AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 78 Monday,
No. 57 March 25, 2013

Pages 17865–18220

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpo@custhelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 77 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, April 9, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 78, No. 57

Monday, March 25, 2013

Agriculture Department
See National Agricultural Statistics Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17920

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Coast Guard
RULES
Safety Zones:
Desert Storm Shootout; Lake Havasu, Lake Havasu City, AZ, 17869–17871
PROPOSED RULES
Medical Waivers for Merchant Mariner Credential Applicants with a History of Seizure Disorders, 17917–17919

Commerce Department
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17922

Committee for the Implementation of Textile Agreements
NOTICES
Determinations under the Textile and Apperal Commercial Availability Provision of the CAFTA–DR Agreement, 17923

Defense Department
NOTICES
Meetings:
U.S. Strategic Command Strategic Advisory Group, 17924

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Drug Enforcement Administration
PROPOSED RULES
Schedules of Controlled Substances:
Placement of Alfaxalone into Schedule IV, 17895–17900

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Grants under the Predominantly Black Institutions Program, 17924–17925

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Efficiency Programs for Commercial and Industrial Equipment:
Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps, 17890

Energy Efficiency and Renewable Energy Office
NOTICES
Energy Conservation Program for Consumer Products:
BSH Corporation; Residential Dishwasher; Waiver, 17925–17928

Environmental Protection Agency
PROPOSED RULES
EPA Responses to State and Tribal 2010 Sulfur Dioxide Designation Recommendations, 17915–17917
Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Approvals and Promulgations:
California; Redesignation of San Diego County to Attainment for the 1997 8-Hour Ozone Standard, 17902–17915
NOTICES
National Rivers and Streams Assessment 2008–009 Draft Report, 17930

Federal Aviation Administration
RULES
Airworthiness Directives:
PILATUS AIRCRAFT LTD. Airplanes, 17865–17866

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 17928–17930

Federal Motor Carrier Safety Administration
RULES
Commercial Driver's License Testing and Commercial Learner's Permit Standards, 17875–17882

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 17930
Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies, 17931

Federal Transit Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17995–17996

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Designation of Critical Habitat for the Northwest Atlantic Ocean Distinct Population Segment of the Loggerhead Sea Turtle, 18000–18082

Food and Drug Administration
RULES
New Animal Drug Approvals:
Change of Sponsor; Change of Sponsor's Drug Labeler Code; Gonadorelin Acetate; et al., 17866–17868
PROPOSED RULES
Effective Dates of Requirements for Premarket Approvals:
Automated External Defibrillator System, 17890–17895

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water, 17932–17933
Determinations:
BENADRYL (diphenhydramine hydrochloride) Injection and Two Other Drug Products, 17933–17934
Public Workshops:
Accessible Medical Device Labeling in a Standard Content and Format, 17934–17935

Foreign Assets Control Office
NOTICES
Blocking or Unblocking of Persons and Property:
One Entity and One Individual Designated as Weapons of Mass Destruction Proliferators and Their Supporters, 17997
One Entity and Three Individuals Designated as Weapons of Mass Destruction Proliferators and Their Supporters, 17996–17997

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Open Government Citizen Engagement Ratings, Rankings, and Flagging, 17931–17932

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
FHA Lender Approval, Annual Renewal, Periodic Updates, etc., 17937–17938
Recordkeeping for HUD's Continuum of Care Program, 17938–17939
Announcements of Funding Awards:
Capital Fund Safety and Security Grants, Fiscal Year 2012, 17939–17940

Interior Department
See Fish and Wildlife Service

Internal Revenue Service
RULES
Noncompensatory Partnership Options; Correction, 17868–17869
PROPOSED RULES
Awards for Information Relating to Detecting Underpayments of Tax or Violations of the Internal Revenue Laws, 17901–17902
Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage; Correction, 17900–17901

International Trade Commission
NOTICES
Complaints:
Certain Computerized Orthopedic Surgical Devices, Software, Implants, and Components Thereof, 17940–17941

Justice Department
See Drug Enforcement Administration
See Justice Programs Office
PROPOSED RULES
Periodic Review of Existing Regulations; Retrospective Review under E.O. 13563, 17888–17889
NOTICES
Proposed Consent Decrees under CERCLA, 17941

Justice Programs Office
NOTICES
Draft of SWGDOC Standard for Indentation Examinations, 17942

Labor Department
See Labor Statistics Bureau

Labor Statistics Bureau
NOTICES
Meetings:
Data Users Advisory Committee, 17942

National Agricultural Statistics Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17920–17922

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Arts Advisory Panel, 17942

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Institutes of Health Office of Intramural Training and Education Application, 17935–17936
Meetings:
Center for Scientific Review, 17936–17937
National Cancer Institute, 17936
National Heart, Lung, and Blood Institute, 17937
National Institute of Biomedical Imaging and Bioengineering, 17937

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Pacific Cod by Catcher Vessels Greater Than or Equal to 50 Feet Using Hook-and-line Gear, etc., 17884–17885
Pacific Cod by Catcher Vessels Less Than 50 Feet Using Hook-and-line Gear, etc., 17885
Pollock in Statistical Area 630 in the Gulf of Alaska, 17886–17887
Pollock in the West Yakutat District of the Gulf of Alaska, 17885–17886
Recreational Closure Authority Specific to Federal Waters Off Individual States:
Recreational Red Snapper Component of the Gulf of Mexico Reef Fish Fishery, 17882–17884
PROPOSED RULES
Fisheries of the Northeastern United States:
Northeast Multispecies Fishery; Framework Adjustment 48, 18188–18219
Fishing Restrictions and Observer Requirements:
International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species, etc. for 2013–2014, 17919

Nuclear Regulatory Commission
NOTICES
Applications:
Licenses to Export High-Enriched Uranium, 17942–17943
Draft Program-Specific Guidance About Fixed Gauge Licenses, 17943–17944
Meetings:
Advisory Committee on Reactor Safeguards Subcommittee on Fukushima, 17945
Advisory Committee on Reactor Safeguards Subcommittee on Future Plant Designs, 17945–17946
Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures, 17944
Advisory Committee on Reactor Safeguards Subcommittee on Radiation Protection and Nuclear Materials, 17944–17945

Patent and Trademark Office
RULES
Changes to Implement the Technical Corrections to the Leahy–Smith America Invents Act as to Inter Partes Review, 17871–17874

Pipeline and Hazardous Materials Safety Administration
RULES
Hazardous Materials:
Miscellaneous Petitions for Rulemaking, Retrospective Regulatory Review, 17874–17875

Securities and Exchange Commission
PROPOSED RULES
Regulation Systems Compliance and Integrity, 18084–18186
NOTICES
Meetings; Sunshine Act, 17946
Self-Regulatory Organizations; Proposed Rule Changes:
C2 Options Exchange, Inc., 17967–17969
Chicago Mercantile Exchange, Inc., 17957–17958
Consolidated Tape Association Plan and Consolidated Quotation Plan, 17946–17952
Financial Industry Regulatory Authority, Inc., 17969, 17975–17982
International Securities Exchange, LLC, 17988–17992
Miami International Securities Exchange LLC, 17958–17962, 17970–17972
NASDAQ OMX BX, Inc., 17952–17957
NASDAQ Stock Market LLC, 17962–17967, 17985–17988
NYSE Arca, Inc., 17972–17975
NYSE MKT LLC, 17982–17985

