, the Commission is proposing an additional requirement for AT Person status: A volume threshold test, as described in Section II(C) below. In addition, as discussed below in Section VI(D)(3)(c), the Commission is also proposing to permit market participants to voluntarily elect AT Person status.<sup>25</sup>

The defined term "AT Person" remains central to the structure of the proposed rules. Regulation AT defines the term "AT Person" in order to

<sup>24</sup> The Commission also considered alternatives based on defined terms such as "DEA" and "Algorithmic Trading" that also serve to define the scope of AT Persons. The Supplemental NPRM proposes revisions to the definition of DEA based on public comments that the NPRM proposed definition was ambiguous, but does not propose amendments to the definition of Algorithmic Trading. The Commission believes the volume-based approach proposed herein is a better option as it is based on verifiable and easily observed data regarding the trading volumes of all market participants on DCMs.

<sup>25</sup> See Supplemental proposed § 1.3(xxxx)(2). The Commission is providing flexibility so that non-AT Person market participants can administer their own pre-trade risk controls in lieu of controls that its FCM must otherwise impose. Such market participants must register as New Floor Traders and comply with obligations imposed on AT Persons.

identify which entities are subject to the proposed regulations addressing trading firms' management of the risks associated with automated trading.

These regulations include, for example, pre-trade and other risk controls on the orders initiated by the trading firm, and standards for the development, testing and supervision of ATs. The definition of AT Person under NPRM proposed § 1.3(xxxx) lists those persons or entities that may be considered an AT Person, namely (1) persons registered or required to be registered as FCMs, floor brokers, swap dealers ("SDs"), major swap participants ("MSPs"), commodity pool operators ("CPOs"), commodity trading advisors ("CTAs"), or introducing brokers ("IBs") that engage in Algorithmic Trading on or subject to the rules of a DCM; or (2) persons registered or required to be registered as floor traders as defined in § 1.3(1)(iii).<sup>26</sup>

*Direct Electronic Access.* Through this Supplemental NPRM, the Commission is proposing to amend the definition of DEA originally proposed in the NPRM. In the NPRM, the Commission proposed a new § 1.3(yyyy) that defined DEA as an arrangement where a person electronically transmits an order to a DCM, without the order first being routed through a separate person who is a member of a DCO to which the DCM submits transactions for clearing. By using the word "routed," the Commission indicated that it means the process by which an order physically goes from a customer to a DCM. Section III below discusses the Commission's revisions to the proposed definition of DEA as part of this Supplemental.

*Algorithmic Trading.* The Commission is not proposing to amend the definition of Algorithmic Trading originally proposed in the NPRM.<sup>27</sup>

<sup>26</sup> In the NPRM, the Commission proposed amending the definition of "floor trader" in existing § 1.3(x) to facilitate the registration of proprietary traders using DEA for Algorithmic Trading on a DCM. The NPRM proposed requiring such persons (*i.e.*, New Floor Traders) to register as floor traders, assuming they were not already registered or required to register with the Commission in another capacity.

<sup>27</sup> In the NPRM, the Commission proposed a new § 1.3(zzzz) that defines Algorithmic Trading as trading in any commodity interest as defined in Regulation 1.3(yy) on or subject to the rules of a DCM, where: (1) One or more computer algorithms or systems determines whether to initiate, modify, or cancel an order, or otherwise makes determinations with respect to an order, including but not limited to: the product to be traded; the venue where the order will be placed; the type of order to be placed; the timing of the order; whether to place the order; the sequencing of the order in relation to other orders; the price of the order; the quantity of the order; the partition of the order into smaller components for submission; the number of orders to be placed; or how to manage the order after submission; and (2) such order, modification or order cancellation is electronically submitted for

As the Commission explained in the NPRM, "[t]he term 'Algorithmic Trading' is a critical underpinning" of Regulation AT.<sup>28</sup> It noted that the proposed definition of Algorithmic Trading is similar to that which was adopted by the European Commission under MiFID II, except that it also includes AORs.<sup>29</sup> It observed that "automated order routers have the potential to disrupt the market to a similar extent as other types of automated systems, and therefore should not be treated differently" under Regulation AT. It also explained that "given the interconnectedness of trading firm systems, carving out a particular subset of automated systems from the definition of Algorithmic Trading, *e.g.*, order routing systems, would introduce unnecessary complexity and reduce the effectiveness of the safeguards provided in its proposed regulations."<sup>30</sup> The Commission is cognizant of comments indicating some commenters' belief that the proposed definition of Algorithmic Trading should be revised to exclude certain systems such as AORs. However, the Commission has thus far been presented with no persuasive evidence establishing that the operation of AORs presents less risk to the market than other types of automated or algorithmic systems.

*Comments Received.* As discussed above, the NPRM proposed to define AT Person as an existing Commission registrant that engages in Algorithmic Trading on or subject to the rules of a DCM, or a New Floor Trader (*i.e.*, a market participant that engages in (1) proprietary (2) Algorithmic Trading (3) through DEA on a DCM). In addition to receiving comments on the substance of NPRM proposed terms such as "Algorithmic Trading" and "DEA,"<sup>31</sup> the Commission also received comments concerning the number of market participants that would qualify as AT Persons under the proposed rules, particularly as a function of the defined terms discussed above. Several

processing on or subject to the rules of a DCM; provided, however, that Algorithmic Trading does not include an order, modification, or order cancellation whose every parameter or attribute is manually entered into a front-end system by a natural person, with no further discretion by any computer system or algorithm, prior to its electronic submission for processing on or subject to the rules of a DCM.

<sup>28</sup> See NPRM at 78840.

<sup>29</sup> See *id.*

<sup>30</sup> See *id.*

<sup>31</sup> The comments received regarding the NPRM proposed definition of DEA are discussed in Section III(B) below. The Commission is proposing a revised definition of DEA, as set forth in Section III(C) below. The Commission is not proposing to amend the NPRM proposed definition of Algorithmic Trading.

commenters asserted that the number of persons or entities that would come within the NPRM proposed definition of AT Person is higher than the Commission's estimate of 420 AT Persons. ICE commented that "[i]f read broadly (*i.e.* orders routed through an FCM's risk management controls located at the exchange but not physically routed . . . through the FCM are considered DEA), the Commission's estimated 100 market participants that would be impacted by Regulation AT would increase to include the vast majority of all market participants."<sup>32</sup> The Commercial Alliance stated that Regulation AT could apply to "a large segment of commercial energy and agricultural firms," contrary to the Commission's intent to limit its scope to one hundred new registrants.<sup>33</sup> MFA commented that "the breadth of the Regulation AT definitions are [sic] likely to capture many more market participants as AT Persons than the 420 persons that the Commission estimates."<sup>34</sup> MFA estimated that if even half of the CTAs and CPOs registered with the Commission used an algorithmic trading execution system, there would be at least 1,270 CTAs and CPOs that would be AT Persons, exclusive of other registrant categories.<sup>35</sup>

Several commenters estimated the total number of AT Persons could number in the thousands. Specifically, MFA asserted that if a commodity pool or managed account could be considered an AT Person, "there could be tens of thousands of AT Persons."<sup>36</sup> CME commented that "the CFTC should recognize that orders can pass through software that is calibrated by clearing members but maintained and owned by a clearing member's IT provider (*e.g.*, TT or Bloomberg). If these orders are viewed as DEA orders because they are mischaracterized as bypassing clearing FCM controls, then the DEA definition will capture trading activity from significantly more firms (1000s) than the 100 firms mentioned in the rulemaking."<sup>37</sup>

During the Roundtable and the Second Comment Period, the

Commission received several comments regarding potential quantitative measures to establish the population of AT Persons. Better Markets commented that "[r]egarding a quantitative threshold, the CFTC must adopt a threshold using a metric that sets limits on volume and frequency."<sup>38</sup> Better Markets further commented that "[f]or registration purposes, FCMs should be tasked with monitoring proposed metrics and communicating these metrics to the CFTC because their 'know your customer' rules make them the most fit."<sup>39</sup> AIMA expressed concerns regarding quantitative measures, commenting that it "considers that additional metrics on top of the current proposed definition of AT Person may not be the optimal solution to avoid the disproportionately broad scope capturing excessive numbers of registered firms. The fundamental problem causing a large population of potential AT Persons is the inappropriately broad definition of [Algorithmic Trading]."<sup>40</sup> The Commercial Alliance also took the position that the Commission should not adopt a quantitative approach to establish the population of AT Persons.<sup>41</sup>

Commenters raised a number of concerns regarding potential quantitative measures, including that all algorithmic or electronic trading should be subject to appropriate risk controls;<sup>42</sup> that even a small volume of trading could pose risks to the marketplace;<sup>43</sup> that any quantitative measure would necessarily be arbitrary;<sup>44</sup> and that market participants could seek to modify their trading to "game" any quantitative measure.<sup>45</sup> The Commission has carefully considered all comments received, and believes that the proposals set forth in this Supplemental NPRM address the comments regarding quantitative

measures raised during the Roundtable and in written comments.

Specifically, the Commission is proposing to establish a framework where FCMs act as one of two pre-trade risk control layers for all Electronic Trading *not* originating with an AT Person (*see* Supplemental proposed § 1.3(2)). The volume threshold test would identify those market participants with the most significant presence in CFTC-regulated markets. The Commission is also proposing an anti-evasion provision in Supplemental proposed § 1.3(xxxx)(4) to address commenters' concerns that a quantitative measure could be "gamed" by market participants.<sup>46</sup> As discussed in Section II(C) below, the proposed anti-evasion provision states that no person shall trade contracts or cause contracts to be traded through multiple entities for the purpose of evading the floor trader registration requirements under Supplemental proposed § 1.3(x)(3), or to avoid meeting the definition of AT Person under Supplemental proposed § 1.3(xxxx).

### C. Substance of New Proposal

In light of comments received, the Commission is proposing an additional requirement for AT Person status: A volume threshold test. Pursuant to Supplemental proposed § 1.3(xxxx), a market participant may fall under the definition of AT Person in one of three ways. First, the category of AT Persons includes persons registered or required to be registered as an FCM, floor broker, SD, MSP, CPO, CTA, or IB that (1) engages in Algorithmic Trading and (2) satisfies the volume threshold test under Supplemental proposed § 1.3(x)(2) (as discussed in greater detail below).<sup>47</sup> Second, AT Persons include New Floor Traders under Supplemental proposed § 1.3(x)(1)(iii).<sup>48</sup> Such New Floor Traders must engage in Algorithmic Trading, utilize DEA, and satisfy the volume threshold test under Supplemental proposed § 1.3(x)(2). Third, a person who does not satisfy either of the other two prongs of the AT Person definition may nevertheless elect to become an AT Person, provided that such person registers as a floor trader and complies with all requirements of AT Persons pursuant to Commission regulations.<sup>49</sup> In addition, each AT Person who is not already a member of an RFA must submit an application for

<sup>38</sup> Better Markets III 2.

<sup>39</sup> *Id.*

<sup>40</sup> AIMA III 3.

<sup>41</sup> Commercial Alliance III 2–4.

<sup>42</sup> ICE, transcript of June 10, 2016 Roundtable ("Roundtable Tr."), available at <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/transcript061016.pdf>, 110:14–114:5; Optiver, Roundtable Tr. 119:11–120:17; *see also* FIA 6, 13, 21; ICE 4; and MGEX 20–21 (commenting that all market participants trading electronically should use pre-trade and other risk controls appropriate to their trading).

<sup>43</sup> Hudson Trading, Roundtable Tr. 95:10–97:8, 135:12–136:19; Optiver, Roundtable Tr. 119:11–19; KCG, Roundtable Tr. 120:21–121:8.

<sup>44</sup> Hartree, Roundtable Tr. 100:7–101:7; AQR, Roundtable Tr. 106:5–107:17, 109:9–110:13.

<sup>45</sup> Milliman III 3; Hudson Trading, Roundtable Tr. 97:15–98:4; AQR, Roundtable Tr. 107:18–108:7; QIM, Roundtable Tr. 117:13–114:10.

<sup>46</sup> *See* AQR, Roundtable Tr. 107:18–108:7; Hudson River Trading, Roundtable Tr. 97:19–21.

<sup>47</sup> *See* Supplemental proposed § 1.3(xxxx)(1)(i).

<sup>48</sup> *See* Supplemental proposed § 1.3(xxxx)(1)(ii).

<sup>49</sup> *See* Supplemental proposed § 1.3(xxxx)(2).

<sup>32</sup> ICE 6.

<sup>33</sup> Commercial Alliance 2; *see also* IECA 6 (asserting that Regulation AT could affect "vastly more" than 100 proprietary trading firms).

<sup>34</sup> MFA 34.

<sup>35</sup> *See id.*

<sup>36</sup> MFA 12 n.23.

<sup>37</sup> CME A–7. *See also* TT 3 (commenting that "the definition of DEA will likely capture within the definition of 'floor trader' many single traders, small trading groups and even larger companies like energy firms who hedge on futures exchanges, all of whom trade through FCMs and are often substantial liquidity providers.").

membership to at least one RFA, as discussed below.

### 1. Volume Threshold Test for AT Persons

In light of commenter views that the Commission has underestimated the number of AT Persons that would fall within the scope of Regulation AT, the Commission proposes modifying the proposed definition of AT Person to incorporate a volume threshold test. Specifically, Supplemental proposed § 1.3(x)(2) would require potential AT Persons to determine whether they trade an aggregate average daily volume of at least 20,000 contracts for their own account, the accounts of customers, or both. The Commission notes that while many Commission registration categories (*e.g.*, FCM, CPO, floor broker, etc.) may trade both their proprietary and customer accounts, New Floor Traders are likely to trade solely for themselves. Accordingly currently unregistered market participants would likely look to their proprietary trading volume when determining whether they satisfy the volume threshold test.<sup>50</sup> For purposes of the volume threshold test, potential AT Persons would be required to calculate their aggregate average daily volume across all products on the electronic trading facilities<sup>51</sup> of all DCMs on which they trade.<sup>52</sup> Aggregate average daily volume would be calculated in six-month periods, from each January 1 through June 30 and each July 1 through December 31, based on all trading days in the respective period.<sup>53</sup> For purposes of calculating the aggregate average daily volume, AT Persons would also be required to aggregate their own trading volume and that of any other persons controlling, controlled by or under common control with the potential AT Person.<sup>54</sup>

The Commission believes that a volume threshold test based on total trading volume across the electronic trading facilities of all DCMs best matches the goals of AT Person regulation, including risk controls, recordkeeping and testing and

monitoring of automated systems requirements that will prevent and reduce the potential risk of market disruption caused by technological malfunction or other error. This volume threshold test would apply to both current and new Commission registrants to help define whether they are AT Persons.

In making this determination, the Commission reviewed other quantitative thresholds proposed, or finalized, for regulatory purposes similar to those in Regulation AT. These other quantitative thresholds include, for example, tests proposed by ESMA for identifying high-frequency traders in European markets, *i.e.*, average resting order times and daily number of messages sent by a trading entity. The Commission's purpose in creating the new AT Person category is to ensure that risk management, testing and monitoring standards are sufficiently high for larger market participants in futures markets, regardless of strategy or firm type. The Commission believes that, out of all actions taking place on an electronic platform, consummated transactions are the key element of market processes such as price discovery and risk transfer. For this reason, larger entities, across products taken as a whole, should be held to standards sufficient to mitigate the risks of general market disruptions or degradations in the quality of trading.

The Commission proposes setting a six-month window for calculating average daily trading volume. The Commission's intent is that a longer window will smooth out episodic volume fluctuations experienced by a firm through the year for a variety of reasons, including, for example, hedging practices, roll activity, or other seasonal reasons. By doing this, the set of AT Persons should be restricted to entities that are larger, sufficiently high-volume traders. The averaging window also should moderate the effect of market events where there is unusually high volume relative to historical levels.

The volume threshold test definition does not make a distinction between futures products or between futures and options contracts for the purposes of aggregation. The Commission believes this is appropriate to help facilitate the volume calculation for potential AT Persons. Accordingly, the proposed volume threshold test instead results in an averaging across markets and products.

Using the proposed definition, and a trading volume threshold of 20,000 contracts traded per day on DCM electronic trading facilities—including for a firm's own account, the accounts

of customers, or both, over a six month period—the Commission estimates that there would be approximately 120 AT Persons, a portion of which would be newly registered under the amended definition of floor trader.<sup>55</sup> In order to derive this estimate, the Commission made use of daily trading audit trail data, for futures and options on futures, received from a number of DCMs. This audit trail data included information about the trading activity of market participants on the electronic trading facility of each DCM, coinciding with the order and trade activity associated with electronic trading, the focus of many other elements of this Supplemental NPRM. Because the volume threshold test is based on activity within a semi-annual period, the Commission calculated the average activity of individual firms during the first half of 2016 and used these aggregate numbers as an activity benchmark. Aggregating this activity across the DCMs for which the Commission had firm identification provided a basis for estimating the number of potential AT Persons. The Commission notes that its data provides a significantly comprehensive, but not a full, identification of the firms associated with each trade; in other cases, the firm associated with a trade may be the broker rather than the principal. For these reasons, the Commission estimates for the number of AT Persons may omit some firms that would meet the volume threshold requirements.

Because trading patterns for a given entity or firm may change over time, the Commission acknowledges that traders who are active enough to fall above the AT Person volume threshold test during a given semi-annual period may, over time, reduce their activity levels. To accommodate changes in strategy and in the use of futures markets, the AT Person definition allows for current AT Persons to drop their designation as an AT Person if they fall below the volume threshold for two consecutive six-month periods.<sup>56</sup>

<sup>55</sup> The Commission notes that over time it may amend the volume threshold it adopts in any final rules for Regulation AT. Such amendments would be an outgrowth of the Commission's experience with the volume threshold it adopts in final rules. As the Commission is proposing to codify the volume threshold in its rules, any future changes would necessarily be pursued through further notice and comment rulemaking.

<sup>56</sup> The Commission's proposed volume threshold test helps determine, together with other factors, a market participant's obligation to register as a New Floor Trader. As described above, any Commission registrant who is also an AT Person, including a floor trader, may cease to be bound by the requirements applicable to AT Persons if such registrant falls below the volume threshold test for

<sup>50</sup> However, if a currently unregistered market participant is in fact trading the accounts of customers consistent with the Act and Commission regulations, such market participant should include their customer trading volume, in addition to their proprietary volume, when determining whether it satisfies the volume threshold test.

<sup>51</sup> "Electronic trading facility" is defined in section 1a(16) of the CEA. The aggregate average daily volume would not include block trades, exchange for related positions, pit trades, or other transactions outside a DCM's electronic trading platform.

<sup>52</sup> See Supplemental proposed § 1.3(x)(2)(i).

<sup>53</sup> See Supplemental proposed § 1.3(x)(2)(ii).

<sup>54</sup> See Supplemental proposed § 1.3(x)(2)(iii).

## 2. Registration as a Floor Trader

Supplemental proposed § 1.3(x) modifies the new definition of floor trader, which also make up the group of AT Persons under Supplemental proposed § 1.3(xxxx)(1)(ii). Under the Supplemental proposed definition, a floor trader must, in addition to using DEA to conduct Algorithmic Trading (as proposed in the NPRM), also satisfy the volume threshold test set forth in Supplemental proposed § 1.3(x)(2). This proposal will help to address concerns that too many market participants would be captured by the new definition of floor trader proposed in the NPRM.

Supplemental proposed § 1.3(x)(3) specifies the period of time provided to an entity meeting these conditions to register as a floor trader and come into compliance with the requirements for AT Persons. Specifically, Supplemental proposed § 1.3(x)(3) provides that an unregistered person who satisfies Supplemental proposed §§ 1.3(x)(1)(iii)(A), (x)(1)(iii)(B) and (x)(1)(iii)(C), and who meets the volume threshold test in Supplemental § 1.3(x)(2) in any January 1 through June 30 or July 1 through December 31 period, shall register as a floor trader within 30 days after the end of such period and shall comply with all requirements of AT Persons pursuant to Commission regulations within 90 days after the end of such period.

Supplemental proposed § 1.3(x)(3)(ii) describes which person or persons must register if there is an “affiliate group,” under common control, that meets the volume threshold test in the aggregate. Supplemental proposed § 1.3(x)(3)(ii) states that for any group consisting of a person and any other persons controlling, controlled by or under common control of such person, if such group of persons in the aggregate satisfies the volume threshold test set forth in Supplemental proposed § 1.3(x)(2), then one or more persons in such group must register as floor traders. These registrations would need to continue across affiliated entities until the aggregate average daily volume of the unregistered persons in the group trade an aggregate average daily volume below the volume threshold test set forth in § 1.3(x)(2).<sup>57</sup>

two consecutive six-month periods. The Commission notes, however, that a floor trader who ceases to be an AT Person shall still be registered as a floor trader unless it formally applies for withdrawal from registration as described in Commission § 3.33.

<sup>57</sup> The Commission’s proposal for aggregating the trading volume of affiliated entities under common control is modeled on analogous provisions in the Commission’s swap dealer registration

## 3. Anti-Evasion

Supplemental proposed § 1.3(x)(4) provides that no person shall trade contracts or cause contracts to be traded through multiple entities for the purpose of evading the registration requirements imposed on New Floor Traders under § 1.3(x)(3), or to avoid meeting the definition of AT Person under § 1.3(xxxx). The purpose of this provision is to prevent market participants whose trading volume would otherwise cause them to fall within the definition of New Floor Trader (and, therefore, AT Person), but who trade through multiple entities for the purpose of falling below the volume threshold test, from avoiding registration. By including such anti-evasion provision, the Commission seeks to prevent market participants from structuring transactions and legal entities in order to avoid the requirements of Regulation AT. Examples of these structures might include trading through multiple “shell” companies that individually trade below the threshold, or trading through one entity for part of the year, then ceasing all trading activity for that entity and trading instead through a newly formed entity, similarly leaving average daily volume under the threshold.

## 4. Registration for Membership With a Registered Futures Association

In addition to being registered with the Commission in some capacity, AT Persons must also submit applications for membership in at least one RFA.<sup>58</sup> In particular, Supplemental proposed § 170.18 requires that an AT Person not yet a member of an RFA must submit an application for membership in at least one RFA within 30 days of such AT Person satisfying the volume threshold test set forth in Supplemental proposed § 1.3(x)(2).<sup>59</sup> In addition, Supplemental proposed § 1.3(xxxx) provides that any

requirements. See existing § 1.3(ggg)(4) and Interpretative Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292 (July 26, 2013).

<sup>58</sup> The Commission is cognizant that upon the adoption of final rules for Regulation AT, an RFA may need additional time to prepare its governance structure, membership categories, application materials, and other internal processes to accommodate New Floor Traders. Accordingly, the Commission may determine to delay the compliance date for Supplemental proposed § 170.18 for a short period of time so that an RFA may complete such processes prior to receiving its first application for membership from a New Floor Trader.

<sup>59</sup> Any unregistered person who meets the requirements to register as a New Floor Trader would have identical 30-day periods in which to both register with the Commission and apply for membership in an RFA.

person that elects to become an AT Person must submit an application for membership to at least one RFA pursuant to Supplemental proposed § 170.18 within 30 days of such person choosing to become an AT Person.<sup>60</sup>

## D. Commission Questions

1. The Commission invites comment on the proposed volume threshold test set forth in Supplemental proposed § 1.3(x)(2). In particular, the Commission specifically invites comment on whether the volume threshold test is an appropriate means of identifying those market participants who should qualify as AT Persons and therefore be subject to the proposed risk control, recordkeeping testing and monitoring and other requirements in Regulation AT.

2. If you believe that AT Persons should be identified by a quantitative measure other than the proposed volume threshold test, please identify and describe such alternative measure, including the number and types of market participants that would qualify as AT Persons.

3. The proposed volume threshold test would require a potential AT Person to determine whether it trades an aggregate average daily volume of at least 20,000 contracts over a six month period. Do you believe that a potential AT Person’s average daily volume for purposes of the volume threshold test should instead be calculated only over the days in which the potential AT Person trades during the six month period? Would such alternative better address potential AT Persons who may trade infrequently over the course of a six month period, but in large quantities when they do trade?

4. The Commission estimates that its proposed volume threshold of 20,000 contracts traded per day, including for a firm’s own account, the accounts of customers, or both, across all products and DCMs, would capture approximately 120 market participants, including new and existing registrants. Please comment on the Commission’s estimate. Do you believe that the number of market participants captured by this volume threshold test would be greater or fewer than 120? Please indicate how many of these market participants are currently registered with the Commission and how many are not.

<sup>60</sup> The Commission does not require such membership to be in a specific membership category. An RFA may register such AT Persons as “floor traders,” or choose to create a subset or other category of Regulation AT floor traders for membership purposes.

5. With the addition of the proposed volume threshold test, do you believe that any AT Person will be a natural person or a sole proprietorship with no employees other than the sole proprietor?

6. For the proposed volume threshold test, please explain any challenges that could arise with respect to implementation. For example, what difficulties might an entity potentially subject to Regulation AT encounter in calculating whether it meets the volume threshold? Will the entity be able to readily distinguish between trades executed on a DCM's electronic trading facility and other trades executed on or pursuant to the rules of the DCM? Does the volume threshold test potentially capture a set of entities that should not be subject to Regulation AT?

7. For the proposed volume threshold test, please explain whether the proposed rule should specify a different aggregation level for purposes of deciding who is an AT Person (e.g., individual DCMs, individual products), or whether the aggregation should be done over a time period different than the proposed semi-annual window.

8. For the proposed volume threshold test, please explain whether certain trades should be weighted differently in calculating the volume aggregation, or whether certain trades such as spread trades should be excluded from the aggregation.

9. For the proposed volume threshold test, the Commission proposes to set a single threshold incorporating trading in all products and on all DCMs in order to facilitate calculations for potential AT Persons. Please explain whether the Commission should instead set different thresholds for groups of related products, or on a per-DCM basis, or other more granular measures than the aggregation of a potential AT Person's trading across all products and DCMs. Please also discuss the added complexity of any such alternate system, and explain why such system is preferable despite such complexity.

10. Supplemental proposed § 1.3(x)(2)(ii) calls for aggregate average daily volume to be calculated in six-month periods, from each January 1 through June 30 and each July 1 through December 31. The Commission requests comment regarding when to begin the first six-month measurement period for any final rules that the Commission adopts. For example, the Commission anticipates that for any final rules with an effective date prior to July 1, 2017, the first measurement period will be July 1 through December 31, 2016. Alternatively, the Commission could delay the effective date for certain

elements of the final rules to a date from July 1, 2017 onwards. In such case, the first measurement period could be January 1 to June 30, 2017.

11. The Commission invites comment on whether any future changes to the volume threshold deemed appropriate by the Commission (subsequent to a final rulemaking on Regulation AT) should be made by notice and comment rulemaking. Commenters are particularly invited to address potential alternatives to updating the volume threshold, if any.

12. The Commission invites comment as to how the proposed volume threshold test should be applied to members of an affiliated group. Commenters are particularly invited to address how the Commission should interpret common control for these purposes, and whether this interpretation should be limited to wholly-owned affiliates.

13. The Commission requests comment regarding the appropriate amount of time for an entity to register as a New Floor Trader and come into compliance with all requirements applicable to AT Persons, once such entity has triggered the criteria for registration and AT Persons status.

### III. Proposed Definition of DEA

#### A. Overview and Policy Rationale for New Proposal

The Commission proposed in NPRM § 1.3(yyyy) to define DEA for purposes of Regulation AT as an arrangement where a person electronically transmits an order to a DCM, without the order first being routed through a separate person who is a member of a DCO to which the DCM submits transactions for clearing.<sup>61</sup> The NPRM explained that the term "routed" was intended to mean the process by which an order physically goes from a customer to a DCM. The Commission proposed this definition of DEA in the NPRM as a filter, along with Algorithmic Trading, to help define the category of proprietary traders that would be required to register as floor traders under Regulation AT. The Commission anticipated that the proposed definition of DEA could help to define the number of entities required to register as New Floor Traders, and to focus registration on larger market participants not otherwise registered with the Commission. In light of comments received on the NPRM, and in light of the proposed addition of a volume threshold test to filter out smaller market participants from floor trader

registration and its attendant obligations, the Commission is proposing an amended definition of DEA, as described below.

The Supplemental proposed defined term DEA means the electronic transmission of an order for processing on or subject to the rules of a contract market, including the electronic transmission of any modification of such order. DEA would *not* include orders, or modifications or cancellations thereof, (i) electronically transmitted to a DCM (ii) by an FCM (iii) that such FCM received from an unaffiliated natural person<sup>62</sup> (iv) by means of oral or written communications.<sup>63</sup> The amended definition differs from the NPRM definition in four key areas: (a) Eliminating the term "routed through"; (b) clarifying that DEA does *not* include orders submitted to a DCM by an FCM where such FCM received the order from an unaffiliated natural person by means of written or oral communication;<sup>64</sup> (c) changing the proposed rule's reference to "clearing members" of DCOs to any FCM; and (d) expanding the term "order" to include the cancellation or modifications of such order.

#### B. NPRM Proposal and Comments

In the NPRM, DEA was relevant to several of the proposed regulations. It was used as a filter to define the category of market participants required to register as floor traders and be subject to the requirements of Regulation AT

<sup>62</sup> The Commission notes that an "unaffiliated natural person" is one who has no affiliation with, and whose employer has no affiliation with, the FCM receiving the order. Such natural person may be communicating the order for another (unaffiliated) Commission registrant, an (unaffiliated) unregistered market participant, an (unaffiliated) end customer, etc. Examples of scenarios that are not DEA include: (1) An employee of a Commission registrant communicates an order to an unaffiliated FCM, verbally or in writing, for onward transmission by such FCM to a DCM; (2) A natural person customer communicates an order to an unaffiliated FCM, verbally or in writing, for onward transmission by such FCM to a DCM; and (3) An employee of customer that is a legal entity not registered with the Commission communicates an order to an unaffiliated FCM, verbally or in writing, for onward transmission by such FCM to a DCM. The Commission emphasizes that an unaffiliated natural person has no relationship, and their *employer* has no relationship, with the FCM receiving the order for submission to a DCM.

<sup>63</sup> The Commission notes that "written communications" may include email, text messages, or instant messaging "chat" tools, in addition to communications on paper. The common denominator is that such communications are in each instance specifically written by a natural person.

<sup>64</sup> The Commission notes that this exclusion addresses the "how" and "by whom" of an order's communication to the FCM. Such communication must be made by a (1) unaffiliated (2) natural person (3) verbally or in writing.

<sup>61</sup> See NPRM at 78844.

(see proposed § 1.3(x)(3)). In addition, DEA was relevant to revised § 38.255, which requires DCMs to have in place systems and controls reasonably designed to facilitate an FCM's management of the risks that may arise from Algorithmic Trading, and proposed § 1.82, which requires FCMs to implement such DCM-provided controls for DEA orders. This approach of enabling clearing FCMs to implement DCM-based controls is similar to how the Commission addresses financial risk management by FCMs, as reflected in existing DCM regulation § 38.607. Existing § 38.607 describes DEA as allowing customers of futures commission merchants to enter orders directly into a designated contract market's trade matching system for execution.<sup>65</sup> As discussed below, the Commission proposes to amend the definition of DEA to address various commenter concerns, and the term continues to be relevant to Supplemental proposed §§ 1.3(x)(1)(iii), 1.82 and 38.255.

*Comments Received.* The Commission received a range of comments concerning the scope and clarity of the definition of DEA proposed in the NPRM. Better Markets commented that the NPRM's definition of DEA encompassed all types of access commonly understood in Commission-regulated markets as "direct market access."<sup>66</sup> Other commenters raised a number of concerns over the NPRM proposed definition of DEA and its application to various types of market participants. One commenter cautioned that the NPRM proposed definition of DEA would not capture any market participants because clearing members are required to have risk controls over automated customer orders under existing § 1.73.<sup>67</sup> Some commenters found the NPRM definition too broad, and argued that it would capture individual traders and small trading groups, as well as large corporations using futures markets to hedge risks.<sup>68</sup> CME stated that this broader reading of DEA would capture thousands of firms if the term includes orders that pass through software calibrated by clearing members but maintained and owned by a clearing member's IT provider (e.g.,

TT or Bloomberg).<sup>69</sup> Two commenters suggested that the definition of DEA is unnecessary because any market participant trading electronically must utilize pre-trade and other risk controls appropriate to the nature of their trading.<sup>70</sup>

Several commenters asserted that the NPRM proposed definition of DEA lacks clarity,<sup>71</sup> and that the definition does not provide sufficient guidance as to what "being routed through a separate person" that is a member of a DCO means.<sup>72</sup> Many commenters argued that DEA should not include DCM-offered connectivity platforms such as WebICE or CME Direct.<sup>73</sup> Commenters also argued that DEA should not include platforms provided by third-party ISVs;<sup>74</sup> one commenter considered such ISVs to be an extension of the FCM's infrastructure where the FCM was able to control a risk control module on the platform.<sup>75</sup>

Some commenters also suggested that the NPRM definition was too narrowly focused on the role of clearing FCMs, as opposed to executing FCMs. Several commenters argued that executing FCMs could better act as gatekeepers over customer order flow than clearing FCMs.<sup>76</sup> For example, Milliman commented that NPRM proposed § 1.3(yyyy) should be modified to refer to an order being routed through a separate person who is an "executing agent" (rather than a clearing member).<sup>77</sup> QIM raised the issue of FCM "gateways" through which customers could submit orders, and commented that only the person or agent directly placing trades on a DCM should be considered to possess DEA.<sup>78</sup>

Commenters offered a variety of alternate definitions of DEA, with the intent that DEA not capture certain types of market participants. Bloomberg and TT offered alternate definitions that would exclude market participants

using third-party software platforms provided by FCMs.<sup>79</sup> CME offered an alternative definition that would exclude orders passing through risk controls administered by a clearing member.<sup>80</sup> FIA and the Commercial Alliance offered an alternative definition that would exclude orders that are first routed through an order routing system under the control of an FCM.<sup>81</sup> Better Markets proposed a definition that would take into consideration colocation and the use of FCM-provided software.<sup>82</sup> Nadex supported defining DEA, consistent with existing Commission § 38.607, as "allowing customers of FCMs to enter orders directly into a DCM's trade matching system for execution."<sup>83</sup> Similarly, Nodal commented that the definition of DEA in § 38.607 "is an accurate definition of Direct Electronic Access that does not need revision."<sup>84</sup>

### C. Substance of New Proposal

The Commission proposes to amend the definition of DEA in § 1.3(yyyy) of the NPRM to address the comments summarized above, including with respect to potential ambiguities in the NPRM's definition of DEA. At the same time, the Supplemental NPRM retains DEA as one of the criteria for defining who must register as a New Floor Trader. The addition of the volume threshold test pursuant to Supplemental proposed § 1.3(x)(2) will act as a further filter for New Floor Traders, limiting registration to large market participants. This will limit AT Person status and its attendant obligations to only those market participants who meet the volume threshold test.

The Commission intends for the amended proposed definition of DEA to cover any arrangement where a market participant electronically transmits an order, modification or cancellation to a DCM. However, the amended proposed definition *excludes* from the definition of DEA any orders submitted by an FCM where the FCM receives such order from an unaffiliated natural person by means of written or oral communication. As noted in Section III(A) above, an "unaffiliated" natural person is one who has no affiliation with the FCM receiving the order for submission to a DCM. Similarly, the natural person's employer can have no affiliation with such FCM.

<sup>65</sup> In addition, in the context of foreign boards of trade, section 4(b)(1)(A) of the CEA defines "direct access" as an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade.

<sup>66</sup> Better Markets 3; Better Markets III 3-4.

<sup>67</sup> CME, 12.

<sup>68</sup> TT 3.

<sup>69</sup> CME A-7.

<sup>70</sup> FIA 6; ICE 4-5.

<sup>71</sup> TT 2; MFA 15; CME 11-12; ICE 4; IECA 7.

<sup>72</sup> TT 2; CME 11-12; ICE 4.

<sup>73</sup> FIA A-17; MFA 15; AGA 3; Commercial Alliance III 4; ICE 5; CME A-7.

<sup>74</sup> FIA A-6; MFA 15; TT 3; Commercial Alliance 4.

<sup>75</sup> FIA A-6.

<sup>76</sup> Milliman III 2. One commenter also noted that there may be non-FCM clearing members of a DCM, which could create situations under the NPRM proposed rules where there would be "no second line of pre-trade risk control administered by an FCM." Industry Group III 15 n.12. One commenter also suggested that limiting the exclusion to instances where a clearing member had risk controls in place would incentivize market participants to move away from the use of executing FCMs and give-up arrangements. See Bloomberg 7.

<sup>77</sup> Milliman III 2.

<sup>78</sup> QIM III 1.

<sup>79</sup> Bloomberg 8-9; TT 3.

<sup>80</sup> CME 12.

<sup>81</sup> FIA 6; Commercial Alliance 6.

<sup>82</sup> Better Markets III 4.

<sup>83</sup> Nadex III 2.

<sup>84</sup> Nodal 2.

The NPRM definition of DEA exempted orders that were “routed through” a clearing FCM. After receiving comments requesting clarification on this phrase, the Commission proposes changing the definition of DEA so that it does not include orders electronically submitted to a DCM by an FCM that such FCM first receives from an unaffiliated natural person by means of oral or written communications. The Commission believes that this revision clarifies which order submission methods are DEA, and which are not, for purposes of Regulation AT. The Commission expects that the language in which an FCM electronically submitting orders first received from an unaffiliated natural person by means of oral or written communications will only encompass situations where the FCM is acting in a true intermediating role: *i.e.*, where the FCM receives an order from a third-party (who may or may not be a Commission registrant) and the FCM then submits such order to a DCM for or on behalf of the third party. Each element of Supplemental proposed § 1.3(yyyy) is intended to emphasize an FCM’s active, involved intermediation as a necessary condition for non-DEA order submission, modification, or cancellation. Accordingly, non-DEA orders must be received by an FCM orally or in writing, from a natural person, who is unaffiliated and whose employer is unaffiliated with the FCM.

Because technological innovations have created, and may continue to create, new methods for market participants to connect to DCMs, the Commission has determined not to differentiate between currently existing connection types. Instead, the amended proposed definition would capture all electronic order submissions to a DCM as DEA, unless the order is first received by an FCM from an unaffiliated natural person by means of written or oral communication prior to being submitted to the DCM by the FCM.<sup>85</sup> To identify specific connection types in this definition—such as connection through a DCM’s application program interface (“API”)—risks having the definition become outdated with changes in technology while simultaneously

<sup>85</sup> The Commission understands that written or oral communications are not computer-generated, and therefore such communications would come from a natural person. The Commission notes that “written communications” may include email, text messages, or instant messaging “chat” tools, in addition to communications on paper. The common denominator is that such communications are in each instance specifically written by a natural person.

creating uncertainty over the regulatory standing of such new technology.

Second, the exclusion would apply only where an FCM receives an oral or written communication from a natural person for a particular order or series of orders. The exclusion would not apply to orders received through electronic systems or automated means, such as through any API or graphical user interfaces (“GUIs”) provided by an FCM. The exclusion also would not apply to any third-party ISV platforms, such as those provided by Bloomberg or TT, even if the FCM were able to calibrate or implement risk controls over customer order flow submitted through those platforms. Further, the exclusion would not apply to any orders submitted through DCM-provided APIs, such as WebICE or CME Direct. In each case, current and potential technological practices may serve to reduce or eliminate the role of an FCM or other Commission registrant as a true intermediary to the transaction.

Third, the Commission’s amended proposed definition also would change the entity that must be involved in an order’s transmittal to the DCM for such order not to be considered DEA. The NPRM proposal would exclude orders routed through a clearing member of a DCO to which the DCM submits trades for clearing, thus applying to clearing FCMs. The amended proposal would expand the exclusion from DEA to certain types of orders submitted by any FCM, including those FCMs that a market participant may use only to execute trades as well as those used to clear trades. This change is in response to various comments suggesting that executing FCMs could better act as gatekeepers on customer order flow than clearing FCMs.

Fourth, the amended proposal differs from the NPRM proposal in that the definition of DEA proposed in this Supplemental NPRM applies explicitly to modifications and cancellations of orders, not only initial order submissions. The Commission considers this a non-substantial clarification intended to align the DEA definition with the proposed definition of Algorithmic Trading (NPRM proposed § 1.3(zzzz)).

#### *D. Commission Questions*

14. Does the amended proposed definition of DEA appropriately capture all order submission methods to which the additional filters for New Floor Trader status (*i.e.*, Algorithmic Trading and the volume threshold test) should be applied?

## **IV. Algorithmic Trading Source Code Retention and Inspection Requirements**

### *A. Overview and Policy Rationale for New Proposal*

The Commission proposed NPRM § 1.81(a)(vi) to ensure that source code is preserved and available to the Commission when necessary. The NPRM required that AT Persons maintain a “source code repository” and make it available for inspection in accordance with existing § 1.31. The requirements proposed in the NPRM were intended to be consistent with the Commission’s traditional statutory and regulatory authorities governing recordkeeping and access to records; however, as explained below, some commenters misconstrued the proposal as requiring more than the Commission intended. Specifically, NPRM proposed § 1.81(a)(vi) did *not* require the transfer of all source code to the Commission or other third party for centralized storage. It also did not require that AT Persons provide their Algorithmic Trading Source Code to the Commission on a regular basis.

Comments received in response to NPRM proposed § 1.81(a)(vi) expressed intellectual property and information security concerns among numerous market participants and other observers. The Commission appreciates these concerns, including the commercial and enterprise value of market participants’ Algorithmic Trading Source Code. The Commission is proposing to revise NPRM proposed §§ 1.81(a)(1)(v) and (vi) as reflected in Supplemental proposed § 1.84. This new proposal directly addresses commenters’ concerns regarding Commission access to source code in several respects. Most importantly, access to Algorithmic Trading Source Code would not be governed by § 1.31. Instead, access to Algorithmic Trading Source Code and related records described in the proposed rule would require a subpoena approved by the Commission pursuant to part 11 or a “special call” which must also be approved by the Commission itself, a heightened procedural step that responds to concerns raised by market participants.

Through Supplemental proposed § 1.84, the Commission is endeavoring to balance its responsibility to oversee markets and market participants—including the operation of ATs which have become highly pervasive in modern electronic markets—with market participants’ strongly-held privacy and confidentiality concerns. Ultimately, it is imperative that the Commission have access to all information necessary for effective

regulatory oversight, including market surveillance and maintaining the safety and soundness of markets. The Commission believes that Supplemental proposed § 1.84 strikes an appropriate balance between regulatory needs and privacy concerns.

The Commission emphasizes that recordkeeping and Commission access to books and records are central to the Act's statutory framework for the oversight of regulated derivatives markets. Sections 4g, 4n(3)(A), 4r(c), and 4s(f)(1)(C) of the Act require all registrants and registered entities to maintain books and records, and provide for prompt access by the Commission and its staff. They include nearly identical language stating that registrants and registered entities shall keep books and records in such form and manner and for such period as may be required by the Commission; and shall keep such books and records open to inspection by any representative of the Commission.<sup>86</sup> These core statutory provisions recognize that the Commission must have adequate information to oversee markets and market participants subject to its jurisdiction.<sup>87</sup> Required books and records include not only those that must be reported to the Commission on a routine basis, but also books and records that registrants must maintain in their own possession and make available upon request by the Commission or its staff. The Act and Commission rules contemplate a range of mechanisms to obtain books and records, from prompt production to Commission staff through on-site inspection,<sup>88</sup> to subpoenas in

investigative proceedings pursuant to part 11 of the Commission's regulations.

As a civil law enforcement agency, the Commission handles sensitive, proprietary and trade secret information under strict retention and use requirements.<sup>89</sup> Further, cybersecurity and the protection of confidential information are a top priority for the Commission.<sup>90</sup> The Commission receives confidential information on a daily basis in a variety of contexts, and takes its legal obligation to protect such information seriously. The Commission has significant data security measures in place to protect sensitive information from internal or external threats. In addition, all current and former CFTC employees are prohibited by 17 CFR 140.735–5 from disclosing confidential or non-public commercial, economic or official information to any unauthorized person, or releasing such information in advance of authorization for its release.

In sum, this Supplemental NPRM and the Algorithmic Trading Source Code amendments proposed herein achieve four important goals. First, the Commission is clarifying its intent regarding Algorithmic Trading Source Code. The Commission's interest is in ensuring that Algorithmic Trading Source Code is preserved by AT Persons and that it be available for inspection by the Commission when needed to investigate, understand, and respond, for example, to significant market events, including market disruptions

and failures of the price discovery process. The Commission does not seek routine access to Algorithmic Trading Source Code, nor is it requiring that Algorithmic Trading Source Code be provided to repositories maintained by the CFTC or a third party.

Second, the Commission is proposing to codify in Supplemental proposed § 1.84(b) that any access to Algorithmic Trading Source Code must be authorized by the Commission itself. Such access could be authorized via subpoena, in an investigatory proceeding pursuant to part 11 of the Commission's regulations, or via special call authorized by the Commission and executed by the Director of the Division of Market Oversight (“DMO” or “Division”) pursuant to Supplemental proposed § 1.84(b). The Commission notes that the different methods of access to source code—subpoena or special call—depend on whether Commission staff is: (1) Formally investigating potential violations of law; or (2) carrying out its market oversight responsibilities. Subpoenas are typically issued in connection with enforcement investigations. The proposed special call authority and process is intended to require similar Commission approval, but to recognize, for example, the potential need for DMO to review source code, such as in association with unusual trading events or market disruptions. While some commenters recommended that the Commission rely on subpoenas for access to source code in all circumstances, the Commission believes it is important to distinguish investigatory proceedings from access to records by DMO in connection with market surveillance and related work.<sup>91</sup> However, both the subpoena and the special call would require approval by the Commission itself.

The Commission notes Supplemental proposed § 1.84's emphasis on access to Algorithmic Trading Source Code and related files in support of the Commission's market and trade practice surveillance functions. In executing the special call, communications from DMO to the AT Person could specify further procedures undertaken by the Division to help ensure the security of records provided. For example, the Division could specify the means by which it will access Algorithmic Trading Source Code or other records required by the special call, including on-site inspection at the facilities of the AT Person; the provision of records to the Commission on secure storage media or on

<sup>86</sup> 17 CFR 1.31. See Section 4g(a) of the Act, 7 U.S.C. 6g(a); Section 4n(3)(A) of the Act, 7 U.S.C. 6n(3)(A); Section 4r(c) of the Act, 7 U.S.C. 4r(c); and Section 4s(f)(1)(C) of the Act, 7 U.S.C. 6s(f)(1)(C). Sections 1.31 and 1.35 of the Commission's rules build on these statutory provisions by requiring registrants to keep full, complete, and systematic records, and to produce such records as required by any representative of the Commission. See 17 CFR 1.35; 17 CFR 1.31. Records must be kept for at least five years, and must be “readily accessible” during the first two years. See 17 CFR 1.31(a)(1). Records must be produced to the Commission in a form specified by any representative of the Commission, and production shall be made, at the expense of the person required to keep the book or record. See 17 CFR 1.31(a)(2).