State Department
NOTICES
Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters; Designations:
Pak To–Chun, Chu Kyu–Chang, and O Kuk–Ryol, 17992
Meetings:
Defense Trade Advisory Group, 17993
Industry Advisory Panel, 17993
International Telecommunication Union World Telecommunication Development Conference, 17992–17993
Nominations:
General Advisory Committee and Scientific Advisory Subcommittee, U.S. Section, Inter-American Tropical Tuna Commission, 17993–17995

Statistical Reporting Service
See National Agricultural Statistics Service

Surface Transportation Board
NOTICES
Petitions for Retroactive Exemptions:
MCM Rail Services LLC, Sparrows Point, MD, 17996

Tennessee Valley Authority
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17995

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Transit Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 18000–18082

Part III
Securities and Exchange Commission, 18084–18186

Part IV
Commerce Department, National Oceanic and Atmospheric Administration, 18188–18219

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

2 CFR
Proposed Rules:
Ch. XXVII.....17888

5 CFR
Proposed Rules:
Ch. XXVIII.....17888

8 CFR
Proposed Rules:
Ch. V.....17888

10 CFR
Proposed Rules:
431.....17890

14 CFR
39.....17865

17 CFR
Proposed Rules:
242.....18084
249.....18084

21 CFR
510.....17866
522.....17866
524.....17866
529.....17866
Proposed Rules:
870.....17890
Ch. II.....17888
1308.....17895

26 CFR
1.....17868
Proposed Rules:
1.....17900
301.....17901

27 CFR
Proposed Rules:
Ch. II.....17888

28 CFR
Proposed Rules:
Ch. I.....17888
Ch. III.....17888
Ch. V.....17888
Ch. VI.....17888

31 CFR
Proposed Rules:
Ch. IX.....17888

33 CFR
165.....17869

37 CFR
42.....17871

40 CFR
Proposed Rules:
52.....17902
81 (2 documents) 17902, 17915
Ch. IV.....17888

41 CFR
Proposed Rules:
Ch. 128.....17888

45 CFR
Proposed Rules:
Ch. V.....17888

46 CFR
Proposed Rules:
10.....17917

48 CFR
Proposed Rules:
Ch. 28.....17888

49 CFR
172.....17874
173.....17874
176.....17874
178.....17874
383.....17875
384.....17875

50 CFR
622.....17882
679 (4 documents) 17884, 17885, 17886
Proposed Rules:
17.....18000
300.....17919
648.....18188

Rules and Regulations

Federal Register
Vol. 78, No. 57
Monday, March 25, 2013

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0070; Directorate Identifier 2007–CE–098–AD; Amendment 39–17398; AD 2008–07–11 R1]

RIN 2120–AA64

Airworthiness Directives; PILATUS AIRCRAFT LTD. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; rescission; request for comments

SUMMARY: We are rescinding an airworthiness directive (AD) for all PILATUS AIRCRAFT LTD. Models PC–12, PC–12/45, and PC–12/47 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. We issued that AD to mandate new life limits for the pitch trim actuator and pitch trim actuator attachment parts. If these new limitations were not mandated, the pitch trim actuator and the pitch trim actuator components could fail. This failure could lead to an unsafe flying configuration. Since we issued that AD, we have determined that the unsafe condition addressed in that AD is now addressed in another AD.

DATES: This AD is effective March 25, 2013.

We must receive comments on this AD by May 9, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On March 27, 2008, we issued AD 2008–07–11, Amendment 39–15452 (73 FR 18433, April 4, 2008). That AD required actions intended to address an unsafe condition on the products listed above.

AD 2008–07–11, Amendment 39–15452 (73 FR 18433, April 4, 2008) was based on results of a full-scale fatigue test of the pitch trim actuator on PILATUS AIRCRAFT LTD. Models PC–12, PC–12/45, and PC–12/47 airplanes. The life-limit was extended and the time between overhaul (TBO) was reduced. In addition, based on the results of the fatigue test, a life-limit of the pitch trim actuator attachment had been established.

These new limitations were incorporated into the airworthiness limitations section of the Pilatus PC–12 Airplane Maintenance Manual (AMM) 12–A/AMP–04, chapter 4, revision 10, dated October 26, 2007.

The new limitations for the pitch trim actuator TBO were moved from Chapter 5: Time Limits/Maintenance Checks, to Chapter 4: Structural, Component and Miscellaneous—Airworthiness Limitations. Since both chapter 4 and chapter 5 are mandatory within the European and Swiss airworthiness systems, it was not necessary for the European Aviation Safety Agency (EASA) and the Federal Office of Civil Aviation (FOCA) to issue an AD to mandate these new limitations.

The only way the FAA can mandate the implementation of changes to the airworthiness limitations section of an FAA-approved maintenance program is by AD action.

On February 8, 2013, we issued AD 2012–26–16, Amendment 39–17311 (78 FR 11572, February 19, 2013). AD 2012–26–16 also requires incorporating new revisions into the Limitations section, Chapter 4, of the Pilatus PC–12 AMM. The limitations were revised to include an inspection of the wing main spar fastener holes at rib 6 for cracks.

After issuing AD 2012–26–16, Amendment 39–17311 (78 FR 11572, February 19, 2013), we determined that AD 2008–07–11 should have been superseded by AD 2012–26–16. Since AD 2008–07–11 requires incorporating an earlier version of the airworthiness limitations section of the AMM, it could cause confusion for the owners/operators and could result in missed inspections and replacements required by AD 2012–26–16. Therefore, the need to continue to address this subject as an unsafe condition through AD 2008–07–11 is no longer necessary.

FAA's Determination

We are issuing this AD because we evaluated all available information and determined the existing AD is no longer necessary.

AD Requirements

This AD would rescind AD 2008–07–11, Amendment 39–15452 (73 FR 18433, April 4, 2008).

FAA's Determination of the Effective Date

An unsafe condition exists or could develop that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the unsafe condition addressed in AD 2008–07–11, Amendment 39–15452 (73 FR 18433, April 4, 2008) is currently addressed in AD 2012–26–16, Amendment 39–17311

(78 FR 11572, February 19, 2013). Allowing the airworthiness limitation section (ALS) required by AD 2008–07–11 to remain valid could cause confusion as to what is required and this could introduce an unsafe condition if certain areas were not inspected. Therefore, 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 fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0070; Directorate Identifier 2007–CE–098–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

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 AD 2008–07–11, Amendment 39–15452 (73 FR 18433, April 4, 2008), and adding the following new AD:

2008–07–11 R1 PILATUS AIRCRAFT LTD.: Amendment 39–17398; Docket No. FAA–2008–0070; Directorate Identifier 2007–CE–098–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 15, 2013.

(b) Affected ADs

This AD rescinds AD 2008–07–11, Amendment 39–15452 (73 FR 18433, April 4, 2008).

(c) Applicability

This AD applies to PILATUS AIRCRAFT LTD. Models PC–12, PC–12/45, and PC–12/47 airplanes, all serial numbers, certificated in any category.

(d) Subject

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

Issued in Kansas City, Missouri on March 11, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–06169 Filed 3–22–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 522, 524, and 529

[Docket No. FDA–2013–N–0002]

New Animal Drug Approvals; Change of Sponsor; Change of Sponsor's Drug Labeler Code; Gonadorelin Acetate; Isoflurane; Praziquantel; Propofol; Sevoflurane; Triamcinolone Acetonide

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during January 2013. FDA is also informing the public of the availability of summaries the basis of approval and of environmental review documents, where applicable. The animal drug regulations are also being amended to reflect changes of sponsorship for an NADA and ANADA, and a change of a sponsor's drug labeler code.