<sup>87</sup> In addition to the statutory authority cited above under Sections 4g, 4n(3)(A), 4r(c), and 4s(f)(1)(C) of the Act, the Commission notes that Section 8a(5) of the Act provides additional authority for the proposed recordkeeping and inspection rules. Section 8a(5) authorizes the Commission to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act. 7 U.S.C. 12a(5).

<sup>88</sup> See 17 CFR 1.31(a)(2).

<sup>89</sup> See Section 8(a) of the Act, 7 U.S.C. 12(a) (providing that except as otherwise specifically authorized in the Act, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers); Section 8(e) of the Act, 7 U.S.C. 12(e) (providing that the Commission shall not furnish any information to a foreign futures authority or to a department, central bank and ministries, or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the information will not be disclosed by such foreign futures authority, department, central bank and ministries, or agency except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department, central bank and ministries, or agency thereof, or foreign futures authority, is a party); 17 CFR 145.5 (providing that the Commission may decline to publish or make available to the public certain nonpublic records, including records specifically exempted from disclosure by statute, including data and information which would separately disclose the business transactions or market positions of any person and trade secrets or names of customers); see also 5 U.S.C. 552(b)(4) (providing exemption from FOIA for trade secrets and commercial or financial information obtained from a person and privileged or confidential).

<sup>90</sup> See System Safeguards Testing Requirements, Final Rule, 81 FR 64272 (Sept. 19, 2016); System Safeguards Testing Requirements for Derivatives Clearing Organizations, Final Rule, 81 FR 64322 (Sept. 19, 2016).

<sup>91</sup> The Commission notes that it would continue to possess subpoena authority with respect to source code, as it does today.

computers lacking network connectivity; or the transfer of records to secure Commission systems with controlled access.

Third, and building on public comments regarding additional information necessary for the Commission to understand the operation of Algorithmic Trading in regulated markets, the Commission is proposing in Supplemental proposed § 1.84(a)(3) that AT Persons be required to keep records of log files generated in the ordinary course by their ATs. Absent subpoena, access to such log files would also be limited to special call by the Commission. As with other regulatory records, both Algorithmic Trading Source Code and log files would be required to be maintained for a period of five years.<sup>92</sup> Pursuant to Supplemental proposed § 1.84(b)(2), AT Persons would be required to maintain records “in a form and manner that ensures the authenticity and reliability of the information in such records,” and would also be required to have available “systems to promptly retrieve and display” records required to be maintained under Supplemental proposed § 1.84.<sup>93</sup>

Finally, consistent with section 8(a) of the CEA, the Commission is emphasizing in Supplemental proposed § 1.84(b)(3) that key confidentiality protections would apply to any records provided to the Commission pursuant to § 1.84. The Commission notes that section 8 of the Act and other Commission rules governing confidential information would apply to Algorithmic Trading Source Code and related files even in the absence of Supplemental proposed § 1.84(b)(3).<sup>94</sup>

#### B. NPRM Proposal and Comments

The NPRM proposed that each AT Person maintain a “source code repository” to manage source code access, persistence, copies of all code used in the production environment,

<sup>92</sup> See Supplemental proposed § 1.84(a).

<sup>93</sup> In this regard, Supplemental proposed § 1.84(b)(2) is modeled on existing Commission recordkeeping rules in § 1.31, which also call for persons subject to recordkeeping to maintain capabilities by which the Commission can view required records.

<sup>94</sup> In this regard, Supplemental proposed § 1.84(b)(3) is intended to emphasize the confidential nature of any Algorithmic Trading Source Code provided to the Commission. The protections of section 8 would apply even absent codification by the Commission in Supplemental proposed § 1.84(b)(3). Section 8 provides, among other things, that except as otherwise specifically authorized the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers. See 7 U.S.C. 8(a)(1).

and changes to such code. The NPRM further required that such source code repository would include an audit trail of material changes to source code that would allow AT Persons to determine, for each such material change: Who made it; when they made it; and the coding purpose of the change. The NPRM also required that AT Persons maintain source code in accordance with § 1.31.

Several commenters expressed support for the proposal that source code should be a required record under Commission rules.<sup>95</sup> Better Markets called the source code provisions “the most important and effective provision in the proposed rule” and noted “the clear and many benefits arising from the Commission’s ability to perform post-mortems after disruptive market events.”<sup>96</sup> Better Markets pointed out that “it is crucial that regulators have access to HFT algorithm source code, rather than facing the impossible task of reconstructing manipulative algorithms from market data alone.”<sup>97</sup> Another commenter stated that if an algorithm or source code has caused, or has the potential to cause, damage to the U.S. financial markets, regulators have not only a right, but a duty to inspect source code.<sup>98</sup> MFA supported a source code and audit trail record retention requirement, but objected to a source code “repository.”<sup>99</sup> MFA stated that it understands the Commission’s need “to be able to obtain and review confidential, proprietary material that trading firms and other businesses maintain. We also understand the need for a preservation requirement that will ensure that the source code and any audit trails that are relevant to a given investigation be preserved and be made available to the Commission . . . when appropriate.”<sup>100</sup> MFA recommended that the Commission adopt a principles-based rule requiring that market participants adopt a mechanism to preserve source code, produce current and prior versions of such source code, and track material change to the source code.<sup>101</sup> AIMA commented that it is “supportive of an obligation for AT Persons to maintain internal source code repositories.”<sup>102</sup>

Many commenters expressed concerns about the confidentiality of source code, and in particular making

<sup>95</sup> AFR 3; Better Markets 2; Better Markets III 2–3; Shatto 1; Summers 1.

<sup>96</sup> Better Markets 2.

<sup>97</sup> Better Markets 2–3.

<sup>98</sup> Summers 1.

<sup>99</sup> MFA 3, 21.

<sup>100</sup> MFA 21.

<sup>101</sup> MFA III 3.

<sup>102</sup> AIMA III 4.

source code subject to § 1.31.<sup>103</sup> Several stated that source code should only be available pursuant to a subpoena,<sup>104</sup> which some described as a procedural safeguard.<sup>105</sup> Others, such as FIA and Mercatus, noted the potential impracticality of certain requirements of § 1.31 in the context of source code, such as duplicate storage, indexes of stored records, and the potential retention of a third-party technical consultant with access to the records.<sup>106</sup>

Numerous commenters described source code as valuable intellectual property and raised concerns about information security if source code were to be provided to regulators.<sup>107</sup> Some raised the possibility that source code stored on government servers or government-mandated repositories could be vulnerable to cyberattack and other system breaches or misappropriation.<sup>108</sup> Some commenters took the position that making source code subject to § 1.31 would violate Constitutional protections.<sup>109</sup>

Several commenters questioned the scope of the records to be retained as source code.<sup>110</sup> MMI stated that “source code” should be defined to avoid confusion.<sup>111</sup> FIA stated that “it is not clear under § 1.81(a)(vi) whether the referenced source code refers to Algorithmic Trading code only, or includes the code of ‘related systems’ or separate ‘software’ as well.”<sup>112</sup> One commenter even speculated that the rule might be broad enough to require Microsoft to permit inspection of the code underlying its Excel program if a trader developed an algorithm using an Excel spreadsheet.<sup>113</sup>

Several commenters and Roundtable participants noted that a review of source code alone without additional context would be insufficient to identify the cause of a trading discrepancy.<sup>114</sup>

<sup>103</sup> MFA 29; ISDA 6; NASDAQ 2; Two Sigma 4; CCMR 5; FIA A–49, 54; Mercatus 6.

<sup>104</sup> AIMA 10–11; AIMA III 5; Barnard 2; Citadel 2; FIA A–48; Hudson Trading 3; KCG III 4–5; ICE 7; ICE III 4; ISDA 6; MFA 23; MFA III 3; MGEX 24–25; MMI 5; Commercial Alliance 12; QIM 5; TraderServe 1; TT 7; Two Sigma 4–5.

<sup>105</sup> Industry Group 6.

<sup>106</sup> FIA A–54; Mercatus 6.

<sup>107</sup> Hudson Trading 1–2; IAA 10; ICE 7; ISDA 6; ITI 2, 4; MMI 3; Commercial Alliance 12; Nadex 7; Two Sigma 2; Virtu 3; TT 4, 3 n.2; QIM 2.

<sup>108</sup> LCHF 3; Mercatus 6; MFA 22, 24, 25; CTC 9–10; IAA 10; CCMR 4–5; MMI 3–4; MMI III 2; Commercial Alliance 12; Chamber of Commerce III 2, 4–5; NIBA 2; QIM 5; TT 4; Two Sigma 2, 3, 6; Mercatus 6; AIMA 10; FIA A–52; Bloomberg 2–3; Citadel 2; SIFMA 16.

<sup>109</sup> ITI 2; FIA A–46; MMI 4; MMI III 1–2; TT 4.

<sup>110</sup> FIA A–47; MMI 2; TT 3–4.

<sup>111</sup> MMI 2.

<sup>112</sup> FIA A–47.

<sup>113</sup> TT 4.

<sup>114</sup> ITI 6; MMI 2; TT 5.

Several commenters also posited that source code would be unintelligible to regulators,<sup>115</sup> or that the CFTC lacked the resources to understand it.<sup>116</sup> Several participants at the Roundtable suggested that it may be necessary to review log files in order to gain further context regarding trading activity under review.<sup>117</sup> Participants indicated that a review of log files might assist in identifying a trigger for specific trading behavior such as market data, a change in parameters, or a component of source code.<sup>118</sup>

### C. Substance of New Proposal

Through this Supplemental NPRM, the Commission is proposing to replace NPRM § 1.81(a)(1)(vi) with Supplemental proposed § 1.84, entitled “Maintenance of records of Algorithmic Trading Source Code and related records.”<sup>119</sup> Supplemental proposed § 1.84 requires AT Persons to retain

<sup>115</sup> Hudson Trading 1–2; MMI 2; TraderServe 2; ITI 6; MMI 2; TT 5–6.

<sup>116</sup> ITI 5; Weaver 2.

<sup>117</sup> KCG Holdings II, Roundtable Tr. 263:2–13 (one of the first items to look at when addressing a trading discrepancy would be “log files to see was it a data issue, incoming data issue, was it something that was part of the algorithm, was it a control that misfired. You’d look at the log data to see if there’s anything in there that would start to point you in a direction of where the issue might become. At that point in time you might bring in a developer to help walk through the code.”); TT II, Roundtable Tr. 264:9–11 (noting that a developer would “probably comb through log files” to narrow down where a discrepancy occurred).

<sup>118</sup> Optiver II, Roundtable Tr. 267:18–268:21 (describing “looking in the log file . . . to figure out . . . the trigger for . . . [an] order,” including whether it was “human interaction, . . . market data, a “change in parameters,” or “source code.”).

<sup>119</sup> The Commission notes that in addition to proposing new § 1.84 (addressing Algorithmic Trading Source Code) and § 1.85 (addressing use of third party systems or components), it has made several changes to proposed § 1.81. The Supplemental NPRM withdraws §§ 1.81(a)(1)(v) and (vi). Provisions relating to documenting the strategy and design of Algorithmic Trading software and maintenance of Algorithmic Trading Source Code are now contained in Supplemental proposed §§ 1.84 and 1.85.

In addition, NPRM proposed § 1.81(a)(1)(ii) required testing of all Algorithmic Trading code and any changes to such systems. This language has been modified so that it is consistent with the Commission’s intent that the AT Person be required to test systems, not merely the source code related to such systems. The changes to the second sentence, resulting in the language in Supplemental proposed § 1.81(a)(1)(ii) that such testing shall be reasonably designed to effectively identify circumstances that may contribute to future Algorithmic Trading Events, are intended to improve clarity. The Commission deleted the provision’s final sentence, “Such testing must be conducted both internally within the AT Person and on each designated contract market on which Algorithmic Trading will occur.” The Commission has also withdrawn corresponding NPRM proposed § 40.21, which had required DCMs to provide test environments to AT Persons. Supplemental proposed § 1.81(a)(1)(ii) now provides discretion to the AT Person as to where testing should occur.

three categories of records for a period of five years: (1) Algorithmic Trading Source Code; (2) records that track changes to Algorithmic Trading Source Code; and (3) log files that record the activity of the AT Person’s Algorithmic Trading system.<sup>120</sup> These records would be required to be maintained in their native format. Supplemental proposed § 1.84 does not require that records be generated; rather, it only requires the retention of such records to the extent they are generated by an AT Person (or by a third-party on behalf of the AT Person) in the ordinary course of their business. It also requires that these records be kept in a form and manner that ensures the authenticity and reliability of the information contained in the records, and that AT Persons have systems available to promptly retrieve and display the records.<sup>121</sup>

Algorithmic Trading Source Code is defined broadly in Supplemental proposed § 1.3(ccccc), and is intended to capture the various types of code and related components used in connection with Algorithmic Trading. It includes computer code, hardware description language, scripts and formulas, as well as the configuration files and parameters used to carry out the trading.<sup>122</sup> The term Algorithmic Trading Source Code should be construed broadly to encompass field-programmable gate array (“FPGA”) technology including the logic built onto chips or embedded in electronic circuits. Logic embedded in electronic circuits is sometimes referred to as “hardware description language (“HDL”). On the other hand, Algorithmic Trading Source Code does not include the underlying code to a program used to develop a formula or algorithm (*i.e.*, Microsoft Excel).

The Commission recognizes the confidentiality and value of Algorithmic

<sup>120</sup> Commenters at the Roundtable recognized that in order to assess a trading discrepancy they would need to review their own log files and potentially the source code for their trading algorithms. KCG II, Roundtable Tr. 262:17–263:10; 267:18–268:21; TT II, Roundtable Tr. 264:3–20.

<sup>121</sup> The Commission notes that Supplemental proposed § 1.84’s requirement that records be maintained in their “native format” is distinct from the proposed requirement that such records be maintained in a manner that ensures the “authenticity and reliability” of information contained in such records. The retention of a record in “native format” equates to a requirement that such record be retained in the same format as it was originally created. Authenticity and reliability, in contrast, address the accuracy of a record as genuine, unchanged iteration of the original.

<sup>122</sup> Parameters include settings or variables that are relied on by an algorithm to make determinations in a system’s Algorithmic Trading. For example, parameters may include settings or variables impacting order type, order quantity, order price, order side, position size, number of orders, and duration of orders.

Trading Source Code. Accordingly, the Commission has endeavored in this Supplemental NPRM to enhance the procedural protections afforded to Algorithmic Trading Source Code in the rule text and to expressly reference the statutory and regulatory provisions that protect all confidential information to which the Commission has access. As a threshold matter, the Commission emphasizes that Supplemental proposed § 1.84 makes Algorithmic Trading Source Code, change logs, and log files subject to recordkeeping requirements that are *separate* from the general recordkeeping provisions under § 1.31 of the Commission’s rules.

Supplemental proposed § 1.84 also makes clear that these records are subject to section 8(a) of the Act.<sup>123</sup> Section 8(a) prohibits the release of data or information that would disclose business transactions or market positions of any person and trade secrets or names of customers, and any data or information concerning or obtained in connection with any pending investigation of any person. Separately, confidential information received by Commission employees is also subject to § 140.735–5 of the Commission’s rules, which prohibits a Commission employee or former employee from disclosing, or causing or allowing to be disclosed, confidential or non-public commercial, economic or official information to any unauthorized person.<sup>124</sup> The Commission also notes that Section 1905 of Title 18 specifically prohibits the disclosure of confidential information, including trade secrets, by all officers or employees of the United States and any department or agency thereof, including the CFTC. Violations of this statutory provision carry significant penalties, including fines, loss of employment, and imprisonment.<sup>125</sup> Commission staff are

<sup>123</sup> Section 8(a) of the Act, 7 U.S.C. 12(a).

<sup>124</sup> 17 CFR 140.735–5.

<sup>125</sup> See 18 U.S.C. 1905, which provides that whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under Title 18 of the United States Code, or imprisoned not more than one year,

annually trained on the prohibitions against disclosing confidential or non-public commercial, economic or official information, and specifically are provided with post-employment guidance regarding these prohibitions, in addition to other applicable ethics restrictions, prior to their departure from the Commission.

Supplemental proposed § 1.84 sets out a procedure for requests for production or inspection of these records that requires Commission approval by means of a special call for the records. The Commission would also retain its existing authority to seek access to such records through a subpoena, which would typically be used in an enforcement matter. If the Commission approves a special call, it may authorize the Director of the Division of Market Oversight to execute the special call, and may also authorize the Director to specify the form and manner in which the required records must be produced. The Commission notes that Supplemental proposed § 1.84 does not alter any aspect of part 11 of the Commission's rules relating to investigations. For clarity, Supplemental proposed § 1.84 provides that the records required by the section must also be available by subpoena issued pursuant to part 11 of the Commission's regulations.

Supplemental proposed § 1.84(a)(2) requires that AT Persons retain records tracking material changes to Algorithmic Trading Source Code, including a record of when and by whom such changes were made, when such records are generated in the ordinary course of business. The Commission notes that this new proposed rule does not require that such records be generated, but does require that they be maintained if they are generated in the ordinary course of business.

Supplemental proposed § 1.84(a)(3) requires that AT Persons retain any logs or log files generated by the AT Person in the ordinary course of business that record the activity of the AT Person's ATS, including a chronological record of such system's actions. As noted above, this provision was added to address the concerns of some commenters that source code alone is insufficient to review trading activity of an AT Person, and the suggestion that log files may provide important context to a review of source code. The new proposal does not mandate the retention of specific log files or even the form or specific content of log files. The new

or both; and shall be removed from office or employment.

proposal simply requires that log files be retained to the extent such files are generated in the ordinary course of business. The Commission recognizes that various exchanges require persons with direct access to maintain audit trails with detailed information about trading activity.<sup>126</sup> The Commission expects that log files will contain a similar level of detail and in some cases a greater level of detail than the electronic audit trails required by these exchanges. To the extent log files are generated, they must be maintained in a form and manner that ensures the authenticity and reliability of the information contained in the records. In addition, AT Persons must have systems available to promptly retrieve and display these records to the Commission in the event of a special call.

#### *D. Commission Questions*

15. Please comment on whether, through Supplemental proposed § 1.84, the Commission has appropriately balanced its responsibility to oversee markets and market participants with the privacy and confidentiality concerns that market participants have raised with respect to access to Algorithmic Trading Source Code.

16. Please comment on the Commission's determination to obtain access to Algorithmic Trading Source Code via special call, rather than have such access be governed by § 1.31.

17. Is the definition of "Algorithmic Trading Source Code" sufficiently clear to allow AT Persons to comply with the recordkeeping requirements in Supplemental proposed § 1.84? Which, if any, components of Algorithmic Trading systems should be added to the definition of Algorithmic Trading Source Code? Which, if any, should be excluded?

18. Are log files described in sufficient detail in the Supplemental NPRM? Please explain why or why not.

19. The NPRM's Question 131 (NPRM at 78913) sought comment on NPRM proposed § 1.81(a)'s standards for the development and testing of Algorithmic Trading systems and procedures, including requirements for AT Persons to test all Algorithmic Trading code and related systems and any changes to such code and systems prior to their implementation. The Commission

<sup>126</sup> For example, ICE Futures U.S. Rule 27.12A requires certain clearing members and direct access members to maintain electronic audit trails of electronic orders submitted through direct access connections. CME Rule 536.B.2. also requires an electronic audit trail for systems accessing the CME Globex platform through the CME iLink gateway. Both CME and ICE require the retention of these electronic audit trails for five years.

renews that question here as to Supplemental proposed § 1.84(a). Are any of the requirements of Supplemental proposed § 1.84(a) not already followed by the majority of market participants that would be subject to § 1.84(a) (or some particular segment of market participants), and if so, how much will it cost for a market participant to comply with such requirement(s).

20. If a firm uses FPGA or a similar technology, how would it record the design of the programming?

21. How do firms store or record configurations and parameters that impact their trading system? For example, are these components stored or recorded in their Algorithmic Trading Source Code or log files?

22. If a firm uses a chip or FPGA as a part of its ATS, how does it describe the records?

### **V. Testing, Monitoring and Recordkeeping Requirements in the Context of Third-Party Providers**

#### *A. Overview and Policy Rationale for New Proposal*

Regulation AT, as proposed in the NPRM, required AT Persons to comply with a number of standards regarding pre-trade risk controls and other measures; the development, testing and supervision of ATSS; and the retention and potential production of source code. In order to be effective, Regulation AT should be uniformly applied across the breadth of business arrangements that AT Persons may elect to pursue. As detailed below, commenters to the NPRM's proposed rules noted that AT Persons whose ATSS are sourced in whole or in part from third parties face challenges in complying with certain elements of NPRM proposed §§ 1.80 and 1.81. The Commission has considered these comments and is sensitive to the concerns raised. However, the use of third-party systems should not exempt market participants from compliance with regulatory standards designed to increase the safety and soundness of Algorithmic Trading. The rules set forth in Supplemental proposed § 1.85 seek to strike an appropriate balance by permitting AT Persons to comply with certain elements of §§ 1.81 and 1.84 through a combination of certifications from their service providers, due diligence by the AT Persons and, in most cases,<sup>127</sup> a retention of legal

<sup>127</sup> As discussed below, Supplemental proposed § 1.85(d) requires that an AT Person is responsible for ensuring that records are retained and produced as required pursuant to Supplemental proposed § 1.84. A certification and due diligence alone will not satisfy an AT Person's obligation to ensure that

responsibility for compliance with the rules by the AT Person.<sup>128</sup>

### B. NPRM Proposal and Comments

NPRM proposed § 1.81(a) required AT Persons to implement written policies and procedures for the development and testing of ATSS. Among other things, such policies and procedures must at a minimum include documenting the strategy and design of proprietary Algorithmic Trading software, as well as any changes to software that are implemented in a production environment, pursuant to NPRM proposed § 1.81(a)(v). NPRM proposed § 1.81(a)(vi) required an AT Person to maintain a source code repository, which included an audit trail of material changes to source code that would allow AT Persons to determine, for each such material change: Who made it; when they made it; and the coding purpose of the change. The source code was also required to be maintained in accordance with § 1.31.

*Comments received.* Several commenters noted that AT Persons using third-party systems licensed or purchased from vendors or DCMs do not have access to the systems' algorithmic code, and therefore would be unable to comply with the source code provisions.<sup>129</sup> IAA identified this as an issue for registered CPOs and CTAs using an ISV's or other third-party's system,<sup>130</sup> SIFMA identified it as an issue for asset managers,<sup>131</sup> and AIMA identified it as an issue for buy-side participants. AIMA stated that requiring access and disclosure of third-party code, particularly best-execution algorithms, as provided in the NPRM, would cause third parties to stop providing software services to AT Persons.<sup>132</sup> The Commercial Alliance also confirmed that the vast majority of its members use third-party source code provided by ISVs or DCMs.<sup>133</sup> TT commented that the testing

Algorithmic Trading Source Code is retained as required by Supplemental proposed § 1.84.

<sup>128</sup> In the context of the Securities and Exchange Commission's ("SEC") Market Access Rule, 75 FR 69792 (Nov. 15, 2010), the SEC allows a broker-dealer relying on third-party technology or software to perform appropriate due diligence to assure that its controls and procedures are consistent with the rule. See SEC, Responses to Frequently Asked Questions Concerning Risk Management Controls for Brokers and Dealers with Market Access (Apr. 15, 2014) (Question 14), available at <https://www.sec.gov/divisions/marketreg/faq-15c-5-risk-management-controls-bd.htm>.

<sup>129</sup> FIA A-53; ISDA 5; CME 38; AIMA 11; AIMA III 5-6; IAA 11; Commercial Alliance 12; SIFMA 15; TT III 2.

<sup>130</sup> IAA 11.

<sup>131</sup> SIFMA 15.

<sup>132</sup> AIMA 11.

<sup>133</sup> Commercial Alliance 12.

requirements under NPRM proposed § 1.81(a) should focus on the *output* of an ATS or software, rather than the underlying source code.<sup>134</sup>

At the Roundtable, Commission staff asked for industry comment regarding how such issues involving third-party providers should be addressed. Generally, industry participants stated that AT Persons lacked access to source code of third parties.<sup>135</sup> Tethys commented that AT Persons exhibit a range of control over source code;<sup>136</sup> while some AT Persons may write their own code, others use off-the-shelf third-party software, and others may add additional controls to third-party software as necessary.<sup>137</sup> TT stated that as a third-party provider, it did not provide its customers with access to its source code.<sup>138</sup>

Commission staff also asked for comment at the Roundtable on a potential approach where AT Persons would obtain certifications from third parties regarding development requirements and would conduct due diligence. TT said that because it provides customers with the opportunities to test algorithms built using its software,<sup>139</sup> it would be unnecessary and burdensome to require AT Persons to obtain certifications from third-party providers.<sup>140</sup> AQR, Tethys, and TT argued that it would be difficult to fairly impose a certification requirement.<sup>141</sup> ABN AMRO and Tethys commented that AT Persons may not have the necessary expertise to perform extensive due diligence regarding software code.<sup>142</sup> ABN AMRO said that customers would not want to have access to source code.<sup>143</sup> In addition, TT stated that the Commission can understand how technology functions without seeing source code.<sup>144</sup>

### C. Substance of New Proposal

The NPRM comments discussed above cite potential compliance challenges when AT Persons obtain their ATSS, in whole or in part, from third-party providers. Accordingly, this

<sup>134</sup> TT III 1.

<sup>135</sup> Tethys II, Roundtable Tr. 236:2-14; TT II, Roundtable Tr. 216:22-217:1-3, 250:9-13; ABN AMRO, Roundtable Tr. 249:4-10.

<sup>136</sup> Tethys II, Roundtable Tr. 236:2-14.

<sup>137</sup> Tethys II, Roundtable Tr. 236:2-14.

<sup>138</sup> TT II, Roundtable Tr. 216:22-217:1-3.

<sup>139</sup> TT II, Roundtable Tr. 237:17-238:6.

<sup>140</sup> TT II, Roundtable Tr. 238:7-239:3.

<sup>141</sup> AQR, Roundtable Tr. 240: 15-2, 242:17-243:19; Tethys II, Roundtable Tr. 240:4-14; TT II, Roundtable Tr. 239:4-15.

<sup>142</sup> ABN AMRO, Roundtable Tr. 245:12-246:14; Tethys II, Roundtable Tr. 247:18-249:3.

<sup>143</sup> ABN AMRO, Roundtable Tr. 249:4-10.

<sup>144</sup> See TT II, Roundtable Tr. 250:14-252:7; TT III 2-3.

Supplemental NPRM proposes an alternative framework for AT Persons to comply with their obligations related to the development and testing of ATSS, and for the retention and production of Algorithmic Trading Source Code and related records.

Specifically, Supplemental proposed § 1.85 allows AT Persons who, due solely to their use of third-party system or components, are unable to comply with a particular development or testing requirement (NPRM proposed §§ 1.81(a)(1)(i), 1.81(a)(1)(iii), 1.81(a)(1)(iv), 1.81(a)(2), or Supplemental proposed §§ 1.81(a)(1)(ii) or 1.84)<sup>145</sup> or a particular maintenance or production requirement related to Algorithmic Trading Source Code and related records (Supplemental proposed § 1.84), to comply with such proposed regulatory obligations by satisfying two requirements: (i) Obtaining a certification that the third party is complying with the obligation; and (ii) conducting due diligence regarding the accuracy of the certification.<sup>146</sup> While obtaining such certifications and conducting due diligence as to their accuracy may still be challenging for some AT Persons, the Commission has determined that such requirements, at this stage, appear more practical compared to the NPRM's proposal that AT Persons themselves comply with all NPRM § 1.81 requirements. The Commission believes that the certification and due diligence requirements present a workable alternative that will ensure that all AT Persons—regardless of whether they develop their own ATSS, or use the systems of a third party—are subject to the same standards.

<sup>145</sup> These subsections were also proposed in the NPRM, although this Supplemental NPRM proposes several changes to the text of § 1.81(a)(1)(ii).

<sup>146</sup> The Supplemental NPRM provides flexibility and does not set forth the means by which due diligence must be conducted. The Commission expects that due diligence may take a variety of forms, all of which can potentially be effective in helping AT Persons fulfill their regulatory obligations pursuant to Supplemental proposed § 1.85. Due diligence may include, for example, a combination of (1) information gathering, including with respect to prevailing best practices and a third party's own practices; (2) on-site inspection; (3) communications between the AT Person and its third-party provider, including in writing, in person, via email, and telephone or video; and (4) review and evaluation of files, documents, and other information gathered. The Commission offers this list by way of example only, and notes that each AT Person should arrive at its own determination regarding an appropriate due diligence process. The Commission encourages each AT Person making use of Supplemental proposed § 1.85 to perform such diligence as is necessary for the AT Person to have comfort that the underlying substantive regulatory requirements are being met.

Supplemental proposed § 1.85(d) requires that, in all cases, an AT Person is responsible for ensuring that records are retained and produced as required pursuant to Supplemental proposed § 1.84.<sup>147</sup> In other words, an AT Person's certification and due diligence will establish that it has complied with testing obligations pursuant to NPRM proposed §§ 1.81(a)(1)(i), 1.81(a)(1)(iii), 1.81(a)(1)(iv), 1.81(a)(2), or Supplemental proposed § 1.81(a)(1)(ii), but certification and due diligence alone will not satisfy an AT Person's obligation to ensure that Algorithmic Trading Source Code is retained and produced as required by Supplemental proposed § 1.84. Even where an AT Person obtains a certification and conducts due diligence with respect to a third party's obligations, the AT Person will remain responsible for ensuring that Algorithmic Trading Source Code retention and production requirements are met. For example, if the Commission were to issue a special call or a subpoena to an AT Person for the production of Algorithmic Trading Source Code maintained by a third party, the AT Person would be responsible for complying with the Commission request, regardless of the certification or the due diligence performed by the AT Person. Such compliance could be achieved by making sure that the third party produced the required records, but a failure by the third party to produce such records would not relieve the AT Person of its own obligations.

Pursuant to the Commission's Supplemental proposal, AT Persons may not rely on § 1.85 for any element of §§ 1.81(a)(1) and 1.84 with which they have the ability to comply. For example, an AT Person who uses a combination of third-party and internally developed ATS components would be expected to comply with NPRM proposed §§ 1.81(a)(1)(i), 1.81(a)(1)(iii), 1.81(a)(1)(iv), 1.81(a)(2), and Supplemental proposed §§ 1.81(a)(1)(ii) and 1.84 for all such components that the AT Person itself develops or modifies. The Commission also notes that Supplemental proposed § 1.85 provides an alternative means of compliance in circumstances where the use of a third-party system or component is the *sole* reason why an AT Person cannot otherwise comply with its obligations. Although an AT Person may be motivated to make use of Supplemental proposed § 1.85 for

reasons of potential costs or administrative ease, such considerations are not permissible rationales for use of Supplemental proposed § 1.85.

In many cases, the Commission expects that AT Persons and third parties will each have developed different portions of an ATS. If an AT Person develops an algorithm using third-party software, the AT Person would remain responsible for development and testing requirements with respect to the algorithm, and for the retention and production of Algorithmic Trading Source Code and related records requirements for that algorithm. Further, whether a third-party certification is appropriate under Supplemental proposed § 1.85 may depend on the amount of control the AT Person has over the development of algorithms it employs. If the AT Person, for example, has a limited ability to affect or modify an algorithm, then the Commission expects that the AT Person would comply with NPRM proposed §§ 1.81(a)(1)(i), 1.81(a)(1)(iii), 1.81(a)(1)(iv), 1.81(a)(2), and Supplemental proposed §§ 1.81(a)(1)(ii) and 1.84 by obtaining a certification and conducting due diligence pursuant to Supplemental proposed § 1.85. However, the Commission notes that as to Supplemental proposed § 1.84 requirements, the AT Person remains responsible for compliance with Algorithmic Trading Source Code retention and production requirements are met.

The Commission expects that the certifications required by Supplemental proposed § 1.85 would, at a minimum, list the specific regulatory obligations that the third party is certifying compliance with, describe the component of the ATS at issue (or the whole system, if applicable), and explain how such component or system complies with the regulatory obligation. The Commission recognizes that some system components may be standard products offered to multiple customer trading firms, and others may be custom-designed for one customer trading firm. With respect to standard products, the third party's certification may take the same form for multiple customers.

Supplemental proposed § 1.85(b) requires that the AT Person must obtain a certification each time there has been a material change to such third-party provided systems or components. Accordingly, there is no specific periodic deadline for certification; rather, the third party must only re-certify when there has been a material change. The Commission intends that the due diligence requirement imposed

by Supplemental proposed § 1.85(c) includes an obligation on AT Persons to determine whether a material change to third-party provided systems or components has occurred.

The Commission understands that AT Persons who use third-party system components or Algorithmic Trading Source Code may not have the same level of development and testing expertise as third-party providers who routinely develop such systems or code. Accordingly, the due diligence required to be performed by the AT Person under Supplemental proposed § 1.85(c) is limited to the accuracy of the certification. Due diligence may require the involvement of technology support staff from the AT Person, but detailed technical audits are not required on behalf of the AT Person with respect to Supplemental proposed § 1.85(c).

#### D. Commission Questions

23. The Commission invites comment on all aspects of Supplemental proposed § 1.85.

24. Should the requirements for AT Persons who develop their own systems and code differ from requirements imposed on AT Persons that use systems or components provided by a third party? If so, how should the requirements be different, while continuing to ensure a consistent baseline of effectiveness in the development and testing of ATSs?

25. What specific steps should AT Persons take when conducting due diligence of the accuracy of a certification from a third party, as required by Supplemental proposed § 1.85? Should proposed § 1.85(c) provide greater detail with respect to such due diligence? For example, should due diligence be required to specifically include review of technical design information, testing protocols and test results, documented dialogue between staff of the AT Person and the third party, or other measures?

26. Supplemental proposed § 1.85(b) requires that the AT Person must obtain a certification each time there has been a material change to third-party provided systems or components. What is a reasonable estimate as to the average frequency of such material changes? Should the Commission base the certification requirement on another timing metric?

<sup>147</sup> The proposed rules do not require that the certifications be filed with the Commission. However, the certifications would be subject to § 1.31 recordkeeping requirements.

## VI. Changes to Overall Risk Control Framework

### A. Change From Three Level to Two Level Risk Control Framework

#### 1. Overview and Policy Rationale for Proposal

In the NPRM, the Commission sought to take a principles-based approach to addressing the potential risks associated with Algorithmic Trading.<sup>148</sup> NPRM proposed §§ 1.80, 1.82, 38.255 and 40.20 imposed pre-trade risk control and other requirements, such as order cancellation systems, at three points in the order submission and execution chain: AT Persons, FCMs and DCMs. The NPRM approach proposed to allow the relevant entity—AT Person, FCM, or DCM—discretion in the design and parameters of such controls. In general, while some commenters supported the multi-layered approach described above, numerous commenters viewed the framework as unnecessarily redundant and prescriptive. Accordingly, the Commission in this Supplemental NPRM proposes a risk control framework with controls at two, rather than three, levels: (i) AT Person or FCM; and (ii) DCM. The Commission believes that this structure still achieves the goal of protecting market integrity, while simultaneously reducing the complexity of the risk controls and overall costs of compliance.

By requiring two levels of risk controls, mistakes or omissions made at one level will have a backstop, potentially mitigating the possibility of a trading disruption. Because the unexpected or disruptive behavior of an algorithm would affect other market participants at the DCM level, thus leading to potential system risk, the Commission is requiring DCM controls for all electronic orders, regardless of source. The second set of controls may be implemented at either the AT Person or the FCM level, depending on whether an order is originated by AT Person or non-AT Person market participant. In addition, under specific circumstances, AT Persons will have discretion to delegate certain of their pre-trade risk control functions to an FCM, if they so choose. The Supplemental proposed rules continue to provide discretion in how entities design and calibrate the controls. Further, as discussed below, the Commission has revised the rules to allow greater flexibility for AT Persons, FCMs and DCMs to determine the level of granularity at which controls are set.

#### 2. NPRM Proposal and Comments

As discussed above, NPRM proposed §§ 1.80, 1.82, 38.255 and 40.20 imposed risk control and similar requirements, such as order cancellation systems, at three levels: the AT Person, FCM and DCM.

*Comments Received.* The Commission received numerous comments on the proposed risk control structure during the Initial Comment Period, the Second Comment Period, and at the Roundtable. As discussed in more detail below, some commenters during the Second Comment Period and at the Roundtable suggested a two-level structure instead of the three level structure proposed in the NPRM. For example, the Industry Group suggested a framework in which responsibility for implementing appropriate pre-trade risk controls lies either (i) with the FCM registrant that is facilitating access to the DCM, or (ii) in the case of a market participant that is not trading through the risk controls of an FCM, with that participant. Industry Group further stated that in both cases, the pre-trade risk controls must be supplemented by DCM-provided risk controls configured by the member of the DCO that grants access to the DCM.<sup>149</sup> CME suggested a similar approach, commenting that: “Two layers of market risk controls would apply to all Algorithmic Trading orders. The first layer would be administered by either an AT Person or the gatekeeper clearing member, and could be developed internally or obtained from an independent third-party source (such as the DCM or a software provider). The second layer would be developed and administered by the DCM.”<sup>150</sup> The framework proposed in this Supplemental NPRM involves a similar two-level approach, which is intended to address the complexity and cost concerns expressed by Industry Group, CME and other commenters.

Further, some commenters supported expanding risk controls requirements to all electronic orders, rather than applying controls to only algorithmic trading orders. For example, the Industry Group stated that “all electronic trading must be subject to pre-trade and other risk controls administered by a CFTC registrant that are appropriate to the nature of the activity.”<sup>151</sup> ICE stated that “all market participants that engage in electronic trading on a DCM should maintain . . . risk controls, regardless of how market participants access a DCM or whether the market participants engage in

algorithmic trading.”<sup>152</sup> The Commission has addressed such comments by expanding the scope of the risk control requirements to include Electronic Trading. Further detail on the addition of Electronic Trading to Regulation AT’s risk control framework is discussed below in Section VI(B), and discussion of the relevant new definitions related to such changes is provided in Section VI(C).

Numerous commenters opposed the NPRM’s proposed three-level approach to risk controls or otherwise characterized it as a “one size fits all” model. Specifically, FIA, CME, ICE, MFA, Nadex, NIBA, SIFMA and Mercatus indicated that the multiple layers of risk controls across the market—at the AT Person, clearing member FCM, and DCM levels—are too prescriptive, duplicative, costly and inefficient.<sup>153</sup> FIA, CME, OneChicago, LCHF and QIM commented that Regulation AT’s required duplication of risk controls across the lifecycle of a trade actually introduces risk.<sup>154</sup> CME, MFA, SIFMA and NIBA characterized the proposed rules as a “one size fits all” model that doesn’t appropriately take into account the different types of automated systems, business, or operational size of market participants.<sup>155</sup> FIA did not support requiring every market participant to implement its own risk controls; rather, such controls could be provided by FCMs or DCMs.<sup>156</sup>

In contrast, other commenters supported the multi-layered approach (either fully or with reservations that the approach could create some risks), or supported more centralized controls at the FCM and DCM levels. Specifically, IATP supported a multi-layered approach to risk controls and believed it will mitigate the risks of algorithmic trading.<sup>157</sup> In addition, AIMA supported the principle that risk controls are to be maintained at three levels—the exchange, the clearing member and the trading firm.<sup>158</sup> LCHF also recommended a three-level structure for risk controls.<sup>159</sup> Virtu generally

<sup>152</sup> ICE III 2.

<sup>153</sup> FIA 5; CME 6, A–14; ICE 8; Mercatus 4–5; MFA 4–5; Nadex 3; SIFMA 20; NIBA 1.

<sup>154</sup> FIA 7, A–25; CME A–11; OneChicago 3; LCHF 2–3; QIM 2.

<sup>155</sup> CME A–11; MFA 2, 4; SIFMA 20; NIBA 1.

<sup>156</sup> FIA 4, A–24.

<sup>157</sup> IATP 7.

<sup>158</sup> AIMA 7.

<sup>159</sup> LCHF 2–3. LCHF recommended a structure with risk controls at (1) the trading participant level, requiring all the proposed § 1.80 controls, which should be adopted at the most granular level and tailored to the particular trading technology used by the market participant; (2) the FCM/broker

<sup>149</sup> Industry Group 8.

<sup>150</sup> CME III 9–10.

<sup>151</sup> Industry Group 8.

<sup>148</sup> See NPRM at 78837–78839.

supported a multi-layered approach to risk controls as well, but warned of potential risks if the multiple controls are applied or calibrated independently, since market participants may not be able to predict which orders will reach the order book and which may be screened by a “downstream” risk layer.<sup>160</sup> Similarly, MFA and LCHF acknowledged that multiple risk filters across different entities may reduce the probability that a wrong message reaches the market, but stated that such redundancy may be inefficient or increase complexity and possible errors if the risk parameters are not coordinated properly.<sup>161</sup>

Several commenters supported centralizing controls at the DCM and FCM levels. AIMA stated that DCMs should play a central role in maintaining risk controls internally and through mandates upon their FCMs, and believed that DCMs and FCMs should have the principal obligations to protect the stability of DCM markets.<sup>162</sup> Similarly, MFA commented that the Commission should require centralized pre-trade risk controls at DCMs and clearing member FCMs, and that the proposed § 1.80 risk controls should be applied at the DCM level and the clearing member FCM level.<sup>163</sup> MFA indicated that this would ensure that all orders go through the same set of controls.<sup>164</sup> MFA further commented that the general infrastructure for such a centralized approach already exists, given that DCMs provide clearing FCMs with controls to manage risk with respect to clients, and that this structure would be more transparent and easier for regulators to oversee and enforce.<sup>165</sup>

During the Second Comment Period, the Commission received additional comments on the proposed risk control structure. The Industry Group proposed the following two-level structure. Rather than defining “AT Person,” the Commission should require pre-trade risk controls on all electronic orders. Orders from market participants leveraging FCM-administered systems, including those provided by third parties, may use pre-trade risk controls administered by the FCM.<sup>166</sup> Market participants not using FCM-

level, requiring order size, position and margin controls; and (3) the DCM level, continuing the adoption of existing controls, such as kill switch or self-trade prevention, with no further risk filter imposed on market participants.

<sup>160</sup> Virtu 2.

<sup>161</sup> MFA 5–6; LCHF 2–3.

<sup>162</sup> AIMA 2, 7, 12.

<sup>163</sup> MFA 2, 5–6, 10.

<sup>164</sup> MFA 2, 5–6, 10.

<sup>165</sup> MFA 2, 5–6, 10.

<sup>166</sup> Industry Group 4–5.

administered risk controls must apply risk controls to their own orders.<sup>167</sup> In both cases, the pre-trade risk controls must be supplemented by DCM-provided risk controls configured by the member of the DCO that grants access to the DCM.<sup>168</sup>

CME suggested a similar two-layer approach for all Algorithmic Trading orders, commenting that the first layer “would be administered by either an AT Person or the gatekeeper clearing member” and the second layer “would be developed and administered by the DCM.”<sup>169</sup> MFA also commented that it supports risk controls at both the DCM and the FCM providing trading access.<sup>170</sup> MFA also supported “a regulatory framework where a market participant could choose to implement the Commission’s required marketplace risk controls in lieu of going through an FCM’s risk controls, and be subject to Commission oversight.”<sup>171</sup>

AIMA commented that the principal role in application of risk controls should be played by the DCMs—as the owners of the relevant markets—and FCMs—as the gatekeepers to the relevant markets.<sup>172</sup> AIMA stated that “both parties are best placed to understand and enforce the relevant controls and testing obligations.”<sup>173</sup> Sutherland commented that as an alternative to the NPRM’s proposed framework, DCMs under Part 38 core principles should establish and oversee pre-trade risk and other control requirements applicable to AT Persons. Sutherland stated that DCMs have the expertise and are best positioned to implement and enforce the use of controls to mitigate risks on their markets.<sup>174</sup> Hartree also emphasized the importance of DCMs in implementing risk controls, stating that “DCMs are very well suited to not only police these markets, but also to . . . administer CFTC’s rules and regulations as SROs.”<sup>175</sup> Hartree suggested a framework in which AT Persons are divided into three categories based on the risk they pose to the market: Category 1 Risk (very little risk, including persons who do not use DEA or who use FCMs to access the DCM); Category 2 Risk (some increased risk, including persons who use DEA and algorithmic trading); and Category 3 Risk (enhanced risk, including persons

<sup>167</sup> Industry Group 5.

<sup>168</sup> Industry Group 8.

<sup>169</sup> CME III 9–10.

<sup>170</sup> MFA III 2.

<sup>171</sup> MFA III 2.

<sup>172</sup> AIMA III 4.

<sup>173</sup> *Id.*

<sup>174</sup> Sutherland 7.

<sup>175</sup> Hartree 8.

who can cause significant market disruption, *e.g.*, a flash crash).<sup>176</sup> Third parties such as the FCM and DCM would administer risk controls for Category 1. The trading firm itself and DCM would administer risk controls for Category 2. Enhanced risk controls would apply to Category 3.<sup>177</sup>

ICE commented that “all market participants that engage in electronic trading on a DCM should maintain . . . risk controls, regardless of how market participants access a DCM or whether the market participants engage in algorithmic trading.”<sup>178</sup> ICE further stated that the Commission “should not mandate the same risk control requirements across DCMs, FCMs and AT Persons.”<sup>179</sup> Similarly, another exchange, MGEX, commented that “DCMs, FCMs, and market participants should all have some level of responsibility over the development, deployment, and use of pre-trade risk controls. Each market participant needs to have pre-trade risk controls applied to electronically submitted orders, but how that is accomplished should depend on the circumstances.”<sup>180</sup> MGEX stated that the Commission should take a principles-based approach to risk controls at the DCM, FCM, and market participant level.<sup>181</sup>

At the Roundtable, Commission staff asked for industry comment on a potential approach where three levels of risk controls remain but FCMs—not the Commission—impose pre-trade risk control and other requirements on their AT Person customers. Generally, industry participants disagreed with this approach. For example, industry participants expressed concern over cost and burden to FCMs.<sup>182</sup> In addition, Virtu and Hartree indicated that certain trading firms prefer to implement their own controls, rather than allow FCMs to continuously oversee whether trading firms have adequate controls on their order flow.<sup>183</sup> CME expressed the view that each and every market participant should be responsible for its order flow.<sup>184</sup> Hudson Trading suggested that such an approach had potential for an un-level playing field, with different FCMs applying different standards.<sup>185</sup>

<sup>176</sup> *Id.* at 6.

<sup>177</sup> Hartree 6–7.

<sup>178</sup> ICE III 2.

<sup>179</sup> *Id.*

<sup>180</sup> MGEX III 2.

<sup>181</sup> *Id.* at 5.

<sup>182</sup> JPMorgan, Roundtable Tr. 171:11–172:17; ABN AMRO, Roundtable Tr. 175:16–176:17; Deutsche Bank, Roundtable Tr. 193:10–14.

<sup>183</sup> Virtu II, Roundtable Tr. 177:1–13; Hartree, Roundtable Tr. 185:4–15.

<sup>184</sup> CME II, Roundtable Tr. 177:18–178:7.

<sup>185</sup> Hudson Trading, Roundtable Tr. 187:10–188:1.

Instead, industry participants were more supportive of a two-level approach to risk controls. Tethys described a “two factor” model with the first layer at the DCM and the second layer at the level of who has control of the order being submitted to the DCM.<sup>186</sup> At the second layer, the entity with control of the order would be the clearing broker, the executing FCM, or a firm that connects directly to the DCM. Tethys indicated that this approach would reduce costs and the number of entities subject to the regulation.<sup>187</sup> Hudson Trading also expressed support for a potential two layer approach, with the DCM as one layer.<sup>188</sup> JPMorgan stated that “the two layers of control can be easily crystalized as the matching engine, and the wall around the matching engine that’s run by the DCM, and those who implement the interface that’s provided by the DCM.”<sup>189</sup>

With respect to the risk control framework, commenters also addressed the levels at which the NPRM proposed rules required the controls to be set, and expressed particular concern that FCMs and DCMs would be unable to comply with NPRM proposed §§ 1.82, 38.255 and 40.20 at the levels of granularity required by those rules. As to NPRM proposed § 1.82, FIA indicated that the level of granularity which controls are set should be left to FCM discretion and that compliance with NPRM § 1.82, as proposed, would require FCMs to develop additional technology.<sup>190</sup>

As to NPRM proposed § 38.255, FIA, CBOE, CME, OneChicago and ICE disagreed with the proposal as to the levels at which DCMs must offer the controls to FCMs.<sup>191</sup> FIA indicated that DCMs do not have sufficient information to set controls at the market participant level.<sup>192</sup> In addition, FIA stated that DCM order size limits are set at the highest level of access and not by market participant or account number, and the higher level is meant as a “last back stop” to prevent unintentionally blocking orders already controlled at the market participant or FCM level.<sup>193</sup> CBOE believed that a DCM should set maximum controls at the clearing firm level and at the level of AT Person with DEA, rather than aggregating risk controls for AT Persons with DEA across multiple clearing firms.<sup>194</sup> CBOE

indicated that its system allows clearing firms to set controls for customers, and that clearing firms are not responsible for an order for which another clearing firm is designated for that customer.<sup>195</sup> CBOE further indicated that requiring DCMs to build controls at a more granular level than clearing firm level and AT Person with DEA level would be difficult and cumbersome, because the DCM does not have a direct relationship with participants that do not have DEA.<sup>196</sup> CME stated that DCMs generally do not have the ability to provide risk controls to clearing FCMs that can be set at the AT Person, product, account number or designations, and one or more identifiers of natural persons associated with an AT Order Message.<sup>197</sup> OneChicago indicated that requiring risk controls for each different product would be a substantial burden and may increase the possibility of a disruption event.<sup>198</sup> ICE opposed NPRM proposed § 38.255 mandating the specific levels at which a DCM is required to offer risk controls.<sup>199</sup>

As to NPRM proposed § 40.20, FIA, CME, MGEX, CBOE and OneChicago opposed requiring DCM controls to be set at the AT Person or market participant level.<sup>200</sup> FIA stated that DCMs should not implement the NPRM proposed §§ 1.80 and 1.82 risk controls at the same level of granularity that is expected of market participants and FCMs.<sup>201</sup> Rather, FIA asserted that DCMs should implement controls that apply across all orders and that protect the overall quality of the market.<sup>202</sup> CME stated that the DCM’s controls should be set at the “direct connect” or the particular market level.<sup>203</sup> CBOE indicated that requiring DCMs to build controls at levels more granular level than clearing firm and AT Person with DEA would be difficult and cumbersome, because the DCM does not have a direct relationship with participants that do not have DEA.<sup>204</sup> Similarly, OneChicago believed that DCMs should be able to establish controls at the FCM level, but also believed that DCMs must have discretion in terms of the level at which controls should be applied.<sup>205</sup>

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> CME 19, A–32.

<sup>198</sup> OneChicago 4.

<sup>199</sup> ICE 9.

<sup>200</sup> FIA A–38; CME 18–19, A–32.; MGEX 7; CBOE 3; OneChicago 5.

<sup>201</sup> FIA A–43.

<sup>202</sup> *Id.*

<sup>203</sup> CME A–14.

<sup>204</sup> CBOE 3.

<sup>205</sup> OneChicago 5.

### 3. Substance of New Proposal

In light of comments received during the comment periods, including at the Roundtable, the Commission has revised the overall framework for risk controls and other measures required pursuant to NPRM proposed §§ 1.80, 1.82, 38.255 and 40.20. This Supplemental NPRM proposes a framework with two, rather than three, levels of risk controls: (1) At the AT Person or FCM level, and (2) at the DCM level. With respect to algorithmic orders originating with AT Persons (*i.e.*, AT Order Messages), the NPRM required all AT Persons to implement the risk controls and other measures required pursuant to § 1.80. By contrast, the Supplemental NPRM requires AT Persons to implement those risk controls, but would also permit AT Persons to delegate compliance with § 1.80(a) to FCMs, as discussed below. The Supplemental NPRM also requires that AT Persons implement pre-trade risk controls on their Electronic Trading Order Messages similar to those required by § 1.80(a).<sup>206</sup> In addition, pursuant to the Supplemental NPRM, FCMs are not required to implement risk controls on AT Order Messages that are subject to AT Person-administered controls. AT Order Messages and Electronic Trading Order Messages originating from AT Persons would instead be subject to a second level of risk controls at the DCM level pursuant to Supplemental proposed § 40.20.

Electronic orders originating with a *non-AT* Person are subject to risk controls implemented by executing FCMs pursuant to Supplemental proposed § 1.82. Those orders are subject to the second level of risk controls at the DCM level pursuant to Supplemental proposed § 40.20.

Prompted by some commenters’ concern that a three-layer structure may be redundant, the Commission has determined to propose this two-layer structure. The Commission particularly took into account commenters’ opinion that multiple controls, if applied or calibrated independently, may cause market participants to be unable to predict which orders will reach the order book, increasing rather than mitigating market risk. The Commission also carefully considered the Roundtable comments indicating support for a two-level approach.

The Commission believes that two levels of risk control are beneficial, both to provide a backstop to a malfunction

<sup>206</sup> See Supplemental proposed § 1.80(g)(2) and (g)(3). AT Persons would also be permitted to delegate compliance with § 1.80(g) risk controls to their FCMs.

<sup>186</sup> Tethys, Roundtable Tr. 37:11–38:8.

<sup>187</sup> Tethys, *id.* at 38:1–40:7.

<sup>188</sup> Hudson Trading, *id.* at 189:8–190:5.

<sup>189</sup> JPMorgan, Roundtable Tr. 47:22:48:5.

<sup>190</sup> FIA A–36.

<sup>191</sup> *Id.* at A–38, 40; CBOE 3; OneChicago 4; ICE 9.

<sup>192</sup> FIA A–38.

<sup>193</sup> FIA A–40.

<sup>194</sup> CBOE 3.

or other failure at one level, and because different levels of the order submission chain often monitor different characteristics of the risk associated with an order. For instance, an FCM may be more capable of determining whether an individual order would breach the risk limits of the AT Person or the clearing firm guaranteeing a potential trade; in contrast, a DCM may be more likely to identify orders that could lead to price dislocations in a given product, or that would lead to market instabilities affecting all market participants. The Commission also recognizes that trading firms are in the best position to understand their own systems, technology, and trading strategies, and that they are best positioned to prevent and reduce the potential risk of certain types of risk. Accordingly, the Commission proposes that certain trading firms—*i.e.*, AT Persons—implement their own pre-trade risk controls and other measures pursuant to Supplemental proposed § 1.80.<sup>207</sup>

The Commission has also revised the proposed risk control rules to provide greater flexibility regarding the level of granularity at which risk controls must be set. Previously, the controls proposed in NPRM §§ 1.80, 1.82, 38.255 and 40.20 were required to be set at the AT Person level, or other more granular levels the AT Person, FCM or DCM determined appropriate, including by product, account number or designation, or one or more identifiers of natural persons associated with an AT Order Message. In this Supplemental NPRM, the Commission intends to increase the flexibility and decrease the burden on AT Persons, FCMs and DCMs in terms of the level of granularity at which controls must be set. Specifically, Supplemental proposed §§ 1.80(a)(2) 1.82(a)(2), 38.255(b)(1)(ii) and (2), and 40.20(a)(2) now require controls to be set at a level or levels of granularity which shall include, as appropriate, the level of each firm, product, account number or designation, or one or more identifiers of the natural persons or the order strategy or ATS associated with an AT Order Message or Electronic Trading Order Message (new terms related to Electronic Trading are discussed in Section VI(C) below).<sup>208</sup> By “as appropriate,” the Commission means

<sup>207</sup> Supplemental proposed § 1.80(d) and (g) permit AT Persons to delegate compliance with § 1.80(a) to FCMs.

<sup>208</sup> Supplemental proposed §§ 1.80(a)(2) 1.82(a)(2), 38.255(b)(1)(ii) and (2), and 40.20(a)(2) are amended from the NPRM proposal to incorporate “order strategy” or “ATS” as potential levels of granularity where risk controls may appropriately be set.

such level or levels of granularity as are technologically feasible and reasonably effective at preventing and reducing the potential risk of an Electronic Trading disruption. The proposed rules do not require AT Persons, FCMs or DCMs reorganize their trading infrastructure or develop new technologies solely to ensure that controls are implemented at each of the potential levels enumerated in Supplemental proposed §§ 1.80(a)(2) 1.82(a)(2), 38.255(b)(1)(ii) and (2), and 40.20(a)(2). Rather, as implementation of controls at each such level becomes technologically feasible, AT Persons, FCMs and DCMs should update their practices to optimize the placement of their risk controls at the most effective level.

#### 4. Commission Questions

27. Will two levels of risk controls sufficiently prevent and reduce the potential risks of algorithmic and electronic trading? If there is any element of the revised proposed risk control framework that is not feasible or will not sufficiently address the risks of algorithmic and electronic trading, please explain.

#### B. Electronic Trading at the AT Person, FCM, and DCM Levels

##### 1. Overview and Policy Rationale for New Proposal

The Commission proposes to amend NPRM proposed §§ 1.80, 1.82, 38.255 and 40.20 so that the risk control and order cancellation provisions applicable to AT Persons, FCMs, and DCMs now apply to Electronic Trading,<sup>209</sup> rather than only to Algorithmic Trading. As a result, a larger number of orders would be subjected to two levels of risk controls, a change that addresses comments that all electronic trading, not only Algorithmic Trading, has the potential to cause market disruption.

##### 2. NPRM Proposal and Comments

The NPRM proposed that AT Persons and FCMs must apply risk controls to AT Order Messages (*see* NPRM proposed §§ 1.80, 1.82, and 38.255). In addition, NPRM proposed § 40.20 required that DCMs “implement pre-trade and other risk controls reasonably designed to prevent an Algorithmic Trading Disruption” or similar disruption that results from manual or other non-algorithmic order entry, though the general focus of the risk controls was on AT Order Messages.

*Comments Received.* Several commenters suggested requiring that all electronic trading (not just Algorithmic

Trading) be subject to risk controls. FIA, ICE, and MGEX all supported applying risk controls to all electronic trading, and indicated that DCMs are best suited to implement certain controls.<sup>210</sup> FIA stated that all electronic trading has the potential to disrupt markets and should be subject to pre-trade and other risk controls reasonably designed to mitigate market disruption, regardless of the registration status of the person or entity trading.<sup>211</sup> Similarly, ICE commented that there is potential for all persons trading electronically to impact a market, and all market participants have a responsibility to implement risk controls.<sup>212</sup> ICE commented that some algorithmic traders submit orders across multiple clearing firms throughout a trading session.<sup>213</sup> Therefore, DCMs are better suited to administer certain risk controls—including order throttling and price collars—than trading firms and the FCM.<sup>214</sup>

Another exchange, MGEX, commented that all orders submitted electronically should be subject to pre-trade risk controls, regardless of how the order accesses the matching engine.<sup>215</sup> MGEX recommended that any order that is electronically submitted must go through pre-trade risk controls at some stage before it reaches the matching engine, and that some controls must, at a minimum, reside at the matching engine.<sup>216</sup> MGEX suggested that this would avoid the need for defined terms, better achieve the Commission’s objective, and would provide the public with enhanced clarity.<sup>217</sup> MGEX further stated that market participants should develop their own controls where they use trading technology that has direct market access and the DCM-provided controls would not prevent or mitigate market disruption risk.<sup>218</sup>

Commenters further addressed this issue during the Second Comment Period. The Industry Group commented that “all electronic trading must be subject to pre-trade and other risk controls administered by a CFTC registrant that are appropriate to the nature of the activity.”<sup>219</sup> The Industry Group suggested a framework in which the responsibility for implementing risk controls lies either with the FCM facilitating electronic access to the DCM, or with the market participant, if

<sup>210</sup> FIA 4, 7, A–24; ICE 2, 5; MGEX 2, 6–7.

<sup>211</sup> FIA 4, 7, A–24.

<sup>212</sup> ICE 5.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> MGEX 2, 6.

<sup>216</sup> *Id.* at 6.

<sup>217</sup> *Id.* at 2, 6–7.

<sup>218</sup> *Id.* at 12.

<sup>219</sup> Industry Group 8.

<sup>209</sup> The proposed new defined term “Electronic Trading” is discussed in Section VI(C) below.

it is not trading through the risk controls of an FCM.<sup>220</sup> Similarly, ICE reiterated its position that all market participants that engage in electronic trading should maintain appropriate pre-trade and other risk controls, regardless of how they access the market or whether they engage in algorithmic trading. ICE further stated that limiting mandatory risk controls to AT Persons complicates the proposal and does not enhance oversight of algorithmic trading activity.<sup>221</sup> MGEX stated that “each market participant needs to have pre-trade risk controls applied to electronically submitted orders, but how that is accomplished should depend on the circumstances.”<sup>222</sup>

Finally, CME commented on the NPRM’s proposed standards regarding whether AT Persons, FCMs and DCMs must “prevent” or must “mitigate” an Algorithmic Trading Disruption or similar disruption are inconsistent. CME stated that the preamble indicates that risk controls only need to “mitigate” risk, while the rule text requires that AT Persons and DCMs both mitigate and “prevent” risk.<sup>223</sup> Further, proposed § 1.82 provides that clearing member FCM controls must “prevent or mitigate” an Algorithmic Trading Disruption.<sup>224</sup> CME stated that Regulation AT should only require AT Persons, clearing FCMs and DCMs to mitigate, *not prevent*, disruptions arising from algorithmic trading.<sup>225</sup> CME further stated that it is impossible to prevent every possible disruption caused by algorithmic trading, and therefore the standard should be mitigation, not prevention.<sup>226</sup>

### 3. Substance of New Proposal

In light of the above comments supporting the implementation of risk controls on all electronic orders, the Commission has amended the requirements of NPRM proposed §§ 1.80, 1.82, 38.255 and 40.20. Pursuant to the Supplemental proposed rules, AT Persons’ risk control obligations would be expanded to include not only Algorithmic Trading, but also Electronic Trading (in Supplemental proposed § 1.80(g)). In the case of FCMs and DCMs, however, the Supplemental proposed rules shift the focal point of risk control from Algorithmic Trading to Electronic

Trading.<sup>227</sup> More specifically, Supplemental proposed §§ 1.82 and 38.255 requires FCMs to implement risk controls and other measures on all Electronic Trading Order Messages *not* originating with an AT Person. Supplemental proposed § 40.20 requires that DCMs implement risk controls on all Electronic Trading Order Messages, regardless of their source. As a whole, the Commission’s revised risk control framework addresses concerns regarding market disruptions arising from Electronic Trading, while also preserving an important focus on the unique risks of Algorithmic Trading in modern markets. In addition, the Commission’s revised framework streamlines risk controls from three levels to two, and provides AT Persons with the flexibility to delegate certain risk control functions to their FCM(s).

The risk control requirements for AT Persons in Supplemental proposed § 1.80 apply primarily to AT Order Messages. However, the Commission is proposing in new Supplemental proposed § 1.80(g) that AT Persons also apply pre-trade risk controls to their Electronic Trading Order Messages. The NPRM’s original approach, which required AT Persons to implement risk controls only to their AT Order Messages, left a potentially significant gap in Regulation AT’s overall framework for reducing risk in modern markets. Specifically, non-algorithmic Electronic Trading Order Messages originating with AT Persons would have been left with only one level of required risk controls (*i.e.*, at the DCM). To ensure two levels of risk controls on all Electronic Trading Order Messages, the Commission is proposing Supplemental proposed § 1.80(g)(1), which provides that AT Persons must apply the risk controls required by Supplemental proposed § 1.80(a), (b) and (c) to their Electronic Trading Order Messages that do not arise from Algorithmic Trading. AT Persons may make appropriate adjustments in their § 1.80(g)(1) risk controls mechanisms to accommodate the application of such mechanisms to Electronic Trading Order Messages.<sup>228</sup>

<sup>227</sup> In this regard, the Commission notes that Algorithmic Trading is a subset of Electronic Trading. Risk control mechanisms to address Electronic Trading would necessarily also address Algorithmic Trading.

<sup>228</sup> Certain provisions of § 1.80(a), (b) and (c) reference “Algorithmic Trading” and “AT Order Message.” The language “to accommodate the application of such mechanisms to Electronic Trading Order Messages” means that the risk control mechanisms implemented pursuant to Supplemental proposed § 1.80(g) should be designed and calibrated to apply to Electronic Trading and Electronic Trading Order Messages, rather than to Algorithmic Trading and AT Order Messages.

Supplemental proposed § 1.80(g)(2) and (3) provides a delegation provision similar to Supplemental proposed § 1.80(d), in which an AT Person may delegate to an executing FCM compliance with § 1.80(a) risk control requirements as to Electronic Trading Order Messages.

The Commission has also revised NPRM proposed §§ 1.80, 1.82 and 40.20 to address the inconsistency noted by CME as to whether risk controls must “prevent” or “prevent and mitigate” risk. Supplemental proposed §§ 1.80, 1.82 and 40.20 all now provide for the standard of “reasonably designed” to “prevent and reduce the potential risk of . . . .” As to the concern raised by CME that “prevent” is a difficult standard to meet, the Commission notes that existing § 38.255 imposes on DCMs an obligation to “prevent and reduce the potential risk of price distortions and market disruptions . . . .” which is not modified by “reasonably designed.”<sup>229</sup> The statutory text of the related core principle also requires that DCMs have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process (also without the “reasonably designed” modification).<sup>230</sup> The Commission believes that “reasonably designed” to “prevent” means that the relevant entity—AT Person, FCM or DCM—does those things that are under its control, at its level in the lifecycle of an order, to prevent a disruption from reaching the next level closer to the DCM or at the DCM.

Discussed below are changes to rule text addressing the change in focus to Electronic Trading in Supplemental proposed §§ 1.82, 38.255 and 40.20.

*Proposed § 1.82.* In the NPRM, proposed § 1.82 required risk controls and other measures to be reasonably designed to prevent or mitigate an “Algorithmic Trading Disruption.” Supplemental proposed § 1.82 now requires that FCM risk controls and other measures be reasonably designed to prevent and reduce the potential risk of a disruption associated with Electronic Trading (including an Algorithmic Trading Disruption). The Commission discusses the newly defined terms Electronic Trading and Electronic Trading Order Message in Section VI(C) below.

The Commission considers a disruption associated with Electronic Trading to mean an event that disrupts, or materially degrades, the Electronic Trading of a market participant, the

<sup>229</sup> See existing § 38.255, 17 CFR 38.255.

<sup>230</sup> DCM Core Principle 4, Section 5(d)(4) of the Act, 7 U.S.C. 7(d)(4) (2012).

<sup>220</sup> *Id.*

<sup>221</sup> ICE 2 III.

<sup>222</sup> MGEX 2 III.

<sup>223</sup> CME 4–5, 22–26.

<sup>224</sup> *Id.* at 24–25.

<sup>225</sup> *Id.* at 23, 26.

<sup>226</sup> *Id.* at 23; CME III 3.

operation of the DCM on which the market participant is trading, or the ability of other market participants to trade on the DCM on which the market participant is trading. An Algorithmic Trading Disruption, as defined under Regulation AT, is a subset of the types of Electronic Trading disruptions that could occur.

Supplemental proposed § 1.82 also includes several changes to the enumerated risk controls and order cancellation system requirements based on the addition of Electronic Trading to Regulation AT's risk control framework. In the NPRM, proposed § 1.82(a)(1) required risk controls by reference to the controls listed in § 1.80(a)(1). The Supplemental NPRM now explicitly lists those controls within the regulation text of Supplemental proposed § 1.82(a)(1). In addition, Supplemental proposed § 1.82(a)(1)(i) changes the words "Maximum AT Order Message frequency" to "maximum Electronic Trading Order Message frequency." Similarly, the Supplemental proposed rule now explicitly lists required order cancellation systems within the regulation text of § 1.82(a)(1) and makes such systems applicable to Electronic Trading Order Messages and Electronic Trading, rather than AT Order Messages and Algorithmic Trading. Supplemental proposed § 1.82(a), (b) and (c) include similar conforming changes in light of the proposed shift in focal point of FCM risk controls from Algorithmic Trading to Electronic Trading.

The Supplemental NPRM's proposed FCM rules do not specify the exact stage at which the FCM needs to implement its controls on an Electronic Trading Order Message. In cases where an order is transmitted electronically to, or through, the FCM, the FCM may have significant flexibility in when and how the risk controls are applied prior to dissemination to the DCM. In cases where an order is communicated manually to the FCM, who would then submit the order in the electronic system, risk controls may need to be applied later in the submission process.

In the NPRM, the location of the FCM's controls varied according to whether an AT Person's orders were placed through DEA or intermediated by the FCM. The Supplemental NPRM's proposed FCM rule retains that basic structure. However, with respect to those orders that are submitted through DEA, Supplemental proposed § 1.82(b) and (c) now provide greater discretion to the FCM regarding how to comply with its § 1.82 obligations. FIA's comment letter indicated that pre-trade risk controls can be administered by the FCM facilitating electronic access to the

market, "and implemented within the appropriate system that the FCM has administrative control over, including third-party vendor systems and exchange provided graphical user interfaces."<sup>231</sup> The revised proposed rule now provides discretion to executing FCMs to comply with § 1.82(b) in the DEA context using the FCM's own controls, or controls provided by a DCM or other third party, as long as these controls satisfy the requirements of § 1.82(b). Further, NPRM proposed § 1.82(c) had provided that for non-DEA orders, the FCM must itself establish and maintain pre-trade risk controls and order cancellation systems. Supplemental proposed § 1.82(c) now provides that the FCM may also comply with § 1.82(c) by using the pre-trade risk controls and order cancellation systems provided by DCMs pursuant to § 38.255. The Commission intends that this change will provide increased flexibility and decreased costs on FCMs, and allows the FCM to choose what it judges to be the most appropriate, and robust, risk control system from a broader set of options.

*Proposed § 38.255.* The Commission made conforming changes to NPRM proposed § 38.255 consistent with its decision to shift the focal point of FCM risk control obligations from Algorithmic Trading orders to Electronic Trading orders. These include use of the newly defined terms "Electronic Trading" and "Electronic Trading Order Message." The Commission has also adjusted several regulation cross-references in light of changes made to NPRM proposed § 1.82 (see §§ 38.255(b)(1)(i) and 38.255(b)(2)).

Finally, as noted above with respect to § 1.82, an FCM now has discretion in the DEA context as to whether it will use DCM-provided controls to comply with § 1.82 requirements. Consistent with that change, Supplemental proposed § 38.255(c) now allows a DCM that permits DEA to require that an FCM use the DCM-provided controls, or substantially equivalent controls developed by the FCM itself or a third party. Prior to an FCM's use of its own or a third party's systems and controls, the FCM must certify to the DCM that such systems and controls are in fact substantially equivalent to the systems and controls that the DCM makes available pursuant to Supplemental proposed § 38.255(b).

*Proposed § 40.20.* The Commission made conforming changes to proposed

<sup>231</sup> FIA 3, 5. An industry participant during the Roundtable also indicated that some FCMs may use third party tools to perform certain services to clients. See Roundtable Tr. 166:17–167:5.

§ 40.20 consistent with its decision to require DCMs to apply risk controls and other measures to electronic trading orders, rather than only to Algorithmic Trading orders. These include changes to use the terms "Electronic Trading" and "Electronic Trading Order Message." In addition, the regulatory text of Supplemental proposed § 40.20 now explicitly lists risk controls and order cancellation systems within the regulation text of §§ 40.20(a)(1) and 40.20(b)(1)(i).

Like Supplemental proposed § 1.82, Supplemental proposed § 40.20 now requires DCMs to implement pre-trade and other risk controls reasonably designed to prevent a disruption associated with Electronic Trading (including an Algorithmic Trading Disruption). As discussed above, the Commission considers a disruption associated with Electronic Trading to mean an event that disrupts, or materially degrades, the Electronic Trading of a market participant, the operation of the DCM on which the market participant is trading, or the ability of other market participants to trade on the DCM on which the market participant is trading.

Finally, NPRM proposed § 40.20(d) had required that DCMs implement risk control mechanisms for manual order entry and other non-Algorithmic Trading. Given the change in overall applicability of § 40.20 to Electronic Trading, the Commission has determined to withdraw § 40.20(d).

#### 4. Commission Questions

28. Supplemental proposed §§ 1.82(b) and 38.255(c) provide discretion to the FCM to comply with § 1.82(b) in the DEA context using its controls, or controls provided by a DCM or other third party, as long as those controls are substantially similar to the controls provided by the DCM. Do you agree with this level of discretion, or do you believe that FCMs should be required to use DCM-provided controls in the DEA context to comply with § 1.82?

29. Supplemental proposed § 1.82(c) provides that the FCM may also comply with § 1.82(c) by using the pre-trade risk controls and order cancellation systems provided by DCMs pursuant to § 38.255. Do you agree with this discretion? Given the revised definition of DEA, should proposed §§ 1.82 and 38.255 make any distinction between DEA and non-DEA orders?

30. The Commission assumes that, given the definition of DEA provided in Supplemental proposed § 1.3(yyyy), risk controls implemented by an FCM for non-DEA orders might function similarly to a DCM-provided controls

implemented by an FCM for DEA orders. Should Regulation AT therefore require that DCMs provide § 1.82 risk controls for both DEA and non-DEA orders?

### C. New and Revised Definitions; Change From “Clearing Member” to “Executing” FCMs

#### 1. Overview and Policy Rationale for New Proposal

As discussed above, the Commission has decided to modify its framework such that risk controls would be required at two, rather than three, levels of the order submission process. The DCM will always be one level of risk controls. The second level will be either an AT Person or an executing FCM.<sup>232</sup> In addition, the Supplemental proposed rules require DCMs (and FCMs, when such firms implement risk controls) to implement risk controls on all electronic orders. Paired with those rule changes, the Commission is proposing new defined terms “Electronic Trading” and “Electronic Trading Order Message.” The Commission has also changed terminology in Regulation AT relating to FCMs. In the NPRM, proposed §§ 1.82, 1.83, 38.255, and 40.22 applied to or referred to “clearing member” FCMs. Now such rules apply or refer to “executing” FCMs. These additional changes are responses to commenter concerns with the prior proposed risk control framework, particularly comments that even non-algorithmic electronic orders have the potential to cause disruption and that “clearing member” FCMs may not have the ability to implement certain controls on a pre-trade basis.

#### 2. NPRM Proposal and Comments

The NPRM proposed to define the terms “Algorithmic Trading” and “AT Order Message” (see NPRM proposed §§ 1.3(zzzz) and 1.3(wwww), respectively), but not the terms “Electronic Trading” and “Electronic Trading Order Message.” Pursuant to the NPRM, the proposed term AT Order Message was defined as each new order or quote submitted through Algorithmic Trading to a designated contract market by an AT Person and each change or deletion submitted through Algorithmic Trading by an AT Person with respect to such an order or quote. This term was used in the proposed regulations requiring AT Persons, clearing member

FCMs and DCMs to implement pre-trade risk controls and other measures with respect to AT Order Messages.

*Comments Received.* Commenters generally supported the NPRM proposed definition of AT Order Message. CME commented that the term should not include any “non-actionable” messages, such as requests for quotes, requests for cross, heartbeat messages, and mass quotes.<sup>233</sup> CME further indicated that DCMs should be able to determine what activity may be disruptive in the context of non-actionable messages.<sup>234</sup> FIA commented that message throttles should not reject cancellation messages because such messages may be risk-minimizing.<sup>235</sup> FIA further stated that it should be in the discretion of the person supervising order messages to take action if excessive cancellation messages are disruptive.<sup>236</sup>

The NPRM proposed several rules that impose risk control and reporting requirements on clearing member FCMs (*i.e.*, §§ 1.82 and 1.83) or that otherwise refer to FCMs (*i.e.*, §§ 38.255 and 40.22). The principal risk control rule applicable to FCMs is NPRM proposed § 1.82. AIMA commented that the pre-trade risk controls proposed in the NPRM “represent a strong foundation for ensuring the most obvious safeguards are in place to protect markets from the risks of automated execution.”<sup>237</sup> AIMA further commented on the type of entity that should be subject to NPRM proposed § 1.82, stating that the rule should apply to any AT Person providing market access services in the Algorithmic Trading transaction chain, not only to clearing member FCMs.<sup>238</sup> Similarly, other commenters took the position that NPRM proposed § 1.82 did not apply to the correct set of FCMs. For example, FIA stated that the § 1.82 requirements should be on the FCM “facilitating access to the DCM.”<sup>239</sup> In support of its position, FIA noted that market participants “can choose to route orders through an FCM that is not their clearer and give up the trades after execution on the DCM.”<sup>240</sup> FIA stated that non-clearing FCMs should provide the same

standard of pre-trade risk management as an FCM that executes and clears for a market participant.<sup>241</sup> Accordingly, FIA asserted that any clearing member of a DCM that provides electronic access for its customers or its own trading on a DCM should implement appropriate risk controls.<sup>242</sup> FIA further stated that if a clearing FCM delegates facilitation of electronic access to another entity, the delegated entity should implement the appropriate controls and the delegating FCM should help ensure that such controls are in place.<sup>243</sup>

The Industry Group expanded on this point in their comment letter submitted during the Second Comment Period. The Industry Group indicated that a customer may use the same FCM to provide both execution and clearing services, or may use one FCM for execution and choose to clear trades through another FCM.<sup>244</sup> In that instance, the executing FCM acts as the “gatekeeper” to the DCM matching engine, and is the only FCM that can administer pre-trade risk controls.<sup>245</sup> Any other FCMs that may subsequently clear trades can only provide controls on a post-trade basis.<sup>246</sup>

#### 3. Substance of New Proposal

##### a. Defined Terms Electronic Trading and Electronic Trading Order Message

The NPRM did not propose definitions of “Electronic Trading” or “Electronic Trading Order Message.” Because the Commission has decided to expand some AT Person, FCM and DCM requirements to electronic orders, these new defined terms are necessary.

Supplemental proposed § 1.3(dddd) defines “Electronic Trading,” for purposes of §§ 1.80, 1.82, 1.83, 38.255, 40.20 and 40.22, as trading in any commodity interest (as defined in paragraph (yy) of § 1.3) on an electronic trading facility (as such term is defined by section 1a(16) of the Act), where the order, order modification or order cancellation is electronically submitted for processing on or subject to the rules of a DCM. The scope of the defined term is intended to be expansive, covering, for example, all order activity on CME Globex.

Supplemental proposed § 1.3(bbbbb) defines “Electronic Trading Order Message” as each new order submitted using Electronic Trading and each modification or cancellation submitted using Electronic Trading with respect to

<sup>232</sup> Whether the second level of risk controls is implemented by the AT Person or an executing FCM depends on whether the order originated with an AT Person and whether the AT Person has delegated risk control implementation to the executing FCM.

<sup>233</sup> CME A–5. On its Web site, CME states that “mass quotes” allow authorized CME Globex customers to create and maintain a market on a large number of instruments simultaneously. See <http://www.cmegroup.com/confluence/display/EPIC/SANDBOX/Mass+Quotes>.

<sup>234</sup> CME A–5.

<sup>235</sup> FIA A–13.

<sup>236</sup> *Id.* at 13.

<sup>237</sup> AIMA III 2.

<sup>238</sup> AIMA 14; see also AIMA III 3.

<sup>239</sup> FIA A–29.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.* at A–30 n.28.

<sup>244</sup> Industry Group 4–5 n.4.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

such an order. This defined term largely tracks the term “AT Order Message” as proposed in the NPRM and as revised in this Supplemental NPRM.

b. Revisions to Defined Term “AT Order Message”

In this Supplemental NPRM, the Commission makes several changes to the definition of AT Order Message (§ 1.3(www)), mainly for the purposes of simplification. The words “modification or cancellation” have replaced the words “change or deletion” because it is the Commission’s understanding that “modification” and “cancellation” are more commonly used terms in the industry. The words “to a designated contract market” were deleted as unnecessary, because the concept of an order being submitted specifically to a DCM, as opposed to any other type of exchange, is embedded in the definition of Algorithmic Trading (see NPRM proposed § 1.3(zzzz)).

Finally, in this Supplemental NPRM, the Commission has deleted the word “quote” from the definition of AT Order Message. The word “quote” is also not contained in the Electronic Trading Order Message, Algorithmic Trading, or Electronic Trading definitions. The Commission intends that the term “order” means any firm, actionable messages to the DCM. Accordingly, the term “order” includes quotes or mass quotes as long as such quotes are firm and actionable. In response to the NPRM, CME commented that the term AT Order Message should not include any “non-actionable” messages, such as requests for quotes, requests for cross, heartbeat messages, and mass quotes.<sup>247</sup> To the extent that certain types of messages, such as requests for quote, requests for cross, and heartbeat messages, are not actionable, then such messages would not fall within the definition of AT Order Message or Electronic Trading Order Message. However, the Commission understands from CME’s Web site that mass quotes can be actionable.<sup>248</sup> In cases where the use of quotes (such as mass quotes) is similar to the submission of other order types in that they are actionable, such quotes would have the potential to cause market disruption and, therefore, should be included within the meaning of the terms AT Order Message and Electronic Trading Order Message.

<sup>247</sup> CME A-5.

<sup>248</sup> For example, CME Group’s Web page on mass quotes indicates that successfully accepted quotes act as limit orders. See <http://www.cmegroup.com/confluence/display/EPICSSANDBOX/Mass+Quotes>.

c. Change in Terminology From “Clearing Member” to “Executing” FCMs

In light of the comments received, the Commission determined that applying NPRM proposed § 1.82 to clearing member FCMs would be too limiting. Depending on the order submission process, executing FCMs, rather than clearing member FCMs, may be in the best position to apply risk controls on a pre-trade basis; in many cases, the clearing FCM and the executing FCM will be the same firm, so the wording change will not result in a requirement change. Accordingly, the Commission has revised NPRM proposed § 1.82 (and made conforming changes in Supplemental proposed §§ 1.80, 1.83, 38.255, 40.20 and 40.22) so that the risk control and recordkeeping requirements previously applicable to clearing member FCMs now apply to executing FCMs.

The Commission is seeking comment on whether the change from “clearing member” FCMs to “executing” FCMs is appropriate. If commenters raise concerns with this change, and prefer an alternate description, including a return to the prior language, the Commission may adjust the final rules in light of such comments. With respect to Regulation AT, the Commission seeks to ensure that electronic order messages are subject to risk controls by an FCM who provides access to a DCM and can monitor that order message flow prior to its arrival at the DCM.<sup>249</sup> Accordingly, all FCMs facilitating such access should be aware that they may be subject to final rules under Regulation AT including, without limitation, Supplemental proposed § 1.82 required controls and § 1.83 required recordkeeping. FCMs are encouraged to submit comments concerning such rules and whether certain FCMs should, or should not, be subject to Regulation AT.

4. Commission Questions

31. With respect to the term “Electronic Trading,” should the definition exclude trading on a hybrid trade execution model, *i.e.*, one that includes non-electronic components?<sup>250</sup>

32. The Commission considers the term “order” to include all firm, actionable messages, and understands

<sup>249</sup> In some instances, an order may flow through multiple FCMs. The Commission expects that in such a scenario, each executing FCM must comply with § 1.82 with respect to such order.

<sup>250</sup> With respect to hybrid trade execution models, the Commission means the unlikely event of a DCM employing a trade execution model that has a voice component, as opposed to an entirely electronic model.

mass quotes to be actionable messages. Are there other types of firm, actionable messages that constitute orders—and therefore fall within the scope of the terms AT Order Message and Electronic Trading Order Message—that the Commission should clarify in the final rules? If mass quotes are not firm, actionable messages, please explain.

33. The Commission has changed Regulation AT references to “clearing member” FCMs to “executing” FCMs. Do you agree or disagree with this change? Is the term “executing” FCMs sufficiently clear? Does the term “executing” FCMs more appropriately capture the type of FCMs that can apply pre-trade risk controls and order cancellation systems to electronic trading orders? Does the term “executing” FCMs inappropriately exclude certain FCMs that should otherwise comply with § 1.82 obligations?

D. AT Person Delegation to FCM

1. Overview and Policy Rationale for New Proposal

As explained above, the Commission proposes streamlining risk controls from three levels to two and shifting the focal point of risk control from Algorithmic Trading to Electronic Trading. The number of AT Persons may be reduced as a result of the proposed volume threshold test, but the obligations of AT Persons pursuant to NPRM proposed § 1.80 will remain largely the same, with several exceptions. As discussed below, the changes to NPRM proposed § 1.80 are: (1) AT Persons would be required to implement certain risk controls to their Electronic Trading Order Messages, in addition to their AT Order Messages; (2) AT Persons would be permitted to delegate certain pre-trade risk control obligations to their executing FCMs; (3) AT Persons would no longer be required to notify their clearing member and DCM of their intended use of Algorithmic Trading; and (4) the provisions proposed in NPRM § 1.80(e) regarding self-trade prevention tools are reserved, as the Commission anticipates postponing consideration of self-trade prevention to a second phase of Regulation AT rulemaking in the future. The Commission proposes the delegation option in order to provide increased flexibility and decreased burden on AT Persons, and eliminates the notification requirement in response to commenter concerns that such provision is unnecessary.

## 2. NPRM Proposal and Comments

The NPRM proposed § 1.80, which required that AT Persons implement pre-trade risk controls and other measures for all AT Order Messages that are reasonably designed to prevent an Algorithmic Trading Event.<sup>251</sup> Relevant controls and measures required by NPRM proposed § 1.80 included maximum AT Order Message frequency and maximum execution frequency per unit time; order price parameters and maximum order size limits; order cancellation and ATS disconnect systems; and connectivity monitoring systems. They also included several other specific requirements, such as notification by AT Persons to applicable DCMs and clearing member FCMs that they will engage in Algorithmic Trading; calibrating or otherwise implementing DCM-provided self-trade prevention tools; and periodic review of the sufficiency and effectiveness of the controls implemented by the AT Person.

*Comments Received.* Commenters addressed various aspects of the proposed rule, including the enumerated risk control requirements and order cancellation requirements. The Commission is continuing to review such comments, and may make additional changes to such provisions as part of the final rules. This Supplemental NPRM eliminates the notification requirement and reserves for later consideration the self-trade tool implementation requirements, proposed in the NPRM, respectively, as §§ 1.80(d) and 1.80(e). As stated in the NPRM, the purpose of the § 1.80(d) notification provision was to ensure that clearing member FCMs and exchanges have sufficient advance notice to implement and calibrate pre-trade and other risk controls to manage risks arising from the AT Person's trading.<sup>252</sup>

In response to the NPRM, FIA and CME opposed proposed § 1.80(d).<sup>253</sup> FIA commented that pre-notification of a market participant's initial use of Algorithmic Trading is unnecessary and overly burdensome.<sup>254</sup> FIA stated that when an FCM accepts a client, the client informs the FCM if they will be conducting Algorithmic Trading, and that most exchanges require operator IDs for algorithmic traders.<sup>255</sup> FIA further stated that the breadth of the term Algorithmic Trading would require almost every FCM and DCM client to notify the FCM and DCM of their use of

Algorithmic Trading technology.<sup>256</sup> Finally, FIA commented that identifying each change to a system would be counterproductive and burdensome, as it would require thousands of notices per year by each participant.<sup>257</sup> CME agreed that FCMs already obtain a significant amount of information from clients about the type of trading they anticipate engaging in so that the FCM can comply with existing §§ 1.11 and 1.73, and that the Commission should not prescribe that additional information must be communicated.<sup>258</sup> The Industry Group recommended that market participants trading electronically, without passing through FCM-administered risk controls, should self-identify to applicable DCMs prior to trading, or may be identified via tags on order messages.<sup>259</sup> Nadex requested a change to § 1.80(d), stating that compliance rests entirely on the AT Person providing the notification, and therefore the regulation should specify that in the absence of such notification, the FCM and DCM are absolved of any liability for non-compliance with Regulation AT.<sup>260</sup> In contrast, AIMA supported the proposed § 1.80(d) notification requirement.<sup>261</sup>

## 3. Substance of New Proposal

### a. Delegation to Executing FCMs

The Commission proposes a change to NPRM proposed § 1.80 so that AT Persons may delegate compliance with § 1.80(a) pre-trade risk control requirements to their executing FCMs. Supplemental proposed § 1.80(d)(1) provides that an AT Person may choose to comply with § 1.80(a) by implementing required pre-trade risk controls, or it may instead delegate compliance with such obligations to its executing futures commission merchant(s). As noted above, commenters generally found the NPRM's risk control framework as too "one size fits all," and recommended a more principles-based rule. The Commission believes that the delegation provision provides AT Persons with increased flexibility and decreased burden and compliance costs with respect to § 1.80 compliance. The Supplemental proposed rules do not require the FCM to accept the delegation. If the executing FCM declines to comply with § 1.80(a), the AT Person must implement the risk controls itself.

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> CME A-12.

<sup>259</sup> Industry Group 8.

<sup>260</sup> Nadex 5.

<sup>261</sup> AIMA 14.

Supplemental proposed § 1.80(d)(2) provides that an AT Person may only delegate such functions when (i) it is technologically feasible for each relevant futures commission merchant to comply with § 1.80(a) with a level of effectiveness reasonably designed to prevent and reduce the potential risk of an Algorithmic Trading Event; and (ii) each relevant futures commission merchant notifies the AT Person in writing that the futures commission merchant has accepted the AT Person's delegation and that it will comply with § 1.80(a) on behalf of the AT Person." The purpose of § 1.80(d)(2)(i) is to ensure that the FCM is actually able to effectively implement pre-trade risk controls, order cancellation systems and order connectivity systems on behalf of the AT Person. The Commission believes that generally, use of DEA or some other trading technology that is outside the control of the executing FCM may prevent the FCM from effectively implementing controls on a pre-trade basis. Such delegation would be improper under Supplemental proposed § 1.80(d). The purpose of § 1.80(d)(2)(ii) is to ensure that it is clear, as between the AT Person and the FCM, who is responsible for complying with § 1.80(a).

Finally, Supplemental proposed § 1.80(f) continues to require an AT Person to periodically review its compliance with § 1.80 to determine whether it has effectively implemented sufficient measures. The Commission has revised this section so that its standard is consistent with the "reasonably designed to prevent and reduce the potential risk of" an Algorithmic Trading Event standard discussed above. In addition, the Commission has revised this section to account for the possibility that an AT Person has delegated § 1.80(a) compliance to an FCM, and requires the AT Person to periodically review such FCM's compliance with § 1.80(a).

### b. Proposed Use of Algorithmic Trading Notification Requirement

Based on the addition of Electronic Trading to Regulation AT's risk control framework, the Commission has determined that mandatory notification from an AT Person to an FCM or DCM is no longer warranted. Accordingly, the Commission proposes to withdraw the notification requirements provided in NPRM § 1.80(d). The Commission emphasizes, however, that DCMs must have an appropriate awareness of its market participants engaged in Algorithmic Trading, as well as the systems and strategies used by market participants. Such understanding is

<sup>251</sup> See NPRM at 78849-78855.

<sup>252</sup> *Id.* at 78854.

<sup>253</sup> FIA A-26; CME A-12.

<sup>254</sup> FIA A-26.

<sup>255</sup> *Id.*

necessary not only for DCMs' role as self-regulatory organizations with plenary responsibility for the oversight of their markets, but also to comply with the requirements of Supplemental proposed § 40.22. This provision, explained in detail below, requires each DCM to establish an effective program for periodic review and evaluation of AT Persons' compliance with §§ 1.80 and 1.81. The Commission expects that DCMs will establish their own rules and procedures to ensure that they are aware of the AT Persons trading on their markets, and to successfully comply with Supplemental proposed § 40.22.

#### c. Voluntary Election of AT Person Status

Finally, the Commission, as part of its changes to the definition of "AT Person," proposes § 1.3(xxxx)(2), which allows a person that does not satisfy the conditions of § 1.3(xxxx)(1) to nevertheless elect to become an AT Person. Prior to becoming an AT Person, such person must register as a floor trader as defined in § 1.3(x)(1)(ii) and submit an application for membership in at least one RFA pursuant to § 170.18. A person that elects to become an AT Person pursuant to Supplemental proposed § 1.3(xxxx)(2)(i) must comply with all requirements of AT Persons pursuant to Commission regulations.<sup>262</sup> The Commission proposes § 1.3(xxxx)(2) in order to provide increased flexibility to persons that prefer to implement their own pre-trade risk controls, rather than leaving implementation of such measures to executing FCMs.

#### 4. Commission Questions

34. Please explain whether you support or oppose the ability of AT Persons to delegate certain § 1.80 obligations to FCMs, including implementation of pre-trade risk controls, order cancellation systems and system connectivity requirements.

a. Does the language of Supplemental proposed §§ 1.80(d)(2) and (g)(3) providing that an AT Person may only delegate such functions when (i) it is technologically feasible adequately ensure that delegation only occurs when the FCM can implement controls on a pre-trade basis?

b. Should the Commission require the AT Person to conduct due diligence or obtain a certification to ensure that the FCM is implementing sufficient controls?

c. Should the Commission allow AT Persons to delegate to FCMs compliance with other § 1.80 obligations, such as § 1.80(b) order cancellation

requirements? For which obligations would FCM delegation be technologically feasible?

35. Do you agree with the Commission's determination to eliminate the notification of the use of Algorithmic Trading requirement that had been required in NPRM proposed § 1.80(d)? If you believe that the Commission should retain such a requirement, please explain why.

36. Will DCMs be able to comply with Supplemental proposed § 40.20(c)'s system connectivity requirements as to AT Persons without an explicit requirement that AT Persons or FCMs notify DCMs that the AT Persons will be conducting Algorithmic Trading?

### VII. Reporting and Recordkeeping Obligations

#### A. Overview and Policy Rationale for New Proposal

NPRM proposed §§ 1.83 and 40.22 required that AT Persons and clearing member FCMs provide the DCMs on which they operate annual reports containing information on their compliance with §§ 1.80(a) and 1.82(a)(1), and that DCMs establish a program for effective review and evaluation of such reports. The proposed rules also provided recordkeeping requirements regarding NPRM proposed §§ 1.80, 1.81 and 1.82 compliance. The reports, recordkeeping requirements, and review program were intended to enable DCMs to understand the pre-trade risk controls and compliance procedures of AT Persons and FCMs with respect to Algorithmic Trading and to identify and take remedial action to address potential risks and compliance concerns.