DATES: This rule is effective March 25, 2013.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, email: *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations to reflect approval actions for NADAs and ANADAs during January 2013, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630

Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents through the Center for Veterinary Medicine's (CVM's) FOIA Electronic Reading Room at *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm.*

In addition, FDA is amending the animal drug regulations to reflect changes of sponsorship for an NADA and ANADA, and a change of a sponsor's drug labeler code.

RMS Laboratories, Inc., 1903 East First St., Vidalia, GA 30474, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 141–210 for GENESIS (triamcinolone acetonide) Topical Spray to Virbac AH, Inc., 3200 Meacham Blvd., Ft. Worth, TX 76137. Following this change of sponsorship, RMS Laboratories, Inc., will no longer be the sponsor of an approved application.

Teva Animal Health, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503, has informed FDA that it has transferred ownership of, and all rights and interest in, ANADA 200–176 for PRAZITECH (praziquantel) Injectable Solution to Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.

Abbott Laboratories, North Chicago, IL 60064, has informed FDA of a change in drug labeler code. Accordingly, the Agency is amending the regulations in 21 CFR 510.600 to reflect this change of drug labeler code and to remove entries for RMS Laboratories, Inc., and in 21 CFR parts 522 and 529 to make conforming changes to Abbott Laboratories' product listings.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING JANUARY 2013

NADA/ ANADA	Sponsor	New animal drug product name	Action	21 CFR Section	FOIA Summary	NEPA Review
200–541	Parnell Technologies Pty. Ltd., unit 4, 476 Gardeners Rd., Alexandria, New South Wales 2015, Australia.	GONABREED (gonadorelin acetate) Injectable Solution.	1. Original approval as a generic copy of NADA 098–379; and. 2. Supplemental approval for use with cloprostenol sodium to synchronize estrous cycles to allow for fixed time artificial insemination in lactating dairy cows and beef cows.[1]	522.1073	yes	1. CE[2] 2. EA/FONSI[3]

[1] Supplemental approval under section 512(b)(1) of the Federal Food, Drug, and Cosmetic Act.
[2] The Agency has determined under 21 CFR 25.33 that this action is categorically excluded (CE) from the requirement to submit an environmental assessment (EA) or an environmental impact statement (EIS) because it is of a type that does not individually or cumulatively have a significant effect on the human environment.
[3] Based on its review of an EA submitted by the sponsor, the Agency has concluded that this action will not have a significant impact on the human environment and that an EIS is not required. A finding of no significant impact (FONSI) has been prepared.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 522, 524, and 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 522, 524, and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Amend § 510.600 as follows:

■ a. In the table in paragraph (c)(1), revise the entry for ''Abbott Laboratories'' and remove the entry for ''RMS Laboratories, Inc.''; and

■ b. In the table in paragraph (c)(2), remove the entries for ''000074'' and ''067292'' and add an entry for ''000044'' in numerical order.

The addition and revision read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Abbott Laboratories, North Chicago, IL 60064	000044
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
000044	Abbott Laboratories, North Chicago, IL 60064.
* * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. Add § 522.1073 to read as follows:

§ 522.1073 Gonadorelin acetate.

(a) *Specifications.* Each milliliter of solution contains 100 micrograms (μg) of gonadorelin as gonadorelin acetate.

(b) *Sponsor.* See No. 068504 in § 510.600(c) of this chapter.

(c) *Conditions of use in cattle*—(1) *Indications for use and amounts.*

(i) For the treatment of ovarian follicular cysts in dairy cattle. Administer 100 µg gonadorelin by intramuscular or intravenous injection.

(ii) For use with cloprostenol sodium to synchronize estrous cycles to allow for fixed-time artificial insemination in lactating dairy cows and beef cows. Administer to each cow 100 µg gonadorelin by intramuscular injection, followed 6 to 8 days later by 500 µg cloprostenol by intramuscular injection, followed 30 to 72 hours later by 100 µg gonadorelin by intramuscular injection.

(2) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 5. In § 522.1077, revise the section heading to read as set forth below; and in paragraph (c)(3), remove the first sentence.

§ 522.1077 Gonadorelin hydrochloride.

* * * * *

§ 522.1078 [Redesignated as § 522.1075]

■ 6. Redesignate § 522.1078 as § 522.1075.

■ 7. In § 522.1870, revise the section heading and paragraphs (b), (c)(1)(iii), and (c)(2)(iii) to read as follows:

§ 522.1870 Praziquantel.

* * * * *

(b) *Sponsors.* See Nos. 000859 and 061623 in § 510.600(c) of this chapter.

(c) * * *

(1) * * *

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.2005 [Amended]

■ 8. In paragraph (b)(2) of § 522.2005, remove ''000074'' and in its place add ''000044''.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 9. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.2482 [Amended]

■ 10. In paragraph (b) of § 524.2482, remove ''067292'' and in its place add ''051311''.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 11. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.1186 [Amended]

■ 12. In paragraph (b) of § 529.1186, remove ''000074'' and in its place add ''000044''.

§ 529.2150 [Amended]

■ 13. In paragraph (b) of § 529.2150, remove ''000074'' and in its place add ''000044''.

Dated: March 20, 2013.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2013–06748 Filed 3–22–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9612]

RIN 1545–BA53

Noncompensatory Partnership Options; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9612) that were published in the **Federal Register** on Tuesday, February 5, 2013 (78 FR 7997) relating to the tax treatment of noncompensatory options and convertible instruments issued by a partnership. The final regulations generally provide that the exercise of a noncompensatory option does not cause the recognition of immediate income or loss by either the issuing partnership or the option holder. The final regulations also modify the regulations under section 704(b) regarding the maintenance of the partners' capital accounts and the determination of the partners' distributive shares of partnership items. The final regulations also contain a characterization rule providing that the holder of a noncompensatory option is treated as a partner under certain circumstances.

DATES: This correction is effective on March 25, 2013 and is applicable on or after February 5, 2013.

FOR FURTHER INFORMATION CONTACT: Benjamin Weaver, at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under sections 171, 704, 721, 761, 1272, 1273, and 1275 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9612) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.704–1 is amended by revising the table in paragraph (b)(5) *Example 35* (ii), and the first sentence of paragraph (b)(5) *Example 35* (iii) to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(5) * * *

Example 35. * * *

(ii) * * *

	K		L		M	
	Tax	Book	Tax	Book	Tax	Book
Initial capital account	$10,000	$10,000	$10,000	$10,000	0	0
Year 1 net income	1,000	1,000	1,000	1,000	0	0
Year 2 net income	1,000	1,000	1,000	1,000	0	0
Year 3 net income	1,000	1,000	1,000	1,000	0	0
Year 4 initial capital account	13,000	13,000	13,000	13,000	0	0

(iii) At the beginning of Year 4, at a time when property D, LLC's only asset, has a value of $33,000 and basis of $24,000 ($30,000 original basis less $6,000 depreciation in Years 1 through 3), and LLC has accumulated undistributed cash of $12,000 ($15,000 gross income less $3,000 of interest payments) in LLC, M converts the debt into a ⅓ interest in LLC. * * *

* * * * *

■ **Par. 3.** Section 1.761–3 is amended by:

■ a. Revising the second sentence of paragraph (b)(3);

■ b. Revising paragraph (f) introductory text;

■ c. Removing ''1'' from paragraph (f) Example heading; and

■ d. Revising the second sentence in the paragraph (f) Example.

The revisions read as follows:

§ 1.761–3 Certain option holders treated as partners.