In response to the NPRM, the Commission received comments indicating that the reporting requirements were overly burdensome and would provide little benefit with respect to mitigating the risks of Algorithmic Trading. Accordingly, as described below, the Commission has eliminated the annual compliance reports requirement; retained the recordkeeping requirements; and changed the DCM annual compliance report review program to a more general program for review of AT Person and FCM compliance with §§ 1.80, 1.81 and 1.82. The Commission further proposes requiring DCMs to mandate that AT Persons and executing FCMs provide DCMs with an annual certification attesting that the AT Person or FCM complies with the requirements of §§ 1.80, 1.81, and 1.82, as applicable. The Commission believes that these changes will significantly decrease the

cost of compliance by AT Persons and FCMs with Regulation AT, while at the same time providing enhanced flexibility and discretion to DCMs in terms of designing and implementing an effective program for review of AT Person and FCM controls and procedures related to Algorithmic Trading.

#### B. NPRM Proposal and Comments

NPRM proposed § 1.83(a) and (b) required that AT Persons and clearing member FCMs provide the DCMs on which they operate with information regarding their compliance with §§ 1.80(a) and 1.82(a)(1). NPRM proposed § 40.22 required that each DCM that receives a report described in § 1.83 establish a program for effective review and evaluation of the reports. The reports proposed by § 1.83 and the review program proposed by § 40.22 were intended to ensure that AT Persons and clearing FCMs implement effective risk controls and regularly review these risk controls. NPRM § 1.83(c) and (d) complimented the compliance report review program by requiring that AT Persons and clearing member FCMs keep and provide upon request to DCMs books and records regarding their compliance with proposed §§ 1.80 and 1.81 (for AT Persons) and § 1.82 (for clearing member FCMs). NPRM proposed § 40.22(d) required DCMs to implement rules that require AT Persons and FCMs to keep and provide to the DCM books and records regarding compliance with §§ 1.80, 1.81 and 1.82. Finally, NPRM proposed § 40.22(e) required DCMs to review and evaluate, as necessary, such books and records maintained by AT Persons and clearing member FCMs regarding their Regulation AT compliance.

*Comments Received.* Numerous commenters opposed the NPRM requirement that AT Persons file an annual report.<sup>263</sup> AIMA expressed concern about the burden that reviewing the filings would have on DCMs,<sup>264</sup> and CME, FIA, MGEX, Commercial Alliance and Nadex suggested that the cost of requiring participants to prepare and submit compliance reports to DCMs outweighs any benefit.<sup>265</sup> Furthermore, CME, FIA and ICE all indicated that information in the reports would be

<sup>263</sup> AIMA 17; CME 20, A-20-A-21; FIA 10, A-90; MGEX 15, 16, 25-26; Commercial Alliance 12; Nadex 5; OneChicago 6; ISDA 71; MFA 29; ICE 10, A-30, A-31; NIBA 2; NASDAQ 4.

<sup>264</sup> AIMA 17.

<sup>265</sup> CME 20; FIA 10; MGEX 15, 25-26; Commercial Alliance 12; Nadex 5.

<sup>262</sup> See Supplemental proposed § 1.3(xxxx)(2)(ii).

outdated and no longer useful by the time a report is reviewed.<sup>266</sup>

In addition, commenters questioned the technical capability of DCMs to perform a meaningful review of AT Persons' reports or to assess whether the quantitative settings or calibrations of any AT Person's controls are sufficient.<sup>267</sup> MGEX stated that "it is impracticable to expect DCMs to understand all unconventional or proprietary trading strategies or the varied technological systems that market participants employ."<sup>268</sup> Nadex and OneChicago were concerned that DCMs would be responsible for the manner an AT Person sets or calibrates risk controls.<sup>269</sup> MGEX was skeptical that reviewing compliance reports would ensure that AT Persons are actually following these measures in practice.<sup>270</sup> MGEX believed that clear rules and robust surveillance are a better way to ensure market integrity.<sup>271</sup> CME and FIA further commented that compliance reports would be duplicative for clearing FCMs, which already undergo review by their Designated Self-Regulatory Organization ("DSRO") and clearing organizations.<sup>272</sup>

Several commenters were concerned about the cost of compliance.<sup>273</sup> For example, ICE believed that DCMs would have to hire additional staff to conduct a comprehensive review of reports and expressed concern regarding the potential additional cost.<sup>274</sup> LCHF and NIBA commented that only large market participants should be required to submit compliance reports, noting concerns as to the costs for small firms or IBs.<sup>275</sup> MGEX and NASDAQ commented that small DCMs will be particularly burdened because they will need to hire additional staff.<sup>276</sup> NASDAQ believed that the proposed requirements "could potentially cause some DCMs to cease or scale back operation, and impact the entry of new DCMs."<sup>277</sup>

As an alternative process to mandatory filing of annual reports a number of commenters suggested certification processes and outlined different processes that could be required.<sup>278</sup> For example, LCHF suggested that compliance reports be reviewed in situations limited to those involving an "open investigation" or "complaint filed on a market participant."<sup>279</sup> MGEX similarly suggested that if compliance report reviews were included, they should only occur as a part of an investigation of a market disruption, or alternatively that the FCM or DSRO would have the responsibility for conducting such a review.<sup>280</sup>

Commenters also expressed concern over the confidentiality of information required to be provided to DCMs in compliance reports.<sup>281</sup> AIMA suggested that language be added to the proposed rule to require that DCMs maintain compliance reports in confidence, and that the Commission treat these as non-public reports for FOIA purposes.<sup>282</sup>

With respect to the DCM's role in the reporting and recordkeeping framework, OneChicago, CME, FIA and ICE commented that the compliance reports provided to DCMs would be overly burdensome and ineffective in reducing risk.<sup>283</sup> FIA and ICE commented that DCMs already follow procedures that effectively reduce the risk from Algorithmic Trading.<sup>284</sup> ICE further commented that the compliance reports are unnecessary, because "DCMs have implemented comprehensive market surveillance and regulation programs that include automated reports and alerts designed to identify instances of aberrant or abnormal order or trade activity. These programs are already effective at identifying specific events of concern that involve Algorithmic Trading."<sup>285</sup> CME, FIA and ICE also commented that the reports would include stale and irrelevant data, which would not be helpful to DCMs in preventing future market risk or disruptive practices.<sup>286</sup> FIA commented that "DCMs are likely not to know the trading strategies or risk tolerances of any particular AT Person and thus are unable to assess the adequacy of their development and testing protocols, their procedures to help detect Algorithmic

Trading Compliance Issues, or their pre-trade risk and other controls."<sup>287</sup>

CBOE commented on the preamble language, stating that a DCM may want to review an AT Person's books and records, pursuant to § 40.22(d)-(e), if the AT Person represents significant volume in a particular product.<sup>288</sup> CBOE stated that "the trigger for a review of risk control books and records should be potential or actual problematic behavior by the AT Person that suggests the need for heightened scrutiny of the AT Person in relation to its risk controls," but that high volume should not be a trigger for review.<sup>289</sup> In addition, OneChicago found the text of § 40.22 vague and questioned what would be considered appropriate remediation of any deficiency found in an AT Person or FCM report.<sup>290</sup>

Some commenters also asserted that the Commission's estimated cost for DCMs to comply with § 40.22 is too low.<sup>291</sup> CME stated that the annual cost for each of its four exchanges would be closer to \$525,000, stating that "this figure assumes that across all four Exchanges, approximately 650 entities would come within the scope of the proposed compliance report requirements and each entity would be reviewed once every four years (across all four Exchanges). If CME Group Exchanges were required to review each entity's annual report once every two years, the cost would double as CME Group would need to hire twice as many full-time employees. CME Group estimates that it would take approximately one month for a full-time employee to complete each review."<sup>292</sup> MGEX estimated that it would need to hire at least two additional full time employees to review the reports, and that reviewing each report would take significantly longer than the 15 hours estimated in the NPRM.<sup>293</sup>

Commenters further discussed the reporting structure during the Second Comment Period. The Industry Group commented that the annual reports requirement was "ineffective, unnecessary, and redundant with other requirements to which registrants are subject. Additionally, the proposed reports will inundate DCMs with voluminous policies and procedures related to the development and compliance of algorithmic trading systems, as well as mountainous

<sup>266</sup> CME 20, A-21; FIA 10; ICE A-30.

<sup>267</sup> CME 20, A-20; FIA 10; ICE 10, A-30.

<sup>268</sup> MGEX 16.

<sup>269</sup> Nadex 5-6; OneChicago 6. Nadex also asserted in its comment letter that "the proposed regulations would essentially place the DCM in the role of an advisor or consultant to the AT Person. The AT Person could hold the DCM responsible for any errors or malfunctions that occur as the result of the DCM's 'remediation', or shift blame to the DCM in the event those changes are found inappropriate or insufficient by the CFTC or RFA." Nadex 6.

<sup>270</sup> MGEX 16.

<sup>271</sup> *Id.*

<sup>272</sup> CME 20; FIA 10, A-90.

<sup>273</sup> ISDA 71; MFA 29.

<sup>274</sup> ICE A-31.

<sup>275</sup> LCHF 3; NIBA 2.

<sup>276</sup> MGEX 16.

<sup>277</sup> NASDAQ 4.

<sup>278</sup> CME 20, A-21, 22; FIA 10, FIA A-90; ICE 9-10; MFA 29; NASDAQ 4; OneChicago 6.

<sup>279</sup> LCHF 3.

<sup>280</sup> MGEX 17.

<sup>281</sup> AIMA 18; FIA A-91, A-92.

<sup>282</sup> AIMA 18.

<sup>283</sup> OneChicago 6; CME 20; FIA A-90-91; ICE 33.

<sup>284</sup> FIA A-94; ICE 33.

<sup>285</sup> ICE 33.

<sup>286</sup> CME A-21; FIA A-91; ICE 30-31.

<sup>287</sup> FIA A-91.

<sup>288</sup> NPRM 78876.

<sup>289</sup> CBOE 7-8.

<sup>290</sup> OneChicago 6.

<sup>291</sup> CME 22; MGEX 26.

<sup>292</sup> CME 22.

<sup>293</sup> MGEX 26.

snapshots of stale qualitative risk parameter settings particularized to a given market participant that will be virtually impossible for a DCM to meaningfully assess.”<sup>294</sup> The Industry Group stated that as an alternative, the Commission should require a certification process that affected parties materially comply with relevant aspects of the rule.<sup>295</sup> In addition, consistent with its recommendation of a two-level risk control structure with AT Persons/FCMs at one level, and DCMs as the second level, the Industry Group suggested a due diligence requirement in which FCMs must perform due diligence on customers that transmit orders without such orders going through FCM-administered risk controls.<sup>296</sup>

In its Second Comment Period letter, CME reiterated its opposition to the reporting structure as creating an unnecessary administrative burden without a corresponding benefit to market integrity.<sup>297</sup> Among other things, CME noted that DCMs would not have sufficient information about AT Persons’ systems to meaningfully assess Regulation AT compliance, and DCMs would appear to be endorsing the policies and procedures of AT Persons if they receive compliance reports but remain silent.<sup>298</sup> CME also commented on the substantial costs of the report review program.<sup>299</sup> Finally, CME suggested a similar due diligence process where the clearing member who granted DEA to an AT Person (a “gatekeeper clearing member”) should obtain certifications of compliance from their customers.<sup>300</sup>

### C. Substance of New Proposal

In light of the concerns raised by commenters to NPRM proposed §§ 1.83 and 40.22, the Commission has determined to make several changes to the proposed rules. First, and most significantly, the Commission has eliminated the requirement that AT Persons and FCMs prepare compliance reports. The requirements proposed as NPRM §§ 1.83(a) (AT Person reports) and 1.83(b) (FCM reports) are withdrawn in Supplemental proposed § 1.83. However, the Commission has determined to retain the AT Person and FCM recordkeeping requirements, and such requirements proposed in the

NPRM as §§ 1.83(c) and 1.83(d) are now re-numbered as §§ 1.83(a) and 1.83(b).

The Commission in this Supplemental NPRM has made conforming changes to § 40.22. Specifically, the NPRM required that DCMs review AT Person and FCM annual reports, identify deficiencies in AT Persons’ and FCMs’ compliance programs, and take remedial action as needed. The Commission has eliminated DCMs’ obligation to review annual compliance reports. In place of that obligation, Supplemental proposed § 40.22(a) now requires DCMs to periodically review AT Persons’ and FCMs’ programs for compliance with §§ 1.80, 1.81 and 1.82. The Commission expects that DCMs’ periodic review programs would be similar to their existing programs for periodically reviewing members’ and market participants’ compliance with audit trail recordkeeping requirements.

Supplemental proposed § 40.22(b) (formerly § 40.22(d)) continues to require DCMs to implement rules requiring AT Persons and FCMs (now executing FCMs) to keep and provide to the DCM books and records regarding compliance with §§ 1.80, 1.81 and 1.82. Proposed § 40.22(c) replaces the previous requirement that DCMs review and evaluate such books and records with a more general requirement that DCMs require such periodic reporting from AT Persons and executing futures commission merchants as is necessary to fulfill the designated contract market’s obligations pursuant to paragraph (a) of § 40.22.

Supplemental proposed § 40.22(d) provides that DCMs must require by rule that AT Persons and executing FCMs provide DCMs with an annual certification attesting that the AT Person or FCM complies with the requirements of §§ 1.80, 1.81, and 1.82, as applicable. Such annual certification shall be made by the chief compliance officer or chief executive officer of the AT Person or FCM and must state that, to the best of his or her knowledge and reasonable belief, the information contained in the certification is accurate and complete. The Commission believes that the annual certification requirement proposed in Supplemental proposed § 40.22(d) will be substantially less burdensome than the review of compliance reports proposed under NPRM proposed § 40.22. The Commission also believes that the periodic review program required by Supplemental proposed § 40.22(a), and the annual certifications required by Supplemental proposed § 40.22(d), will together impose an important discipline on actors in the Algorithmic and

Electronic Trading space to help ensure compliance with Regulation AT’s key risk control and algorithm development provisions, including §§ 1.80, 1.81 and 1.82.

The Commission acknowledges the comments from Industry Group and CME suggesting an FCM-based due diligence program. The Commission will continue to consider such comments and whether such a structure should be incorporated into a final rule. However, at this time the Commission believes that the DCM is the appropriate entity to review the compliance programs of AT Persons. The DCM will have a broader perspective of the entire market compared to an FCM, and is better situated to ensure that there is a consistent baseline of sufficient controls across all AT Persons and executing FCMs.

### D. Commission Questions

37. Do you agree with the elimination of the annual compliance report requirement? Do you believe that the current AT Person/executing FCM recordkeeping and DCM review program proposed rules will sufficiently ensure that AT Persons and executing FCMs have effective risk controls? Is there any aspect of Supplemental proposed §§ 1.83 and 40.22 that should be changed to better ensure that AT Persons and executing FCMs are implementing effective risk controls?

### VIII. Additional Changes to NPRM Proposed Rules Under Consideration

The Commission is considering certain additional changes to the rules proposed in the NPRM, apart from the proposed rule text provisions set forth in this Supplemental NPRM. The Commission preliminarily believes that such additional changes could be adopted without further notice and comment, since they do not impact new parties, create new obligations, or otherwise increase burdens. The following is a summary of certain discrete areas that are under consideration. The Commission emphasizes that it has yet to make final determinations with respect to the items below, and that their final disposition may depend in part on how the Commission proceeds with other proposals in the NPRM and Supplemental NPRM.

NPRM proposed § 1.3(tttt) defines the term Algorithmic Trading Compliance Issue.<sup>301</sup> The term is relevant to the pre-

<sup>294</sup> Industry Group 7.

<sup>295</sup> *Id.*

<sup>296</sup> *Id.* at 9.

<sup>297</sup> CME III 4.

<sup>298</sup> *Id.* at 4.

<sup>299</sup> *Id.*

<sup>300</sup> *Id.* at 5.

<sup>301</sup> NPRM proposed § 1.3(tttt) defines “Algorithmic Trading Compliance Issue” to mean an event at an AT Person that has caused any Algorithmic Trading of such entity to operate in a manner that does not comply with the CEA or the

trade risk and other control requirements for AT Persons under NPRM proposed § 1.80, the testing requirements on AT Persons under proposed § 1.81(c), and the pre-trade and other risk controls for DCMs under NPRM proposed § 40.20. Several commenters noted that the scope of an Algorithmic Trading Compliance Issue should not include breaches of an AT Person's own internal requirements.<sup>302</sup> For example, SIFMA recommended that the definition be revised to remove references to an AT Person's internal policies to prevent unduly burdening DCMs and AT Persons with notifications of internal events that do not impact the market.<sup>303</sup> MFA commented that including violations of the AT Person's own internal requirements, or the requirements of the AT Person's clearing member, is too general and broad.<sup>304</sup> Citadel commented that the Commission should "focus on trading activity that can impact the proper functioning of the market, instead of purely internal events within a firm that do not impact other market participants, such as an inadvertent violation of an internal trading-related process."<sup>305</sup> CME indicated that applying a causation standard to internal policies may cause uncertainty.<sup>306</sup> In response to the concerns expressed by commenters, the Commission is considering limiting the scope of the term to violations of applicable law, including the Act and CFTC regulations. To that end, the Commission is considering whether to eliminate from NPRM proposed § 1.3(ttt) references to an AT Person's own internal rules, those of its clearing member, any DCM on which it trades, or an RFA.<sup>307</sup>

rules and regulations thereunder, the rules of any designated contract market to which such AT Person submits orders through Algorithmic Trading, the rules of any registered futures association of which such AT Person is a member, the AT Person's own internal requirements, or the requirements of the AT Person's clearing member, in each case as applicable.

<sup>302</sup> See AIMA 8; Citadel 3; CME A-3; CTC 14; IAA 9; ICE 10; FIA Appendix A 5, 11; ISDA 4; MFA 13; SIFMA 3.

<sup>303</sup> SIFMA 3, 1; *see also* Citadel 3.

<sup>304</sup> MFA 13.

<sup>305</sup> Citadel 3.

<sup>306</sup> CME A-3-4.

<sup>307</sup> The Commission notes, however, that its regulation 166.3 requires each Commission registrant (except certain associated persons) to "diligently supervise" the handling by its partners, officers, employees, agents, and persons occupying a similar status or performing a similar function, of all commodity interest accounts carried, operated, advised, or introduced by the registrant, and all other activities of its partners, officers, employees, agents, etc. AT Persons would be included among the Commission registrants subject to § 166.3

NPRM proposed § 1.3(uuuu) defines the term Algorithmic Trading Disruption.<sup>308</sup> The term is relevant to Regulation AT's pre-trade risk and other control requirements for AT Persons and FCMs that are clearing members for a DCO, as provided in NPRM proposed §§ 1.80 and 1.82(a), respectively. Several commenters asserted that the proposed definition is too broad<sup>309</sup> or lacks clarity.<sup>310</sup> Commenters also recommended excluding events originating within an AT Person from the scope of an Algorithmic Trading Disruption.<sup>311</sup> The Commission is considering potentially eliminating references in the definition to a disruption of an AT Person's own ability to trade, and limiting the scope of the term to disruptions of the market and others' ability to trade on it.

The Commission is also considering whether to make analogous changes to the defined term Algorithmic Trading Event. NPRM proposed § 1.3(vvvv) defined the term Algorithmic Trading Event to mean either an Algorithmic Trading Compliance Issue or an Algorithmic Trading Disruption. The term is used in NPRM proposed § 1.80, which required AT Persons to implement risk controls that are reasonably designed to prevent or mitigate an Algorithmic Trading Event.<sup>312</sup> The term is also used in NPRM proposed § 1.81(a) (requiring AT Persons to conduct regular back-testing using historical data to identify circumstances that may contribute to Algorithmic Trading Events), NPRM proposed § 1.81(b) (requiring AT Persons to conduct real-time monitoring of Algorithmic Trading to identify potential Algorithmic Trading Events), and NPRM proposed § 1.81(d) (requiring AT Persons to establish training procedures for communicating and escalating to appropriate personnel instances of Algorithmic Trading Events). Several commenters stated that the proposed definition of Algorithmic Trading Event is unnecessary<sup>313</sup> or

<sup>308</sup> NPRM proposed § 1.3(uuuu) provides that the term "Algorithmic Trading Disruption" means an event originating with an AT Person that disrupts, or materially degrades, (1) the Algorithmic Trading of such AT Person, (2) the operation of the designated contract market on which such AT Person is trading or (3) the ability of other market participants to trade on the designated contract market on which such AT Person is trading.

<sup>309</sup> AIMA 9; CME A-4; MMI 2; SIFMA 3, 19; CME A-4; FIA Appendix A-5, A-6.

<sup>310</sup> CME A-4; FIA Appendix A-5, A-6.

<sup>311</sup> SIFMA 3, 19; CME A-4; AIMA 2, 9; MMI 2.

<sup>312</sup> This provision now requires AT Persons to implement controls reasonably designed to prevent and reduce the potential risk of an Algorithmic Trading Event.

<sup>313</sup> MFA 15; MMI 2.

overly broad.<sup>314</sup> Consistent with the proposed changes to NPRM proposed §§ 1.3(ttt) and 1.3(uuuu) described above, the Commission is considering clarifying in the final rules for Regulation AT that an AT Person's internal policies, or the disruption of its own Algorithmic Trading, are outside the scope of an Algorithmic Trading Event.

Additionally, the Commission is considering whether to modify certain requirements regarding the development, monitoring, and compliance of ATs under NPRM proposed § 1.81. CME, MFA, AIMA and FIA commented that the requirement under NPRM proposed § 1.81(a)(1)(ii)<sup>315</sup> to test all changes to Algorithmic Trading code prior to implementation is too broad.<sup>316</sup> CME also raised concerns that this requirement would impose significant costs for AT Persons and DCMs.<sup>317</sup> MFA and AIMA recommended that this requirement be limited by a materiality standard.<sup>318</sup> FIA commented that "'any changes' should be clarified to be limited to any change that directly impacts source code associated with determining when and how to send an order or otherwise impact an order on a DCM."<sup>319</sup> FIA also commented that "'related systems' should be clarified to pertain only to those systems that have the ability to determine when and how to send an order or otherwise affect an order on a DCM."<sup>320</sup> The Commission has withdrawn the requirement under NPRM proposed § 1.81(a)(1)(ii) that AT Persons must test all Algorithmic Trading code and related systems on each DCM on which Algorithmic Trading will occur. The Commission is also considering whether to modify the requirement that AT Persons must test all changes to code by adding a materiality standard.

The Commission is considering whether to modify the algorithm monitoring requirements under NPRM proposed § 1.81(b), which requires continuous real-time monitoring of

<sup>314</sup> SIFMA 3, 19.

<sup>315</sup> NPRM proposed §§ 1.81(a)(1)(ii) (requiring AT Persons to implement written policies and procedures for the testing of all Algorithmic Trading code and related systems and any changes to such code and systems prior to their implementation and that such testing must be conducted both internally within the AT Person and on each designated contract market on which Algorithmic Trading will occur.).

<sup>316</sup> CME A-16; MFA 19; AIMA 16; FIA 61.

<sup>317</sup> CME A-16.

<sup>318</sup> MFA 19; AIMA 16.

<sup>319</sup> FIA 61.

<sup>320</sup> *Id.*

ATs.<sup>321</sup> Several commenters recommended changes to the proposed requirements for real-time monitoring. CME stated that “any final regulation should be flexible enough to allow the most reasonable approach for real-time monitoring that is proportional to the AT Person’s size and risk profile.”<sup>322</sup> FIA recommended that the Commission “only mandate that: (1) One or more specifically identifiable persons at an AT Person must have the authority to address system breakdowns that might cause an Algorithmic Trading Disruption; and (2) systems must be in place to help such persons monitor for potential problems and interact with each Algorithmic Trading system.”<sup>323</sup> IAA commented that the monitoring and compliance requirements of § 1.81 should be replaced with a more general requirement for AT Persons to design a compliance program that is reasonably designed to meet the requirements of the rule. The Commission is considering whether to eliminate certain language in the NPRM preamble regarding CFTC expectations that the person monitoring an algorithm should simultaneously be engaged in trading.

The Commission is also considering whether to eliminate in its entirety NPRM proposed § 1.81(c)(2)(ii). The provision provided that each AT Person must implement written policies and procedures requiring a plan of internal coordination and communication between compliance staff of the AT Person and staff of the AT Person responsible for Algorithmic Trading regarding Algorithmic Trading design, changes, testing, and controls, which plan should be designed to detect and prevent Algorithmic Trading Compliance Issues.

In addition, the Commission is continuing to evaluate comments regarding certain of the enumerated risk control mechanisms in the NPRM (and retained in this Supplemental). For example, the Commission is considering the appropriateness of a maximum execution frequency control at the DCM level. The Commission is also considering clarifying in any final rules it may adopt for Regulation AT that the requirements for market maker and trading incentive programs under NPRM proposed § 40.25 do not apply retroactively, *i.e.*, to programs

<sup>321</sup> NPRM proposed § 1.81(b) provides, *inter alia*, that each AT Person shall implement written policies and procedures reasonably designed to ensure that each of its Algorithmic Trading systems is subject to continuous real-time monitoring by knowledgeable and qualified staff while such Algorithmic Trading system is engaged in trading.

<sup>322</sup> CME A–18.

<sup>323</sup> FIA 66.

established prior to the Regulation AT effective date. In addition to proposing the changes to NPRM proposed rules set forth above, the Commission notes that it has determined to defer to a later date the final rules regarding self-trading<sup>324</sup> and disclosure and transparency of DCM trade matching systems.<sup>325</sup> The Commission anticipates finalizing those rules after finalizing the other rules proposed in the NPRM and this Supplemental NPRM.

#### D. Commission Questions

38. The Commission welcomes all comments regarding its consideration of potential amendments, deferral, or elimination of provisions proposed in the NPRM as discussed in this Section VIII of the Supplemental NPRM.

### IX. Related Matters

#### A. Cost-Benefit Considerations

##### 1. The Statutory Requirement for the Commission To Consider the Costs and Benefits of Its Actions

Section 15(a) of the CEA requires the Commission to “consider the costs and benefits” of its actions before promulgating a regulation under the CEA or issuing certain orders.<sup>326</sup> Section 15(a) further specifies that the costs and benefits must be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors below. As a general matter, the Commission considers the incremental costs and benefits of the new and amended rules proposed in this supplemental notice of proposed rulemaking for Regulation Automated Trading,<sup>327</sup> taking into account what it

<sup>324</sup> See NPRM proposed § 40.23.

<sup>325</sup> See NPRM proposed § 38.401(a).

<sup>326</sup> 7 U.S.C. 19(a).

<sup>327</sup> As explained, *infra*, on December 17, 2015, the Commission published in the **Federal Register** a notice of proposed rulemaking (“NPRM”) proposing a series of risk controls, transparency measures, and other safeguards to enhance the safety and soundness of automated trading on all designated contract markets (“DCMs”) (collectively, “Regulation Automated Trading” or “Regulation AT”). Regulation Automated Trading, Proposed Rule, 80 FR 78824 (Dec. 17, 2015) (hereinafter “NPRM”).

Through this supplemental notice of proposed rulemaking for Regulation AT (“Supplemental NPRM”), the Commission is proposing certain modifications and additions to rules set forth in the

believes is industry practice given the Commission’s existing regulations and industry best practices, as described below. Where reasonably feasible, the Commission has endeavored to estimate quantifiable costs and benefits. The Commission also identifies and describes costs and benefits qualitatively.

#### 2. Comments Regarding Costs and Benefits of Regulation AT<sup>328</sup>

##### a. Pre-Trade Risk Controls and Other Measures

Some commenters addressing Regulation AT requirements generally (including pre-trade risk controls, recordkeeping, and compliance report costs) indicated that costs are substantially higher than estimated in the proposed rule and the articulated benefits do not justify the costs.<sup>329</sup> As to DCMs, FIA commented that certain of the Commission’s proposed pre-trade and other risk controls for DCMs are overly prescriptive and would result in costly investment in controls that would not be sufficiently flexible to adapt to further market evolution.<sup>330</sup>

##### b. Testing and Supervision of Automated Systems

*Rules applicable to DCMs:* CBOE recommended that any requirements for testing environments be principles-based and not prescriptive in order to accommodate the current best practices of the industry and to avoid requiring the development of costly new systems that are not currently in existence at DCMs.<sup>331</sup>

ICE, CME, and FIA each stated that the requirement to have DCM test environments offer simulation of production trading, contained in NPRM proposed § 40.21, was impractical. ICE stated that requiring DCM test environments to support the simulation of real market conditions or historical transaction, order or message data in its test environment is not practical, and that any benefits that this type of simulation may produce would not be commensurate with the substantial cost

NPRM. This discussion refers to rules originally proposed in the NPRM as “NPRM proposed” and rules proposed in the Supplemental NPRM as “Supplemental proposed.”

<sup>328</sup> This summary of comments is limited to those relevant to the costs and benefits of the Supplemental proposed rules that are the subject of this Supplemental NPRM. Comments addressing the costs and benefits of NPRM proposed rules not modified by this Supplemental NPRM will be included in the final rulemaking release for Regulation AT.

<sup>329</sup> See, e.g., FIA 1–3; 10–11; A–78; MFA 34–25; QJM 3; SIFMA 20.

<sup>330</sup> FIA A–41.

<sup>331</sup> CBOE 6–7.

associated with developing it. Without the actual interaction of real trades and the wide range of market conditions that can occur in a live trading environment, ICE stated that it is unclear what benefits would arise from this type of simulation. ICE also commented that the implementation would require significant financial investment to develop and maintain.<sup>332</sup>

CME commented that the Commission fails to clearly define the term “simulate” in NPRM proposed § 40.21. In addition, CME stated if the Commission interprets Regulation AT to require DCMs to maintain and provide a test environment that includes a production parallel facility that utilizes real-time or near real-time market and transaction data for testing of a market participant’s algorithm, the Commission’s cost analysis of NPRM proposed § 40.21 is incorrect.<sup>333</sup>

FIA commented that although it is possible to include historical data in test environments that can be replayed to simulate stress conditions in DCM stress environments, such environments would not be able to interact with the market. As a result, FIA asserted that a true simulation is not possible. Requiring historical data would add costs without producing the intended improvement in the DCM test environment. FIA also indicated that a test environment as prescribed in NPRM proposed § 40.21 would not be possible within the bounds of reasonable investment, and that any costs would far outweigh the purported benefits.<sup>334</sup>

FIA and CME both stated that the costs of NPRM proposed § 1.81 exceed the benefits. CME stated that the prescriptive nature of the requirements set forth in NPRM Proposed § 1.81 will introduce significant cost and inefficiencies without the benefit of reduced risk to DCMs and market participants. Moreover, FIA and CME commented that the Commission has significantly underestimated the cost to both market participants and DCMs to support performance level production testing.<sup>335</sup> FIA also stated that the proposed prescriptive requirements with respect to DCM test environments are cost prohibitive with no justifiable benefit.<sup>336</sup>

CME further commented that back testing is a complex and costly exercise with a limited scope for mitigating risk; therefore, NPRM proposed § 1.81 should

not be adopted.<sup>337</sup> CME asserted that the costs to AT Persons and DCMs to establish the extensive infrastructure needed for back testing far exceed the benefits. CME also stated that requiring AT Persons to test “any” change with DCMs, as set forth in NPRM proposed § 1.81(a)(1)(ii), is too vague. Moreover, CME commented that the requirement was too expansive in that it would encompass testing for changes to systems which would not reduce risk to the AT Person or the overall markets, but would instead be a significant cost burden for AT Persons and the DCM.<sup>338</sup> CME further indicated that requiring DCMs to provide test environments that simulate production performance levels would be costly and less effective than the current market practice, whereby AT Persons design and develop their own scaled environment with the support of DCMs.<sup>339</sup>

TT commented that the testing requirements under NPRM proposed § 1.81(a) “should focus on the output of an Algorithmic Trading system or software rather than the source code underlying such systems or software, which would yield no material benefit.”<sup>340</sup>

*Rules applicable to AT Persons:* A Roundtable participant stated that Regulation AT is “a very, very heavy burden” and “an extreme cost to be an AT person.”<sup>341</sup> CTC commented that NPRM proposed § 1.81(a) would require CTC to draft, implement, and test a whole new series of policies. Altering its procedures to conform to the regulation, CTC explained, would be costly and would not provide sufficient benefit to justify the costs. CTC further indicated that the cost-benefit analysis contained in the NPRM fails to adequately explain the benefits, only citing an event involving Knight Capital. According to CTC, the event “is a threadbare justification for imposing prescriptive requirements on AT Persons.” CTC further stated that proposed § 1.81(b), which requires AT Persons to provide for continuous, real-time monitoring of ATs, entails significant staffing and other resource costs. CTC commented that real-time monitoring is a standard that is impossible to meet.<sup>342</sup> CTC proposed “near real time” as an alternative standard.<sup>343</sup>

FIA, SIFMA, and Mercatus objected to the rule requiring monitoring of algorithmic trading by a natural person separate from the trader. FIA stated that hiring an activity monitor that is independent of the trader would not be operationally efficient or reasonable from a cost perspective.<sup>344</sup> SIFMA also noted that requiring separate monitors to those implementing a training strategy is overly burdensome and inconsistent with typical CPO/CTA trading behavior. SIFMA argued that the requirement to “oversee a trader’s actions continuously and in real time is a burdensome measure that is not common practice in the industry and may not be capable of being accomplished fully.” Instead, SIFMA stated that traders would have the appropriate monitoring knowledge and can respond best in real time.<sup>345</sup>

Mercatus argued that requiring the separation of algorithmic monitoring and trading would create undue burdens on small firms. Specifically, Mercatus stated that “the required separation of trading and monitoring functions is akin to requiring that every firm engaged in algorithmic trading have a dedicated compliance person. Further burdening small firms, the Commission requires ‘staff of the AT Person to review ATs in order to detect potential Algorithmic Trading Compliance Issues’ and specifies that ‘such staff must include staff of the AT Person familiar with’ the relevant laws, regulations, and rules. This language would seem to preclude the use of outside consultants, which could be a more affordable method of compliance for small firms.”<sup>346</sup>

MFA argued that a separate physical structure for algorithm testing would be unnecessarily burdensome to smaller AT Persons. In contrast to physical separation, MFA commented that virtual separation (ensuring that testing software does not connect to active markets) rather than physical separation, would reduce costs and more easily allow for the sharing of components between test and production environments such as “market data infrastructure or reference data files.” MFA also noted concerns with code testing, stating that the requirement is broad. MFA pointed out that only material changes should be required to be tested. MFA stated that it is not uncommon for CTAs and CPOs to make minor adjustments to certain parameters embedded in their investment trading software on a daily

<sup>332</sup> ICE A–10.

<sup>333</sup> CME 35.

<sup>334</sup> FIA A–44–A–45.

<sup>335</sup> CME A–16.

<sup>336</sup> FIA A–38, A–39 and A–44.

<sup>337</sup> CME A–15.

<sup>338</sup> CME A–16.

<sup>339</sup> *Id.*

<sup>340</sup> TT III 1.

<sup>341</sup> *See* CME, Roundtable Tr. 28:12–18.

<sup>342</sup> CTC 14.

<sup>343</sup> *Id.* at 12–13.

<sup>344</sup> FIA A–77.

<sup>345</sup> SIFMA 16.

<sup>346</sup> Mercatus 4.

basis, including administrative changes, or enhancements.<sup>347</sup>

SIFMA commented that the definition of AT Person extends to systems in which trades are communicated to the FCM/other trader for execution. SIFMA indicated that such execution management systems are often not under the development or control of the CPO/CTA and therefore cannot be fully monitored by them. In addition, SIFMA stated that CPO/CTAs may make use of routing software (AORSs) provided by the FCM that often have risk controls built in.<sup>348</sup>

FIA commented that the CFTC needs a better understanding of, among other things, the anticipated benefits and actual costs of the proposed requirements for policies and procedures for the development, testing, deployment, and monitoring of ATs.<sup>349</sup> FIA further asserted that several of the requirements in NPRM proposed § 1.81(a)–(d) are not standard industry practice and would impose costs on AT Persons, including costs stemming from the hiring of additional staff. In addition, FIA commented that the rules would require extensive narrative documentation, testing of every change to an ATS at every DCM, historical back-testing of all changes to source code, separation of the trading function and the monitoring function associated with Algorithmic Trading, and documentation of system strategy and design independently of the software responsible for executing the strategy.<sup>350</sup>

#### c. Requirements To Maintain and Make Available Source Code Records

In support of the NPRM proposed rules regarding source code, Better Markets commented that “the clear and many benefits arising from the Commission’s ability to perform post-mortems after disruptive market events far outweigh any legitimate concerns, which haven’t been proffered.”<sup>351</sup> In contrast, other commenters expressed concerns regarding potential costs regarding source code recordkeeping. CME commented that maintaining a source code repository would impose significant burdens and costs on any entity that does not currently do so.<sup>352</sup> CME further commented that the CFTC has not demonstrated any need for AT Persons to make source code available, “let alone a need that outweighs the cost

and confidentiality concerns attendant to such a requirement.”<sup>353</sup>

The Industry Group commented that the proposed source code requirement “puts highly proprietary information at risk without measurable benefits.”<sup>354</sup> FIA stated that the requirement in NPRM proposed § 1.81(a)(v) for AT Persons to maintain a source code repository in accordance with § 1.31 is impractical and unduly burdensome.<sup>355</sup> FIA noted that the proposed rule captures Algorithmic Trading source code as well as the source code of “related systems” in its retention and access requirements.<sup>356</sup> FIA asserted that “related systems” is vague and could encompass all, or nearly all, source code utilized by an AT Person, including, but not be limited to, source code associated with back-office, portfolio risk management, monitoring, and user interfaces. FIA indicated that such a broad interpretation would dramatically increase the cost of complying with the proposed rules. Relatedly, a Roundtable participant noted that storage of source code is not free.<sup>357</sup>

AIMA commented that source code “provides very little supervisory or investigative utility to anyone seeking to ‘read’ it” and that accessing source code “without a specific court-upheld reason would simply risk the commercially sensitive IP of AT Persons without providing any additional benefit.”<sup>358</sup> The Chamber of Commerce asserted that “the CFTC has not provided an estimate of the costs for hiring qualified developers that could actually analyze the proprietary source code, meaning that the CFTC currently does not know how much it would even cost to review information within its possession.”<sup>359</sup> The Chamber of Commerce further asserted that the proposed source code requirements would “not provid[e] any tangible benefit to the CFTC.”<sup>360</sup>

KCG commented that “it seems clear that the risks (and costs) of allowing on-demand access to proprietary source code outweigh any potential benefit.”<sup>361</sup> Similarly, MGEX also expressed concern that the costs of the proposed source code requirement outweigh the benefits.<sup>362</sup> MMI commented that “the costs associated with creating a new regulatory

requirement and the risks associated to the disclosure of such information [*i.e.*, source code] to regulators (and perhaps inadvertently to the public) defy an acceptable cost-benefit analysis of the proposed § 1.81(a).”<sup>363</sup> Finally, QIM asserted that the proposed source code requirement “would not provide the benefits envisioned by the Commission.”<sup>364</sup>

#### d. Requirement To Submit Compliance Reports and Other Related Algorithmic Trading Requirements

*Costs and Benefits to DCMs:* ICE commented that the burden on DCMs to collect and review the proposed annual reports is significant. ICE indicated that undertaking the type of review necessary to verify and evaluate the information contained in the proposed annual reports would be both costly and resource intensive. The number of AT Persons and clearing FCMs that would be required to file annual reports with DCMs would far exceed the number of clearing FCMs that are currently reviewed under DSRO audit today. Further, ICE stated that DCMs do not have the resources or qualified expertise that would be required to conduct a comprehensive review of the proposed annual reports and the algorithms developed and operated by AT Persons. ICE recommended that the annual report requirement set forth in NPRM proposed § 1.83 be replaced with a certification process.<sup>365</sup>

CME commented that the annual compliance report requirement creates an unnecessary administrative burden on all parties involved without generating a significant benefit.<sup>366</sup> CME asserted that the information in the reports would be stale and that CME would need to hire additional staff with the expertise to evaluate the reports. Moreover, CME indicated that compliance reports would be onerous and duplicative for clearing FCMs, as they already undergo significant review by their DSRO and clearing organizations. CME argued that further unnecessary duplication would result from AT Persons submitting reports to multiple DCMs.

With regard to specific cost estimates, CME stated that the Commission has significantly underestimated the ongoing costs to DCMs of complying with the NPRM’s requirement to periodically review AT Person and clearing FCM compliance reports and books and records, and to identify and

<sup>347</sup> MFA 18–19.

<sup>348</sup> SIFMA 4–5, 16.

<sup>349</sup> FIA 3–4.

<sup>350</sup> FIA A–72.

<sup>351</sup> Better Markets III 3.

<sup>352</sup> CME 38.

<sup>353</sup> CME III 9.

<sup>354</sup> Industry Group 6 (emphasis omitted).

<sup>355</sup> FIA A–54.

<sup>356</sup> *Id.* at A–55.

<sup>357</sup> AQR, Roundtable Tr. at 281:9–10.

<sup>358</sup> AIMA III 5.

<sup>359</sup> Chamber of Commerce III 4.

<sup>360</sup> Chamber of Commerce III 6.

<sup>361</sup> KCG III 5.

<sup>362</sup> MGEX III 7.

<sup>363</sup> MMI III 2–3.

<sup>364</sup> QIM III 2.

<sup>365</sup> ICE A–31.

<sup>366</sup> CME 20; CME III 4.

remediate any insufficient mechanisms, policies and procedures discovered. In the NPRM, the Commission estimated that it would cost each DCM approximately \$244,080 per year to comply with NPRM proposed § 40.22. CME believes this estimate is deficient by approximately 50% and estimated the annual cost for each of its four DCMs to be closer to \$525,000, assuming that across all four DCMs, approximately 650 entities would come within the scope of the proposed compliance report requirements and that each entity would be reviewed once every four years (across all four DCMs). CME estimated that it would take approximately one month for a full-time employee to complete each review. According to CME, the biggest flaw in the CFTC's analysis is its assumption that new full-time employees dedicated to compliance with § 40.22 would not be required. Moreover, for the compliance report to provide any meaningful benefit to market integrity, DCM personnel would need to spend far more than 15 hours reviewing each report and related books and records.<sup>367</sup>

MGEX commented that costs are likely to be higher for DCMs than those calculated by the Commission, especially for the requirement that DCMs review, analyze and remediate compliance programs of AT Persons.<sup>368</sup> In extremis, elevated costs could leave the marketplace in a situation of reduced competition between DCMs. MGEX provided estimates for the costs associated with DCM compliance, and stated that the per-form review time would exceed the Commission's 15 hour estimate because such forms would not be standardized. MGEX indicated that the review process would require the hiring of at least two additional full time employees. Finally, MGEX argued that these costs are especially burdensome for smaller DCMs, stating: "[T]he costs associated with new compliance obligations disproportionately impacts existing DCMs. With every new compliance obligation, there are new costs. For smaller DCMs, the cost are often more severe. This is because smaller DCMs do not have the benefit of large staffs and resources to leverage. Put differently, it is more likely smaller DCMs will have to hire additional staff to meet new compliance obligations, and therefore their cost assessment is fundamentally different than larger DCM."<sup>369</sup>

#### *Costs and Benefits to Market Participants and FCMs: MFA*

<sup>367</sup> CME at 22.

<sup>368</sup> MGEX 25–26.

<sup>369</sup> *Id.* at 27.

commented that Regulation AT reporting, compliance and recordkeeping costs far outweigh the benefits, and proposed that reporting/compliance could be incorporated in the NFA review program which is already CPO/CTA common practice.<sup>370</sup>

FIA recommended that each AT Person periodically review and test the effectiveness of its policies and procedures related to Algorithmic Trading and take prompt action to remedy any deficiencies.<sup>371</sup> However, because there is no materiality threshold associated with the remediated deficiencies in the proposed rule, FIA does not support documenting each incident of remediation. FIA indicated that many deficiencies are immaterial and the costs associated with their documentation would outweigh the marginal benefit, if any. In addition, FIA asserted that extensive documentation of policies and procedures associated with trading system design, development, testing, operations, and compliance does little to reduce any perceived risks associated with Algorithmic Trading. FIA stated that the application of sound policies and procedures, rather than the documentation of those policies and procedures, has a material impact on reducing risk.<sup>372</sup>

FIA opposes requiring AT Persons or clearing member FCMs to prepare annual reports because, among other things, the burden of preparing and filing an annual report may be extensive, especially if Regulation AT applies to AT Persons of different sizes and complexities.<sup>373</sup> FIA noted that IBs, CTAs, CPOs who are small entities may be disproportionately adversely impacted by Regulation AT. FIA also argued that since FCMs are already required to prepare CCO Annual Reports under § 3.3 and subject to risk management requirements under §§ 1.11 and 1.73, there is no marginal benefit in requiring FCMs to produce an additional annual report. FIA expects that such a report would cost substantially higher than the Commission's estimates.

CME commented that the "proposed requirement that AT Persons and clearing FCMs prepare and submit extensive annual compliance reports to DCMs creates an unnecessary administrative burden on all parties involved without providing significant benefit to market integrity."<sup>374</sup> In

addition, a Roundtable participant representing an FCM estimated that the compliance costs for Regulation AT would be \$1 million annually for the participant's firm.<sup>375</sup> Another Roundtable participant questioned whether all FCMs could afford that cost and suggested that "we could potentially lose" some FCMs.<sup>376</sup>

#### *e. Requirements for Certain Entities to Register as New Floor Traders*

MFA commented that, as currently proposed, Regulation AT would apply to the majority of futures market participants, significantly increasing compliance costs relative to a framework where risk controls are applied at the DCM and clearing-FCM level. Specifically, MFA stated that it "is concerned that the Regulation AT framework is overly broad and elaborate, which would make implementation expensive and burdensome for market participants and regulators. Regulation AT, as proposed, would regulate—in the same manner—virtually any market participant that uses any automation with respect to trading, without taking into consideration the type of automation or the different category, business or operational size of the market participant. Based on the Commission's own cost-benefit and regulatory flexibility analyses, we believe this is not the Commission's intent." MFA acknowledged that risk controls are appropriate for all entities, but requiring the same risk controls at all levels of trading is unreasonably costly.<sup>377</sup>

The Commercial Alliance commented that a quantitative measure to identify the population of AT Persons "would require the CFTC to revise the metric frequently" and such revisions would "increase costs for market participants to update their IT systems and monitoring practices accordingly, which could cause a lag in the markets and reduce liquidity."<sup>378</sup> The Commercial Alliance further commented that a registration framework for AT Persons would "impose significant cost burdens to market participants" but would not provide any "additional regulatory benefit."<sup>379</sup>

#### *3. The Commission's Cost-Benefit Consideration of Regulation AT—Baseline Point*

In the NPRM, the Commission took account of the incremental costs and

<sup>370</sup> MFA 9

<sup>371</sup> FIA A–63.

<sup>372</sup> *Id.* at A–73.

<sup>373</sup> *Id.* at A–91–A–92.

<sup>374</sup> CME III 4.

<sup>375</sup> ABN AMRO, Roundtable Tr. 176: 13–17.

<sup>376</sup> OneChicago, Roundtable Tr. 197: 11–15.

<sup>377</sup> MFA 5–6.

<sup>378</sup> Commercial Alliance III 3.

<sup>379</sup> *Id.* at III 6.

benefits of the proposed rules relative to what it understood as the general industry status quo conditions (reflective of the Commission's existing regulations and industry best practices). As noted in the NPRM, elements of Regulation AT sought to codify existing norms and best practices of trading firms, FCMs, and DCMs, meaning that the costs and benefits to firms already satisfying these norms and employing the proposed codified practices would be minimal. The Commission, however, also recognized in the NPRM that some individual firms currently may not be operating at industry best practice levels; for such firms, costs and benefits attributable to the proposed regulations will be incremental to a lower status quo baseline.

To assist the Commission and the public in assessing and understanding the economic costs and benefits of the Supplemental proposed rules as revised in this Supplemental NPRM, the Commission has, in general, analyzed the costs of the proposed regulations as compared to the analogous regulations as proposed in the original NPRM.<sup>380</sup> In doing so, the Commission notes how the Supplemental proposed rules alter the previous NPRM assessment relative to the status quo baseline. As noted in the NPRM, in many instances, full quantification of the costs is not reasonably feasible because costs depend on the size, structure, and practices of trading firms, FCMs and DCMs. Within each category of entity, the size, structure and practices of such entities will vary markedly. In addition, the quantification may require information or data, some of which may be proprietary, that the Commission lacks means to access. Further, with exceptions noted in the IX.A.2 discussion of cost-benefit comments, interested parties have not provided information in response to the Concept Release and NPRM to assist the Commission in quantifying costs. The Commission notes that to the extent that the regulations proposed in this rulemaking result in additional costs, those costs will be realized by trading firms, FCMs and exchanges in order to protect market participants and the public. Finally, in general, full quantification of the benefits of the proposed rule is also not reasonably feasible, due to the difficulty in quantifying the benefits of a reduction

in market disruptions and other significant market events due to the risk controls and other measures proposed in Regulation AT.

#### 4. The Commission's Cost-Benefit Consideration of Regulation AT—Cross-Border Effects

The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of the proposed rules on all activity subject to the proposed and amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).<sup>381</sup> In particular, the Commission notes that some AT Persons are located outside of the United States.

#### 5. Introduction: The NPRM and Supplemental NPRM for Regulation AT

The consideration of costs and benefits for this Supplemental NPRM for Regulation AT builds on the cost-benefit considerations contained in the NPRM. Regulation AT reflects a comprehensive effort to reduce risk and increase transparency across algorithmic order origination and electronic trade execution on all U.S. futures exchanges. The proposed rules, both in the NPRM and the Supplemental NPRM, seek to modernize the Commission's regulatory regime, keep pace with evolving markets and technologies, and to promote the continued safety and soundness of trading on all contract markets. The Commission is endeavoring, through this Supplemental NPRM, to incorporate persuasive comments received during numerous opportunities for public comment, and to address concerns raised by market participants including concerns related to the costs and benefits of Regulation AT as proposed in the NPRM. Many of the changes in the Supplemental NPRM are designed to mitigate cost concerns while retaining the important benefits of

Regulation AT. For example, as discussed below, the Commission is proposing to reduce the number of levels at which risk controls are typically applied to two (the DCM and either the FCM or AT Person) from three (the DCM, FCM, and AT Person) and proposing a volume threshold to limit the number of AT Persons under the Supplemental NPRM relative to the number of AT Persons under the NPRM. Both of these changes are designed to reduce costs while retaining the essential benefits associated with the risk controls and the rules applicable to AT Persons.

#### 6. Proposed New Definitions and Changes to NPRM Proposed Definitions

The Commission proposes in this Supplemental NPRM new defined terms "Electronic Trading" and "Electronic Trading Order Message" as well as "Algorithmic Trading Source Code." The Commission also proposes to modify certain definitions proposed in the NPRM, including "Direct Electronic Access" ("DEA") and "AT Order Message." Finally, the Commission in this Supplemental NPRM changes various references in Regulation AT from "clearing member" to "executing" FCM. The Commission believes that these definitions and changes in terminology do not impose costs or confer benefits in and of themselves. However, as discussed below, changes in definition or new definitions may affect the costs and benefits of rules where defined terms are used.

#### 7. Requirements for AT Persons

##### a. Summary of Proposal

The Commission proposes changes to modify the definition of AT Person. Pursuant to Supplemental proposed § 1.3(xxxx), a market participant may fall under the definition of AT Person in one of three ways. First, the category of AT Persons includes persons registered or required to be registered as an FCM, floor broker, swap dealer, major swap participant, commodity pool operator, commodity trading advisor, or introducing broker that (1) engages in Algorithmic Trading and (2) satisfies the volume threshold of 20,000 contracts traded per day over a six month period under Supplemental proposed § 1.3(x)(2).<sup>382</sup> Second, AT Persons include New Floor Traders under Supplemental proposed § 1.3(x)(1)(iii).<sup>383</sup> Such New Floor Traders must engage in Algorithmic Trading, utilize DEA under the revised

<sup>380</sup> The Commission notes that the costs and benefits of NPRM § 1.81(vi), regarding the source code and log file retention, were not explicitly discussed in the NPRM. Therefore, as discussed below, for Supplemental proposed § 1.84, the Commission is using current industry practice as the baseline.

<sup>381</sup> 7 U.S.C. 2(i).

<sup>382</sup> See Supplemental proposed § 1.3(xxxx)(1)(i).

<sup>383</sup> See Supplemental proposed § 1.3(xxxx)(1)(ii).

definition,<sup>384</sup> and satisfy the volume threshold under Supplemental proposed § 1.3(x)(2). Third, a person who does not satisfy either of the other two prongs of the AT Person definition may nevertheless elect to become an AT Person, provided that such person registers as a floor trader and complies with all requirements of AT Persons pursuant to Commission regulations.<sup>385</sup> Further, Supplemental proposed § 1.3(x)(4) contains an anti-evasion provision prohibiting the trading of contracts through multiple entities for the purpose of evading the registration requirements imposed on New Floor Traders under § 1.3(x)(3), or to avoid meeting the definition of AT Person under § 1.3(xxxx).

Under the volume threshold, if a floor trader or other registrant who is a potential AT Person (including other entities under common control) trades an aggregate average daily volume on electronic trading facilities across all products and all DCMs of at least 20,000 contracts, including for a firm's own account, the accounts of customers, or both,<sup>386</sup> over a six-month period (either January–June or July–December), that registrant will be an AT Person.

Further, under NPRM proposed § 170.18, AT Persons also must register for membership in at least one RFA. Supplemental proposed § 170.18 clarifies that an AT Person not yet a member of an RFA must submit an application for membership in at least one RFA within 30 days of such registrant satisfying the volume test set forth in Supplemental proposed § 1.3(x)(2).

Finally, under Supplemental proposed § 1.3(xxxx)(2), an entity may voluntarily choose to become an AT Person even if it does not otherwise meet the definition of AT Person by choosing to register as a floor trader and applying for membership with an RFA.

#### b. Costs

The NPRM's cost-benefit considerations for rules applicable to AT Persons, and for rules on other market participants that depend on the

number of AT Persons (*i.e.*, § 40.22 DCM compliance report review program), were based on an estimate of 420 AT Persons. That estimate was based on a sample of order messages sent to DCMs and was based on the NPRM proposed definition of DEA.<sup>387</sup> This data included new orders, modifications to orders, and cancellations, and the methodology for estimating that number was specified in the NPRM.<sup>388</sup>

In response to comments asserting that the actual number of AT Persons under the proposed rule would be much larger than the 420 entities estimated the Commission, the Commission is proposing a volume threshold to limit the number of AT Persons. The volume threshold would be set at 20,000 contracts aggregated across a market participant's own account, the accounts of customers, or both, over a six-month period. The Commission estimates that the proposed volume threshold will reduce the number of AT Persons to approximately 120.

In order to derive this estimate, the Commission made use of daily trading audit trail data, for futures and options on futures, received from each DCM. Because the volume threshold is based on activity within a semi-annual period, the Commission calculated the average activity of individual firms during the first half of 2016 and used these aggregate numbers as an activity benchmark. Aggregating this activity across the DCMs for which the Commission had firm identification provided a basis for estimating the number of potential AT Persons. The Commission notes that its data provides a significantly comprehensive, but not a full, identification of the firms associated with each trade; in other cases, the firm associated with a trade may be the broker rather than the principal. For these reasons, the Commission estimate for the number of AT Persons may omit some firms that would meet the volume threshold requirements.

The Commission notes that the definition of "Direct Electronic Access" is an element of the definition of "floor trader" and, thus, AT Person. The Commission is modifying the definition of DEA. Under Supplemental proposed § 1.3(yyyy), DEA includes any electronic order submissions to a DCM, unless the order is first received by an FCM from an unaffiliated natural person by means

of written or oral communication prior to being submitted to the DCM by the FCM. This definition, in and of itself, is broad enough to potentially include most participants on DCMs. However, merely meeting the definition of DEA will not impose costs on market participants trading for their own account who are not AT Persons; that is, to incur costs, they must also engage in Automated Trading and meet the volume threshold.

The clarifying changes to Supplemental proposed § 170.18 should not materially affect the costs associated with the RFA membership requirement for AT Persons. Supplemental proposed § 1.3(xxxx)(2), which permits an entity to voluntarily become an AT Person, does not impose any mandatory costs since it does not require anyone who otherwise does not meet the definition of AT Person to become an AT Person. An entity that does voluntarily become an AT Person presumably has determined that the benefits of doing so warrant accepting the costs imposed on AT Persons.

#### c. Benefits

The volume threshold and changes to the definition of AT Person will limit the number of firms subject to Regulation AT while preserving the benefits of Regulation AT for the larger firms trading on DCMs. The Commission believes that the benefits associated with requirements such as risk controls, testing and monitoring, recordkeeping, and other provisions applicable to AT Persons are greatest for this subset of market participants because errors related to malfunctions at the firms with highest activity will likely have the largest impact on other market participants and the market as a whole. As evidence for this, FIA indicated in its December 2013 response to the Concept Release that most, if not all, large automated firms have extensive risk controls across all of their algorithmic activity, often calibrated at multiple levels, along with other quality control schemes to minimize the chance of error.<sup>389</sup> Such firms, understanding the effect they may have on the marketplace due to unanticipated behavior, have voluntarily chosen to incorporate measures similar to those required in Regulation AT to mitigate these risks. The anti-evasion provisions will help ensure that entities that should be AT Persons are not able to readily avoid AT Person status by trading through multiple entities.

<sup>384</sup> Under the revised definition in § 1.3(yyyy), DEA includes any electronic order submissions to a DCM, unless the order is first received by an FCM from a separate natural person by means of written or oral communication prior to being submitted to the DCM by the FCM.

<sup>385</sup> See Supplemental proposed § 1.3(xxxx)(2).

<sup>386</sup> As discussed above in Section II(C), New Floor Traders who are not otherwise registered with the Commission would be expected to trade only for their own accounts, not on behalf of customers. Absent any trading for a customer account consistent with the Act and Commission regulations, New Floor Traders would therefore be expected to apply the volume threshold test solely to their proprietary trading volume.

<sup>387</sup> Under NPRM proposed § 1.3(yyyy), DEA was defined as an arrangement where a person electronically transmits an order to a DCM, without the order first being routed through a separate person who is a member of a DCO to which the DCM submits transactions for clearing.

<sup>388</sup> NPRM at 78884.

<sup>389</sup> FIA, Comment in Response to Concept Release (Dec. 11, 2013).

The clarifying changes to Supplemental proposed § 170.18 should not materially affect the benefits associated with the RFA membership requirement for AT Persons. Supplemental proposed § 1.3(xxxx)(2), which permits an entity to voluntarily become an AT Person, provides an entity that does not otherwise meet the definition of AT Person with the flexibility to become an AT Person so that it can realize the benefits of implementing its own risk controls, rather than accepting an FCM's risk controls.

#### d. Consideration of Alternatives

The Commission considered not adopting a registration requirement for AT Persons in response to comments. This would have made the definition of DEA and the volumetric threshold unnecessary. However, the Commission continues to believe that there are certain larger market participants whose automated trading represents an elevated risk to market integrity and who, for the protection of market participants and the public, should therefore be subject to enhanced oversight relative to other market participants. The Commission also considered not using a volume threshold or other quantitative threshold (as suggested by some commenters) and instead responding to commenter concerns that the NPRM would capture substantially more than 420 AT Persons by revising the definition of DEA so that the term captures a narrower scope of trading activity. The Commission was unable to identify a definition of DEA that would reduce the number of AT Persons and provide a low-cost way for entities to determine whether they are AT Persons as defined under Regulation AT. The Commission thus determined to propose a quantitative threshold (*i.e.*, the volume threshold test), while at the same time defining DEA broadly.

The Commission considered other quantitative metrics including tests proposed by ESMA for identifying high-frequency traders in European markets, *i.e.*, average resting order times and daily number of messages sent by a trading entity. However, the new AT Person category is intended to ensure that risk management, testing and monitoring standards are sufficiently high for the class of market participants who are largest, regardless of strategy or firm type. The Commission believes that volume is a key element of market processes such as price discovery and risk transfer, is simpler than other potential metrics, and can be calculated at lower cost than metrics such as

average order resting times and message frequency.

The Commission also considered volume thresholds at other levels higher and lower than 20,000 contracts. However, the Commission has preliminarily determined that 20,000 contracts will result in the registration of those firms for whom Regulation AT proposed rules applicable to AT Persons are needed most and will provide the greatest benefit.

#### e. Commission Questions

39. Beyond specific questions concerning specific Supplemental proposed rules interspersed throughout its discussion, the Commission generally requests comment on all aspects of its consideration of costs and benefits of this Supplemental NPRM, including: (a) Identification, quantification, and assessment of any costs and benefits not discussed therein; (b) whether any of the proposed regulations may cause FCMs or DCMs to raise their fees for their customers, or otherwise result in increased costs for market participants and, if so, to what extent; (c) whether any category of Commission registrants will be disproportionately impacted by the proposed regulations, and if so whether the burden of any regulations should be appropriately shifted to other Commission registrants; (d) what costs, if any, would likely arise from market participants engaging in regulatory arbitrage by restructuring their trading activities to trade on platforms not subject to the proposed regulations, or taking other steps to avoid costs associated with the proposed regulations; (e) quantitative estimates of the impact on transaction costs and liquidity of the proposals contained herein; (f) the potential costs and benefits of the alternatives that the Commission discussed in this release, and any other alternatives appropriate under the CEA that commenters believe would provide superior benefits relative to costs; (g) data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the benefits and costs of the proposed rules; and (h) substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's consideration of costs and benefits.

40. As noted above, some commenters opined that the NPRM would capture substantially more than 420 AT Persons. Is there a definition of DEA that should be adopted that would appropriately limit the scope of the definition of AT Person, without use of a quantitative

threshold? Further, is there a definition of DEA that would serve as a low-cost method of enabling entities to determine if they are AT Persons?

41. Are there quantitative thresholds other than volume that would provide a superior cost-benefit profile to the Commission's proposal?

42. Would a volume threshold at levels higher or lower than 20,000 contracts provide a superior cost-benefit profile to the Commission's proposal?

43. Should volume threshold calculations exclude or weigh differently spread trades or any other types of trades, and if so, should the volume threshold level be adjusted? What are the costs and benefits of excluding or weighing differently certain types of trades?

#### 8. Source Code Retention and Inspection Requirements

##### a. Summary of New Proposal

Under the NPRM proposal, each AT Person was required to maintain a "source code repository" to manage source code access, persistence, copies of all code used in the production environment, and changes to such code. Such source code repository was required to include an audit trail of material changes to source code that would allow AT Persons to determine, for each such material change: Who made it; when they made it; and the coding purpose of the change. The NPRM also required that AT Persons maintain source code in accordance with § 1.31 and make source code available for inspection by Commission staff and the Department of Justice pursuant to § 1.31.

Under Supplemental proposed § 1.84, AT Persons are required to retain (to the extent that they are generated by an AT Person) three categories of records for a period of five years: (1) Algorithmic Trading Source Code; (2) records that track changes to Algorithmic Trading Source Code; and (3) log files that record the activity of the AT Person's Algorithmic Trading system. Instead of making Algorithmic Trading Source Code available for inspection by Commission staff and the Department of Justice pursuant to § 1.31, under Supplemental proposed § 1.84, action by the Commission itself would be required, either in the form of a special call for these records or pursuant to a subpoena. The Commission may authorize the Director of the Division of Market Oversight to execute the special call, and to specify the form and manner in which the required records must be produced. This procedure is similar to the procedure for the Commission to

grant subpoena power to staff. The Commission will retain the authority to grant subpoena power with respect to Algorithmic Trading Source Code, change logs, and log files.

#### b. Costs

The Commission estimates that a typical AT Person without the hardware and software in place to maintain the records required by Supplemental proposed § 1.84(a) would incur a cost of \$41,840 to purchase and set up the required hardware and software, migrate existing Algorithmic Trading Source Code and logs into the software, draft appropriate recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. This cost is broken down as follows: Hardware costing \$12,000,<sup>390</sup> software costing \$2,000,<sup>391</sup> 1 Project Manager for the Algorithmic Trading Source Code and log migration effort, working for 60 hours ( $60 \times \$70 = \$4,200$ ); 1 Developer for the Algorithmic Trading Source Code and log migration effort, working for 60 hours ( $60 \times \$75 = \$4,500$ ), 1 Project Manager to develop the related policies and procedures, working for 120 hours ( $120 \times \$70 = \$8,400$ ), 1 Business Analyst to develop the related policies and procedures, working for 120 hours ( $120 \times \$52 = \$6,240$ ), and 1 Developer to develop the related policies and procedures, working for 60 hours ( $60 \times \$75 = \$4,500$ ). The 120 AT Persons therefore would incur a total initial cost of \$5,020,800 ( $120 \times \$41,840$ ).

The Commission estimates that, on an initial basis, an AT Person with the hardware and software in place to maintain the records required by Supplemental proposed § 1.84(a) would incur a cost of \$12,160 to purchase and set up the required hardware and software, migrate existing Algorithmic Trading Source Code and logs into the software, draft appropriate recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. This cost is broken down as follows: Hardware costing \$4,000, 1 Project Manager to develop the related policies and

procedures, working for 30 hours ( $30 \times \$70 = \$2,100$ ), 1 Business Analyst to develop the related policies and procedures, working for 30 hours ( $30 \times \$52 = \$1,560$ ), and 1 Developer to develop the related policies and procedures, working for 60 hours ( $60 \times \$75 = \$4,500$ ). The 120 AT Persons therefore would incur a total initial cost of \$1,459,200 ( $120 \times \$12,160$ ).

The Commission also has estimated the cost of complying with Supplemental proposed § 1.84(b), which require AT Persons to produce records of Algorithmic Trading in response to a special call. The Commission estimates that, on an annual basis, an AT Person will incur a cost of \$51,840 to draft and update recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. This cost is broken down as follows: 1 Project Manager, working for 36 hours per month  $\times$  12 months = 432 hours per year ( $432 \times \$70 = \$30,240$ ); and 1 Developer, working for 24 hours per month  $\times$  12 months = 288 hours per year ( $288 \times \$75 = \$21,600$ ). The 120 AT Persons would therefore incur a total initial cost of \$2,894,400 ( $120 \times \$51,840$ ).

The Commission does not estimate a specific number of special calls per year that AT Persons will receive. Rather, such special calls would occur on an intermittent basis and the Commission estimates the cost for one response. The Commission estimates that, on an intermittent basis, an AT Person will incur a cost of \$5,844 to ensure compliance with those aspects of Supplemental proposed § 1.84(b) requiring AT Persons to produce records of Algorithmic Trading in response to a special call. This cost is broken down as follows: 1 Project Manager, working for 12 hours ( $12 \times \$70 = \$840$ ); 1 Developer, working for 36 hours ( $36 \times \$75 = \$2,700$ ); and 1 Compliance Attorney, working for 24 hours ( $24 \times \$96 = \$2,304$ ). The 120 AT Persons would therefore incur a total annual cost of \$701,280 ( $120 \times \$5,844$ ).

The Commission expects that AT Persons already retain Algorithmic Trading Source Code and log files and to some extent are incurring such costs under current practice. The Commission believes that with the numerous protections to Algorithmic Trading Source Code confidentiality provided in Supplemental proposed § 1.84, including removal of the applicability of § 1.31, the various costs attributed to the NPRM source code rule by commenters generally do not apply to Supplemental proposed § 1.84.

For more detail on the estimated costs of § 1.84, see Sections IX(B)(2)(d) and (e) below.

#### c. Benefits

As noted, Supplemental proposed § 1.84 is first and foremost a recordkeeping rule. Requiring AT Persons to retain Algorithmic Trading Source Code and log files will ensure that the Commission is able to access this information (through a special call or subpoena) on the, presumably infrequent, occasions when it is needed to investigate or inquire into an Algorithmic Trading Compliance Issue or disruption. Supplemental proposed § 1.84(b), which would require the Commission to issue a special call in order to enable Commission staff to review Algorithmic Trading Source Code and log files as part of its market oversight responsibilities. The Commission could also access source code by issuing subpoenas that are typically used in enforcement investigations. For example, the Commission might issue a special call to inquire into a market disruption without launching a formal enforcement investigation or implying that the disruption was caused by a violation of the CEA or Commission regulations. Further, Commission access to Algorithmic Trading Source Code and log files should not compromise their integrity as trade secrets or other confidential information; the confidentiality provisions of Supplemental proposed § 1.84(b)(3) are designed to preserve their confidential status. The Commission notes that Supplemental proposed § 1.84(b)(3) is in addition to existing confidentiality protections provided in section 8(a) of the Act.

#### d. Consideration of Alternatives

The Commission considered the alternative of maintaining the NPRM proposal that Algorithmic Trading Source Code would be subject to the inspection and production provisions of § 1.31, but the Commission acknowledges the concerns of commenters regarding Algorithmic Trading Source Code confidentiality and trade secret preservation and determined to provide Algorithmic Trading Source Code and log files with the greater protection provided by Supplemental proposed § 1.84 as compared to § 1.31.

The Commission also considered not promulgating an Algorithmic Trading Source Code rule, but determined that it is essential for the protection of market participants and the public to ensure that Algorithmic Trading Source Code

<sup>390</sup> The Commission estimates that the hardware could cost from \$1,000 to \$25,000 depending on factors including which hardware vendor an AT Person chooses, the amount of business the AT Person does with the hardware vendor and the pricing the hardware vendor provides the AT Person as a result.

<sup>391</sup> The Commission estimates that the software could cost from \$0 to \$5,000 depending on factors including which hardware vendor an AT Person chooses, the amount of business the AT Person does with the hardware vendor and the pricing the hardware vendor provides the AT Person as a result.

and log file records be retained and, when necessary, made available to the Commission.

#### e. Commission Questions

44. The Commission requests comment on the costs and benefits of Supplemental proposed § 1.84 including the accuracy of its cost estimates.

45. To what extent do AT Persons currently retain Algorithmic Trading Source Code and log files and for what period of time?

46. To what extent do the protections to Algorithmic Trading Source Code confidentiality in Supplemental proposed § 1.84 address the concerns of commenters regarding the NPRM proposed § 1.81(a)(1)(vi) Algorithmic Trading Source Code rule, particularly with respect to costs and benefits?

#### 9. Testing, Monitoring and Recordkeeping Requirements in the Context of Third-Party Providers

##### a. Summary of New Proposal

NPRM proposed § 1.81(a) required AT Persons to implement written policies and procedures for the development and testing of ATs. Among other things, such policies and procedures must at a minimum include documenting the strategy and design of proprietary Algorithmic Trading software, as well as any changes to software that are implemented in a production environment, pursuant to NPRM proposed § 1.81(a)(v). Under NPRM proposed § 1.81(a)(vi), a source code repository was required to be maintained, as discussed above.

Supplemental proposed § 1.85 allows AT Persons who are unable to comply with a particular development and testing requirement<sup>392</sup> or a particular maintenance or production requirement related to Algorithmic Trading strategy (including Algorithmic Trading Source Code and log files),<sup>393</sup> due solely to their use of third-party system components, to obtain a certification that the third party is complying with the obligation. AT Persons would need to obtain a new certification whenever there is a material change to the third-party system or system components. The proposed rule also would require AT Persons to conduct due diligence regarding the accuracy of the certification. In addition, in all cases, under the Supplemental NPRM, an AT Person is responsible for ensuring that records are retained and produced as required pursuant to Supplemental

proposed § 1.84 from third-party providers.

##### b. Costs

*Costs to AT Persons:* As discussed in further detail in the PRA section, the Commission estimates that each AT Person will incur a one-time cost of \$4,884 to establish the process for initially obtaining the third-party certifications permitted by Supplemental proposed § 1.85, conduct the related due diligence and obtain the initial certifications. This cost is broken down as follows: 1 Project Manager, working for 24 hours ( $24 \times \$70 = \$1,680$ ); 1 Compliance Attorney, working for 24 hours ( $24 \times \$96 = \$2,304$ ); and 1 Developer working for 12 hours ( $12 \times \$75 = \$900$ ). The estimated 120 AT Persons that will rely on § 1.85 would therefore incur a total one-time cost of \$586,080 ( $120 \times \$4,884$ ).

The Commission expects that the approximately 120 AT Persons, on average, will need to review approximately one certification each, assuming that some AT Persons use more than one third-party system or system component, while others use only their own systems. For purposes of this cost analysis, the Commission estimates that an AT Person will need to acquire a new certification approximately once per year due to a material change in the third-party system or component. The Commission estimates that, on an annual basis, an AT Person will incur a cost of \$2,892 to obtain the third-party certifications permitted by Supplemental proposed § 1.85 and conduct the related due diligence.<sup>394</sup> This cost is broken down as follows: 1 Project Manager, working for 12 hours ( $12 \times \$70 = \$840$ ); 1 Compliance Attorney, working for 12 hours ( $12 \times \$96 = \$1,152$ ); and 1 Developer working for 12 hours ( $12 \times \$75 = \$900$ ). The estimated 120 AT Persons that will rely on § 1.85 would therefore incur a total annual cost of \$347,040 ( $120 \times \$2,892$ ).

The provision making an AT Person responsible for ensuring that records are retained and produced as required pursuant to Supplemental proposed § 1.84, should not impose direct costs on AT Persons unless there is an instance the third party is found to have failed to retain and produce records. The costs, in such an event, would depend on the nature and extent of the violation, and it is not reasonably

feasible for the Commission to quantify such costs at this time.

The Commission also anticipates that an AT Person will incur a one-time cost of \$2,304 to re-write its contracts with third parties, so that the AT Persons can comply with the recordkeeping and production provisions of Supplemental proposed § 1.84. This cost is broken down as follows: 1 Compliance Attorney, working for 24 hours ( $24 \times \$96 \text{ per hour} = \$2,304$ ).

AT Persons may incur additional costs as a result of Supplemental proposed § 1.85, depending on the response of third-party providers to implementation of the rule. It is possible that third-party providers may pass on the costs that they incur as a result of Supplemental proposed § 1.85 to their AT Person customers (or all of their customers) in the form of higher prices or an AT Person surcharge.

*Costs to Third-Party Providers:* The Commission expects that all third-party providers combined will need to provide approximately 120 certifications to the 120 AT Persons, assuming that some AT Persons use more than one third-party system or system component, while others use only their own systems. For purposes of this cost-benefit analysis, the Commission estimates that a third-party provider will need to provide a new certification to its AT Person customers approximately once per year due to a material change in the third-party system or component. The Commission also expects third-party providers to cooperate with AT Person due diligence for each certification provided, for a total of 120 due diligence occurrences.

The Commission estimates that each third-party provider will incur a one-time cost of \$4,884 to establish the process for initially providing the third-party certifications permitted by Supplemental proposed § 1.85 and cooperating with AT Persons conducting the related due diligence. The Commission estimates that there will be a total of 50 third-party service providers to AT Persons for their ATs or components, and seeks comment on this estimate. The one-time \$4,884 cost for each third-party provider is broken down as follows: 1 Project Manager, working for 24 hours ( $24 \times \$70 = \$1,680$ ); 1 Compliance Attorney, working for 24 hours ( $24 \times \$96 = \$2,304$ ); and 1 Developer working for 12 hours ( $12 \times \$75 = \$900$ ). The estimated 50 third parties that provide certifications pursuant to Supplemental proposed § 1.85 would therefore incur a total annual cost of \$244,200 ( $50 \times \$4,884$ ).

<sup>392</sup> See NPRM proposed §§ 1.81(a)(1)(i), 1.81(a)(1)(iii), and 1.81(a)(1)(iv), and Supplemental NPRM proposed § 1.81(a)(1)(ii).

<sup>393</sup> See Supplemental proposed § 1.84.

<sup>394</sup> The Supplemental NPRM does not set forth the means by which due diligence must be conducted. The Commission expects that due diligence may take a variety of forms, including but not limited to, email exchanges, teleconferences, reviews of files, and in-person meetings.

The Commission estimates that, on an annual basis, an average third party will incur a cost of \$2,892 to provide AT Persons the third-party certifications permitted by Supplemental proposed § 1.85 and cooperate with AT Persons conducting the related due diligence. This cost is broken down as follows: 1 Project Manager, working for 12 hours ( $12 \times \$70 = \$840$ ); 1 Compliance Attorney, working for 12 hours ( $12 \times \$96 = \$1,152$ ); and 1 Developer working for 12 hours ( $12 \times \$75 = \$900$ ). The estimated 50 third parties that will rely on § 1.85 would therefore incur a total annual cost of \$146,600 ( $50 \times \$2,892$ ).

In addition to the costs of providing certifications, the Commission anticipates that third-party providers will incur additional costs relating to Supplemental proposed § 1.85(a), which contemplates that third parties will provide to AT Persons systems or components that comply with NPRM proposed §§ 1.81(a)(1)(i), 1.81(a)(1)(iii), 1.81(a)(1)(iv), 1.81(a)(2), or Supplemental proposed §§ 1.81(a)(1)(ii) or 1.84. The Commission estimates that, on an annual basis, a third party will incur costs to comply with the proposed rules listed above that are comparable to the costs that an AT Person would incur to comply with such rules. The estimated costs for an AT Person to comply with Supplemental proposed § 1.84 are discussed in Section IX(A)(8) above. The estimated costs for an AT Person to comply with proposed § 1.81(a) were discussed in detail in the NPRM.<sup>395</sup>

<sup>395</sup> See NPRM at 78900. In the NPRM, the Commission estimated that an AT Person that has not implemented any of the requirements of proposed § 1.81(a) (development and testing of ATSS) would incur a total cost of \$349,865 to implement those requirements. This cost was broken down as follows: 1 Project Manager, working for 1,707 hours ( $1,707 \times \$70 = \$119,490$ ); 2 Business Analysts, working for a combined 853 hours ( $853 \times \$52 = \$44,356$ ); 3 Testers, working for a combined 2,347 hours ( $2,347 \times \$52 = \$122,044$ ); and 2 Developers, working for a combined 853 hours ( $853 \times \$75 = \$63,975$ ). The Commission notes that this calculation would apply only to third parties that have not implemented any of the requirements of proposed § 1.81(a). However, the Commission anticipates that many third-party providers—e.g., software development firms—already develop and test systems or components in the ordinary course of their business. Indeed, the Commission anticipates that third-party providers would generally be as sophisticated, if not more sophisticated, than AT Persons with respect to the development and testing of ATSS. Therefore, the Commission believes that the cost of compliance for third parties would be lower than the estimate calculated above. In addition, the Commission anticipates that compliance costs under Supplemental proposed § 1.81(a)(1)(ii) will be lower than the costs estimated in the NPRM, since the Commission is proposing to eliminate the requirement under NPRM proposed § 1.81(a)(1)(ii) that AT Persons must test all Algorithmic Trading code and related systems on each DCM on which

The Commission also anticipates that a third-party will incur a one-time cost of \$2,304 to re-write its contracts with AT Persons, so that the AT Persons can comply with the recordkeeping and production provisions of Supplemental proposed § 1.84. This cost is broken down as follows: 1 Compliance Attorney, working for 24 hours ( $24 \times \$96 \text{ per hour} = \$2,304$ ).

These cost estimates represent an average across all of the estimated 50 firms offering ATS systems or components of systems for use on DCMs. However, the costs to particular firms will vary depending on how many products they offer and how many AT Person customers they do business with. For example, the Commission understands that a small number of firms have a predominant share in the market for third-party provided ATS. Accordingly, the largest providers may have several dozen AT Person customers (as well as a much larger number of non-AT Person customers) while other firms among these 50 currently may have no or few AT Person customers.

The Commission anticipates that much of the cost of providing certifications will result from the initial costs of researching the requirements for certifications and creating the first certification. The Commission expects that a third-party provider can create a single certification for a particular ATS product or component and provide the same certification to all AT Person customers using that product. Certifications for other software products offered by a third-party vendor are likely to be similar to the certification for the initial product. Thus, the cost of creating a certification for an additional software product is likely to be substantially lower than the cost of creating the initial certification. For the same reason, the cost of modifying a certification to reflect material changes to a product is also likely to be much lower than the cost of creating the initial certification. Accordingly, the Commission expects that there will be economies of scale associated with providing certifications to AT Persons, and costs for firms with many AT Person customers may not be substantially greater than such costs for firms with only one AT Person customer.

However, a firm with many AT Person customers is likely to incur much higher costs associated with cooperating with AT Person due

Algorithmic Trading will occur (while retaining a more general requirement that AT Persons must test all ATSSs).

diligence than a firm with only one or a few AT Person customers. This is because a third-party provider will have to cooperate with due diligence separately for each AT Person customer. If a firm has several dozen AT Person customers, it may be necessary for the project manager, compliance attorney, and developer noted above to devote an extended period of time to cooperating with AT Person due diligence, especially following issuance of the initial certification. On subsequent occasions when the software changes materially, the provider will again have to cooperate with AT Person due diligence, but this is likely to be less costly (albeit still significant) than cooperating with the initial due diligence. As noted, AT Persons would likely perform some due diligence even absent the proposed rule. However, they might perceive less need to perform extensive due diligence on firms with many AT Person customers and strong reputations than on firms new to the market or with few AT Person customers. Moreover, AT Persons may tend to perform less due diligence over time, if there are no problems and they come to trust their providers. Thus, Supplemental proposed § 1.85 may result in more extensive due diligence being performed on established firms with many AT Person customers than would occur absent the Supplemental proposed rule.

It is highly likely, especially given the small number of third party providers, that these third-party providers will pass on these costs to their AT Person customers or to all of their customers. It is also possible that third-party providers will elect to avoid these costs by no longer providing their systems to AT Persons, especially if (as is likely given the small number of AT Persons) AT Persons represent a relatively small percentage of their customers.

For more detail on the estimated costs of § 1.85, see Section IX(B)(2)(f).

#### c. Benefits

The certification requirements of Supplemental proposed § 1.85 will improve the safety of ATSSs by ensuring that ATSSs and components provided by third parties to AT Persons are compliant with the development and testing requirements of Regulation AT even when the AT Persons themselves otherwise are unable to comply with those requirements. The due diligence requirements will further ensure that third-party systems are compliant with Regulation AT. Moreover, the recordkeeping and production requirements of § 1.85(d) (by reference to § 1.84(a) and (b)) will ensure the

Commission is able to access the Algorithmic Trading Source Code and log files of third parties via special call to an AT Person or via subpoena in the event they are needed to investigate or inquire into a disruption. Finally, placing ultimate responsibility for compliance with the recordkeeping and production requirements of Supplemental proposed § 1.84 with the AT Person will further ensure that the benefits of these requirements are fully realized.

#### d. Consideration of Alternatives

The Commission considered not requiring AT Persons to conduct due diligence of third-party certifications in order to reduce costs, but determined that requiring due diligence is essential to market integrity and protection of market participants and the public. The Commission preliminarily believes that certification alone is not sufficient to ensure that third-party systems and components are compliant with Regulation AT.

The Commission also considered making an AT Person ultimately responsible for ensuring that third-party systems are compliant with the development and testing requirements of Supplemental proposed § 1.81, but was concerned that this might deter AT Persons from utilizing third-party systems for which they are ultimately responsible but lack control. Moreover, the Commission preliminarily believes that certification and due diligence are sufficient to ensure that the benefits of Supplemental proposed § 1.81 are realized with regard to third-party systems.

#### e. Commission Questions

47. The Commission requests comment on its cost-benefit considerations related to Supplemental proposed § 1.85, including the accuracy of its cost estimates.

48. The Commission requests comment on the costs of § 1.85 to third-party providers with few AT Person customers as compared to the costs to third-party providers with many AT Person customers.

49. To what extent does requiring due diligence of third-party certifications provide additional benefits beyond those of certification requirement itself?

50. To what extent would AT Persons perform due diligence of third-party certifications absent the proposed rule requiring such due diligence?

51. Would placing ultimate responsibility for third-party compliance with Supplemental proposed § 1.81 with the AT Person

provide benefits beyond those of certification and due diligence?

52. For purposes of this cost analysis, the Commission estimated that an AT Person will need to acquire a new certification approximately once per year due to a material change in the third-party system or component. Please comment on whether the estimate of a material change occurring approximately once per year is an appropriate assumption.

53. The Commission requests any additional quantitative information that commenters can provide regarding the costs and benefits of § 1.85.

54. How many third parties are actively providing Algorithmic Trading software in the futures and option markets on DCMs?

55. To what extent will third-party providers pass on the costs that they incur as a result of § 1.85 to their AT Person customers or to all of their customers?

#### 10. Changes to Overall Risk Control Framework

##### a. Summary of New Proposal

NPRM proposed §§ 1.80, 1.82, 38.255 and 40.20 imposed risk control and similar requirements, such as order cancellation systems, at three levels: the AT Person, FCM and DCM. The NPRM also contained definitions for various terms, including “Algorithmic Trading” and “AT Order Message.” Under the NPRM, risk controls applied to AT Order Messages, but not to order messages entered onto an exchange’s matching engine manually.

In the Supplemental NPRM, the Commission proposes a risk control framework with controls at two, rather than three, levels: (i) AT Person or FCM; and (ii) DCM. With respect to algorithmic orders originating with AT Persons (AT Order Messages), the proposed rules require all AT Persons to implement the risk controls and other measures required pursuant to § 1.80 (although AT Persons may delegate compliance with § 1.80(a) to FCMs). The Supplemental NPRM also adds new § 1.80(g), which requires AT Persons to apply the risk control mechanisms described in § 1.80(a), (b) and (c) on its Electronic Trading Order Messages that do not arise from Algorithmic Trading, after making any adjustments in the risk control mechanisms to accommodate the application of such mechanisms to Electronic Trading Order Messages. FCMs are not required to implement risk controls on AT Order Messages that are subject to AT Person-administered controls. Those AT Order Messages originating from AT Persons will be

subject to a second level of risk controls at the DCM level pursuant to proposed § 40.20.

AT Order Messages originating with a non-AT Person are subject to risk controls implemented by executing FCMs pursuant to proposed § 1.82. Those orders will be subject to the second level of risk controls at the DCM level pursuant to proposed § 40.20.

The Commission is proposing two additional definitions in the Supplemental NPRM for the terms Electronic Trading and Electronic Trading Order Message, since many of the risk controls will also apply to manually-entered electronic trades. Pursuant to these definitions, Electronic Trading Order Messages are subject to risk controls implemented by executing FCMs pursuant to proposed § 1.82 or by AT Persons pursuant to supplemental proposed § 1.80(g). Those orders will be subject to the second level of risk controls at the DCM level pursuant to proposed § 40.20. The Supplemental NPRM eliminates NPRM proposed § 1.80(d) which required notification by AT Persons to applicable DCMs and clearing member FCMs that they will engage in Algorithmic Trading.

Finally, Supplemental proposed § 38.255(c) requires a DCM that permits DEA to require that an FCM use DCM-provided risk controls, or substantially equivalent controls developed by the FCM itself or a third party. Prior to an FCM’s use of its own or a third party’s systems and controls, the FCM must certify to the DCM that such systems and controls are substantially equivalent to the systems and controls that the DCM makes available pursuant to Supplemental proposed § 38.255(b).

##### b. Costs

Requiring risk controls at two levels rather than three will reduce the costs to FCMs and AT Persons associated with these risk controls (relative to those in the NPRM) by requiring either the AT Person or the FCM to implement risk controls, but not both. As discussed in the NPRM, the Commission estimated those costs as: each AT Person—\$79,680; and each clearing member FCM—\$49,800 (as to DEA orders) and \$159,360 (as to non-DEA orders).<sup>396</sup> FCMs generally will be required to implement risk controls only for non-AT Person accounts. AT Persons will be permitted to delegate their risk control responsibilities to FCMs under Supplemental proposed §§ 1.80(d) and 1.80(g)(2) and the Commission expects

<sup>396</sup> See NPRM at 78898 and 78903.

that AT Persons may do so if it reduces their costs.<sup>397</sup>

Imposing risk controls on all electronic order messages will cause a modest increase in costs on AT Persons and DCMs, but the Commission expects this increase in costs to be minimal since the marginal cost of imposing existing risk controls on additional orders is low once the risk controls have been created and are up and running and AT Persons can make appropriate adjustments to the risk controls set out in §§ 1.80(a), (b), and (c) since some of these controls need not be applied to manual orders. Similarly, imposing FCM-level risk controls on all Electronic Trading Order Messages not originating with an AT Person will only increase costs modestly. Moreover, the Commission estimates that at least 95% of all order messages on DCM matching engines are generated by ATSS, so that relatively few order messages are affected by this Supplemental proposed rule. This estimate was based on order activity for one week in 2016, as reported in the audit trail for all futures products on the CME Globex platform.

The withdrawal of the notification requirement of NPRM proposed § 1.80(d) eliminates the costs associated with that NPRM proposal.

The Commission expects that the written notifications pursuant to Supplemental proposed § 38.255(c) from an FCM to a DCM that the FCM's risk controls are substantially equivalent to the risk controls available from the DCM will, as discussed in the PRA section below, cost approximately \$235 per certification. The Commission is unable to estimate the exact number of FCMs that will choose to use its own or a third party's systems and controls. Assuming that all 70 executing FCMs were to do so for four DCMs each, the Commission estimates that the 70 executing FCMs would incur a total one-time cost of \$65,800 (70 × \$235 × 4).<sup>398</sup>

#### c. Benefits

The Commission preliminarily believes that the benefits of risk controls will not be materially impacted by reducing the number of levels at which risk controls are imposed to two from three. As described in the NPRM, these benefits include, among other things, mitigating credit, market, and

operational risks by ensuring that each order accurately reflects the intentions of market participants.<sup>399</sup>

Requiring risk controls for all Electronic Trading Order Messages will, as discussed by commenters, ensure that the benefits of the risk controls are realized for all manually entered Electronic Trading Order Messages as well as AT Order Messages.

#### d. Consideration of Alternatives

In determining the appropriate risk control framework for AT Persons, FCMs and DCMs, the Commission considered a few alternatives. First, the Commission considered whether it should require AT Persons to implement their own controls to comply with Supplemental proposed § 1.80(a), rather than allow AT Persons the choice to delegate their risk control duties to FCMs. However, in order to further mitigate costs, the Commission chose to allow this flexibility when it is technologically feasible for the FCM to implement such controls with the same level of effectiveness reasonably designed to prevent and reduce the risk of an Algorithmic Trading Event.

The Commission also considered the alternative of not requiring AT Persons to apply risk controls to all Electronic Trading Order Messages, but rather applying such controls only to AT Order Messages as a way of reducing costs, but determined that two levels of risk controls should be applied to all Electronic Trading Order Messages, including those originating with an AT Person.

#### e. Commission Questions

56. The Commission requests comment on its cost-benefit considerations related to the revisions to §§ 1.80, 1.82, 38.255 and 40.20, including the accuracy of the Commission's cost estimates or assumptions concerning decreased cost.

57. Does requiring risk controls at two levels rather than three materially alter the costs or benefits of the risk control framework?

58. Does imposing risk controls on all Electronic Trading Order Messages materially increase costs? Please quantify any increase in costs if possible. What are the benefits of imposing risk controls on all Electronic Trading Order Messages, rather than just AT Order Messages?

59. Does permitting AT Persons to delegate risk controls to an FCM reduce costs or materially alter the benefits of the risk controls?

60. Should the Commission require AT Persons to apply risk controls to their manual Electronic Trading Order Messages? Would a single, DCM-level control applicable to such orders provide sufficient protection for markets and market participants?

#### 11. Reporting, Testing and Recordkeeping Requirements

##### a. Summary of New Proposal

NPRM proposed §§ 1.83 and 40.22 required that AT Persons and clearing member FCMs provide the DCMs on which they operate with annual reports providing information on their compliance with §§ 1.80(a) and 1.82(a)(1), and that DCMs establish a program for effective review and evaluation of the reports. NPRM proposed §§ 1.83 and 40.22 also provided recordkeeping requirements regarding §§ 1.80, 1.81 and 1.82 compliance. Further, NPRM proposed § 1.81(a)(1)(ii) required AT Persons to test all Algorithmic Trading code and related systems both internally within the AT Person and on each DCM on which Algorithmic Trading will occur. NPRM proposed § 40.21 had required DCMs to provide testing environments.

In light of the concerns raised by commenters to proposed §§ 1.83 and 40.22, the Commission has replaced the requirement that AT Persons and FCMs prepare compliance reports with a requirement that DCMs mandate that AT Persons and executing FCMs provide DCMs with an annual certification attesting that the AT Person or FCM complies with the requirements of §§ 1.80, 1.81, and 1.82, as applicable, while maintaining the recordkeeping requirements. Also in lieu of requiring compliance reports, Supplemental proposed § 40.22(a) requires DCMs to periodically review AT Persons' and FCMs' programs for compliance with §§ 1.80, 1.81 and 1.82.

Additionally, the Commission is proposing to modify certain requirements regarding the development, monitoring, and compliance of ATSS under NPRM proposed § 1.81. The Commission has withdrawn the requirement under NPRM proposed § 1.81(a)(1)(ii) that AT Persons must test all Algorithmic Trading code and related systems on each DCM on which Algorithmic Trading will occur (while retaining a more general requirement in Supplemental proposed § 1.81(a)(1)(ii) that AT Persons must test all ATSS, including Algorithmic Trading Source Code, any changes to such systems or code, prior to implementation, and such testing shall be reasonably designed to

<sup>397</sup> FCMs would be permitted to charge AT Person customers to implement risk controls on their behalf.

<sup>398</sup> DCMs will incur some costs with respect to preparing an exchange rule requiring FCMs to provide § 38.255(c) certifications. Exchange rule-writing costs were generally covered in the cost-benefit considerations for the Part 40 final rule (76 FR 44776, July 27, 2011).