* * * * *

(b) * * *

(3) * * * In addition, an option includes convertible debt (as defined in § 1.721–2(g)(2)) and convertible equity (as defined in § 1.721–2(g)(3)). * * *

* * * * *

(f) *Example.* The following example illustrates the provisions of this section. For purposes of the example, assume that PRS is a partnership for Federal tax purposes, none of the noncompensatory option holders or partners are related persons, and that general principles of law do not apply to treat the noncompensatory option as a partnership interest. The example reads as follows:

Example. * * * In exchange for a premium of $10x, PRS issues a noncompensatory option to A to acquire a 10 percent interest in PRS for $110x at any time during a 3-year period commencing on the date on which the option is issued. * * *

* * * * *

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2013–06703 Filed 3–22–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0005]

RIN 1625–AA00

Safety Zone; Desert Storm Shootout; Lake Havasu, Lake Havasu City, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Colorado River in Lake Havasu, Lake Havasu City, Arizona in support of the Desert Storm Shootout. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8 a.m. on April 26 through 6 p.m. April 28, 2013. It will be enforced from 8 a.m. through 6 p.m. on April 26 and 27, 2013. If the event is delayed by inclement weather, it will also be enforced from 8 a.m. to 6 p.m. on April 28, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0005]. To view documents mentioned in this preamble as being available in the docket, go to *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 rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Deborah Metzger, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *d11marineeventssandiego@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because notice procedures were impracticable. The Coast Guard did not receive notice of the pertinent details of this event in time to publish an NPRM and solicit public comment. This is a very large event with many spectators and participants expecting it to occur as scheduled.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard did not receive notice of the pertinent details of this event in time to allow for the delay between publication and the effective date of the rule. Delaying the effective date would be contrary to the public interest. Many spectators and participants expect this event to occur as scheduled. Immediate action is necessary to ensure the safety of the crew, spectators, and other vessels and users of the waterway.

B. Basis and Purpose

The legal basis for this temporary rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C 1221 *et seq.*).

Lake Racer LLC is sponsoring the Desert Storm Shootout, which is to be held on the Colorado River in Lake Havasu City, Arizona. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway. This event involves powerboats participating in an exhibition run on a closed course. The size of the boats varies from 19 to 55 feet. Approximately 250 boats will participate in this event. The sponsor will provide approximately 25 rescue, and safety patrol boats for the safety of this event.

C. Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 8 a.m. to 6 p.m. on April 26 and April 27, 2013. If the event is delayed by inclement weather, this safety zone will also be enforced on April 28, 2013, from 8 a.m. to 6 p.m. This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the event and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative. This temporary safety zone will be bound by the following coordinates:

34°26′51″ N, 114°20′41″ W
34°27′17″ N, 114°20′51″ W
34°27′18″ N, 114°22′34″ W
34°26′55″ N, 114°22′59″ W

The Coast Guard may be assisted by the other federal, state, or local agencies, including the Coast Guard Auxiliary. Vessel or persons violating this section may be subject to both criminal and civil penalties.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will be allowed to transit through the designated safety zone during enforcement periods after receiving authorization from the Captain of the Port or his designated representative.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Colorado River from 8 a.m. to 6 p.m. on April 26 and April 27, 2013. If the event is delayed by inclement weather, these regulations will also be enforced on April 28, 2013, from 8 a.m. to 6 p.m.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone impacts a very small portion of Lake Havasu. Commercial traffic will not be impeded. Recreational traffic can operate around the impacted area. Before the effective period, the Coast Guard will publish a Local Notice to Mariners (LNM).

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. 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).

5. Federalism

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 determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. 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.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (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 establishment of a safety zone. This rule is categorically excluded from further review under paragraph 34(g) 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 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–554 to read as follows:

§ 165.T11–554 Safety zone; Desert Storm Shootout; Lake Havasu, Lake Havasu City, AZ

(a) *Location.* This safety zone encompasses the waters of Lake Havasu on the Colorado River and is bound by the following coordinates:

34°26′51″ N, 114°20′41″ W

34°27′17″ N, 114°20′51″ W

34°27′18″ N, 114°22′34″ W

34°26′55″ N, 114°22′59″ W

(b) *Enforcement period.* This rule will be enforced from 8 a.m. to 6 p.m. on April 26 and April 27, 2013. If the event is delayed by inclement weather, this rule will also be enforced on April 28, 2013, from 8 a.m. to 6 p.m. If the need for the safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and his designative representative will announce that the safety zone is no longer in effect.

(c) *Definitions.* The following definition applies to this section: *Designated representative* means any commissioned, warrant, and petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, or federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 21.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, a flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: March 18, 2013.

S.M. Mahoney,

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

[FR Doc. 2013–06705 Filed 3–22–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2013–0003]

RIN 0651–AC83

Changes To Implement the Technical Corrections to the Leahy-Smith America Invents Act as to Inter Partes Review

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) is revising the rules of practice to implement the changes with respect to *inter partes* review that are set forth in section 1(d) of the Act to correct and improve certain provisions of the Leahy-Smith America Invents Act and title 35, United States Code (''AIA Technical Corrections Act''). Consistent with the statutory changes, this final rule eliminates the nine-month ''dead zone'' for filing an *inter partes* review petition challenging a first-to-invent patent or reissue patent. Under the final rule, a petitioner may file an *inter partes* review petition challenging a first-to-invent patent or reissue patent upon issuance, including during the first nine months after issuance.

DATES: *Effective Date:* March 25, 2013.

FOR FURTHER INFORMATION CONTACT: Michael P. Tierney, Sally G. Lane, Sally C. Medley, or Joni Y. Chang, Administrative Patent Judges, Patent Trial and Appeal Board, by telephone at (571) 272–9797.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: The purpose of the AIA Technical Corrections Act is to correct and improve certain provisions of the Leahy-Smith America Invents Act (''AIA''). With respect to *inter partes* review, section 1(d) of the AIA Technical Corrections Act and this final rule eliminate the nine-month ''dead zone'' for filing a petition challenging a first-to-invent patent or reissue patent. Under this final rule, first-to-invent patents and reissue patents are eligible for *inter partes* review upon issuance. In other words, a petitioner may file an *inter partes* review petition challenging a first-to-invent patent or reissue patent upon issuance, including during the first nine months after issuance. That will improve patent quality and limit unnecessary and counterproductive litigation. The preamble of this rule sets forth in detail statutory and regulatory

changes as to *inter partes* review proceedings conducted by the Patent Trial and Appeal Board (Board).

Summary of Major Provisions: Consistent with section 1(d) of the AIA Technical Corrections Act, this final rule permits a petitioner to file an *inter partes* review petition challenging a first-to-invent patent or reissue patent, upon issuance, eliminating the nine-month ''dead zone'' as to first-to-invent patents and reissue patents.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

Background: On September 16, 2011, the AIA was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011). The AIA created four new Board proceedings: *inter partes* review, post-grant review, covered business method patent review, and derivation proceedings. *See* sections 3, 6 and 18 of the AIA. To implement the AIA provisions, the Office promulgated final rules to set forth the standards and procedures for conducting the new Board proceedings. *See Rules of Practice for Trials before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions,* 77 FR 48612 (Aug. 14, 2012) (final rule); *Changes to Implement Inter Partes Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents,* 77 FR 48680 (Aug. 14, 2012) (final rule); *Transitional Program for Covered Business Method Patents—Definition of Technological Invention,* 77 FR 48734 (Aug. 14, 2012) (final rule); and *Changes to Implement Derivation Proceedings,* 77 FR 56068 (Sept. 11, 2012) (final rule).