<sup>399</sup> NPRM at 78899-78900.

effectively identify circumstances that may contribute to future Algorithmic Trading Events). The Commission has also withdrawn NPRM proposed § 40.21, which had required DCMs to provide test environments that enable AT Persons to simulate production trading.

#### b. Costs

The Commission preliminarily believes that the costs associated with Supplemental proposed § 40.22(a) (DCMs to periodically review AT Persons' and FCMs' programs for compliance with §§ 1.80, 1.81 and 1.82) are similar on a per-event basis to the costs associated with the NPRM requirements that DCMs review annual compliance reports from AT Persons and FCMs. However, the Commission expects that DCMs can appropriately perform these periodic reviews for most AT Persons and FCMs at a frequency less often than annually, generally reducing costs. The Commission notes that it may be necessary for DCMs to perform reviews more frequently for entities whose trading activities appear to impose greater potential risks to the marketplace. In the NPRM, the Commission estimated that the compliance reports would cost each clearing member FCM \$7,090 annually and each AT Person \$4,240 annually.<sup>400</sup> However, some commenters indicated that the Commission had underestimated such costs.

The Commission estimated in the NPRM that it would cost each DCM approximately \$244,080 per year to comply with NPRM proposed § 40.22, of which \$133,200 is associated with review and remediation of compliance reports.<sup>401</sup> CME believes the Commission's estimate for complying with § 40.22's requirements that DCMs periodically review AT Person and clearing member FCM compliance reports and books and records, and identify and remediate any insufficient mechanisms, policies and procedures discovered, is too low. Instead, CME estimated the annual cost for each of its four DCMs<sup>402</sup> to be closer to \$525,000,

assuming that across all four DCMs, approximately 650 entities would come within the scope of the proposed compliance report requirements and each entity would be reviewed once every four years (across all four DCMs).<sup>403</sup> CME estimated that it would take approximately one month for a full-time employee to complete each review.<sup>404</sup> The Commission preliminarily adopts the CME cost estimate regarding the cost of each individual compliance review (\$3,230), but at this time believes that it would be appropriate for a DCM to review AT Persons and FCMs on average every two years rather than every four years.<sup>405</sup> As noted, the Commission expects the costs of Supplemental proposed § 40.22(a) to be similar to the compliance review costs of NPRM Proposed Regulation 40.22. However, the Commission expects that the number of entities that would come within the scope of Supplemental proposed § 40.22(a) would be approximately 180 (120 AT Persons and an additional 60 FCMs)<sup>406</sup> and that the high-end cost to a large DCM (such as those operated by the CME) would thus be approximately \$290,000 rather than \$525,000. This cost is broken down as follows: \$3,230 per review multiplied by 90 (180 AT Persons and FCMs half of which are reviewed each year for 90 reviews) is approximately \$290,000. The costs would be lower for smaller DCMs with fewer AT Person market participants and fewer FCMs since they would need to conduct reviews for fewer entities.

FCMs and AT Persons will not incur costs associated with annual compliance reports since those reports will not be required under the Supplemental NPRM, but the Commission estimates that it will cost \$2,480 for an FCM or an AT Person to cooperate with a DCM's periodic review. The Commission expects that on average, an FCM or AT Person will be subject to a periodic review every two years for each DCM on which it trades or once every year in total (with entities whose trading activities appear to impose greater potential risks to the marketplace needing more frequent reviews).

Regulation Department effectively functions as a single entity, sharing management, staff, information technology and other resources.

<sup>403</sup> CME 22.

<sup>404</sup> See *id.*

<sup>405</sup> As noted, more frequent reviews may be needed for firms that appear to present more risk.

<sup>406</sup> The Commission is using 60, as opposed to 70, FCMs for purposes of this calculation because every FCM does not operate on all DCMs. Accordingly, a single DCM would not necessarily have to review every FCM.

Supplemental proposed § 40.22(d) provides that DCMs must require by rule<sup>407</sup> that AT Persons and executing FCMs provide DCMs with an annual certification attesting that the AT Person or FCM complies with the requirements of §§ 1.80, 1.81, and 1.82, as applicable. Such annual certification shall be made by the chief compliance officer or chief executive officer of the AT Person or FCM and must state that, to the best of his or her knowledge and reasonable belief, the information contained in the certification is accurate and complete. The Commission estimates that each DCM's chief compliance officer will spend approximately one hour receiving and reviewing the certification from approximately 120 AT Persons and 60 executing FCMs, for a total of 180 hours and a cost of \$28,620 per DCM. This cost is broken down as follows: 1 Chief Compliance Officer, working for 1 hour (1 × \$159 per hour × 180 certifications = \$28,620). The Commission notes that this cost is significantly lower than the \$111,000 per-DCM cost estimated in the NPRM for review of compliance reports.<sup>408</sup> As to AT Person and executing FCM costs, the Commission expects that the annual certification requirement will involve preparation and transmittal of a document that makes the required certification, and that most of the hours associated with this requirement would involve review and analysis by compliance personnel of the entity's compliance with §§ 1.80, 1.81, and 1.82, as necessary to enable the CCO or CEO to sign the certification. The Commission expects that each AT Person or FCM will transmit the essentially same certifications to each DCM that it is trading or operating on, without the need to prepare a unique certification for each DCM. The Commission also expects that to the extent that an AT Person's or FCM's interaction with the various DCMs' electronic trading facilities are similar, the review and analysis of the entity's compliance with §§ 1.80, 1.81, and 1.82 will also be similar. Therefore, the Commission preliminarily believes that the marginal cost of submitting certifications to additional DCMs will be much less than the cost of submitting a certification to the first DCM.

The Commission estimates that, on an annual basis, an AT Person and an FCM will each incur a cost of \$1,176 to submit the compliance certification to

<sup>407</sup> DCMs will incur some costs with respect to preparing an exchange rule requiring FCMs and AT Persons to provide § 40.22(d) certifications. Exchange rule-writing costs were generally covered in the cost-benefit considerations for the Part 40 final rule (76 *FR* 44776, July 27, 2011).

<sup>408</sup> See NPRM at 78907.

<sup>400</sup> See NPRM at 78904.

<sup>401</sup> See NPRM at 78908. The remainder is associated with the costs of reviewing books and records (§ 40.22(e)) and self-trading requests (§ 40.22(c)). These provisions are not addressed in the Supplemental NPRM.

<sup>402</sup> CME Group is the parent company of the Chicago Mercantile Exchange, Chicago Board of Trade, New York Mercantile Exchange, and Commodity Exchange DCMs. Following the merger of the four exchanges, CME Group has a single Market Regulation Department which provides compliance, enforcement, and other self-regulatory services to all four of the CME Group DCMs. With respect to the four DCMs, CME Group's Market

four DCMs. This cost is broken down as follows: 1 Senior Compliance Specialist, working for 6 hours ( $6 \times \$57 = \$342$ ); and 1 Chief Compliance Officer, working for 6 hours ( $6 \times \$139 = \$834$ ), for each certification.<sup>409</sup> The 120 AT Persons that will be subject to DCM rules implemented pursuant to § 40.22(d) would therefore incur a total annual cost of \$141,120 ( $120 \times \$1,176$ ). Similarly, the 70 executing FCMs that will be subject to DCM rules implemented pursuant to § 40.22(d) would therefore incur a total annual cost of \$82,320 ( $70 \times \$1,176$ ). The Commission notes that the \$1,176 per-entirety cost of submitting certifications is substantially lower than the \$4,240 per-AT Person cost and the \$7,090 per-FCM cost estimated in the NPRM for submission to DCMs of annual compliance reports.<sup>410</sup> Finally, withdrawing the requirement under NPRM proposed § 1.81(a)(1)(ii) that AT Persons must test Algorithmic Trading code and related systems on each DCM on which Algorithmic Trading will occur, and withdrawing NPRM proposed § 40.21, which had required DCMs to provide test environments that enable AT Persons to simulate production trading, will eliminate the costs associated with those NPRM proposed rules.

#### c. Benefits

The Commission expects that the benefits of proposed § 40.22(a) will be similar to the benefits of the compliance report requirements of NPRM proposed §§ 1.83(a) and (b) and 40.22(c). As stated in the NPRM, those benefits were to enable “DCMs to have a clearer understanding of the pre-trade risk controls of all AT Persons that are engaged in Algorithmic Trading on such DCM” and to “improve the standardization of market participants’ pre-trade risk controls.”<sup>411</sup> In those years in which entities are not reviewed, DCMs will at least receive notifications pursuant to supplemental proposed § 40.22(d) confirming that such entities are in compliance with §§ 1.80, 1.81 and 1.82, as applicable. An AT Person’s or FCM’s failure to provide the required certification would indicate a basis for the DCM to engage in a review of such entity’s risk controls and testing program.

The withdrawal of the requirement under NPRM proposed § 1.81(a)(1)(ii) that AT Persons must test Algorithmic

Trading code and related systems on each DCM on which Algorithmic Trading will occur, and the withdrawal of NPRM proposed § 40.21, which had required DCMs to provide test environments that enable AT Persons to simulate production trading, will eliminate any benefits directly associated with those particular NPRM proposed rules. The Commission is revising or withdrawing those NPRM proposed rules in response to comments discussed above indicating that they were costly and impracticable. The Commission expects that the remaining testing requirements in Supplemental proposed § 1.81 generally will continue to provide the benefits described in the NPRM, including the potential to reduce market disruptions.<sup>412</sup>

#### d. Consideration of Alternatives

The Commission considered the alternative of eliminating the compliance requirements of NPRM proposed § 40.22(c) without proposing either § 40.22(a) or § 40.22(d) in its place. The Commission determined to propose § 40.22(a) and § 40.22(d) because it preliminarily determined that these supplemental proposed rules are necessary to ensure that the benefits of Regulation AT are fully realized, including the goal of ensuring that risk controls are effectively implemented across AT Persons and FCMs, and that insufficient controls at such entities are identified and remediated. Specifically, the Commission preliminarily believes that it is necessary for DCMs to periodically review compliance by AT Persons and FCMs and for AT Persons and FCMs to review their own compliance in order to make certifications.

#### e. Commission Questions

61. The Commission requests comment on its cost-benefit considerations related to Supplemental proposed §§ 1.81(a)(1)(ii), 1.83, 40.22, and NPRM proposed § 40.21, including the accuracy of its cost estimates or assumptions regarding decreased costs and the accuracy of its assumptions regarding the amount of work that would be required of AT Persons and FCMs to comply with the certification requirements of Regulation AT.

62. How do the costs and benefits of Supplemental proposed § 40.22(a) compare to the compliance costs and benefits associated with NPRM proposed § 40.22(c)?

#### 12. Section 15(a) Factors

This section discusses the CEA section 15(a) factors for the proposals in this Supplemental NPRM.

##### a. Protection of Market Participants and the Public

The Commission preliminarily believes that, as modified by the Supplemental NPRM, Regulation AT would continue to, as stated in the NPRM, protect market participants and the public by limiting a “race to the bottom,” in which certain entities sacrifice effective risk controls in order to minimize costs or increase the speed of trading. The Supplemental proposal to set risk controls at two levels rather than three will reduce costs while maintaining Regulation AT’s protection of market participants and the public. The proposal to apply risk controls to Electronic Trading Order Messages as well as AT Order Messages will protect market participants and the public by providing the benefits of risk controls to all order submissions to a DCM’s electronic trading facility. The requirements of Supplemental proposed § 40.22(a), which requires DCMs to periodically review AT Persons’ and FCMs’ programs for compliance with §§ 1.80, 1.81 and 1.82, and the certification requirements of § 40.22(d), will promote protection of market participants and the public by helping to ensure that the risk control rules are followed in a consistent manner and may further reduce the likelihood of Algorithmic Trading Events and Algorithmic Trading Disruptions.

Supplemental proposed § 1.84 will protect market participants and the public by ensuring that the Commission has access to the Algorithmic Trading Source Code and log files of AT Persons in the event they are needed to investigate or inquire into an Algorithmic Trading Event or Algorithmic Trading Disruption.

Supplemental proposed § 1.85 will protect market participants and the public by ensuring that ATs and components provided by third parties to AT Persons are compliant with the development and testing requirements of Regulation AT, even when the AT Persons themselves are otherwise unable to comply with those requirements. Moreover, the recordkeeping requirements of § 1.85(d) (by reference to § 1.84(a) and (b)) will protect market participants and the public by ensuring that the Commission has access to the Algorithmic Trading Source Code and log files of third parties in the event they are needed to investigate or inquire into an

<sup>409</sup> The six hours of work for each employee consists of five hours for the initial certification and one hour to prepare additional certifications for three other DCMs.

<sup>410</sup> See NPRM at 78904.

<sup>411</sup> NPRM at 78905.

<sup>412</sup> *Id.* at 78901 and 78907.

### Algorithmic Trading Event or Algorithmic Trading Disruption.

#### b. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission preliminarily believes that by addressing pre-trade risk controls, testing, and order management controls at two market levels—the exchange and either the trading firm or the executing FCM—Regulation AT, as modified by this Supplemental NPRM, will continue to provide standards that can be interpreted and enforced in a uniform manner. Implementation of Regulation AT to electronic order messages will help mitigate instabilities in the markets and ensure market efficiency and financial integrity, as discussed in the NPRM.<sup>413</sup> Supplemental proposed § 1.85 will further these goals as well by ensuring that third-party systems used by AT Persons are compliant with Regulation AT.

Supplemental proposed § 1.84 will further market efficiency and financial integrity by ensuring that the Commission has access to the Algorithmic Trading Source Code and log files of AT Persons in the event they are needed to investigate or inquire into an Algorithmic Trading Event or Algorithmic Trading Disruption.

#### c. Price Discovery

Requiring both exchanges and either trading firms or executing FCMs to implement pre-trade risk controls, testing, and order management control requirements in order to mitigate the risk of a malfunctioning trading algorithm or automated trading disruption promotes the price discovery process by reducing the likelihood of transactions at prices that do not accurately reflect market forces.

#### d. Sound Risk Management Practices

The Commission believes that the pre-trade risk and order management control requirements contained in Regulation AT, as modified by this Supplemental NPRM, will contribute to a system-wide reduction in operational risk, and will help standardize risk management practices across similar entities within the marketplace. The reduction in operational risk may simplify the tasks associated with sound risk management practices. These enhanced risk management practices should help reduce unintended market volatility, which will aid in efficient market making, and reduce overall transaction costs as they relate to price movements, which should encourage

market participants to trade in Commission-regulated markets. Market participants and those who rely on prices as determined within regulated markets should benefit from markets that behave in an orderly and expected fashion.

#### e. Other Public Interest Considerations

The Commission has not identified any effects that these proposed rules would have on other public interest considerations other than those addressed above.

#### f. Commission Questions

63. The Commission requests comment on its consideration of the CEA section 15(a) factors.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis regarding the impact.<sup>414</sup> A regulatory flexibility analysis or certification is typically required for any rule for which the agency publishes a general notice of proposed rulemaking pursuant to the notice-and-comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).<sup>415</sup>

In the NPRM, the Commission provided a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act.<sup>416</sup> Regulation AT impacts three broad types of market participants: DCMs, FCMs, and AT Persons.<sup>417</sup> In the NPRM, the Chairman, on behalf of the Commission, certified pursuant to 5 U.S.C. 605(b) that the rules proposed in Regulation AT imposing requirements on FCMs and DCMs would not have a significant economic impact on a substantial number of small entities.<sup>418</sup>

With respect to AT Persons, the NPRM provided a regulatory flexibility analysis addressing whether Regulation AT would have a significant economic impact on a substantial number of AT Persons that were small entities. As defined in the NPRM, the term AT Persons included various entities that engaged in Algorithmic Trading, including New Floor Traders under NPRM proposed § 1.3(x)(3), FCMs, floor brokers, SDs, MSPs, CPOs, CTAs and

IBs.<sup>419</sup> The NPRM noted that the Commission previously determined that FCMs, foreign brokers, SDs, MSPs, CPOs, and natural persons are not small entities for purposes of the Regulatory Flexibility Act.<sup>420</sup> The NPRM stated that the Commission believes it is likely that no natural persons will be AT Persons, given the technological and personnel costs associated with Algorithmic Trading.<sup>421</sup> The Commission then considered whether, in the context of Regulation AT, floor brokers, floor traders, CTAs, and IBs that engage in Algorithmic Trading should be considered small entities for purposes of the Regulatory Flexibility Act.<sup>422</sup> The Commission concluded that it did not believe that a substantial number of small entities will be impacted by Regulation AT.<sup>423</sup>

The Commission has made a number of substantive additions and changes to Regulation AT in this Supplemental NPRM, some of which may impact small entities. Significantly, while the Commission estimated that there would be 420 AT Persons under the NPRM proposed rules for Regulation AT, the Commission has revised its estimate to 120 AT Persons under the modified rules proposed in this Supplemental NPRM. As discussed below, the Commission believes that the Supplemental proposed rules will have a significant economic impact on fewer (if any) small entities than the NPRM proposed rules.

Pursuant to 5 U.S.C. 603, the Commission offers for public comment the following supplemental analysis to its initial regulatory flexibility analysis addressing the impact of Regulation AT on small entities. The Commission's analysis in the NPRM consisted of six parts, as generally set forth in section 603(b) of the Regulatory Flexibility Act. The Supplemental NPRM does not alter the Commission's analysis of four of the areas: (1) A description of the reasons why action is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposals; (3) an identification of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule; and (4) a description of significant alternatives. The Commission offers the following supplemental analysis for two areas: (1) A description of and, where feasible, an estimate of the number of small entities to which the proposed rules will apply; and (2) a description of the projected

<sup>414</sup> 5 U.S.C. 601 *et. seq.*

<sup>415</sup> 5 U.S.C. 601(2), 603, 604, and 605.

<sup>416</sup> NPRM at 78885.

<sup>417</sup> Supplemental proposed § 1.85 will impact another type of market participant, third-party service providers providing software or systems to AT Persons for Algorithmic Trading.

<sup>418</sup> NPRM at 78885.

<sup>419</sup> *Id.* at 78885–6.

<sup>420</sup> *Id.* at 78885.

<sup>421</sup> *Id.* at 78885–6.

<sup>422</sup> *Id.* at 78885.

<sup>423</sup> *Id.* at 78886.

<sup>413</sup> NPRM at 78909–78910.

reporting, recordkeeping, and other compliance requirements of the rules, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

1. A Description, and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The Commission noted in the NPRM that the definition of AT Person is limited to entities that conduct Algorithmic Trading and the definition of New Floor Traders under NPRM proposed § 1.3(x)(1)(iii) is further limited to those entities with DEA. The Commission believes that entities with such capabilities are generally not small entities.

Supplemental proposed § 1.3(xxxx)(1)(i)(B) adds a volume threshold test to the definition of AT Person, which measure is also set forth in definition of New Floor Trader pursuant to Supplemental proposed §§ 1.3(x)(1)(iii)(D) and 1.3(x)(2). The Commission believes that adding this volume threshold to further reduce the scope of Regulation AT will ensure that a substantial number of small entities will not be impacted by the information collection. In the NPRM, the Commission estimated that approximately 420 persons will be AT Persons. The regulatory flexibility analysis contained in the NPRM concluded that Regulation AT would not impact a substantial number of small entities.<sup>424</sup> In this supplemental NPRM, the Commission estimates that approximately 120 persons will be AT Persons, and a smaller number would be New Floor Traders under 1.3(x)(1)(iii). Accordingly, the Commission believes that under the modified definition of AT Person set forth in Supplemental proposed § 1.3(xxxx), the Supplemental proposed rules will impact significantly fewer small entities than the NPRM proposed rules and, in particular, that there will not be a substantial number of small entities impacted by the information collection.

2. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rules, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

The following section discusses the projected reporting, recordkeeping, and

other compliance requirements that will be imposed upon AT Persons<sup>425</sup> under the proposed rules.

a. § 1.3(x)(1)(iii)—Registration of New Floor Traders

Regulation AT would impose new registration requirements on certain entities with Direct Electronic Access who meet a volumetric test as a result of the proposed amendment to the definition of “floor trader” in Supplemental proposed § 1.3(x)(1)(iii). The Commission provided detailed estimates of the costs associated with registration as a New Floor Trader in the NPRM.<sup>426</sup> The Commission estimated that new registrants would incur a one-time cost of approximately \$2,106 per registrant (\$1,050 in application fees plus \$1,056 in preparation costs). In the NPRM, the Commission estimated that there would be approximately 100 new Floor trader registrants. The Commission believes that the volume threshold test will likely result in fewer than 100 new Floor trader registrants. The Commission further believes that the volume threshold test proposed in the Supplemental NPRM will reduce the impact on small entities as compared with the NPRM, since the registration requirements of Regulation AT will only apply to entities with high trading volumes when measured across all products and DCMs.

b. § 1.80—Pre-Trade Risk Controls

NPRM proposed regulations §§ 1.80, 1.82, 38.255 and 40.20 imposed risk control and similar requirements, such as order cancellation systems, on three levels: AT Person, FCM and DCM. As discussed above, this Supplemental NPRM changes the overall framework for risk controls and other measures required pursuant to NPRM proposed §§ 1.80, 1.82, 38.255 and 40.20. This Supplemental NPRM proposes a revised framework with two levels of risk controls: (1) At the AT Person or FCM level, and (2) the DCM level. With respect to orders originating with AT Persons (AT Order Messages), the rules would require all AT Persons to implement the risk controls and other measures required pursuant to § 1.80 (although AT Persons may delegate compliance with § 1.80(a) to FCMs, as discussed above). In the NPRM, the Commission estimated that it would cost an AT Person approximately \$79,680 to upgrade its controls to

<sup>425</sup> This analysis discusses estimated costs for AT Persons, irrespective of whether they are small entities. However, the Commission believes that the associated costs for small entity AT Persons would be no more than the costs for any other AT Persons.

<sup>426</sup> NPRM at 78925.

comply with § 1.80. In the NPRM, the Commission estimated that there would be 420 AT Persons. However, under this Supplemental NPRM, the Commission estimates that there will be approximately 120 AT Persons. Assuming that there are 120 AT Persons, the Commission estimates that the total industry cost to implement § 1.80 would be approximately \$9,561,600.

The Commission also proposes a change to NPRM proposed § 1.80 in which AT Persons may delegate compliance with pre-trade risk control requirements (§ 1.80(a)) to their executing FCMs. Supplemental proposed § 1.80(d) provides that an AT Person may choose to comply with paragraph (a) of § 1.80 by itself implementing such pre-trade risk controls, or may instead delegate compliance with such obligations to its executing futures commission merchant. Supplemental proposed § 1.80(f) continues to require an AT Person to periodically review its compliance with § 1.80 to determine whether it has effectively implemented sufficient measures reasonably designed to prevent an Algorithmic Trading Event.<sup>427</sup> The Commission has revised this section to account for the possibility that an AT Person has delegated § 1.80(a) compliance to an FCM, and requires the AT Person to periodically review such FCM's compliance with § 1.80(a). The Commission assumes that some AT Persons will delegate compliance with § 1.80 to its executing FCM under § 1.80(d), and thus review such FCM's compliance with § 1.80(a) pursuant to Supplemental proposed § 1.80(f). While the Commission cannot estimate how many AT Persons will delegate compliance, the Commission believes that the costs associated with review are the same as those associated with compliance with § 1.80 generally.

c. § 1.83(a)—AT Person Recordkeeping Requirements

As discussed above, the Commission estimated in the NPRM that 420 entities would qualify as AT Persons under Regulation AT. Pursuant to Supplemental proposed § 1.3(xxxx), the Commission now estimates that 120 entities will be AT Persons. The Commission's new, lower estimate for the number of AT Persons is a function of the volume threshold test that market participants would have to satisfy to fall within the definition of AT Person

<sup>427</sup> The Commission notes that the Supplemental proposes a reasonably designed to prevent and reduce the potential risk of standard under § 1.80.

<sup>424</sup> *Id.* at 78886.

under Supplemental proposed § 1.3(xxxx).

The Commission has updated its Regulatory Flexibility Act analysis from the NPRM for proposed § 1.83, based on its updated estimate of 120 AT Persons in the Supplemental NPRM (as opposed to the 420 AT Persons estimated in the NPRM). The Commission's Regulatory Flexibility Act analysis for Supplemental proposed § 1.83 assumes the same cost on a per AT Person basis as was used in the NPRM analysis. Specifically, the Commission estimated in the NPRM that proposed § 1.83 requirements that AT Persons keep and provide books and records relating to NPRM proposed §§ 1.80 and 1.81 compliance would result in initial outlay of 60 hours of burden per AT Person. Under Supplemental proposed § 1.83(a), the 120 AT Persons would therefore initially incur 7,200 burden hours in total. In the NPRM, the Commission estimated that, on an initial basis, an AT Person would incur a cost of \$5,130 to draft and update recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. Under Supplemental proposed § 1.83(a), the 120 AT Persons would therefore incur a total initial cost of \$615,600.

The Commission estimated in the NPRM that proposed § 1.83 requirements that AT Persons keep and provide books and records relating to NPRM proposed §§ 1.80 and 1.81 compliance would result in annual costs of 30 hours of burden per AT Person. Under Supplemental proposed § 1.83(a), the 120 AT Persons would therefore incur 3,600 burden hours in total. In the NPRM, the Commission estimated that, on an annual basis, an AT Person would incur a cost of \$2,670 to ensure compliance with the NPRM proposed § 1.83(a) recordkeeping rules relating to NPRM proposed § 1.82 compliance. Under Supplemental proposed § 1.83(a), the 120 AT Persons would therefore incur a total annual cost of \$320,400.

d. § 1.84—Maintenance of Algorithmic Trading Source Code and Related Records

Supplemental proposed § 1.84 would require AT Persons to retain three categories of records for a period of five years: (1) Algorithmic Trading Source Code; (2) records that track changes to Algorithmic Trading Source Code; and (3) log files that record the activity of the AT Person's ATS. For purposes of Supplemental proposed § 1.84, Algorithmic Trading Source Code includes computer code, hardware description language, scripts and formulas as well as the configuration

files and parameters used to carry out the trading. These records are required to be maintained in their native format. Supplemental proposed § 1.84 also requires that these records be kept in a form and manner that ensures the authenticity and reliability of the information contained in the records, and that AT Persons have systems available to promptly retrieve and display the records.

Supplemental proposed § 1.84 applies to AT Persons, including any AT Persons that are floor brokers, floor traders, CTAs, or IBs. The Commission's best understanding is that at this time, all floor brokers are natural persons. Given the technological and personnel costs associated with Algorithmic Trading, the Commission's expectation is that only entities, not natural persons, would meet the definition of "AT Person." Accordingly, the Commission does not believe that any floor brokers would be AT Persons impacted by Supplemental proposed § 1.84.

With respect to New Floor Traders, CTAs, and IBs that would meet the definition of AT Person, the Commission does not believe it is feasible to estimate the total number of such entities that would be small entities. However, under this Supplemental NPRM, the Commission estimates that there will be a total of 120 AT Persons, a subset of the estimated 420 AT Persons described in the NPRM. The Commission noted in the NPRM that the proposed definition of AT Person was limited to entities that conduct Algorithmic Trading, and the NPRM proposed definition of New Floor Traders was further limited to those entities with DEA.<sup>428</sup> The Commission stated that it believed entities with such capabilities are generally not small entities.<sup>429</sup> Thus, the population of AT Persons under the Supplemental NPRM is even *less* likely to include small entities, since they must meet the additional volume threshold measures discussed above. Consequently, the Commission does not believe that Supplemental proposed § 1.84 will impact a substantial number of small entities.

In order to comply with the requirements set out in Supplemental proposed § 1.84(a), an AT Person must have a version control system and an application log management system in place. The Commission expects that most AT Persons have version control software to manage each change made to their software and identify who made the change and why. The Commission

also expects that most AT Persons manage their application logs through some form of application log management system.

For firms that do not have version control systems and application log management systems in place, the effort involved in setting one up includes the acquisition of the hardware to run the system, the application software itself, the migration of the existing Algorithmic Trading Source Code and logs into the software, and the creation of policy and procedures related to the use of the system by the firm. For appropriate hardware to accomplish this task, a machine with sufficient storage space and sufficient redundancy will be needed. The Commission expects that ten terabytes of data would constitute sufficient storage capacity. A number of software options are available, from open-source products to industry-standard tools.

i. Firms Without Sufficient Hardware and Software in Place

The Commission estimates that Supplemental proposed § 1.84(a), which requires AT Persons to maintain specified records related to their Algorithmic Trading Source Code and their Algorithmic Trading systems' activity, will result in initial outlay of 420 hours of burden per AT Person without sufficient hardware and software in place to comply with proposed § 1.84(a), and 33,600 burden hours in total. The estimated burden was calculated as follows:

*Burden:* Supplemental proposed § 1.84(a), which would require AT Persons to maintain certain records.

*Respondents/Affected Entities:* 120 AT Persons.

*Estimated total burden on each AT Person or executing FCM:* 420 hours.

*Burden statement—all AT Persons and executing FCMs:* 120 respondents × 420 hours = 50,400 Burden Hours initial year.

The Commission estimates that an AT Person without the hardware and software in place to maintain the records required by Supplemental proposed § 1.84(a) would incur a cost of \$41,840 to purchase and set up the required hardware and software, migrate existing Algorithmic Trading Source Code and logs into the software and draft appropriate recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. This cost is broken down as follows: Hardware costing \$12,000,<sup>430</sup>

<sup>428</sup> NPRM at 78886.

<sup>429</sup> *Id.*

<sup>430</sup> The Commission estimates that the hardware could cost from \$1,000 to \$25,000 depending on factors including which hardware vendor an AT

software costing \$2,000,<sup>431</sup> 1 Project Manager for the Algorithmic Trading Source Code and log migration effort, working for 60 hours ( $60 \times \$70 = \$4,200$ ); 1 Developer for the Algorithmic Trading Source Code and log migration effort, working for 60 hours ( $60 \times \$75 = \$4,500$ ), 1 Project Manager to develop the related policies and procedures, working for 120 hours ( $120 \times \$70 = \$8,400$ ), 1 Business Analyst to develop the related policies and procedures, working for 120 hours ( $120 \times \$52 = \$6,240$ ), and 1 Developer to develop the related policies and procedures, working for 60 hours ( $60 \times \$75 = \$4,500$ ). The 120 AT Persons would therefore incur a total initial cost of \$5,020,800 ( $120 \times \$41,840$ ).

ii. Firms With Sufficient Hardware and Software in Place

Firms that have the necessary systems in place may nevertheless need to make changes to their policies and procedures and enhance their hardware to provide more storage capacity, in each case to address the requirements of Supplemental proposed § 1.84(a). The discussion below addresses both the effort it takes to determine what upgrades need to be made, and to implement those upgrades.

The Commission estimates that Supplemental proposed § 1.84(a) requiring AT Persons to maintain specified records related to their Algorithmic Trading Source Code and their Algorithmic Trading systems' activity will result in initial outlay of 90 hours of burden per AT Person with sufficient hardware and software to comply with Supplemental proposed § 1.84(a), and 10,800 burden hours in total. The estimated burden was calculated as follows:

*Burden:* Supplemental proposed § 1.84(a), which would require AT Persons to maintain certain records.

*Respondents/Affected Entities:* 120 AT Persons.

*Estimated total burden on each respondent:* 90 hours.

*Burden statement—all respondents:* 120 respondents  $\times$  90 hours = 10,800 Burden Hours initial year.

The Commission estimates that, on an initial basis, an AT Person with the hardware and software in place to

maintain the records required by Supplemental proposed § 1.84(a) would incur a cost of \$12,160 to purchase and set up the required hardware and software, migrate existing Algorithmic Trading Source Code and logs into the software and draft appropriate recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. This cost is broken down as follows: Hardware costing \$4,000,<sup>432</sup> 1 Project Manager to develop the related policies and procedures, working for 30 hours ( $30 \times \$70 = \$2,100$ ), 1 Business Analyst to develop the related policies and procedures, working for 30 hours ( $30 \times \$52 = \$1,560$ ), and 1 Developer to develop the related policies and procedures, working for 60 hours ( $60 \times \$75 = \$4,500$ ). The 120 AT Persons would therefore incur a total initial cost of \$1,459,200 ( $120 \times \$12,160$ ).

e. Supplemental Proposed §§ 1.84(b) and (c)

In order to comply with the requirements set out in Supplemental proposed §§ 1.84(b) and 1.84(c), AT Persons will have to use their version control software to manage their software's version history. This will require a standard monthly effort to maintain the environment so that each AT Person is able to respond to special calls and/or subpoenas.

*Monthly Maintenance:* The Commission estimates that Supplemental proposed §§ 1.84(b) and 1.84(c), which require AT Persons to produce records of Algorithmic Trading in response to a special call or subpoena, will result in ongoing costs of 324 hours of burden per AT Person per year, and 38,880 annual burden hours in total. The estimated burden was calculated as follows:

*Burden:* Rule requiring AT Persons to produce Algorithmic Trading records in response to a Special Call or Subpoena.

*Respondents/Affected Entities:* 120 AT Persons.

*Estimated total burden on each respondent:* 324 hours.<sup>433</sup>

*Burden statement—all respondents:* 120 respondents  $\times$  324 hours = 38,880 Burden Hours per year.

The Commission estimates that, on an annual basis, an AT Person will incur a

cost of \$25,380 to draft and update recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. This cost is broken down as follows: 1 Project Manager, working for 3 hours per month  $\times$  18 months = 54 hours per year ( $54 \times \$70 = \$3,780$ ); and 1 Developer, working for 24 hours per month  $\times$  12 months = 288 hours per year ( $288 \times \$75 = \$21,600$ ). The 120 AT Persons would therefore incur a total initial cost of \$3,045,600 ( $120 \times \$25,380$ ).

Costs Per Response to a Special Call or Subpoena. The Commission estimates that Supplemental proposed §§ 1.84(b) and 1.84(c), which require AT Persons to produce records of Algorithmic Trading in response to a special call or subpoena, will result in costs per response of 48 hours of burden per AT Person, and 12,960 burden hours in total. The estimated burden was calculated as follows:

*Burden:* Rule requiring AT Persons to produce Algorithmic Trading records in response to a Special Call or Subpoena.

*Respondents/Affected Entities:* 120 AT Persons.

*Estimated number of responses:* 120.

*Estimated total burden on each respondent:* 108 hours.

*Frequency of collection:* Intermittent.

*Burden statement—all respondents:* 120 respondents  $\times$  108 hours = 12,960 Burden Hours per year.

The Commission estimates that, on an intermittent basis, an AT Person will incur a cost of \$5,844 to ensure compliance with those aspects of Supplemental proposed §§ 1.84(b) and 1.84(c) requiring AT Persons to produce records of Algorithmic Trading in response to a special call or subpoena. This cost is broken down as follows: 1 Project Manager, working for 12 hours ( $12 \times \$70 = \$840$ ); 1 Developer, working for 36 hours ( $36 \times \$75 = \$2,700$ ); and 1 Compliance Attorney, working for 24 hours ( $24 \times \$96 = \$2,304$ ). The 120 AT Persons would therefore incur a total annual cost of \$701,280 ( $120 \times \$5,844$ ).

f. § 1.85—Use of Third-Party Algorithmic Trading Systems or Components

Supplemental proposed § 1.85 would allow AT Persons who are unable to comply with a particular development and testing requirement or a particular maintenance or production requirement related to Algorithmic Trading strategy, due solely to their use of third-party system components, to obtain a certification that the third party is complying with the obligation. Pursuant to Supplemental proposed § 1.84, AT Persons must also conduct due diligence regarding the accuracy of the

Person chooses, the amount of business the AT Person does with the hardware vendor and the pricing the hardware vendor provides the AT Person as a result.

<sup>431</sup> The Commission estimates that the software could cost from \$0 to \$5,000 depending on factors including which hardware vendor an AT Person chooses, the amount of business the AT Person does with the hardware vendor and the pricing the hardware vendor provides the AT Person as a result.

<sup>432</sup> The Commission estimates that the hardware could cost from \$1,000 to \$10,000 depending on factors including which hardware vendor an AT Person chooses, the amount of business the AT Person does with the hardware vendor and the pricing the hardware vendor provides the AT Person as a result.

<sup>433</sup> The Commission estimates 27 burden hours per respondent/affected entity per month. Annualizing this monthly figure by multiplying by 12 results in the 324 total burden hour estimate.

certification.<sup>434</sup> In addition, in all cases, under the Supplemental NPRM, an AT Person is responsible for ensuring that records are retained and produced as required pursuant to Supplemental proposed § 1.84.

Supplemental proposed § 1.85 would have the effect of reducing the burdens on AT Persons under Supplemental proposed § 1.84 because an AT Person could effectively shift its burden to comply with certain obligations onto a third party, provided that the third party provides a certification to the AT Person. Since Supplemental proposed § 1.85 is burden reducing with respect to AT Persons, the Commission does not believe that the proposed rule would have a “significant economic impact” on AT Persons for purposes of the Regulatory Flexibility Act.

Additionally, the Commission assumes that the third parties that would provide certifications under Supplemental proposed § 1.85 would not be small entities, given the levels of complexity and sophistication required to provide third-party system components to AT Persons in connection with such AT Person’s Algorithmic Trading strategy. The Commission invites comment on the accuracy of its assumption.

The Commission estimates that the requirement under Supplemental proposed § 1.85 that an AT Person may comply with an obligation under NPRM proposed §§ 1.81(a)(1)(i), 1.81(a)(1)(iii), 1.81(a)(1)(iv), 1.81(a)(2), or Supplemental proposed §§ 1.81(a)(1)(ii) or 1.84 by obtaining a certification from a third party that the third party is fulfilling the obligation, will result in: (1) 60 one-time hours of burden per AT Person, and 7,200 burden hours in total; (2) 36 hours (on a recurring annual basis) of burden per AT Person, and 4,320 burden hours in total; (3) 60 one-time hours of burden per third party, and 3,000 burden hours in total; and (4) 36 hours (on a recurring annual basis) of burden per third party, and 1,800 burden hours in total. The estimated burden was calculated as follows:

*Burden:* AT Person establishing the process for obtaining third-party certifications, obtaining the initial certifications and conducting due diligence on the accuracy thereof.

*Respondents/Affected Entities:* 120.<sup>435</sup>

<sup>434</sup> The Supplemental NPRM does not set forth the means by which due diligence must be conducted. The Commission expects that due diligence may take a variety of forms, including but not limited to, email exchanges, teleconferences, reviews of files, and in-person meetings.

<sup>435</sup> The Commission estimates 120 AT Persons will rely on third party certifications pursuant to

*Estimated number of responses:* 120.<sup>436</sup>

*Estimated total burden on each respondent:* 60 hours.<sup>437</sup>

*Frequency of collection:* One-time.

*Burden statement—all respondents:* 120 respondents × 60 hours = 7,200 Burden Hours per year.

The Commission estimates that an AT Person will incur a one-time cost of \$3,506 to establish the process for initially obtaining the third-party certifications permitted by Supplemental proposed § 1.85, conduct the related due diligence and obtain the initial certifications. This cost is broken down as follows: 1 Project Manager, working for 24 hours (24 × \$70 = \$1,680); 1 Compliance Attorney, working for 24 hours (24 × \$96 = \$2,304); and 1 Developer working for 12 hours (12 × \$75 = \$900). The estimated 120 AT Persons that will rely on § 1.85 would therefore incur a total one-time cost of \$586,080 (120 × \$4,884).

*Burden:* AT Person updating its certifications from third parties and conducting updated due diligence on the accuracy thereof.

*Respondents/Affected Entities:* 120.

*Estimated number of responses:* 120.

*Estimated total burden on each respondent:* 54 hours.

*Frequency of response:* Annual.

*Burden statement—all respondents:* 120 respondents × 54 hours = 6,480 Burden Hours per year.

The Commission estimates that, on an annual basis, an AT Person will incur a cost of \$2,892 to obtain the third-party certifications permitted by Supplemental proposed § 1.85 and conduct the related due diligence. This cost is broken down as follows: 1 Project Manager, working for 12 hours (12 × \$70 = \$840); 1 Compliance Attorney, working for 12 hours (12 × \$96 = \$1,152); and 1 Developer working for 12 hours (12 × \$75 = \$900). The estimated 120 AT Persons that will rely on § 1.85

Supplemental proposed § 1.85. This estimate is based on an assumption that each AT Person will rely on one third party service providers for such AT Person’s ATS or components. In fact, the Commission anticipates that some AT Persons will not rely on any third party service providers for their ATSs or components, while other AT Persons will rely on two third party service providers. For purposes of this PRA analysis, the Commission believes that the best available estimate is that there will be a total of 120 Respondents/Affected Entities. The Commission seeks comment on this estimate.

<sup>436</sup> This is calculated as the product of 120 estimated Respondents/Affected Entities and one initial response (*i.e.*, establishing the process for obtaining third party certifications, obtaining the initial certifications and conducting due diligence on the accuracy thereof).

<sup>437</sup> The Commission estimates that the initial response will take a Project Manager 24 hours, a Compliance Attorney 24 hours and a Developer 12 hours. The sum of those hours is 60 hours.

would therefore incur a total annual cost of \$347,040 (120 × \$2,892).

The Commission also anticipates that an AT Person will incur a one-time cost of \$2,304 to re-write its contracts with third parties, so that the AT Persons can comply with the recordkeeping and production provisions of Supplemental proposed § 1.84. This cost is broken down as follows: 1 Compliance Attorney, working for 24 hours (24 × \$96 per hour = \$2,304).

*Burden:* Third party establishing the process for providing certifications to AT Persons, providing the initial certifications and cooperating with AT Persons conducting due diligence on the accuracy thereof.

*Respondents/Affected Entities:* 50.<sup>438</sup>

*Estimated number of responses:* 50.<sup>439</sup>

*Estimated total burden on each respondent:* 60 hours.<sup>440</sup>

*Frequency of response:* One-time.

*Burden statement—all respondents:* 50 responses × 60 hours = 3,000 Burden Hours per year.

The Commission estimates that a third party will incur a one-time cost of \$4,884 to establish the process for initially providing the third-party certifications permitted by Supplemental proposed § 1.85 and cooperate with AT Persons conducting the related due diligence. This cost is broken down as follows: 1 Project Manager, working for 24 hours (24 × \$70 = \$1,680); 1 Compliance Attorney, working for 24 hours (24 × \$96 = \$2,304); and 1 Developer working for 12 hours (12 × \$75 = \$900). The Commission estimates that third-party ATS providers will issue 120 certifications per year, either as initial or annual certifications. This reflects the Commission’s estimate of 120 AT Persons, and the fact that some AT Persons will rely on multiple third-party providers, while others will develop their systems entirely in-house. The estimated 50 third parties that provide certifications pursuant to Supplemental

<sup>438</sup> The Commission estimates that there will be a total of 50 third party service providers to AT Persons for their ATSs or components. The Commission seeks comment on this estimate.

<sup>439</sup> This is calculated as the product of 50 third parties and one initial response (*i.e.*, establishing the process for providing third party certifications, providing the initial certifications and cooperating with AT Persons conducting due diligence on the accuracy thereof). The Commission assumes that each third party will provide a single certification to all AT Persons using a product or service from the third party. The Commission seeks comment on this estimate.

<sup>440</sup> The Commission estimates that, as with the initial collection burden on AT Persons, the initial response will take a third party Project Manager 24 hours, a third party Compliance Attorney 24 hours and a third party Developer 12 hours. The sum of those hours is 60 hours.

proposed § 1.85 would therefore incur a total annual cost of \$244,200 (50 × \$4,884).

*Burden:* Third parties annually updating their certifications to AT Persons and cooperating with AT Persons conducting due diligence on the accuracy thereof.

*Respondents/Affected Entities:* 50.<sup>441</sup>

*Estimated number of responses:* 120.

*Estimated total burden on each respondent:* 36 hours.<sup>442</sup>

*Frequency of response:* Annual.

*Burden statement-all respondents:*

120 responses × 36 hours = 4,320 Burden Hours per year.

The Commission estimates that, on an annual basis, a third party will incur a cost of \$2,892 to provide AT Persons the third-party certifications permitted by Supplemental proposed § 1.85 and cooperate with AT Persons conducting the related due diligence. The Commission estimates that third-party ATS providers will issue 120 certifications per year, either as initial or annual certifications. This reflects the Commission's estimate of 120 AT Persons, and the fact that some AT Persons will rely on multiple third-party providers, while others will develop their systems entirely in-house. This cost is broken down as follows: 1 Project Manager, working for 12 hours (12 × \$70 = \$840); 1 Compliance Attorney, working for 12 hours (12 × \$96 = \$1,152); and 1 Developer working for 12 hours (12 × \$75 = \$900). The estimated 50 third parties that will rely on § 1.85 would therefore incur a total annual cost of \$144,600 (50 × \$2,892).

In addition to the costs of providing certifications, the Commission anticipates that third-party providers will incur additional costs relating to Supplemental proposed § 1.85(a), which contemplates that third parties will provide to AT Persons systems or components that comply with NPRM proposed §§ 1.81(a)(1)(i), 1.81(a)(1)(iii), 1.81(a)(1)(iv), 1.81(a)(2), or Supplemental proposed §§ 1.81(a)(1)(ii) or 1.84. The Commission estimates that, on an annual basis, a third party will incur costs to comply with the proposed rules listed above that are comparable to

<sup>441</sup> The Commission estimates that there will be a total of 50 third party service providers to AT Persons for their ATSs or components.

<sup>442</sup> The Commission estimates that, as with the recurring annual collection for AT Persons, the annual collection will take a third party Project Manager 12 hours, a third party Compliance Attorney 12 hours and a third party Developer 12 hours. The sum of those hours is 36 hours. However, the Commission believes that in a typical year, the actual number of burden hours would be lower, provided that the product or service the AT Person receives from the third party provider has not changed substantially.

the costs that an AT Person would incur to comply with such rules. The estimated costs for an AT Person to comply with Supplemental proposed § 1.84 are discussed in Section IX(B)(2)(e) above. The estimated costs for an AT Person to comply with proposed § 1.81(a) were discussed in detail in the NPRM.<sup>443</sup>

The Commission also anticipates that a third-party will incur a one-time cost of \$2,304 to re-write its contracts with AT Persons, so that the AT Persons can comply with the recordkeeping and production provisions of Supplemental proposed § 1.84. This cost is broken down as follows: 1 Compliance Attorney, working for 24 hours (24 × \$96 per hour = \$2,304).