Under the AIA, as originally enacted, a petition for *inter partes* review could only be filed after the later of either: (1) The date that is nine months after the issuance of an original patent or reissued patent; or (2) if a post-grant review is instituted, the date of the termination of such post-grant review. Notably, *inter partes* reviews were available only for patents that had been issued for at least nine months. Additionally, post-grant reviews were not available for first-to-invent patents and reissued patents where the original patent was no longer eligible for post-grant review (35 U.S.C. 325(f)). *See* sections 6(d) and (f)(2) of the AIA. That created two nine-month ''dead zones,'' namely first-to-invent patents and reissued patents could not be challenged in an *inter partes* proceeding before the Office during the first nine months after issuance.

The AIA Technical Corrections Act was enacted on January 14, 2013. *See* Pub. L. 112–274 (2013). Section 1(d) of the AIA Technical Corrections Act amended 35 U.S.C. 311(c) to eliminate the ''dead zones'' by allowing first-to-invent patents and reissued patents to be challenged in *inter partes* reviews during the first nine months after issuance. Pursuant to section 1(d) of the AIA Technical Corrections Act, the Office is revising the rules of practice to permit petitioners to file *inter partes* review petitions challenging first-to-invent patents and reissue patents upon issuance.

Discussion of Section 1(d) of the AIA Technical Corrections Act

Section 1(d) of the AIA Technical Corrections Act entitled ''DEAD ZONES'' provides that 35 U.S.C. 311(c) shall not apply to a petition to institute an *inter partes* review of a patent that is not a patent described in section 3(n)(1) of the Leahy-Smith America Invents Act (35 U.S.C. 100 note). The statutory provision also amends 35 U.S.C. 311(c) by striking ''or issuance of a reissue of a patent.'' This final rule implements these statutory changes.

The changes for *inter partes* review took effect on January 14, 2013, the date of enactment of the AIA Technical Corrections Act, and apply to proceedings commenced on or after January 14, 2013. *See* section 1(n) of the AIA Technical Corrections Act.

Discussion of Specific Rules

Section 42.102: Consistent with section 1(d) of the AIA Technical Corrections Act, § 42.102(a) is amended in this final rule to add: (1) ''The following dates, where applicable;'' (2) ''If the patent is a patent described in section 3(n)(1) of the Leahy-Smith America Invents Act;'' and (3) ''If the patent is a patent that is not described in section 3(n)(1) of the Leahy-Smith American Invents Act, the date of the grant of the patent.'' Section 42.102(a) is also amended to delete ''or of the issuance of the reissue patent.'' Under revised § 42.102(a), a petition for *inter partes* review of a patent must be filed after the later of the following dates, where applicable: (1) If the patent is a patent described in section 3(n)(1) of the Leahy-Smith America Invents Act, the date that is nine months after the date of the grant of the patent; (2) if the patent is a patent that is not described in section 3(n)(1) of the Leahy-Smith American Invents Act, the date of the grant of the patent; or (3) if a post-grant review is instituted as set forth in subpart C of this part, the date of the termination of such post-grant review.

Rulemaking Considerations

A. Administrative Procedure Act: This final rule revises the rules of practice concerning the procedure for requesting an inter partes review. Consistent with section 1(d) of the AIA Technical Corrections Act, the changes set forth in this final rule eliminate the nine-month ''dead zone'' as to first-to-invent patents and reissue patents. Under the final rule, a petitioner may file an inter partes review petition challenging a first-to-invent patent or reissue patent upon issuance. Therefore, the changes adopted in this rule do not change the substantive criteria of patentability.

Moreover, good cause exists to make these procedural changes without prior notice and opportunity for comment and to be effective immediately so as to avoid inconsistencies between regulations and the AIA Technical Corrections Act. This nine-month ''dead zone'' has already been eliminated by operation of the enactment of the AIA Technical Corrections Act, effective January 14, 2013. Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law) and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(b) (or any other law). *See also Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008).

B. Regulatory Flexibility Act: For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that the changes set forth in this rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

Consistent with section 1(d) of the AIA Technical Corrections Act, the changes set forth in this final rule eliminate the nine-month ''dead zone'' as to first-to-invent patents and reissue patents. Under the final rule, a petitioner may file an *inter partes* review petition challenging a first-to-invent patent or reissue patent upon issuance. These changes mirror provisions in the AIA Technical Corrections Act and do not add any additional requirements (including information collection requirements) or fees for petitioners or patent owners.

For the foregoing reasons, none of the changes in this rule will have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking

has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office.

The changes in this rule are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this rule do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501–1571.

M. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321–4370h.

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. The rules of practice pertaining to *inter partes* review have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) under OMB control number 0651–0069. Consistent with section 1(d) of the AIA Technical Corrections Act, the changes set forth in this final rule eliminate the nine-month ''dead zone'' as to first-to-invent patents and reissue patents. Under the final rule, a petitioner may file an *inter partes* review petition challenging a first-to-invent patent or reissue patent upon issuance. This final rule does not add any additional requirements (including information collection requirements) or fees for patent applicants or patentees. Moreover, this final rule eliminates the delay in filing *inter partes* review petitions, but would not impact the number of patents eligible for *inter partes* review. Therefore, the Office is not resubmitting information collection packages to OMB for its review and approval under the Paperwork Reduction Act of 1995 because the changes in this final rule do not affect the information collection requirements associated with the information collections previously approved under OMB control number 0651–0069 or any other information collections.

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 unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

Amendments to the Regulatory Text

For the reasons stated in the preamble, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office amends 37 CFR part 42 as follows:

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 1. The authority citation for 37 CFR part 42 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326, and the Leahy-Smith America Invents Act, Pub. L. 112–29, sections 6(c), 6(f), and 18, 125 Stat. 284, 304, 311, and 329 (2011), as amended by Pub. L. 112–274 (2013).

■ 2. Section 42.102 is amended by revising paragraph (a) to read as follows:

§ 42.102 Time for filing.

(a) A petition for *inter partes* review of a patent must be filed after the later of the following dates, where applicable:

(1) If the patent is a patent described in section 3(n)(1) of the Leahy-Smith America Invents Act, the date that is nine months after the date of the grant of the patent;

(2) If the patent is a patent that is not described in section 3(n)(1) of the Leahy-Smith American Invents Act, the date of the grant of the patent; or

(3) If a post-grant review is instituted as set forth in subpart C of this part, the date of the termination of such post-grant review.

* * * * *

Dated: March 20, 2013.

Teresa Stanek Rea,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 2013–06768 Filed 3–22–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172, 173, 176, 178

[Docket No. PHMSA–2011–0142 (HM–219)]

RIN 2137–AE79

Hazardous Materials: Miscellaneous Petitions for Rulemaking (RRR)

Correction

In rule document 2013–04197, appearing on pages 14702–14716 in the issue of Thursday, March 7, 2013, make the following correction:

§ 172.101 [Corrected]

■ On page 14713, the Table titled ''§ 172.101 HAZARDOUS MATERIALS TABLE'' is corrected to read as set forth below:

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label Codes	Special Provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	* [REVISE]	*		*		*		*		*		*	
	* Powder, smokeless.	* 1.4C	UN0509	* II	1.4C	*	None	* 62	None	* Forbidden	Forbidden	* 06	.....
G	* Self-reactive liquid type B.	* 4.1	UN3221	* II	4.1	* 53	151	* 224	None	* Forbidden	Forbidden	* D	52, 53
G	* Self-reactive liquid type C.	* 4.1	UN3223	* II	4.1	*	151	* 224	None	* 5 L	10 L	* D	52, 53
G	* Self-reactive liquid type D.	* 4.1	UN3225	* II	4.1	*	151	* 224	None	* 5 L	10 L	* D	52, 53
G	* Self-reactive liquid type E.	* 4.1	UN3227	* II	4.1	*	151	* 224	None	* 10 L	25 L	* D	52, 53
G	* Self-reactive liquid type F.	* 4.1	UN3229	* II	4.1	*	151	* 224	None	* 10 L	25 L	* D	52, 53
G	* Self-reactive solid type B.	* 4.1	UN3222	* II	4.1	* 53	151	* 224	None	* Forbidden	Forbidden	* D	52, 53
G	* Self-reactive solid type C.	* 4.1	UN3224	* II	4.1	*	151	* 224	None	* 5 kg	10 kg	* D	52, 53
G	* Self-reactive solid type D.	* 4.1	UN3226	* II	4.1	*	151	* 224	None	* 5 kg	10 kg	* D	52, 53

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label Codes	Special Provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*		*		*		*	
G	Self-reactive solid type E.	4.1	UN3226	II	4.1		151	224	None	5 kg	10 kg	D	52, 53
	*		*		*	*		*		*		*	
G	Self-reactive solid type F.	4.1	UN3230	II	4.1		151	224	None	10 kg	25 kg	D	52, 53
	*		*		*	*		*		*		*	
	[REMOVE]												
	*		*		*	*		*		*		*	
	Gasohol *gasoline mixed with ethyl alcohol, with not more than 10% alcohol.*	3	NA1203	II	3	144, 177	150	202	242	5 L	60 L	E	
	*		*		*	*		*		*		*	

[FR Doc. C1–2013–04197 Filed 3–22–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 384

[Docket No. FMCSA–2007–27659]

RIN 2126–AB59

Commercial Driver's License Testing and Commercial Learner's Permit Standards

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends its May 9, 2011, final rule in response to certain petitions for reconsideration. The 2011 final rule amended the commercial driver's license (CDL) knowledge and skills testing standards and established new minimum Federal standards for States to issue the commercial learner's permit (CLP). The Agency received 34 petitions for reconsideration that covered a wide range of issues. FMCSA granted or denied each of these petitions, by orders available in the docket referenced at the beginning of this notice. Today's final rule addresses the petitions that were granted.

DATES: This final rule is effective on April 24, 2013.

FOR FURTHER INFORMATION CONTACT: Robert Redmond, Office of Safety Programs, Commercial Driver's License Division, telephone (202) 366–5014 or email *robert.redmond@dot.gov.* Office hours are from 8:00 a.m. to 4:30 p.m. If you have questions on the docket, call Ms. Barbara Hairston, Docket Operations, telephone 202–366–3024.

SUPPLEMENTARY INFORMATION:

I. Legal Basis

This rule is based on the same authority as FMCSA's final rule on ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' published on May 9, 2011 [76 FR 26854]; for a complete discussion of that authority, see the Legal Basis section of the 2011 rule [76 FR at 26855].

Briefly, this rule implements or revises certain provisions of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended [49 U.S.C. chapter 313]; the Motor Carrier Safety Act of 1984 (MCSA), as amended [49 U.S.C. 31136]; and the Motor Carrier Act of 1935 (MCA) [49 U.S.C. 31502(b)]. The rule also carries out certain provisions of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, 112 Stat. 107, June 9, 1998]; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005]; and the Security and Accountability For Every Port Act of 2006 (SAFE Port Act) [Pub. L. 109–347, 120 Stat. 1884, Oct. 13, 2006].

The CMVSA established the commercial driver's license (CDL) and drug and alcohol testing programs. The MCSA directed FMCSA to ensure that its safety regulations meet certain general objectives. That statute also underlies most of FMCSA's safety regulations including, as supplemental authority, those related to the CDL program. The MCSA inaugurated Federal regulation of motor carrier safety and provided broad authority over for-hire and private motor carriers.

Sec. 4019 of TEA–21 required the Department of Transportation (DOT) to determine whether the CDL testing system accurately measures the knowledge and skills needed to operate a commercial motor vehicle (CMV) and, if not, to correct the system. Sec. 4122 of SAFETEA–LU required FMCSA to prescribe regulations on minimum uniform standards for the issuance of commercial learner's permits (CLPs), as it had already done for CDLs. Sec. 703 of the SAFE Port Act required the Secretary of Transportation to carry out recommendations issued by the DOT's Office of Inspector General (OIG) in 2002, 2004, and 2006 concerning performance-oriented requirements for English language proficiency, verification of the legal status of commercial drivers, and fraud-reduction in the CDL program. The 2011 final rule implemented all of these mandates.

The Agency received 34 petitions seeking reconsideration of various elements of the 2011 rule. FMCSA is adopting this rule without additional notice and opportunity for comment because the issues raised by petitioners have already been subjected to the full range of notice and comment, starting with the notice of proposed rulemaking (NPRM) in 2008 [73 FR 19282, April 9, 2008]. Many parties submitted comments on the NPRM; the Agency responded at length in the preamble to the 2011 rule. A number of the petitions for reconsideration repeated the comments and suggestions submitted to the Agency in response to the 2008 NPRM. However, some of the petitions included additional analyses and data such that FMCSA is persuaded to adopt changes to the 2011 final rule. These changes include non-substantive changes to clarify the Agency's intent and to resolve confusion over the rule's requirements. The changes also include amendments to lessen the regulatory burden the 2011 rule placed on both public and private entities where such changes fall within the scope of or are the logical outgrowth of the 2008 NPRM. One final change expands the amount of time States have to come into compliance with the new requirements because of changes made in today's final rule. Under these circumstances, a further round of notice and comment would serve no purpose and is not required by the Administrative Procedure Act.

II. Background

On April 9, 2008, FMCSA issued a notice of proposed rulemaking (NPRM) to amend the CDL knowledge and skills testing standards and establish new minimum Federal standards for States to issue the commercial learner's permit (CLP) (73 FR 19282). On May 9, 2011, FMCSA issued a final rule implementing these changes. In response to the final rule, FMCSA received 34 petitions for reconsideration. FMCSA has decided to publish a new final rule amending several provisions of the May 9, 2011 rule.

For additional background information, please see the Background section of the May 9, 2011 final rule (76 FR 26854).

III. Discussion of the Petitions for Reconsideration

After careful review, FMCSA decided to grant some petitions, in whole or in part, and deny others. As a result, FMCSA is publishing a new final rule modifying seven provisions of the May 2011 final rule. The grant and denial orders are available in this rulemaking docket, referenced at the beginning of this notice.

In this final rule, FMCSA modifies the following provisions, which granted, in whole or in part, are in response to the petitions for reconsideration:

1. State Procedures—49 CFR 383.73(a)(2)(vi), (b)(6), (c)(7), (d)(7), and (e)(5)
2. Requiring Two Employees To Verify Documents—49 CFR 383.73(m)
3. Prohibiting Training Schools From Administering Skills Tests—49 CFR 383.75(a)(7)
4. Bonding Requirements—49 CFR 383.75(a)(8)(v)
5. Prohibiting States From Using a Photo on the CLP—49 CFR 383.153(b)(1) and 384.227
6. Requiring Annual Background Checks for Skills Test Examiners—49 CFR 384.228(h)
7. Although FMCSA initially denied petitions seeking to delay the May 2011 final rule's compliance date, FMCSA reverses that decision and modifies the following additional provision: Substantial compliance—general requirements—49 CFR 384.301(f). FMCSA denied the remaining issues submitted for reconsideration.