#### g. § 40.22—Compliance With DCM Reviews

The Commission expects that Supplemental proposed § 40.22, which requires DCMs to periodically review AT Persons' compliance with §§ 1.80 and 1.81 executing FCMs' compliance with § 1.82, will also impose burdens on the AT Persons that will be subject to such reviews. The Commission believes that an adequate review program will typically require DCMs to evaluate AT Persons' compliance every two years. Low-risk parties may require less frequent review, while high-risk parties could require more frequent evaluation. The Commission estimates (on an annual basis) 48 hours of burden per AT

<sup>443</sup> See NPRM at 78888, 78900. In the NPRM, the Commission estimated that an AT Person that has not implemented any of the requirements of proposed § 1.81(a) (development and testing of ATSs) would incur a total cost of \$349,865 to implement those requirements. This cost was broken down as follows: 1 Project Manager, working for 1,707 hours (1,707 × \$70 = \$119,490); 2 Business Analysts, working for a combined 853 hours (853 × \$52 = \$44,356); 3 Testers, working for a combined 2,347 hours (2,347 × \$52 = \$122,044); and 2 Developers, working for a combined 853 hours (853 × \$75 = \$63,975). The Commission notes that this calculation would apply only to third parties that have not implemented any of the requirements of proposed § 1.81(a). However, the Commission anticipates that many third-party providers—e.g., software development firms—already develop and test systems or components in the ordinary course of their business. Indeed, the Commission anticipates that third-party providers would generally be as sophisticated, if not more sophisticated, than AT Persons with respect to the development and testing of ATSs. Therefore, the Commission believes that the cost of compliance for third parties would be lower than the estimate calculated above. In addition, the Commission anticipates that compliance costs under Supplemental proposed § 1.81(a)(1)(ii) will be lower than the costs estimated in the NPRM, since the Commission is proposing to eliminate the requirement under NPRM proposed § 1.81(a)(1)(ii) that AT Persons must test all Algorithmic Trading code and related systems on each DCM on which Algorithmic Trading will occur (while retaining a more general requirement that AT Persons must test all ATSs).

Person, and 2,880 burden hours in total per year. The estimated burden was calculated as follows:

*Burden:* Compliance by AT Persons with DCM Reviews.

*Respondents/Affected Entities:* 120.

*Estimated number of responses:* 60 per year (120/2, or half of the total population per year).

*Estimated total burden on each AT Person or executing FCM:* 48 hours.

*Frequency of response:* Once every two years.

*Burden statement-all AT Persons and executing FCMs:* 60 respondents × 48 hours = 2,880 Burden Hours per year.

The Commission estimates that, on an annual basis, an AT Person will incur a cost of \$3,720 to facilitate a DCM's compliance with Supplemental proposed § 40.22. Such costs reflect to the burden to an AT Person of providing written information, responding to questions, and otherwise furnishing such information as the DCM may need to discharge its responsibilities. This cost is broken down as follows: 1 Senior Compliance Specialist, working for 36 hours (36 × \$57 = \$2,052); and 1 Chief Compliance Officer, working for 12 hours (12 × \$139 = \$1,668). The 120 AT Persons that will be subject to § 1.83(a) would therefore incur a total annual cost of \$446,400 (120 × \$3,720).

#### h. § 40.22(d)—Certification Requirement

The Commission estimates that Supplemental proposed § 40.22(d), which states that DCMs must require each AT Person to provide the DCM an annual certification attesting that the AT Person complies with the requirements of §§ 1.80 and 1.81, will result in (on an annual basis) 12 hours of burden per AT Person and 1,440 burden hours total. The Commission expects that the annual certification requirement will involve preparation and transmittal of a document that makes the required certification, and that most of the burden hours associated with this requirement would involve review and analysis by compliance personnel of the entity's compliance with §§ 1.80 and 1.81 necessary to enable the CCO or CEO to sign the certification. The estimated burden was calculated as follows:

*Burden:* Compliance certifications submitted by AT Persons to DCMs.

*Respondents/Affected Entities:* 120 AT Persons.

*Estimated number of responses:* 120.

*Estimated total burden on each respondent:* 12 hours.

*Frequency of collection:* Annual.

*Burden statement-all respondents:* 120 respondents × 12 hours = 1,440 Burden Hours per year.

The Commission estimates that, on an annual basis, an AT Person will incur a cost of \$1,176 to submit the compliance certification that will be required by proposed § 40.22(d). This cost is broken down as follows: 1 Senior Compliance Specialist, working for 6 hours ( $6 \times \$57 = \$342$ ); and 1 Chief Compliance Officer, working for 6 hours ( $6 \times \$139 = \$834$ ), for each certification to one DCM. The 120 AT Persons that will be subject to DCM rules implemented pursuant to § 40.22(d) would therefore incur a total annual cost of \$141,120 ( $120 \times \$1,176$ ).<sup>444</sup>

64. The Commission invites comment on its Regulatory Flexibility Act analysis. In particular, the Commission specifically invites comment on the accuracy of its assumption that the third parties referenced in Supplemental proposed § 1.85 would not be “small entities” for Regulatory Flexibility Act purposes.

65. Do you agree that revising the definition of AT Person to include one of the proposed volume threshold will mean that no natural persons will be AT Persons?

66. Do you agree that revising the definition of AT Person to include one of the proposed quantitative measures will mean that there will not be a substantial number of small entities impacted by the information collection?

### C. Paperwork Reduction Act

The Paperwork Reduction Act (“PRA”)<sup>445</sup> imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. As discussed in the NPRM, Regulation AT would result in new collection of information requirements within the meaning of the PRA. As explained above, the Commission believes that the proposed volume threshold will reduce the number of AT Persons, which would accordingly reduce the PRA estimates provided in the NPRM. The Commission invites the public to comment on any aspect of how the proposed volume threshold would impact the paperwork burdens discussed in the NPRM.

#### 1. § 1.3(x)(1)(iii)—Submissions by Newly Registered Floor Traders<sup>446</sup>

In the NPRM, the Commission estimated that there would be 100 new Floor trader registrants under the

proposed definition of floor trader in § 1.3(x)(3). The Commission estimated that the NPRM proposed rules requiring registration would result in 11 hours of burden per affected entity, and 1,100 burden hours total. The Commission estimated that new registrants would incur a one-time cost of \$1,056. While the Commission estimated that there would be 420 AT Persons under the NPRM proposed rules for Regulation AT, and approximately 100 would be required to register as Floor traders, the Commission has revised its estimate to 120 AT Persons under the modified rules proposed in this Supplemental NPRM.<sup>447</sup> While the Commission recognizes that the modifications in the Supplemental NPRM may reduce the number of entities required to register, the Commission estimates that there will be approximately 100 new Floor trader registrants under Supplemental proposed § 1.3(x)(1)(iii). The Commission estimates that the 100 entities subject to the registration requirement would incur a total one-time cost of \$105,600 ( $100 \times \$1,056$ ).

#### 2. § 1.80(d)—Pre-Trade Risk Controls for AT Persons—Delegation

Supplemental proposed § 1.80(d) allows an AT Person to delegate compliance with § 1.80(a) to its executing FCM. Under Supplemental proposed § 1.80(d)(2), an AT Person may only delegate such functions when (i) it is technologically feasible for each relevant FCM to comply with § 1.80(a) with a level of effectiveness reasonably designed to prevent and reduce the potential risk of an Algorithmic Trading Event; and (ii) each relevant FCM notifies the AT Person in writing that the FCM has accepted the AT Person’s delegation and that it will comply with § 1.80(a) on behalf of the AT Person. The Commission expects that the written notification pursuant to Supplemental proposed § 1.80(d)(2)(ii) will involve preparation and transmittal of a document that confirms that the FCM accepted the delegation and will comply with § 1.80(a). Accordingly, the Commission estimates that Supplemental proposed § 1.80(d)(2)(ii) will result in two burden hours per affected entity to prepare and send the notification: 1 Compliance Attorney, working for 1 hour ( $1 \times \$96 = \$96$ ); and 1 Chief Compliance Officer, working for 1 hour ( $1 \times \$139$ ). The Commission is unable to estimate the exact number of the 120 AT Persons that will choose to delegate § 1.80(d) compliance. Assuming that all 70 executing FCMs accept delegation for at least one AT

Person, the Commission estimates that the 70 executing FCMs would incur a total one-time cost of \$16,450 ( $70 \times \$235$ ).

#### 3. § 1.83(a)—AT Person Retention and Production of Books and Records<sup>448</sup>

As discussed above, the Commission estimated in the NPRM that 420 entities would qualify as AT Persons under Regulation AT. Pursuant to Supplemental proposed § 1.3(xxxx), the Commission now estimates that 120 entities will be AT Persons. The Commission’s new, lower estimate for the number of AT Persons is a function of the volume threshold test that market participants would have to satisfy to fall within the definition of AT Person under Supplemental proposed § 1.3(xxxx).

The Commission has updated its PRA analysis from the NPRM for proposed § 1.83, based on its updated estimate of 120 AT Persons in the Supplemental NPRM (as opposed to the 420 AT Persons estimated in the NPRM). The Commission’s PRA analysis for Supplemental proposed § 1.83 assumes the same cost on a per AT Person basis as was used in the NPRM analysis. Specifically, the Commission estimated in the NPRM that proposed § 1.83 requirements that AT Persons keep and provide books and records relating to NPRM proposed §§ 1.80 and 1.81 compliance would result in initial outlay of 60 hours of burden per AT Person. Under Supplemental proposed § 1.83(a), the 120 AT Persons would therefore initially incur 7,200 burden hours in total. In the NPRM, the Commission estimated that, on an initial basis, an AT Person would incur a cost of \$5,130 to draft and update recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. Under Supplemental proposed § 1.83(a), the 120 AT Persons would therefore incur a total initial cost of \$615,600.

The Commission estimated in the NPRM that proposed § 1.83 requirements that AT Persons keep and provide books and records relating to NPRM proposed §§ 1.80 and 1.81 compliance would result in annual costs of 30 hours of burden per AT Person. Under Supplemental proposed § 1.83(a), the 120 AT Persons would therefore incur 3,600 burden hours in total. In the NPRM, the Commission estimated that, on an annual basis, an AT Person would incur a cost of \$2,670 to ensure

<sup>444</sup> The six hours of work for each employee consists of five hours for the initial certification and one hour to prepare additional certifications for three other DCMs.

<sup>445</sup> 44 U.S.C. 3501 *et seq.*

<sup>446</sup> 78 FR 78891.

<sup>447</sup> See Section II(C)(1).

<sup>448</sup> Supplemental proposed § 1.83(a) is identical to NPRM proposed § 1.83(c). NPRM proposed §§ 1.83(a) and (b) have been removed in this Supplemental NPRM, and § 1.83 has been renumbered accordingly.

compliance with the NPRM proposed § 1.83(a) recordkeeping rules relating to NPRM proposed § 1.82 compliance. Under Supplemental proposed § 1.83(a), the 120 AT Persons would therefore incur a total annual cost of \$320,400.

#### 4. § 1.83(b)—Executing FCM Retention and Production of Books and Records<sup>449</sup>

As discussed above, Supplemental proposed § 1.83(b) would govern FCM retention and production of books and records relating to § 1.82 compliance. NPRM § 1.83(d) applied to “clearing” FCMs. In contrast, Supplemental proposed § 1.83(b) would apply to “executing” FCMs. The Commission’s PRA analysis for Supplemental proposed § 1.83 assumes the same cost on a per AT Person basis as was used in the NPRM analysis. In the NPRM, the Commission estimated that compliance with § 1.83(d) would result in initial outlay of 60 hours of burden per FCM, and 3,420 burden hours total. In the NPRM, the Commission estimated that, on an initial basis, an FCM would incur a cost of \$5,130 to draft and update recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. Under Supplemental proposed § 1.83(b), the 70 executing FCMs would therefore incur a total initial cost of \$359,100.

The Commission estimated in the NPRM that proposed § 1.83 requirements that clearing FCMs keep and provide books and records relating to NPRM proposed § 1.82 compliance would result in annual costs of 30 hours of burden per FCM. In the NPRM, the Commission estimated that compliance with § 1.83(d) would result in annual costs of 30 hours of burden per FCM, and 1,710 burden hours total. In the NPRM, the Commission estimated that, on an initial basis, an FCM would incur a cost of \$2,670 relating to § 1.82 compliance, including the updating of policies and procedures and technology infrastructure, and to respond to DCM record requests. Under Supplemental proposed § 1.83(b), the 70 executing FCMs would therefore incur a total annual cost of \$186,900.

#### 5. § 1.84—Retention, Production and Confidentiality of Algorithmic Trading Records

##### a. Supplemental Proposed § 1.84(a)

In order to comply with the requirements set out in Supplemental proposed § 1.84(a), an AT Person must

<sup>449</sup> Supplemental proposed § 1.83(b) amends the provisions of NPRM § 1.83(d). NPRM §§ 1.83(a) and (b) have been removed in this Supplemental NPRM, and § 1.83 has been renumbered accordingly.

have a version control system and an application log management system in place. The Commission expects that most AT Persons have version control software to manage each change made to their software and identify who made the change and why. The Commission also expects that most AT Persons manage their application logs through some form of application log management system.

For firms that do not have version control systems and application log management systems in place, the effort involved in setting one up includes the acquisition of the hardware to run the system, the application software itself, the migration of the existing Algorithmic Trading Source Code and logs into the software, and the creation of policy and procedures related to the use of the system by the firm. For appropriate hardware to accomplish this task, a machine with sufficient storage space and sufficient redundancy will be needed. The Commission expects that 10 terabytes of data would constitute sufficient storage capacity. A number of software options are available, from open-source products to industry-standard tools.

##### i. Firms Without Sufficient Hardware and Software in Place

The Commission estimates that Supplemental proposed § 1.84(a), which requires AT Persons to maintain specified records related to their Algorithmic Trading Source Code and their Algorithmic Trading systems’ activity, will result in initial outlay of 420 hours of burden per AT Person without sufficient hardware and software in place to comply with proposed § 1.84(a), and 50,400 burden hours in total. The estimated burden was calculated as follows:

*Burden:* Supplemental proposed § 1.84(a), which would require AT Persons to maintain certain records.

*Respondents/Affected Entities:* 120 AT Persons.

*Estimated total burden on each respondent:* 420 hours.

*Burden statement—all respondents:* 120 respondents × 420 hours = 50,400 Burden Hours initial year.

The Commission estimates that an AT Person without the hardware and software in place to maintain the records required by Supplemental proposed § 1.84(a) would incur a cost of \$41,840 to purchase and set up the required hardware and software, migrate existing Algorithmic Trading Source Code and logs into the software and draft appropriate recordkeeping policies and procedures and make technology improvements to recordkeeping

infrastructure. This cost is broken down as follows: Hardware costing \$12,000,<sup>450</sup> software costing \$2,000,<sup>451</sup> 1 Project Manager for the Algorithmic Trading Source Code and log migration effort, working for 60 hours (60 × \$70 = \$4,200); 1 Developer for the Algorithmic Trading Source Code and log migration effort, working for 60 hours (60 × \$75 = \$4,500), 1 Project Manager to develop the related policies and procedures, working for 120 hours (120 × \$70 = \$8,400), 1 Business Analyst to develop the related policies and procedures, working for 120 hours (120 × \$52 = \$6,240), and 1 Developer to develop the related policies and procedures, working for 60 hours (60 × \$75 = \$4,500). Therefore, if none of the 120 AT Persons had sufficient hardware and software to comply, they would therefore incur a total initial cost of \$5,020,800 (120 × \$41,840).

##### ii. Firms With Sufficient Hardware and Software in Place

Firms that have the necessary systems in place may nevertheless need to make changes to their policies and procedures and enhance their hardware to provide more storage capacity, in each case to address the requirements of Supplemental proposed § 1.84(a). The discussion below addresses both the effort it takes to determine what upgrades need to be made, and to implement those upgrades.

The Commission estimates that Supplemental proposed § 1.84(a) requiring AT Persons to maintain specified records related to their Algorithmic Trading Source Code and their Algorithmic Trading systems’ activity will result in initial outlay of 90 hours of burden per AT Person with sufficient hardware and software to comply with Supplemental proposed § 1.84(a), and 10,800 burden hours in total. The estimated burden was calculated as follows:

*Burden:* Supplemental proposed § 1.84(a), which would require AT Persons to maintain certain records.

*Respondents/Affected Entities:* 120 AT Persons.

*Estimated total burden on each respondent:* 90 hours.

<sup>450</sup> The Commission estimates that the hardware could cost from \$1,000 to \$25,000 depending on factors including which hardware vendor an AT Person chooses, the amount of business the AT Person does with the hardware vendor and the pricing the hardware vendor provides the AT Person as a result.

<sup>451</sup> The Commission estimates that the software could cost from \$0 to \$5,000 depending on factors including which hardware vendor an AT Person chooses, the amount of business the AT Person does with the hardware vendor and the pricing the hardware vendor provides the AT Person as a result.

*Burden statement—all respondents:* 120 respondents × 90 hours = 10,800 Burden Hours initial year.

The Commission estimates that, on an initial basis, an AT Person with the hardware and software in place to maintain the records required by Supplemental proposed § 1.84(a) would incur a cost of \$12,160 to purchase and set up the required hardware and software, migrate existing Algorithmic Trading Source Code and logs into the software and draft appropriate recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. This cost is broken down as follows: Hardware costing \$4,000,<sup>452</sup> 1 Project Manager to develop the related policies and procedures, working for 30 hours (30 × \$70 = \$2,100), 1 Business Analyst to develop the related policies and procedures, working for 30 hours (30 × \$52 = \$1,560), and 1 Developer to develop the related policies and procedures, working for 60 hours (60 × \$75 = \$4,500). The 120 AT Persons would therefore incur a total initial cost of \$1,459,200 (120 × \$12,160).

b. Supplemental Proposed §§ 1.84(b) and (c)

In order to comply with the requirements set out in Supplemental proposed §§ 1.84(b) and 1.84(c), AT Persons will have to use their version control software to manage their software's version history. This will require a standard monthly effort to maintain the environment so that each AT Person is able to respond to special calls and/or subpoenas.

*Monthly Maintenance:* The Commission estimates that Supplemental proposed §§ 1.84(b) and 1.84(c), which require AT Persons to produce records of Algorithmic Trading in response to a special call or subpoena, will result in ongoing costs of 324 hours of burden per AT Person per year, and 38,880 annual burden hours in total. The estimated burden was calculated as follows:

*Burden:* Rule requiring AT Persons to produce Algorithmic Trading records in response to a Special Call or Subpoena.

*Respondents/Affected Entities:* 120 AT Persons.

*Estimated total burden on each respondent:* 324 hours.<sup>453</sup>

<sup>452</sup> The Commission estimates that the hardware could cost from \$1,000 to \$10,000 depending on factors including which hardware vendor an AT Person chooses, the amount of business the AT Person does with the hardware vendor and the pricing the hardware vendor provides the AT Person as a result.

<sup>453</sup> The Commission estimates 27 burden hours per respondent/affected entity per month.

*Burden statement—all respondents:* 120 respondents × 324 hours = 38,880 Burden Hours per year.

The Commission estimates that, on an annual basis, an AT Person will incur a cost of \$24,120 to draft and update recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. This cost is broken down as follows: 1 Project Manager, working for 3 hours per month × 12 months = 36 hours per year (36 × \$70 = \$2,520); and 1 Developer, working for 24 hours per month × 12 months = 288 hours per year (288 × \$75 = \$21,600). The 120 AT Persons would therefore incur a total annual cost of \$2,894,400 (120 × \$24,120).

*Costs per Response to a Special Call or Subpoena:* The Commission estimates that Supplemental proposed §§ 1.84(b) and 1.84(c), which require AT Persons to produce records of Algorithmic Trading in response to a special call or subpoena, will result in costs per response of 72 hours of burden per AT Person, and 12,960 burden hours in total. The estimated burden was calculated as follows:

*Burden:* Rule requiring AT Persons to produce Algorithmic Trading records in response to a Special Call or Subpoena.

*Respondents/Affected Entities:* 120 AT Persons.

*Estimated number of responses:* 120.

*Estimated total burden on each respondent:* 108 hours.

*Frequency of collection:* Intermittent.

*Burden statement—all respondents:* 120 respondents × 108 hours = 12,960 Burden Hours per year.

The Commission estimates that, on an intermittent basis, an AT Person will incur a cost of \$5,844 to ensure compliance with those aspects of Supplemental proposed §§ 1.84(b) and 1.84(c) requiring AT Persons to produce records of Algorithmic Trading in response to a special call or subpoena. This cost is broken down as follows: 1 Project Manager, working for 12 hours (12 × \$70 = \$840); 1 Developer, working for 36 hours (36 × \$75 = \$2,700); and 1 Compliance Attorney, working for 24 hours (24 × \$96 = \$2,304). The 120 AT Persons would therefore incur a total annual cost of \$701,280 (120 × \$5,844).

#### 6. § 1.85—Third-Party Algorithmic Trading Systems or Components

The Commission estimates that the requirement under Supplemental proposed § 1.85 that an AT Person may comply with an obligation under NPRM proposed §§ 1.81(a)(1)(i), 1.81(a)(1)(iii), 1.81(a)(1)(iv), 1.81(a)(2), or

Annualizing this monthly figure by multiplying by 12 results in the 324 total burden hour estimate.

Supplemental proposed §§ 1.81(a)(1)(ii) or 1.84 by obtaining a certification from a third party that the third party is fulfilling the obligation, will result in: (1) 60 one-time hours of burden per AT Person, and 7,200 burden hours in total; (2) 36 hours (on a recurring annual basis) of burden per AT Person, and 4,320 burden hours in total; (3) 60 one-time hours of burden per third party, and 3,000 burden hours in total; and (4) 36 hours (on a recurring annual basis) of burden per third party, and 1,800 burden hours in total. The estimated burden was calculated as follows:

*Burden:* AT Person establishing the process for obtaining third-party certifications, obtaining the initial certifications and conducting due diligence on the accuracy thereof.

*Respondents/Affected Entities:* 120.<sup>454</sup>

*Estimated number of responses:* 120.<sup>455</sup>

*Estimated total burden on each respondent:* 60 hours.<sup>456</sup>

*Frequency of collection:* One-time.

*Burden statement—all respondents:* 120 respondents × 60 hours = 7,200 Burden Hours per year.

The Commission estimates that an AT Person will incur a one-time cost of \$4,884 to establish the process for initially obtaining the third-party certifications permitted by Supplemental proposed § 1.85, conduct the related due diligence and obtain the initial certifications. This cost is broken down as follows: 1 Project Manager, working for 24 hours (24 × \$70 = \$1,680); 1 Compliance Attorney, working for 24 hours (24 × \$96 = \$2,304); and 1 Developer working for 12 hours (12 × \$75 = \$900). The estimated 120 AT Persons that will rely on § 1.85 would therefore incur a total one-time cost of \$586,080 (120 × \$4,884).

*Burden:* AT Person updating its certifications from third parties and

<sup>454</sup> The Commission estimates 120 AT Persons will rely on third party certifications pursuant to Supplemental proposed § 1.85. This estimate is based on an assumption that each AT Person will rely on one third party service providers for such AT Person's ATS or components. In fact, the Commission anticipates that some AT Persons will not rely on any third party service providers for their ATSs or components, while other AT Persons will rely on two third party service providers. For purposes of this PRA analysis, the Commission believes that the best available estimate is that there will be a total of 120 Respondents/Affected Entities. The Commission seeks comment on this estimate.

<sup>455</sup> This is calculated as the product of 120 estimated Respondents/Affected Entities and one initial response (i.e., establishing the process for obtaining third party certifications, obtaining the initial certifications and conducting due diligence on the accuracy thereof).

<sup>456</sup> The Commission estimates that the initial response will take a Project Manager 24 hours, a Compliance Attorney 24 hours and a Developer 12 hours. The sum of those hours is 60 hours.

conducting updated due diligence on the accuracy thereof.

*Respondents/Affected Entities:* 120.

*Estimated number of responses:* 120.

*Estimated total burden on each respondent:* 36 hours.<sup>457</sup>

*Frequency of collection:* Annual.

*Burden statement—all respondents:* 120 respondents × 36 hours = 4,320 Burden Hours per year.

The Commission estimates that, on an annual basis, an AT Person will incur a cost of \$2,892 to obtain the third-party certifications permitted by Supplemental proposed § 1.85 and conduct the related due diligence. This cost is broken down as follows: 1 Project Manager, working for 12 hours (12 × \$70 = \$840); 1 Compliance Attorney, working for 12 hours (12 × \$96 = \$1,152); and 1 Developer working for 12 hours (12 × \$75 = \$900). The estimated 120 AT Persons that will rely on § 1.85 would therefore incur a total annual cost of \$347,040 (120 × \$2,892).

*Burden:* Third party establishing the process for providing certifications to AT Persons, providing the initial certifications and cooperating with AT Persons conducting due diligence on the accuracy thereof.

*Respondents/Affected Entities:* 50.<sup>458</sup>

*Estimated number of responses:* 50.<sup>459</sup>

*Estimated total burden on each respondent:* 60 hours.<sup>460</sup>

*Frequency of collection:* One-time.

*Burden statement—all respondents:* 50 responses × 60 hours = 3,000 Burden Hours per year.

The Commission estimates that a third party will incur a one-time cost of \$4,884 to establish the process for initially providing the third-party certifications permitted by

Supplemental proposed § 1.85 and cooperate with AT Persons conducting the related due diligence. This cost is broken down as follows: 1 Project Manager, working for 24 hours (24 × \$70 = \$1,680); 1 Compliance Attorney, working for 24 hours (24 × \$96 = \$2,304); and 1 Developer working for 12 hours (12 × \$75 = \$900). The estimated 50 third parties that provide certifications pursuant to Supplemental proposed § 1.85 would therefore incur a total initial cost of \$244,200 (50 × \$4,884).

*Burden:* Third parties annually updating their certifications to AT Persons and cooperating with AT Persons conducting due diligence on the accuracy thereof.

*Respondents/Affected Entities:* 50.<sup>461</sup>

*Estimated number of responses:* 120.

*Estimated total burden on each respondent:* 36 hours.<sup>462</sup>

*Frequency of collection:* Annual.

*Burden statement—all respondents:* 120 responses × 36 hours = 4,320 Burden Hours per year.

The Commission estimates that, on an annual basis, a third party will incur a cost of \$2,892 to provide AT Persons the third-party certifications permitted by Supplemental proposed § 1.85 and cooperate with AT Persons conducting the related due diligence. This cost is broken down as follows: 1 Project Manager, working for 12 hours (12 × \$70 = \$840); 1 Compliance Attorney, working for 12 hours (12 × \$96 = \$1,152); and 1 Developer working for 12 hours (12 × \$75 = \$900). The estimated 50 third parties that will rely on § 1.85 would therefore incur a total annual cost of \$144,600 (50 × \$2,892).

#### 7. § 38.255(c)—Risk Controls for Trading—FCM Certification to DCM

Supplemental proposed § 38.255(c) requires a DCM that permits DEA to require that an FCM use DCM-provided risk controls, or substantially equivalent controls developed by the FCM itself or a third party. Prior to an FCM's use of its own or a third party's systems and controls, the FCM must certify to the DCM that such systems and controls are in fact substantially equivalent to the

<sup>461</sup> The Commission estimates that there will be a total of 50 third party service providers to AT Persons for their ATs or components.

<sup>462</sup> The Commission estimates that, as with the recurring annual collection for AT Persons, the annual collection will take a third party Project Manager 12 hours, a third party Compliance Attorney 12 hours and a third party Developer 12 hours. The sum of those hours is 36 hours.

However, the Commission believes that in a typical year, the actual number of burden hours would be lower, provided that the product or service the AT Person receives from the third party provider has not changed substantially.

systems and controls that the DCM makes available pursuant to Supplemental proposed § 38.255(b). The Commission expects that the written notification pursuant to Supplemental proposed § 38.255(c) will involve preparation and transmittal of a certification document. Accordingly, the Commission estimates that Supplemental proposed § 38.255(c) will result in two burden hours per affected entity to prepare and send the notification: 1 Compliance Attorney, working for 1 hour (1 × \$96 = \$96); and 1 Chief Compliance Officer, working for 1 hour (1 × \$139). The Commission is unable to estimate the exact number of FCMs that will choose to use its own or a third party's systems and controls. Assuming that all 70 executing FCMs were to do so for four DCMs, the Commission estimates that the 70 executing FCMs would incur a total one-time cost of \$65,800 (70 × \$235 × 4).<sup>463</sup>

#### 8. § 40.22(a)–(c)—Compliance With DCM Reviews

The Commission expects that Supplemental proposed § 40.22(a)–(c), which requires DCMs to periodically review AT Persons' compliance with §§ 1.80 and 1.81 executing FCMs' compliance with § 1.82, will also impose burdens on the AT Persons and executing FCMs that will be subject to such reviews. The Commission believes that an adequate review program will typically require DCMs to evaluate AT Persons' and executing FCMs' compliance every two years. Low-risk parties may require less frequent review, while high-risk parties could require for frequent evaluation. The Commission estimates (on an annual basis) 48 hours of burden per AT Person and executing FCM, and 4,320 burden hours in total per year. The estimated burden was calculated as follows:

*Burden:* Compliance by AT Persons and FCMs with DCM Reviews.

*Respondents/Affected Entities:* 180 (120 AT Persons + 60 FCMs).<sup>464</sup>

*Estimated number of responses:* 90 per year (180/2, or half of the total population per year).

*Estimated total burden on each AT Person or executing FCM:* 48 hours.

*Frequency of response:* Once every two years.

<sup>463</sup> DCMs will incur some costs with respect to preparing an exchange rule requiring FCMs to provide § 38.255(c) certifications. Exchange rule-writing costs are generally covered in the existing Part 40 PRA collection.

<sup>464</sup> The Commission is using 60, as opposed to 70, FCMs for purposes of this calculation because every FCM does not operate on all DCMs. Accordingly, a single DCM would not necessarily have to review every FCM.

<sup>457</sup> The Commission estimates that the annual collection will take a Project Manager 12 hours, a Compliance Attorney 12 hours and a Developer 12 hours. The sum of those hours is 36 hours. However, the Commission believes that in a typical year, the actual number of burden hours would be lower, provided that the product or service the AT Person receives from the third party provider has not changed substantially.

<sup>458</sup> The Commission estimates that there will be a total of 50 third party service providers to AT Persons for their ATs or components. The Commission seeks comment on this estimate.

<sup>459</sup> This is calculated as the product of 50 third parties and one initial response (*i.e.*, establishing the process for providing third party certifications, providing the initial certifications and cooperating with AT Persons conducting due diligence on the accuracy thereof). The Commission assumes that each third party will provide a single certification to all AT Persons using a product or service from the third party. The Commission seeks comment on this estimate.

<sup>460</sup> The Commission estimates that, as with the initial collection burden on AT Persons, the initial response will take a third party Project Manager 24 hours, a third party Compliance Attorney 24 hours and a third party Developer 12 hours. The sum of those hours is 60 hours.

*Burden statement—all AT Persons and executing FCMs:* 90 respondents × 48 hours = 4,320 Burden Hours per year.

The Commission estimates that, on an annual basis, an AT Person or an executing FCM will incur a cost of \$3,720 to facilitate a DCM's compliance with Supplemental proposed § 40.22. Such costs reflect to the burden to an AT Person or executing FCM of providing written information, responding to questions, and otherwise furnishing such information as the DCM may need to discharge its responsibilities. This cost is broken down as follows: 1 Senior Compliance Specialist, working for 36 hours (36 × \$57 = \$2,052); and 1 Chief Compliance Officer, working for 12 hours (12 × \$139 = \$1,668). The 180 AT Persons and executing FCMs that will be subject to § 40.22 DCM review programs would therefore incur a total annual cost of \$334,800 (90 × \$3,720).

#### 9. § 40.22(d)—Certification Requirement

The Commission estimates that Supplemental proposed § 40.22(d), which states that DCMs must require each AT Person to provide the DCM an annual certification attesting that the AT Person complies with the requirements of §§ 1.80 and 1.81, will result in (on an annual basis) 12 hours of burden per AT Person and 1,440 burden hours total. The Commission expects that the annual certification requirement will involve preparation and transmittal of a document that makes the required certification, and that most of the burden hours associated with this requirement would involve review and analysis by compliance personnel of the entity's compliance with §§ 1.80 and 1.81 necessary to enable the CCO or CEO to sign the certification. The estimated burden was calculated as follows:

*Burden:* Compliance certifications submitted by AT Persons to DCMs.

*Respondents/Affected Entities:* 120 AT Persons.

*Estimated number of responses:* 120.  
*Estimated total burden on each respondent:* 12 hours.

*Frequency of collection:* Annual.  
*Burden statement—all respondents:* 120 respondents × 12 hours = 1,440 Burden Hours per year.

The Commission estimates that, on an annual basis, an AT Person will incur a cost of \$1,176 to submit the compliance certification that will be required by proposed § 40.22(d). This cost is broken down as follows: 1 Senior Compliance Specialist, working for 6 hours (6 × \$57 = \$342); and 1 Chief Compliance Officer, working for 6 hours (6 × \$139 = \$834), for each certification to one

DCM. The 120 AT Persons that will be subject to DCM rules implemented pursuant to § 40.22(d) would therefore incur a total annual cost of \$141,120 (120 × \$1,176).

Proposed § 40.22(d) also states that DCMs must require that each executing FCM provide the DCM with an annual certification attesting that the executing FCM complies with the requirements of § 1.82. The Commission estimates that this requirement will result in (on an annual basis), 10 hours of burden per executing FCM, and 2,800 burden hours total. The Commission expects that the annual certification requirement will involve preparation and transmittal of a document that makes the required certification, and that most of the burden hours associated with this requirement would involve review and analysis by compliance personnel of the entity's compliance with § 1.82 necessary to enable the CCO or CEO to sign the certification. The estimated burden was calculated as follows:

*Burden:* Compliance certifications submitted by executing FCMs to DCMs.

*Respondents/Affected Entities:* 70 executing FCMs.

*Estimated number of responses:* 70.  
*Estimated total burden on each respondent:* 12 hours.

*Frequency of collection:* Annual.  
*Burden statement—all respondents:* 70 respondents × 12 hours = 840 Burden Hours per year.

The Commission estimates that, on an annual basis, an executing FCM will incur a cost of \$1,176 to submit the compliance certification required by proposed § 40.22(d). This cost is broken down as follows: 1 Senior Compliance Specialist, working for 6 hours (6 × \$57 = \$342); and 1 Chief Compliance Officer, working for 5 hours (5 × \$139 = \$695), for each certification to one DCM. The 70 executing FCMs that will be subject to DCM rules implemented pursuant to § 40.22(d) would therefore incur a total annual cost of \$82,320 (70 × \$1,176).

#### 10. Commission Questions

67. The Commission welcomes all comments on the PRA analysis set forth in this Supplemental NPRM and, in particular, all comments regarding the accuracy of its estimate that 120 AT Persons would rely on third-party certifications pursuant to Supplemental proposed § 1.85.

68. The Commission seeks comment on its estimate that 50 third parties would provide certifications to AT Persons pursuant to Supplemental proposed § 1.85.

69. The Commission seeks comment on its estimated costs on AT Persons

and third parties in connection with Supplemental proposed § 1.85.

70. The Commission is assuming that each third party that provides certifications under Supplemental proposed § 1.85 will provide a single certification to all AT Persons that use a product or service from such third party. The Commission seeks comment on whether it is feasible for a third party to provide a single certification to all AT Persons using such third party's products or services.

#### List of Subjects

##### 17 CFR Part 1

Commodity futures, Commodity pool operators, Commodity trading advisors, Definitions, Designated contract markets, Floor brokers, Futures commission merchants, Introducing brokers, Major swap participants, Reporting and recordkeeping requirements, Swap dealers.

##### 17 CFR Part 38

Commodity futures, Designated contract markets, Reporting and recordkeeping requirements.

##### 17 CFR Part 40

Commodity futures, Definitions, Designated contract markets, Reporting and recordkeeping requirements.

##### 17 CFR Part 170

Commodity futures, Commodity pool operators, Commodity trading advisors, Floor brokers, Futures commission merchants, Introducing brokers, Major swap participants, Reporting and recordkeeping requirements, Swap dealers.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as follows:

#### PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 (2012).

■ 2. Amend § 1.3 as follows:

- a. Revise paragraph (x);
- b. Reserve paragraphs (tttt)–(vvvv);
- c. Add paragraphs (wwww), (xxxx), and (yyyy);
- d. Reserve paragraphs (zzzz) and (aaaa); and
- e. Add paragraphs (bbbb), (cccc), and (dddd).

The revisions and additions to read as follows:

**§ 1.3 Definitions.**

\* \* \* \* \*

(x) *Floor trader*—(1) *In general*. This term means any person:

(i) Who, in or surrounding any pit, ring, post or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account—

(A) Any commodity for future delivery, security futures product, or swap; or

(B) Any commodity option authorized under section 4c of the Act; or

(ii) Who is registered with the Commission as a floor trader; or

(iii)(A) Who, in or surrounding any other place provided by a contract market for the meeting of persons similarly engaged, purchases or sells solely for such person's own account—

(1) Any commodity for future delivery, security futures product, or swap; or

(2) Any commodity option authorized under section 4c of the Act;

(B) Who uses Direct Electronic Access as defined in paragraph (yyyy) of this section, in whole or in part, to access such other place for Algorithmic Trading;

(C) Who is not registered with the Commission as a futures commission merchant, floor broker, swap dealer, major swap participant, commodity pool operator, commodity trading advisor, or introducing broker; and

(D) Who, with respect to purchases or sales on any designated contract market of any commodity for future delivery, security futures product, or swap, or any commodity option authorized under section 4c of the Act, satisfies the volume threshold test set forth in paragraph (x)(2) of this section.

(2) *Volume threshold test*. A person satisfies the volume threshold test for purposes of paragraph (x)(1)(iii)(D) of this section if such person trades an aggregate average daily volume of at least 20,000 contracts for such person's own account, the accounts of customers, or both where:

(i) Such person shall calculate the aggregate average daily volume across all products and on the electronic trading facilities of all designated contract markets where such person trades;

(ii) Such person shall calculate the aggregate average daily volume for each January 1 through June 30 and July 1 through December 31 period, based on all trading days in the respective period; and

(iii) For purposes of calculating the aggregate average daily volume, such person shall aggregate its own trading volume and that of any other persons controlling, controlled by or under common control with such person.

(3) *Registration period*. (i) Unregistered persons who satisfy paragraphs (x)(1)(iii)(A)–(C) of this section, and who satisfy the volume threshold test set forth in paragraph (x)(2) of this section in any January 1 through June 30 or July 1 through December 31 period, shall register as a floor trader within 30 days after the end of such period and shall comply with all requirements of AT Persons pursuant to Commission regulations in this chapter within 90 days after the end of such period.

(ii) For any group consisting of a person and any other persons controlling, controlled by or under common control with such person, if such group of persons in the aggregate satisfies the volume threshold test set forth in paragraph (x)(2) of this section, then one or more persons in such group shall register as floor traders under paragraph (x)(3)(i) of this section, so that the aggregate average daily volume of the unregistered persons in the group trade an aggregate average daily volume below the volume threshold test set forth in paragraph (x)(2) of this section.

(4) *Anti-Evasion*. (i) No person shall trade contracts or cause contracts to be traded through multiple entities for the purpose of evading the registration requirements imposed on floor traders under paragraph (x)(3) of this section, or to avoid meeting the definition of AT Person under paragraph (xxxx) of this section.

(ii) Contracts that any person trades or causes to be traded through multiple entities for the purpose of evading the registration requirements imposed on floor traders under paragraph (x)(3) of this section, or to avoid meeting the definition of AT Person under paragraph (xxxx) of this section, shall be attributed to such person for purposes of the volume threshold test calculation contained in paragraph (x)(2) of this section.

\* \* \* \* \*

(tttt)–(vvvv) [Reserved]

(wwwv) *AT Order Message*. This term means each new order submitted through Algorithmic Trading by an AT Person and each modification or cancellation submitted through Algorithmic Trading by an AT Person with respect to such an order.

(xxxx) *AT Person*. (1) This term means any person registered or required to be registered as a—

(i) Futures commission merchant, floor broker, swap dealer, major swap participant, commodity pool operator, commodity trading advisor, or introducing broker that—

(A) Engages in Algorithmic Trading on or subject to the rules of a designated contract market; and

(B) With respect to purchases or sales of any commodity for future delivery, security futures product, or swap, or any commodity option authorized under section 4c of the Act, satisfies, or has satisfied, the volume threshold test set forth in paragraph (x)(2) of this section; provided, however, that if an AT Person does not satisfy such volume threshold test for two consecutive semi-annual periods, as outlined in paragraph (x)(2) of this section, then such person shall no longer be considered an AT Person; or

(ii) Floor trader as defined in paragraph (x)(1)(iii) of this section.

(2)(i) A person who does not satisfy the conditions of paragraph (xxxx)(1) of this section may elect to become an AT Person, provided that such person:

(A) Registers as a floor trader as defined in paragraph (x)(1)(ii) of this section; and

(B) Submits an application for membership in at least one registered futures association pursuant to § 170.18 of this chapter.

(ii) A person that elects to become an AT Person pursuant to paragraph (xxxx)(2)(i) of this section shall comply with all requirements of AT Persons pursuant to Commission regulations in this chapter.

(yyyy) *Direct Electronic Access*. For purposes of §§ 1.3(x), 1.3(xxxx), 1.80, 1.81, and 1.82, and §§ 38.255 and 40.20 of this chapter, this term means the electronic transmission of an order for processing on or subject to the rules of a contract market, including the electronic transmission of any modification or cancellation of such order; *provided however* that this term does not include orders, or modifications or cancellations thereof, electronically transmitted to a designated contract market by a futures commission merchant that such futures commission merchant first received from an unaffiliated natural person by means of oral or written communications.

(zzzz)–(aaaa) [Reserved]

(bbbb) *Electronic Trading Order Message*. This term means each new order submitted by Electronic Trading and each modification or cancellation submitted by Electronic Trading with respect to such an order.

(cccc) *Algorithmic Trading Source Code*. Algorithmic Trading Source Code

generally means computer commands written in a computer programming language that is readable by natural persons. For purposes of §§ 1.81 and 1.84, Algorithmic Trading Source Code shall include at minimum computer code, logic embedded in electronic circuits, scripts, parameters input into an Algorithmic Trading system, formulas, and configuration files.

(ddddd) *Electronic Trading*. For purposes of §§ 1.80, 1.82, and 1.83, and §§ 38.255, 40.20, and 40.22 of this chapter, this term means trading in any commodity interest as defined in paragraph (yy) of this section on an electronic trading facility as such term is defined by section 1a(16) of the Act, where the order, order modification or order cancellation is electronically submitted for processing on or subject to the rules of a designated contract market.

■ 3. Add subpart A to read as follows:

**Subpart A—Requirements for Algorithmic Trading**

Sec.

- 1.80 Pre-trade risk controls for AT Persons.
- 1.81 Standards for the development, monitoring, and compliance of Algorithmic Trading systems.
- 1.82 Executing futures commission merchant risk management.
- 1.83 AT Person and executing futures commission merchant recordkeeping.
- 1.84 Maintenance of Algorithmic Trading Source Code and related records.
- 1.85 Use of third-party Algorithmic Trading systems or components.

**Subpart A—Requirements for Algorithmic Trading**

**§ 1.80 Pre-trade risk controls for AT Persons.**

For all AT Order Messages, an AT Person shall implement pre-trade risk controls and other measures reasonably designed to prevent and reduce the potential risk of an Algorithmic Trading Event, including but not limited to:

- (a) [Reserved]
- (1) [Reserved]
- (2) Pre-trade risk controls shall be set at a level or levels of granularity that shall include as appropriate the level of each AT Person, product, account number or designation, or one or more identifiers of the natural persons or the order strategy or Algorithmic Trading system associated with an AT Order Message.

(b) [Reserved]

(c) [Reserved]

(d) *Delegation*. (1) An AT Person may choose to comply with paragraph (a) of this section by implementing required pre-trade risk controls, or it may instead delegate compliance with such

obligations to its executing futures commission merchant(s).

(2) An AT Person may only delegate such functions when—

- (i) It is technologically feasible for each relevant futures commission merchant to comply with paragraph (a) of this section with a level of effectiveness reasonably designed to prevent and reduce the potential risk of an Algorithmic Trading Event; and
- (ii) Each relevant futures commission merchant notifies the AT Person in writing that the futures commission merchant has accepted the AT Person's delegation and that it will comply with paragraph (a) of this section on behalf of the AT Person.

(e) [Reserved]

(f) *Periodic review for sufficiency and effectiveness*. Each AT Person shall periodically review its compliance with this section to determine whether it has effectively implemented sufficient measures reasonably designed to prevent and reduce the potential risk of an Algorithmic Trading Event. Each AT Person that has delegated its pre-trade risk controls to a futures commission merchant pursuant to paragraph (d) or paragraph (g)(2)–(3) of this section shall periodically review such futures commission merchant's compliance with the requirements of paragraph (a) of this section on behalf of the AT Person. Each AT Person shall take prompt action to remedy any deficiencies it identifies in its own measures or in those of a futures commission merchant to which it has delegated.

(g) *AT Persons' pre-trade risk controls for electronic trading*. (1) An AT Person shall also apply the risk control mechanisms described in paragraphs (a), (b), and (c) of this section to its Electronic Trading Order Messages that do not arise from Algorithmic Trading, after making appropriate adjustments in the risk control mechanisms to accommodate the application of such mechanisms to Electronic Trading Order Messages.

(2) An AT Person may choose to comply with paragraph (g)(1) of this section as to the risk controls in paragraph (a) of this section by implementing required pre-trade risk controls, or it may instead delegate compliance with such obligations to its executing futures commission merchant(s).

(3) An AT Person may only delegate such functions when—

- (i) It is technologically feasible for each relevant futures commission merchant to comply with paragraph (g)(1) of this section as to risk control mechanisms required by paragraph (a)

of this section with a level of effectiveness reasonably designed to prevent and reduce the potential risk of a disruption associated with Electronic Trading; and

(ii) Each relevant futures commission merchant notifies the AT Person in writing that the futures commission merchant has accepted the AT Person's delegation and that it will comply with paragraph (a) of this section on behalf of the AT Person.

**§ 1.81 Standards for the development, monitoring, and compliance of Algorithmic Trading systems.**

(a) *Development and testing of Algorithmic Trading Systems*. (1) [Reserved]

(i) [Reserved]

(ii) *Testing of all Algorithmic Trading systems, including Algorithmic Trading Source Code, and any changes to such systems or code, prior to their implementation*. Such testing shall be reasonably designed to effectively identify circumstances that may contribute to future Algorithmic Trading Events.

(iii)–(iv) [Reserved]

(2) [Reserved]

(b)–(d) [Reserved]

**§ 1.82 Executing futures commission merchant risk management.**

(a) *Electronic Trading Order Messages not originating with an AT Person*. Each executing futures commission merchant shall comply with the following requirements for all Electronic Trading Order Messages not originating with an AT Person:

(1) Make use of pre-trade risk controls reasonably designed to prevent and reduce the potential risk of a disruption associated with Electronic Trading (including an Algorithmic Trading Disruption), including at a minimum:

(i) Maximum Electronic Trading Order Message frequency per unit time and maximum execution frequency per unit time; and

(ii) Order price parameters and maximum order size limits.

(2) Pre-trade risk controls must be set at a level or levels of granularity that will prevent and reduce the potential risk of an Electronic Trading disruption, which shall include as appropriate the level of each customer, product, account number or designation, or one or more identifiers of the natural persons or the order strategy or Algorithmic Trading system associated with an Electronic Trading Order Message.