State Procedures—49 CFR 383.73(a)(2)(vi), (b)(6), (c)(7), (d)(7), and (e)(5)

Sections 383.73(b)(6) and 383.73(c)(7) require States to check for legal presence and domicile, but provide for an exception stating that this only needs to be done once after July 8, 2011, provided that a notation is made on an individual's record. Some States requested that the Agency extend this exception to renewals and upgrades.

Sections 383.73(b)(6) and 383.73(c)(7) state that the exception to checking for legal presence and domicile applies to initial issuances, transfers, and renewals; however, the exception does not appear in § 383.73(d)(7), which governs renewals. In addition, § 383.73 does not specify whether the exception applies to upgrades, which are governed by § 383.73(e)(5). The Agency acknowledges that the exception was not written as the Agency intended. As a result, FMCSA amends §§ 383.73(b)(6), 383.73(c)(7), 383.73(d)(7), and 383.73(e)(5) to clarify that the exception covers all transactions, whether initial issuance, transfer, renewal, or upgrade, made after July 8, 2011.

Requiring Two Employees To Verify Documents—49 CFR 383.73(m)

Section 383.73(m) requires that two State Driver's Licensing Agency (SDLA) staff members verify CLP and CDL applicants' test scores, completed application forms, and documents to prove legal presence. For SDLA offices with only one staff member on duty, the documents must be verified by a supervisor before issuance. Alternatively, when the supervisor is not available, copies must be made of the documents used to prove legal presence and domicile so that a supervisor can verify them along with the completed application within one business day of issuance of a CLP or CDL. A number of States interpreted § 383.73(m) to require two employees to verify each document. They requested reconsideration, stating that the perceived requirement would burden existing resources and increase SDLA workload at a time when State agencies are experiencing reduced funding and resources. In addition, one State asked for clarification of how this provision affects central-issuance States.

FMCSA did not intend to create a redundant process under which two SDLA employees must verify each document a particular driver-applicant presents. Rather, FMCSA intended that more than one SDLA employee participate substantively in the licensing process. For example, one person might review the legal presence and other documentation the driver presents, while a second SDLA employee would conduct the required driving record check for driving violations, take the applicant's photograph, and issue the license. Moreover, the two employees need not work in the same location. For a central-issuance State, having one employee accept documents at the point of service and another verify some or all of them at the central-issuance facility would satisfy the requirements of this section. Similarly, for SDLA offices with only one staff member on duty, having a supervisor verify some or all of the documents within one business day of issuance of a CLP or CDL would satisfy the requirements of this section.

FMCSA amends § 383.73(m) to clarify that FMCSA requires two people to be substantively involved in the license issuance process, but does not require that two people verify each document.

Prohibiting Training Schools From Administering Skills Tests—49 CFR 383.75(a)(7)

Section 383.75(a)(7) prohibits CDL training schools from skills testing applicants they train, except if there is no skills testing alternative within 50 miles of the school and the same examiner does not train and test the same student applicant. The FMCSA

received petitions requesting reconsideration on the grounds that the provision was too restrictive and would create hardship for States, training schools, and motor carriers.

FMCSA acknowledges the hardship and unintended consequences that this provision could cause for States, schools, and aspiring CDL holders. FMCSA believes, however, that prohibiting individual examiners from administering skills tests to student applicants they have trained will further the Agency's and Congress's fraud-prevention objectives. Accordingly, FMCSA amends § 383.75(a)(7) to provide that CDL training schools may test their own student applicants only so long as an individual examiner does not administer the skills test to drivers he or she has trained.

Bonding Requirements—49 CFR 383.75(a)(8)(v)

Section 383.75(a)(8)(v) requires third party CDL testers to maintain bonds in an amount sufficient to pay for re-testing of drivers if required due to examiners engaging in fraudulent activities related to skills testing. A number of States requested that FMCSA reconsider this section to require bonding to be at the State's discretion or only apply to non-governmental entities.

As explained in the May 2011 rule, FMCSA is aware of a number of third party testers whose examiners engaged in fraudulent activities. As a result, a number of CDL holders were required to be re-tested, causing States and individuals to incur additional expenses. FMCSA implemented this provision to ensure that, in the event examiners are involved in fraudulent activities related to skills testing, States or individuals would have an opportunity to recoup expenses related to re-testing.

FMCSA acknowledges that a number of third-party testers are governmental entities performing testing services under inter-agency or other agreements. FMCSA believes there is a lower risk associated with locating and recouping expenses from governmental entities than from private third-party testers. Moreover, FMCSA is aware that many States normally do not require their own political subdivisions and agencies, either at the State or local level, to obtain bonds. Accordingly, FMCSA amends § 383.75(a)(8)(v) to eliminate the bond requirement for governmental entities.

Prohibiting States From Using a Photo on the CLP—49 CFR 383.153(b)(1) and 384.227

Section 383.153(b)(1) prohibits States from placing a digital color image or photograph or black and white laser engraved photograph or other visual representation of the driver on the CLP. FMCSA received petitions requesting reconsideration on the grounds that prohibiting the inclusion of a digital color image or photograph or black and white laser engraved photograph or other visual representation of the driver would cause economic harm to the States and/or make the CLP less secure.

FMCSA acknowledges that many, but not all, States have invested in technologies to develop secure CLPs that may or may not include a digital color image or photograph or black and white laser engraved photograph or other visual representation of the driver. Other provisions of this rule establish that the CLP is a two-part license comprised of the CLP document and the underlying CDL or non-CDL, and that the CLP document must be presented with the underlying CDL or non-CDL to be valid. Moreover, the CLP document will have the same driver's license number as the underlying CDL or non-CDL as well as language stating the two-part nature of the document, making this relationship clear. Accordingly, to accommodate the States' requests for flexibility in determining whether to include a photograph of the driver on the CLP, FMCSA amends § 383.153(b)(1) to make the reference to a digital color image or photograph or black and white laser engraved photograph of the driver permissive rather than prohibited. The Department of Homeland Security (DHS), however, objected to having a State issue two photograph IDs to a single person, stating it would violate the one driver/one license/one record principle. In fact, the CLP and the underlying license constitute a single document with (potentially) two photographs. FMCSA leaves the determination up to the State to include a photo on the CLP, for an extra security measure when processing a CDL request.

FMCSA also amends section 384.227 to reflect the permissive inclusion of a photograph on the CLP.

Requiring Annual Background Checks for Skills Test Examiners—49 CFR 384.228(h)

Section 384.228(h) requires States to conduct annual background checks on all test examiners. Some States petitioned for reconsideration of this requirement on the grounds that annual checks are burdensome.

On further consideration, FMCSA agrees that an annual background check of 2,200 skills test examiners is unnecessarily burdensome. Accordingly, FMCSA amends § 384.228(h) to require States to perform background checks on test examiners only at the time of hiring.

Substantial Compliance—General Requirements—49 CFR 384.301(f)

Section 384.301(f) establishes the date by which all States must come into substantial compliance with the provisions of the May 2011 and today's final rules. FMCSA received petitions for reconsideration requesting an extension of the May 2011 final rule, so that the States would have sufficient time to implement the requirements established in that rule. Although FMCSA believes that a three year implementation period is generally sufficient, the Agency recognizes that many States have been waiting for today's final rule to implement changes to those provisions for which the Agency has granted petitions for reconsideration. As a result, and in consideration of the changes made in today's final rule, the Agency has extended the compliance date for the changes established in the May 2011 and today's final rules by one year, to July 8, 2015.