(3) The futures commission merchant shall have policies and procedures reasonably designed to ensure that natural person monitors at the futures

commission merchant are promptly alerted when pre-trade risk control parameters established pursuant to this section are breached.

(4) Make use of order cancellation systems that have the ability to:

(i) Immediately disengage Electronic Trading;

(ii) Cancel selected or up to all resting orders when system or market conditions require it; and

(iii) Prevent submission of new Electronic Trading Order Messages.

(b) *Direct Electronic Access orders.* For all Electronic Trading Order Messages not originating with an AT Person and that are submitted to a trading platform through Direct Electronic Access as defined in § 1.3(yyyy), the futures commission merchant may comply with the requirements of paragraphs (a)(1), (2), and (4) of this section by implementing the pre-trade risk controls and order cancellation systems provided by designated contract markets pursuant to § 38.255(b) and (c) of this chapter.

(c) *Non-Direct Electronic Access orders.* For all Electronic Trading Order Messages not originating with an AT Person and that are not submitted to a trading platform through Direct Electronic Access as defined in § 1.3(yyyy), the futures commission merchant shall comply with the requirements of paragraphs (a)(1), (2), and (4) of this section by—

(i) Itself establishing and maintaining the pre-trade risk controls and order cancellation systems described in paragraphs (a)(1), (2), and (4) of this section; or

(ii) Implementing the pre-trade risk controls and order cancellation systems provided by designated contract markets pursuant to § 38.255(b) and (c) of this chapter.

#### **§ 1.83 AT Person and executing futures commission merchant recordkeeping.**

(a) *AT Person recordkeeping.* Each AT Person shall keep, and provide upon request to each designated contract market on which such AT Person engages in Algorithmic Trading, books and records regarding such AT Person's compliance with all requirements pursuant to §§ 1.80 and 1.81.

(b) *Executing futures commission merchant recordkeeping.* Each executing futures commission merchant shall keep, and provide upon request to each designated contract market on which its customers engage in Electronic Trading, books and records regarding such futures commission merchant's compliance with all requirements pursuant to § 1.82.

#### **§ 1.84 Maintenance of Algorithmic Trading Source Code and related records.**

(a) *Records required to be maintained.* Each AT Person shall retain the following records, in their native format, for a period of five years:

(1) Any Algorithmic Trading Source Code used by the AT Person.

(2) Any records generated by the AT Person in the ordinary course of business that track material changes to the Algorithmic Trading Source Code, including, if generated by the AT Person in the ordinary course of business, a record of when and by whom such changes were made.

(3) Any logs or log files generated by the AT Person in the ordinary course of business that record the activity of the AT Person's Algorithmic Trading system, including a chronological record of such system's actions.

(b) *Commission access to required records pursuant to special call.* AT Persons shall produce records required to be maintained pursuant to § 1.84(a) as requested pursuant to special call of the Commission.

(1) *Form and manner.* Such special call by the Commission may authorize the Director of the Division of Market Oversight to execute the special call and to specify the form and manner in which records shall be produced.

(2) *Accessibility and production of records of Algorithmic Trading activity.*

(i) The records required to be kept pursuant to § 1.84(a) shall be maintained in a form and manner that ensures the authenticity and reliability of the information contained in such records.

(ii) AT Persons shall have available at all times systems to promptly retrieve and display the records required to be maintained pursuant to § 1.84(a) and the information contained in such records. Such systems shall, at a minimum, be equivalent to the systems used by the AT Persons when accessing records required to be maintained pursuant to § 1.84(a) in the ordinary course of its business.

(iii) Each AT Person must, at its own expense, produce promptly upon demand, such records as may be set forth in the Commission's special call or as specified by the Director of the Division of Market Oversight pursuant to special call by the Commission.

(3) *Confidentiality of records required to be maintained.* Records required to be maintained pursuant to § 1.84(a) are subject to section 8(a) of the Act when produced to the Commission pursuant to § 1.84(b). Except as specifically authorized in the Act or the Commission's regulations in this chapter, the Commission shall not

disclose any record provided pursuant to § 1.84(b), including data and information that would separately disclose the market positions, business transactions, trade secrets, or names of customers of any person.

(c) *Subpoenas.* The special call procedure set forth in paragraph (b) of this section in no way limits the ability of the Commission, any member of the Commission, or Commission staff to obtain records required to be maintained pursuant to paragraph (a) of this section via the subpoena procedure set forth in part 11 of this chapter.

#### **§ 1.85 Use of third-party Algorithmic Trading systems or components.**

(a) *Use of third-party Algorithmic Trading systems or components.* With respect to Algorithmic Trading systems or components, AT Persons who are otherwise unable to comply with an obligation set forth in the following provisions: §§ 1.81(a)(1)(i), 1.81(a)(1)(ii), 1.81(a)(1)(iii), 1.81(a)(1)(iv), 1.81(a)(2), or 1.84, due solely to their use of third-party systems or components may comply with such obligation by obtaining a certification from the third party that the relevant system or component meets applicable regulatory requirements.

(b) AT Persons shall obtain a new certification described in paragraph (a) of this section each time there is a material change to such third-party provided systems or components.

(c) Each AT Person shall conduct due diligence to reasonably determine the accuracy and sufficiency of a certification provided by a third party.

(d) Notwithstanding the provisions of paragraphs (a)–(c) of this section, each AT Person shall remain responsible for compliance with the obligations set forth in § 1.84. Each AT Person shall retain records pursuant to § 1.84(a), or shall cause such records to be maintained. Each AT Person shall also produce records pursuant to § 1.84(b), or cause such records to be produced, when requested by the Commission.

### **PART 38—DESIGNATED CONTRACT MARKETS**

■ 4. The authority citation for part 38 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 6, 6a, 6c, 6d, 6e, 6f, 6g, 6i, 6j, 6k, 6l, 6m, 6n, 7, 7a–2, 7b, 7b–1, 7b–3, 8, 9, 15, and 21, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

■ 5. Revise § 38.255 to read as follows:

#### **§ 38.255 Risk controls for trading.**

(a) [Reserved]

(b) For all Electronic Trading Order Messages that are submitted to a designated contract market through Direct Electronic Access as defined in § 1.3(yyyy) of this chapter, the designated contract market shall make available to the executing futures commission merchants effective systems and controls, reasonably designed to facilitate the items enumerated below:

(1) The futures commission merchant's management of the risks, pursuant to § 1.82(a)(1) and (2) of this chapter, that may arise from such Electronic Trading.

(i) Such systems and controls shall include, at a minimum, the pre-trade risk controls described in § 1.82(a)(1) of this chapter.

(ii) Such systems shall, at a minimum, enable the futures commission merchant to set the pre-trade risk controls at a level or levels of granularity that will prevent and reduce the potential risk of an Electronic Trading disruption, which shall include as appropriate the level of each customer, product, account number or designation, and one or more identifiers of the natural persons or the order strategy or Algorithmic Trading system associated with an Electronic Trading Order Message.

(2) The future commission merchant's ability to make use of the order cancellation systems required by § 1.82(a)(4) of this chapter. The designated contract market shall enable the future commission merchant to apply such order cancellation systems to orders at a level or levels of granularity that will prevent and reduce the potential risk of an Electronic Trading disruption, which shall include as appropriate orders from each customer, product, account number or designation, or one or more identifiers of the natural persons or the order strategy or Algorithmic Trading system associated with an Electronic Trading Order Message.

(c) A designated contract market that permits Direct Electronic Access as defined in § 1.3(yyyy) of this chapter shall also require futures commission merchants to use the systems and controls described in paragraph (b) of this section, or substantially equivalent systems and controls developed by the futures commission merchant itself or provided by a third party, with respect to all Electronic Trading Order Messages not originating with an AT Person that are submitted through Direct Electronic Access. Prior to a futures commission merchant's use of its own or a third party's systems and controls, the futures commission merchant must certify to the designated contract market that such systems and controls are substantially

equivalent to the systems and controls that the designated contract market makes available pursuant to paragraph (b) of this section.

#### **PART 40—PROVISIONS COMMON TO REGISTERED ENTITIES**

■ 6. The authority citation for part 40 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 7, 7a, 8 and 12, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

#### **§§ 40.13 through 40.19 [Reserved]**

■ 7. Add reserved §§ 40.13 through 40.19.

■ 8. Add § 40.20 to read as follows:

#### **§ 40.20 Risk controls for trading.**

A designated contract market shall implement pre-trade and other risk controls reasonably designed to prevent and reduce the potential risk of a disruption associated with Electronic Trading (including an Algorithmic Trading Disruption), including at a minimum all of the following:

(a) *Pre-trade risk controls.* Pre-trade risk controls reasonably designed to address the risks from Electronic Trading on a designated contract market.

(1) The pre-trade risk controls to be established and used by a designated contract market shall include:

(i) Maximum Electronic Trading Order Message frequency per unit time and maximum execution frequency per unit time; and

(ii) Order price parameters and maximum order size limits.

(2) Designated contract markets must set the pre-trade risk controls at a level or levels of granularity that will prevent and reduce the potential risk of an Electronic Trading disruption, which shall include as appropriate the level of each trading firm, by product or one or more identifiers of the natural persons or the order strategy or Algorithmic Trading system associated with an Electronic Trading Order Message.

(3) [Reserved]

(b) *Order cancellation systems.* (1) Order cancellation systems that have the ability to:

(i) Immediately disengage Electronic Trading;

(ii) Cancel selected or up to all resting orders when system or market conditions require it;

(iii) Prevent submission of new Electronic Trading Order Messages; and

(iv) Cancel or suspend all resting orders from AT Persons in the event of disconnect with the trading platform.

(2) [Reserved]

(c) [Reserved]

#### **§ 40.21 [Reserved]**

■ 9. Add reserved § 40.21.

■ 10. Add § 40.22 to read as follows:

#### **§ 40.22 DCM requirements for AT Persons and executing FCMs; DCM review program.**

A designated contract market shall comply with the following:

(a) *Compliance program.* Establish a program for effective periodic review and evaluation of AT Persons' compliance with §§ 1.80 and 1.81 of this chapter and executing futures commission merchant compliance with § 1.82 of this chapter. An effective program shall include measures by the designated contract market reasonably designed to identify and remediate any insufficient mechanisms, policies and procedures, including identification and remediation of any inadequate quantitative settings or calibrations of pre-trade risk controls required of AT Persons pursuant to § 1.80(a) of this chapter;

(b) *Maintenance of books and records.* Implement rules that require each AT Person to keep and provide to the designated contract market books and records regarding such AT Person's compliance with all requirements pursuant to §§ 1.80 and 1.81 of this chapter, and require each executing futures commission merchant to keep and provide to the designated contract market books and records regarding such executing futures commission merchant's compliance with all requirements pursuant to § 1.82 of this chapter; and

(c) *Reporting.* Require such periodic reporting from AT Persons and executing futures commission merchants as is necessary to fulfill the designated contract market's obligations pursuant to paragraph (a) of this section.

(d) *Annual Certification.* Require by rule that AT Persons and executing futures commission merchants provide the designated contract market with an annual certification attesting the AT Person or executing futures commission merchant complies with the requirements of §§ 1.80, 1.81, and 1.82 of this chapter, as applicable. Such annual certification shall be made by the chief compliance officer or chief executive officer of the AT Person or the executing futures commission merchant, and shall state that, to the best of his or her knowledge and reasonable belief, the information contained in the certification is accurate and complete.

#### **§§ 40.23 through 40.28 [Reserved]**

■ 11. Add reserved §§ 40.23 through 40.28.

## PART 170—REGISTERED FUTURES ASSOCIATIONS

■ 12. The authority citation for part 170 continues to read as follows:

**Authority:** 7 U.S.C. 6d, 6m, 6p, 6s, 12a, and 21.

■ 13. Add § 170.18 to subpart C to read as follows:

### § 170.18 AT Persons.

Each registrant, as defined in § 1.3(oooo) of this chapter, that is an AT Person, as defined in § 1.3(xxxx) of this chapter, that is not otherwise required to be a member of a futures association that is registered under section 17 of the Act pursuant to §§ 170.15, 170.16, or 170.17 must submit an application for membership in at least one futures association that is registered under section 17 of the Act and that provides for the membership therein of such registrant, unless no such futures association is so registered, within 30 days of such registrant satisfying the volume threshold test set forth in § 1.3(x)(2) of this chapter.

### Subpart D [Reserved]

#### § 170.19 [Reserved]

■ 14. Add reserved subpart D, consisting of reserved § 170.19.

Issued in Washington, DC, on November 7, 2016, by the Commission.

**Christopher J. Kirkpatrick,**  
*Secretary of the Commission.*

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

## Appendices to Regulation Automated Trading—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

### Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioner Bowen voted in the affirmative. Commissioner Giancarlo voted in the negative.

### Appendix 2—Statement of Chairman Timothy G. Massad

I support this supplemental proposal related to “Regulation AT,” our proposed rule to address the increased use of automated trading in our markets.

Automated trading dominates the markets we oversee. More than 70 percent of trading in futures is now automated. And this is not just in financial futures; we see it in physical commodity futures as well.

Our markets have fundamentally changed as a result. In just a few years, we have gone from open-outcry pits where floor traders jostled elbow-to-elbow to make trades, to a machine dominated market where a millisecond is considered slow. In fact, the

new measure is a microsecond. In the time it would take a trader to hang up the phone and signal a single bid with his hands in the pit, today's machines can potentially generate thousands of orders.

But in another respect, our markets have not changed at all. Farmers, ranchers, manufacturers, exporters—businesses of all types—still depend on them to hedge routine risk and engage in price discovery. Whether it is corn or copper, crude oil or cocoa, equities or Treasuries, Japanese yen or British pounds—businesses need these markets. They need them to function reliably, fairly, and free of manipulation or disruption.

If anything has changed, it is that those needs are greater today. Businesses operate worldwide, commodity markets are global, and products are more diverse.

Market participants look to us to make sure these markets operate with integrity. So while the landscape has changed dramatically, our mission has stayed the same.

I meet with market participants of all types, and I find that traditional end-users, such as those from the agricultural community, are particularly concerned about the effects of automated trading on these markets. It is especially important for us to be able to respond to the concerns of those who are not so-called “flash boys,” and are only moving at human speed.

The fact is that our regulations have not kept up with our modern markets. Today's proposal is a part of what we need to do to keep our regulatory system up-to-date, just as you need updates for your phone's operating system from time to time. There are other things we need to do to modernize our regulatory oversight and, in particular, to engage in adequate surveillance of modern trading methods. For example, we must continue to enhance our ability to receive and analyze message and other types of data, and cooperation among regulators will become increasingly important given how today's global markets are linked.

This proposal focuses on minimizing the risk of disruption and other problems that can be caused by automated trading, and making sure we have the tools to deal with those problems should they occur. It requires reasonable risk controls, using a principles-based approach that would codify many industry best practices. But it does not prescribe the parameters or limits of such controls, because we know how diverse market participants can be, and we believe they are the ones who should determine those specifics. It requires testing and monitoring of algorithms. It requires the preservation of source code and other records—the equivalent of the records that those trading at human speed have preserved for years. And it ensures that we would have access to such records when necessary, just as for years we have reviewed the records of non-automated traders.

In the last year, we received significant feedback on the proposal that the Commission unanimously approved in November of 2015. And today's supplemental proposal makes a number of changes to that initial measure. They reflect the helpful suggestions and comments we have received.

First, while our original proposal called for risk controls at three levels—the exchange, the futures commission merchant (FCM) and the trading firm—we heard from many respondents that this was redundant and costly. Many instead favored a two-tier structure. Therefore, today's proposal would require risk controls at the exchange level, and either the trader or FCM level. So for example, a firm could have its own controls—or opt in to the FCM controls, but we would not require both.

In addition, we heard from many that the controls should pertain to all electronic trading, not just algorithmic trading. The proposal approved today also makes that change. It also provides greater flexibility regarding the level at which pre-trade risk controls must be set.

We also heard that our registration requirement was overly broad. Some claimed it would require thousands of firms to register. Some even argued that we should not require registration at all; we should simply require risk controls.

We need a registration requirement to make sure that some of the biggest traders in our markets are following the basic risk controls required by our proposal. But I am willing to have it appropriately tailored to those who are most active in our markets. Today, a small number of traders can represent a large percentage of total trading volume, including during periods of high volatility. For example, the evening after the UK's vote to exit the European Union, the ten most active firms represented approximately 60 percent of trade activity in British pound futures. This is why our supplemental proposal adds a volumetric test to our registration requirement, so that it pertains to those firms that are doing most of the trading.

In addition, this proposal reduces Regulation AT's reporting requirements, by replacing the annual compliance report with a streamlined annual certification report.

Finally, the proposal revises our original proposal on the issue of algorithmic trading source code. I have said many times that I support a rule that respects the proprietary value and confidentiality of source code. At the same time, this information may be critical to understanding what happened in the event of a market disruption or whether someone is complying with the law. This is why preservation of source code, as well as access, is critical. Therefore, this supplemental proposal makes the following changes.

First, the proposal requires the Commission itself to make the decision to seek access to source code. No staff member can do so without Commission approval. This is a significant departure from our standard practice, which allows staff to seek access to information that registrants are required to preserve without a subpoena or specific Commission authorization. We have proposed this change in recognition of the concerns raised.

The Commission could authorize the staff to seek such access either by means of a subpoena—which is sometimes the means used in the context of an enforcement investigation into behavior that may be unlawful—or a “special call.” The special

call is the means our surveillance division has used for many years to obtain and review information in connection with their oversight of trading, and it is issued by the staff. But in this case, we are proposing a process that will require the same level of Commission approval that comes with the issuance of a subpoena, even if it is for surveillance purposes.

Our proposal also describes the steps we can take to preserve the confidentiality of source code. Exactly what we would do in any particular situation would depend on the facts, but confidentiality must always be preserved. It could include precautions like reviewing the source code on a computer that is not connected to the internet or any network, and housing that computer in a secure room. Further, employees of the agency are under statutory obligation to keep proprietary information like source code confidential. There are criminal penalties associated with violating that requirement. I would note that we have protected the confidentiality of source code in the past when we have obtained it.

Finally, I disagree with the characterization that what we are doing amounts to a “slippery slope.” I would call this an “uphill climb.” Our markets have evolved much faster than our regulatory framework. We are climbing a steep hill to catch up; and to make sure we can always see and understand what is going on in our markets today.

We have long engaged in surveillance that involves reviewing information that has significant proprietary value. This may consist of information on trading strategies, including activities in related markets, or information that would go to whether a position truly is a bona fide hedge, such as purchase or supply commitments of related cash commodities, inventory levels, production expectations, and so forth. Much of this information is confidential and proprietary, and so we protect it. Our review of it is not a denial of due process rights, nor is the proposal we have adopted today.

We should not have a regulatory regime where those who still trade at human speed are subject to effective surveillance, but those who use machines are not. Our rules should not favor one method over another, and nobody should be able to hide behind their machines.

I thank the hardworking CFTC staff for their work on this supplemental proposal and I thank my fellow Commissioners for their consideration.

### **Appendix 3—Concurring Statement of Commissioner Sharon Y. Bowen**

Thank you. I’m glad to be here this morning as the Commission considers this supplemental proposal to our rulemaking on Automated Trading. I’ve said several times that I am a firm believer in two things: The need to enhance our rules to ensure that they are appropriately rigorous and protective and to find a rule that works and can be effectively implemented. I am pleased to say that I believe today’s release does both. I commend our staff for their hard work on this proposal.

Following significant engagement with a variety of stakeholders, from exchanges and

proprietary traders to advocates of financial reform, we are making several important revisions to our proposed rule on automated trading. Of these changes, there are two in particular that I want to flag. First, we are revising our registration regime to better focus our attention and regulations on the firms responsible for substantial amounts of automated trading in our markets. Under this proposal, firms that make use of Direct Electronic Access (DEA) to connect to our markets will not automatically have to register. Instead, only those firms which use DEA and also have an average of 20,000 or more trades each day over a six month period will be required to register.<sup>1</sup> It only seems appropriate that the firms responsible for a substantial portion of trades in our markets should have heightened regulatory requirements than small firms only entering a handful of trades a day. While a one-size-fits-all system may work in some cases, I believe it would be unduly burdensome to small firms to require that anyone who uses DEA automatically has to register. By offering a specific threshold for registration, however, it is critical that we pick the right number. I therefore am looking forward to the comments from market participants on whether 20,000 trades per day is the right level, too high, or too low. Given the interest that our previous proposal on registration engendered, I am sure that there will be some spirited debates about just what the proper threshold should be.

However, while small firms with small volumes will not be required to register, it is not the case that their trades will be unregulated. In fact, the second major revision of today’s proposal will require that all electronic trading, algorithmic as well as non-algorithmic, will have two separate layers of pre-trade risk controls on it. For those trades originating from an AT Person, both the designated contract market (DCM) and the AT Person will be obligated to place pre-trade risk controls on their electronic trades, with the AT Person having the option of delegating this responsibility to the relevant futures commission merchant (FCM). Meanwhile, any electronic trading from entities other than AT persons will also be subject to two levels of pre-trade risk controls: One level set by the DCM and one by the FCM. As a result, under this proposal, we will be ensuring that every single electronic trade, automated as well as non-automated, in our markets is subject to two levels of pre-trade risk controls without exception. Given the nearly constant technological innovations and redesigns involving algorithmic trading, I believe having two levels of risk controls is not only the most prudent course of action for our markets, it is also critical protection against a market malfunction harming investors or our broader economy. For those of you worried that automated trading is occurring free of any oversight or regulation, this rule seeks to allay some of those fears.

As I have said before, however, this regulation is merely a first cut. Having looked

at this issue for nearly a year, I have some doubts whether we are doing enough to ensure that all market participants, especially end-users in certain markets, are being given a level-playing field at present due to the proliferation of algorithmic trading. I therefore believe that we should consider instituting pilot programs in certain small sections of the market that can test the effects of additional, more substantial restrictions on algorithmic trading on market operations. Please note, I do not believe it is the time to place more rigorous restrictions on algorithmic trading on all the markets we regulate. Instead, I believe only that we should see whether there are some markets where a significant percentage of end-users are interested in establishing greater monitoring and regulation of algorithmic trading. If one or two such markets do exist, then those markets could be candidates for a tailored pilot program to gather data on the effects of algorithmic trading on those markets. We could then gain important insight on the effects of new market dynamics that continue to evolve. If you are an end-user and believe that your market would benefit from such a tailored pilot program, I encourage you to convey that message to the Commission.

I had the pleasure of meeting with some members of the National Cattlemen’s Beef Association earlier this year and more recently, who informed me that they believe algorithmic trading is having a substantial impact on livestock markets and that they are interested in gaining more data on how algorithmic trading is influencing livestock prices. I share a desire for more information, both about whether this rule is regarded as being a step in the right direction and about what, if any, effects algorithmic trading is having on our markets. If an observer has an issue with any part of this rule, especially if you feel it is too weak, I sincerely hope you will lay out that concern in detail and let us know how we can improve it.

Finally, I want to thank stakeholders, particularly several industry groups, for their engagement with the Commission since we released our proposal. I was very happy to learn that some aspects of this proposal, including the idea of requiring pre-trade risk controls on all electronic trades, were suggested by members of the industry. We have notice and comment requirements for many reasons: Increased transparency, an opportunity for public involvement, and of course to set procedural strictures on the government. But one of the reasons undergirding our system of notice and comment is the idea that regulators do not have all the answers all of the time, and there is a role for market participants to play during the regulatory process. The fact that industry participants were able to devise and endorse a broad regulatory requirement on all automated trading is to be commended.

### **Appendix 4—Dissenting Statement of Commissioner J. Christopher Giancarlo**

#### **Introduction**

I have previously said that proposed Regulation Automated Trading (Reg. AT) is a well-meaning attempt by the Commodity Futures Trading Commission (CFTC or

<sup>1</sup> Supplemental Notice of Proposed Rulemaking on Regulation on Automated Trading at II.C.1 and proposed rule § 1.3(x)(2).

Commission) to catch up to the digital revolution in U.S. futures markets.<sup>1</sup> However, I have also raised some concerns ranging from the prescriptive compliance burdens to the disproportionate impact on small market participants to the regulatory inconsistencies of the proposed rule.<sup>2</sup> I have also warned that any public good achieved by the rule is undone by the now notorious source code repository requirement.<sup>3</sup> Not surprisingly, dozens of commenters to the proposal echoed my concerns and vehemently opposed the source code requirement.

So, here we are again almost a year later to consider a Supplemental Notice of Proposed Rulemaking on Regulation Automated Trading (Supplemental Notice) because proposed Reg. AT missed the mark the first time around.<sup>4</sup>

This Supplemental Notice does improve proposed Reg. AT in some respects, such as moving from three levels of risk controls to two levels in order to simplify the framework and narrowing the scope of registration so it may not capture smaller market participants. However, the Supplemental Notice does not go far enough. It subjects the source code retention and inspection requirements to the special call process and provides an unworkable compliance process for AT Persons<sup>5</sup> that use software from third-party providers.

I proposed several reasonable changes to the Commission and staff in an effort to make the Supplemental Notice workable and less burdensome, while still achieving its objectives. It is disappointing that those changes were not accepted. On a brighter note, the Commission has agreed to extend the comment period from 30 days to 60 days. While a longer comment period may provide some comfort to commenters that they do not have to rush to finish their comment letters over the Thanksgiving holiday, it does nothing to address my substantive issues. I am certain that many commenters will once again echo my concerns.

While I could focus on a number of issues with proposed Reg. AT and the Supplemental Notice, I will first concentrate my statement on the source code issue and then the third-party software provider requirements. Thereafter, I will discuss a few other topics, such as the prescriptive nature of the proposal and burdensome reporting requirements. I welcome comments on all these issues and others.

<sup>1</sup> Opening Statement of Commissioner J. Christopher Giancarlo before the CFTC Staff Roundtable on Regulation Automated Trading, June 10, 2016, <http://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlostatement061016>.

<sup>2</sup> Regulation Automated Trading, 80 FR 78824, 78945–48 (Dec. 17, 2015).

<sup>3</sup> *Id.* at 78947.

<sup>4</sup> I note that at a time when the CFTC continuously pleads for additional resources, this is an example where the Commission could have saved a lot of time and effort if it spent a little more time up front to craft a sensible proposed Reg. AT.

<sup>5</sup> As defined in the Supplemental Notice.

## Source Code Retention and Inspection Requirements

### *No Subpoena Means No Due Process of Law*

Let me make clear at the outset that the CFTC can today obtain the computer source code of market participants pursuant to a subpoena. Therefore, the issue raised by proposed Reg. AT and this Supplemental Notice is NOT whether the CFTC can examine source code of automated traders where appropriate to investigate suspected market misbehavior. The issue raised by this proposal is whether the owners of source code have any say in the matter.

The subpoena process provides property owners with due process of law before the government can seize their property. It protects owners of property—not the government that already has abundant power. It allows property owners an opportunity to challenge the scope, timing and manner of discovery and whether any legal privileges apply to the process of surrendering property to the government.

The subpoena process therefore provides a fair compromise between the rights of property owners and the government's right to seize their property. Without the subpoena process, there is no balance between the civil liberties of the governed and the unlimited power of the government.

As a foundation of civil liberties, the subpoena process precedes the American Republic going back to English common law. As a legal principle, it was woven into the Bill of Rights. As a bulwark of modern civil society, it protects the liberty of the governed from the tyranny of the government.

The Supplemental Notice before us today, however, would strip owners of intellectual property of due process of law. The CFTC justifies this abridgment of rights with the condition that before the Commission can take source code<sup>6</sup> it will abide by two procedural hurdles—a majority vote of the Commission and the special call process operated by the Division of Market Oversight (DMO).<sup>7</sup>

This justification entirely misses the point. Abrogating the legal rights of property owners is not assuaged by imposing a few additional procedural burdens on the government agency seizing their property. Source code owners will have lost any say in the matter. The proposal gives unchecked power to the CFTC to decide if, when and how property owners must turn over their source code.

Moreover, the special call process provides the CFTC an end-run-around the subpoena process. While the Supplemental Notice states that the CFTC will use the special call

<sup>6</sup> I also note my concern with the breadth of the new Algorithmic Trading Source Code definition and invite comment on it.

<sup>7</sup> The Supplemental Notice allows the Commission to authorize the Director of DMO to execute the special call and to specify the form and manner in which records shall be produced. DMO's existing special call process has not operated without operational error or inadvertent disclosure of confidential information. The process should be subject to enhanced checks and balances, procedural controls and greater objectivity in targeting market behavior.

process to obtain source code in carrying out its market oversight responsibilities, there is no limit in the proposed rule on DMO staff from sharing source code with staff of the Division of Enforcement. The proposal will allow the Enforcement Division to view source code without bothering with a subpoena. Such sharing of information will likely become routine if this proposal is finalized.

### *No Specific Source Code Protections*

Commenters have rightly questioned what level of security the CFTC will deploy to safeguard seized source code. In an attempt to assure market participants that their source code will be kept secure, the Supplemental Notice lists the various statutes and regulations that require confidentiality of such information. The proposed rule text also includes a reference to Commodity Exchange Act (CEA) section 8(a), which prohibits the release of trade secrets and other information.<sup>8</sup>

Yet, these are not new protections. They are in place today. Simply citing them in the preamble and rule text of the Supplemental Notice gives little assurance that the CFTC will safeguard source code. If the agency is determined to protect confidentiality, then it should include specific protections in the rule. For example, the CFTC could provide that it will only review source code at a property owner's premises or on computers not connected to the Internet. The CFTC could also state that it will return all source code to the property owner once its review is finished. The rule text provides no such assurances.

Absent specific measures, it is absurd to suggest that source code will be kept secure. Just look at the area of government cybersecurity. In the six months after the CFTC proposed Reg. AT, hackers breached the computer networks of the Federal Deposit Insurance Corporation and the Federal Reserve.<sup>9</sup> Incredibly, the U.S. Office of Personnel Management (OPM) that gave up 21.5 million personnel records in a year-long cyber penetration failed a security audit last November—six months after the breach was discovered.<sup>10</sup> In fact, federal, state and local government agencies rank last in cybersecurity when compared against 17 major private industries, including transportation, retail and healthcare.<sup>11</sup>

<sup>8</sup> 7 U.S.C. 12(a); CEA section 8(a).

<sup>9</sup> Katie Bo Williams, *Criminal Investigation Underway into Banking Regulator Data Breach*, The Hill, May 12, 2016, <http://thehill.com/policy/cybersecurity/279752-criminal-investigation-open-in-fdic-data-breach>; Dustin Volz and Jason Lange, *U.S. Lawmakers Probe Fed Cyber Breaches, Cite 'Serious Concerns'*, Reuters, June 3, 2016, <http://t.reuters.com/article/topNews/idUSKCN0YP281>.

<sup>10</sup> U.S. Office of Pers. Mgmt. Office of the Inspector Gen. Office of Audits, 4A–CI–00–15–011, Federal Information Security Modernization Act Audit FY 2015, Nov. 10, 2015; See also, Jack McCarthy, *OIG Finds OPM Still Struggling with Security*, Healthcare IT News, Nov. 30, 2015, <http://www.healthcareitnews.com/blog/oig-finds-opm-still-struggling-security> (discussing OIG's findings of OPM's security protocols six months after a massive data breach).

<sup>11</sup> Dustin Volz, *U.S. Government Worse than All Major Industries on Cyber Security: Report*, Reuters,

The CFTC itself has an imperfect record as a guardian of confidential proprietary information.<sup>12</sup> If this rule goes forward, the CFTC will make itself a target for a broader group of cyber criminals, including those engaged in commercial espionage.

Last Friday, we learned that a former employee of the Office of the Comptroller of the Currency (OCC) downloaded thousands of files from the agency's servers onto two removable thumb drives without authorization prior to retiring from the agency.<sup>13</sup> The OCC said that when it contacted the former employee about those files, he was "unable to locate or return the thumb drives to the agency."<sup>14</sup>

The OCC breach surely sent shivers up the spines of source code owners who received notice that same day of the CFTC's intention to move forward with the Supplemental Notice. They must have been doubly spooked when the CFTC's own servers crashed a few hours later due to a denial-of-service attack.

#### *Establishment of Dangerous Regulatory Precedent*

If the CFTC adopts the source code provisions of the Supplemental Notice, the Securities and Exchange Commission (SEC) will likely copy it and so will other U.S. and overseas regulators—and not just regulators of financial markets.<sup>15</sup> Regulators like the Federal Communications Commission may demand source code for Apple's iPhone. The Federal Trade Commission may seek source code used in the matching engines of Google, Facebook and Snapchat. The National Security Agency may demand to see the source code of Cisco's switches and Oracle's servers. The Department of Transportation may demand Uber's auction technology and Tesla's driverless steering source code. Where does it end?

It certainly will not end on American shores. Overseas regulators will also mimic the rule. The German chancellor has said that she wants her government to examine the source code used in the matching engines of Google and Facebook because she does not like their political coverage of her administration.<sup>16</sup> The Chinese government

Apr. 14, 2016, <http://mobile.reuters.com/article/idUSKCN0XB27K>.

<sup>12</sup> See generally Bart Chilton, *The Government Can't be Trusted to Collect Source Code and Other Private Property*, Business Insider, Nov. 1, 2016, <http://www.businessinsider.com/bart-chilton-government-cant-be-trusted-to-collect-source-code-2016-11>; Gregory Meyer and Philip Stafford, *US Regulators Propose Powers to Scrutinise Algo Traders' Source Code*, Financial Times, Dec. 1, 2015, <https://www.ft.com/content/137f81bc-944f-11e5-b190-291e94b77c8f>.

<sup>13</sup> Ben Lane, *OCC Reveals Major Information Security Breach Involving Former Employee*, HousingWire, Oct. 28, 2016, <http://www.housingwire.com/articles/38402-occ-reveals-major-information-security-breach-involving-former-employee>.

<sup>14</sup> *Id.*

<sup>15</sup> Congressman Sean P. Duffy Letter to SEC Chair Mary Jo White, Aug. 10, 2016, <http://modernmarketsinitiative.org/wp-content/uploads/2016/08/16.08.10-Automated-Trading-Letter-to-SEC.pdf>.

<sup>16</sup> Article, *Angela Merkel wants Facebook and Google's Secrets Revealed*, BBC, Oct. 28, 2016, <http://www.bbc.com/news/technology-37798762>.

has already tried to put in place a rule to obtain the source code of U.S. technology firms.<sup>17</sup> If the CFTC adopts this rule, it will make a mockery of the U.S. government's past attempts to oppose China's efforts to view proprietary commercial source code.<sup>18</sup> It confirms that the CFTC is not on the same page as its own U.S. government counterparts.

Undoubtedly, this proposed rule is a recklessly stepped onto a slippery slope. Today, the federal government is coming for the source code of seemingly faceless algorithmic trading firms. Tomorrow, however, governments worldwide may come for the source code underlying the organizing and matching of Americans' personal information—their snapchats, tweets and instagrams, their online purchases, their choice of reading material and their political and social preferences. Seriously, where will it end?

#### *Possible Constitutional Challenge*

Fortunately, our country's founders protected Americans against unreasonable searches and seizures and guaranteed them due process of law in the U.S. Constitution. The Supreme Court has routinely and recently upheld these fundamental civil rights. If the CFTC adopts the Supplemental Notice as proposed, its source code seizure provisions may be robustly challenged in federal court. The litigation will consume the agency's precious, limited resources and its credibility in defending such a dubiously constitutional rule. That will be a sad waste of American taxpayer money.

The CFTC justifies its actions based on its need to oversee the growing incidence of algorithmic trading and disruption in the financial markets. Given the relative ease of obtaining an administrative subpoena,<sup>19</sup> I disagree with the assertion in the proposal that the special call process is necessary to review source code in association with usual trading events or market disruptions. The subpoena and the proposed special call process both require a Commission vote. One process is therefore not faster than the other. The only difference is that the special call process is an end-run-around the subpoena process and deprives source code owners of due process of law.

#### **Third-Party Software Providers**

If the source code requirements are not bad enough, AT Persons who use third-party algorithmic trading systems and those third-

<sup>17</sup> Eva Dou, *U.S., China Discuss Proposed Banking Security Rules*, The Wall Street Journal, Feb. 13, 2015, <http://www.wsj.com/articles/china-banking-regulator-considering-source-code-rules-1423805889>; Shannon Tiezzi, *US-China Talk Intellectual Property, Market Access at Trade Dialogue*, The Diplomat, Nov. 25, 2015, <http://thediplomat.com/2015/11/us-china-talk-intellectual-property-market-access-at-trade-dialogue/>.

<sup>18</sup> *Id.* Congressmen Scott Garrett and Randy Neugebauer Letter to CFTC Chairman Timothy Massad, Aug. 3, 2016, <http://modernmarketsinitiative.org/wp-content/uploads/2016/08/20160802-ESG-RN-Letter-to-CFTC-re-Reg-AT2.pdf>.

<sup>19</sup> *United States v. Morton Salt Company*, 338 U.S. 632 (1950).

parties are in for a real treat. Under the Supplemental Notice, AT Persons who use third-party trading systems are liable for turning over the source code of the third-party providers. An AT Person has no control over a third party's source code. And, third-parties have already said that they will not give out their source code.<sup>20</sup>

In addition, the Supplemental Notice requires an AT Person who uses a third-party algorithmic trading system to obtain a certification and conduct due diligence to ensure that the third-party is complying with the development and testing requirements in proposed Reg. AT. The AT Person must obtain a new certification each time there is a material change to such third-party's system.

These requirements are infeasible and could harm innovation and intellectual property rights. Participants at the Regulation AT roundtable also found the certification and due diligence suggestion impractical.<sup>21</sup> One commenter said it could hurt smaller third-party vendors.<sup>22</sup> Another commenter said that AT Persons may not have the necessary expertise to perform due diligence of third-party systems.<sup>23</sup> They are correct. The CFTC must revisit these requirements. I invite commenters to propose less burdensome solutions.

#### **Other Issues**

Finally, let me highlight three issues: (1) The prescriptive nature of risk controls and development and testing requirements; (2) burdensome reporting requirements; and (3) the need for a phased-in implementation process. I reassert the issues I raised from proposed Reg. AT last year. I thank the many commenters for responding to those questions and concerns.

#### *Prescriptive Nature of Risk Controls and Development and Testing Requirements*

When proposed Reg. AT was issued, I noted that the CFTC is basically playing catch-up to an industry that has already developed and implemented risk controls and related testing standards for automated trading.<sup>24</sup> I supported a principles-based approach to risk controls and testing that built upon, rather than hindered ongoing industry efforts.<sup>25</sup>

Many commenters to Reg. AT supported such a principles-based approach to risk controls and development and testing requirements and noted that proposed Reg. AT was too prescriptive.<sup>26</sup> Commenters supported providing participants' flexibility to determine which risk controls are needed

<sup>20</sup> Trading Technologies, Staff Roundtable, Elements of Proposed Regulation Automated Trading, Transcript, at 250–252, June 10, 2016 (Roundtable Tr.), <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/transcript061016.pdf>.

<sup>21</sup> *Id.* at 239.

<sup>22</sup> *Id.*

<sup>23</sup> Tethys Technology, Roundtable Tr. at 248.

<sup>24</sup> 80 FR at 78945.

<sup>25</sup> *Id.* at 78946.

<sup>26</sup> See, e.g., FIA Comment Letter at 3, 4–5 (Mar. 16, 2016); CME Comment Letter at 6, 7–8 (Mar. 16, 2016); ICE Comment Letter at 10 (Mar. 16, 2016); CTC Comment Letter at 1 (Mar. 15, 2016).

and how those controls are applied and administered based on each participant's unique risk profile and business situation.<sup>27</sup> Commenters also noted that many of the proposed development and testing requirements are not practical and do not reflect how software is customarily developed, tested, deployed and monitored.<sup>28</sup>

I believe that the marketplace has implemented effective best practices and procedures for risk controls and development and testing of automated trading systems that account for different types of systems and businesses. Reg. AT's approach is a one-size-fits-all model that does not take into account individual circumstances. For example, the proposed risk controls may not apply to all market participants or at all levels and may have negative unintended consequences.<sup>29</sup> The proposed development and testing requirements will require AT Persons to make costly changes to existing business practices and procedures with no material market benefit.<sup>30</sup> Once again, I urge the CFTC to adopt a principles-based approach in the final rule so that AT Persons have the necessary flexibility to administer controls and testing based on their trading and risk profiles.

#### *Still Burdensome Reporting Requirements*

The Supplemental Notice replaces the requirement in proposed Reg. AT that AT Persons and clearing member futures commission merchants (FCMs) prepare certain annual reports with an annual certification requirement. While that is positive, the Supplemental Notice requires designated contract markets (DCMs) to establish a program for effective periodic review and evaluation of AT Persons' and FCMs' compliance with risk controls and other requirements. The Supplemental Notice also retains proposed Reg. AT's requirement that the DCM must identify and remediate any insufficient mechanisms, policies and procedures, including identification and remediation of any inadequate quantitative settings or calibrations of pre-trade risk controls required of AT Persons.

The Supplemental Notice touts the significantly decreased costs and enhanced flexibility to DCMs in designing a compliance program by replacing the annual reports with a certification requirement. I am not so sure that will be the case. The Supplemental Notice does not eliminate the compliance program altogether and replace it with a certification requirement. DCMs must still establish such a program and review and evaluate AT Persons' and FCMs' compliance with risk control and other requirements. I

am concerned that this requirement could necessitate DCMs hiring additional staff to conduct periodic reviews with limited benefits for reducing risk.

Even more problematic, DCMs are on the hook to identify and remediate any insufficient mechanisms, policies and procedures, including inadequate quantitative settings or calibrations of pre-trade risk controls. The Supplemental Notice acknowledges, but dismisses, DCMs' own concerns that they lack the technical capability to assess whether the quantitative settings or calibrations of AT Persons' controls are sufficient.<sup>31</sup> In my statement on proposed Reg. AT, I suggested a much simpler process of self-assessments like FINRA requires.<sup>32</sup> Commenters also suggested similar less burdensome processes.<sup>33</sup> I urge the Commission to revisit this provision and provide a more workable solution that does not hold DCMs liable for identifying and remediating inadequate settings of AT Persons.

#### *Any Final Rule Must Be Phased-In*

Proposed Reg. AT and this Supplemental Notice if finalized in their current form will be a huge undertaking for all parties involved. The Futures Industry Association (FIA) estimated that it could take several years to implement.<sup>34</sup> In this regard, FIA recommended that the CFTC implement Reg. AT in three separate rules: Pre-trade and other risk controls, policies and procedures regarding development and testing of algorithmic trading systems and registration.<sup>35</sup> Other commenters also recommended phased-in rulemakings.<sup>36</sup>

Reg. AT is a major rulemaking that covers a broad range of automated trading issues. Commenters asserted that the costs of the proposal are substantially higher than estimated by the Commission and provided quantitative estimates to back up their assertions.<sup>37</sup> The Supplemental Notice does not do enough to fix the issues with proposed Reg. AT and reduce unnecessary costs on the marketplace. Given the scope of Reg. AT and the cost concerns, I believe the CFTC should at least phase-in the implementation process for any final Reg. AT rulemaking. I invite commenters to provide suggestions on how to do so.

<sup>31</sup> CME Comment Letter at 20 (Mar. 16, 2016); ICE Comment Letter at 9–10 (Mar. 16, 2016); FIA Comment Letter at 10 (Mar. 16, 2016); MGEX Comment Letter at 16–17 (Mar. 16, 2016).

<sup>32</sup> 80 FR at 78947.

<sup>33</sup> CME Comment Letter at 20 (Mar. 16, 2016); ICE Comment Letter at 9–10 (Mar. 16, 2016); FIA Comment Letter at 10 (Mar. 16, 2016); MGEX Comment Letter at 16–17 (Mar. 16, 2016).

<sup>34</sup> FIA Comment Letter at 11 (Mar. 16, 2016).

<sup>35</sup> *Id.* at Attachment A at 14–15.

<sup>36</sup> MGEX Comment Letter at 3 (Mar. 16, 2016); NASDAQ Futures Comment Letter at 2 (Mar. 16, 2016).

<sup>37</sup> *See, e.g.*, CME Comment Letter at 5 (Mar. 16, 2016); MFA Comment Letter at 34–35 (Mar. 16, 2016); MGEX Comment Letter at 25–28 (Mar. 16, 2016).

<sup>27</sup> *See, e.g.*, FIA Comment Letter at 3 (Mar. 16, 2016); CME Comment Letter at 7–8 (Mar. 16, 2016).

<sup>28</sup> *See, e.g.*, FIA Comment Letter at 5 (Mar. 16, 2016); CTC Comment Letter at 12–14 (Mar. 15, 2016).

<sup>29</sup> *See, e.g.*, FIA Comment Letter, Attachment A at 24–25 (Mar. 16, 2016).

<sup>30</sup> *See, e.g.*, CTC Comment Letter at 12 (Mar. 15, 2016).

## Conclusion

It has been my general practice as a CFTC commissioner to vote in support of publishing proposed rules for public comment even when I have substantial concerns and issues. That is because on most proposals reasonable people can have differences of opinion. I try to hear a broad range of sensible views before making a final decision. I have also taken this approach because of the enormous respect I have for my two fellow commissioners. It continues to be an honor to serve alongside them.

So, it is a disappointment that on this rule I must depart from my preferred practice of voting in favor of proposed rulemakings.

Reg. AT is unlike any other rule proposal that I have seen in my time of service. What should be a step forward by the agency in its mission to oversee twenty-first century digital markets is squandered by its giant stumble backwards in undoing Americans' legal and Constitutional rights.

The Commission recommends that we adopt this Supplemental Notice in order to address the growing incidence of algorithmic trading and to determine if algorithms are disrupting financial markets. That is all well and good. Automated trading presents a number of critical challenges to our markets.<sup>38</sup> My many meetings with America's farmers and ranchers have confirmed the importance of enhancing the CFTC's ability to catch-up to the digital transformation of twenty-first century futures markets.<sup>39</sup>

Yet, jettisoning the subpoena process does nothing to address the challenge of automated trading given the existing ease and speed of obtaining an administrative subpoena.<sup>40</sup>

Benjamin Franklin is said to have warned that "A people that are willing to give up their liberty for temporary security deserve neither—and will lose both."

Franklin was right. Reg. AT is a threat to Americans' liberty AND their security. After twelve score years of ordered freedom, it is a degree turn in the direction of unchecked state authority. If adopted in its present form, it will put out of balance centuries-old rights of the governed against the creeping power of the government.

Thus, I have no choice but to vote against this proposal.

[FR Doc. 2016–27250 Filed 11–23–16; 8:45 am]

#### **BILLING CODE 6351–01–P**

<sup>38</sup> *See* Guest Lecture of Commissioner J. Christopher Giancarlo, Harvard Law School, Fidelity Guest Lecture Series on International Finance, Dec. 1, 2015, <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-11>.

<sup>39</sup> *See* Address of CFTC Commissioner J. Christopher Giancarlo to the American Enterprise Institute, 21st Century Markets Need 21st Century Regulation, Sept. 21, 2016, <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-17>.

<sup>40</sup> *United States v. Morton Salt Company*, 338 U.S. 632 (1950).

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