Technical Corrections

In addition to addressing the issues raised in the petitions for reconsideration, FMCSA is also adopting the following technical corrections in this final rule:

- In § 383.73(f)(2)(ii), an incorrect cross reference to § 383.153(b) is changed to § 383.153(c).
- The preamble to the 2011 final rule made it clear that CLPs cannot be ''transferred'' from one State to another State. The regulatory language, however, did not adequately reflect that decision. The following sections are therefore revised to include a prohibition on transfer of CLPs: § 383.73, paragraphs (a)(2)(vi), (b)(6), (c)(7), (d)(7), (e)(5) and (m); § 383.153(h); § 384.105, definition of ''Issue and Issuance;'' § 384.227, and § 384.405(b)(1).

IV. Regulatory Analyses

E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined this final rule is not a significant regulatory action within the meaning of Executive Order

(E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979). The estimated cost of the final rule is not expected to exceed the $100 million annual threshold for economic significance. The Agency expects the final rule to generate cost savings in the form of reduced annual paperwork burden hours compared to the estimates in the 2011 final rule. The provisions revised in this rule are intended to increase fraud reduction, improve safety, and facilitate entrance into the commercial motor vehicle (CMV) driver occupations. Many of the provisions of this rule impose minimal cost on the States or industry members, either because many States are already complying with the requirements contained in the May 2011 final rule or because the requirements have minimal impact on the SDLA or industry operations or procedures.

FMCSA emphasizes that this rule does not change requirements concerning State procedures in CDL processing or impose additional burden hours or costs. The Agency amends several sections of the current regulations in 49 CFR §§ 383.73(a)(2)(vi), (b)(6), (c)(7), (d)(7), and (e)(5) to cover all transactions (initial issuance, transfer, renewal, or upgrades). Likewise, bonding requirements for third party testers as written in 49 CFR § 383.75(a)(8)(v) remain intact, the only difference being that a third party tester that is a government entity is no longer required to maintain a bond.

FMCSA recognized the potential loss of revenue from reduced enrollment when it prohibited training schools from administering skills tests to their own student applicants. This is even more evident in smaller training programs in rural areas. These training schools may be 100 miles or more from the nearest tester unaffiliated with the school, who would be available to test the school's drivers. Amending this section will allow CDL training schools to test their students, yet prohibit a skills test examiner who is also a skills instructor from administering a skills test to an applicant who received skills training from that examiner. The Agency does not know the number or location of training programs that conduct skills testing and therefore cannot produce a reasonable estimate of the total cost associated with this exclusion on skills testing.

The SAFE Port Act mandated that the Agency adopt certain regulations implementing the DOT Office of Inspector General's (OIG) anti-fraud recommendations. Applying these mandates required the Agency to adopt specific measures to prevent fraud in the CDL system. One of the measures required by the Agency is that CLP documentation be presented simultaneously with the underlying CDL or non-CDL to be valid.

The States will have the discretion to place a digital photograph on the CLP (see § 383.153(b)(1) and § 384.227); most SDLAs currently keep a digital photograph on file for all drivers they license.

FMCSA amends § 383.73(m) to clarify that FMCSA requires two people to be involved in the license issuance process, but does not require that two people verify each document. Two SDLA staff members can participate independently in the licensing process for a CLP/CDL. For example, one person might review the legal presence and other documentation the driver presents, while a second SDLA employee would view the driving record for violations, take the applicant's photo, and issue the license. Also, the two employees are not required to work in the same duty location. For a central-issuance State, having one employee accept documents at the point of service and another verify some or all of them at the central-issuance facility would satisfy the requirements of this section. The amendment to § 383.73(m) splits driver processing, but it will not double either the time or effort needed to issue a CDL. The $2.97 million [1] per year cost for processing time will remain unchanged despite the amendment because the extra time burden has been factored into the May 2011 Final Rule.

Lastly, FMCSA agreed that annual background checks for skills test examiners as described in 49 CFR 384.228(h) were unnecessary. FMCSA amends this section to require background checks on test examiners only at the time of hiring. This will produce a total cost saving of $214,400 [2] per year, after conducting an initial background check. This represents the only quantifiable cost savings of the rule, but other provisions will result in unquantifiable benefits.

Regulatory Flexibility Act

FMCSA is not required to prepare a new Regulatory Flexibility Analysis (RFA) because the RFA performed for the May 2011, final rule pursuant to 5 U.S.C. 604(a) remains fully applicable to this final rule. The 2011 RFA provided estimates of the active motor carrier population and the number of entities subject to the rule at that time. While these numbers may have changed slightly in the intervening months, they do not affect the conclusions of the 2011 RFA in any way.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Robert Redmond, listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's 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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $141.3 million (which is the value of $100 million in 2010 after adjusting for inflation) or more in any 1 year.

[1] This amount is calculated by multiplying ($24.45/hr.) of a licensing clerk by the (⅙ of an hour) of processing time, by the number of new CDLs processed annually (530,000). Final Rule Regulatory Evaluation: Commercial Driver's License Testing and Commercial Learner's Permit Standards. p. 12 March 2011. The processing cost includes $26,500 CLP CDLIS record change and $779,100 tamper proofing of CLPs.

[2] OMB Control No. 2126–0011 titled, ''Commercial Driver Licensing and Test Standards.'' May 1, 2012, pp. 22–23. This amount is calculated by multiplying 2,144 skills test examiners × $100/per FBI background check = $214,400.

E.O. 13132 (Federalism)

FMCSA has analyzed this rule in accordance with the principles and criteria of Executive Order 13132, ''Federalism,'' and has determined that it does not have federalism implications.

The Federalism Order applies to ''policies that have federalism implications,'' which it defines as regulations and other actions 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.'' Sec. 1(a). The key concept here is ''substantial direct effects on the States.'' Sec. 3(b) of the Federalism Order provides that ''[n]ational action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.''

The rule amends the commercial driver's license (CDL) program authorized by the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. chapter 313). States have been issuing CDLs in accordance with Federal standards for well over a decade. The CDL program does not have preemptive effect. It is voluntary; States may withdraw at any time, although doing so will result in the loss of certain Federal-aid highway funds pursuant to 49 U.S.C. 31314. Because this rule makes only a few small incremental changes to the requirements already imposed on participating States, FMCSA has determined that it does not have substantial direct effects on the States, on the relationship between the Federal and State governments, or on the distribution of power and responsibilities among the various levels of government.

E.O. 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not significant within the meaning of E.O. 12866 and the estimated cost of the rule is not expected to exceed the economic annual threshold. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not believe that this regulatory action could create an environmental or safety risk that could disproportionately affect children.

E.O. 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

Privacy Impact Assessment

FMCSA conducted a privacy impact assessment of this rule as required by section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the rule on the privacy of information in an identifiable form and related matters. FMCSA has determined this rule would have no privacy impacts.

E.O. 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This rulemaking affects the currently-approved information collection covered by the OMB Control No. 2126–0011 titled, ''Commercial Driver Licensing and Test Standards.'' The current OMB approved information collection has an annual burden of 1,628,582 hours and will expire on August 31, 2014.

This action updates and provides more uniform procedures for ensuring that the applicant has the appropriate knowledge and skills to operate a commercial motor vehicle. It also adjusts some of the procedures used in the testing and licensing process due to recommendations accepted in the petitions for reconsideration of rulemaking. FMCSA believes this rule will result in an estimated decrease in the annual burden hours compared to the 2011 final rule.

The following table summarizes the burden hours for current and future information collection activities for the first 4 years of implementation of the new requirements and for the 5th and subsequent years of maintaining the CDL program with the new requirements. Relying on past experiences, the Agency believes there will be no increase in annual burden hours for the first 4 years because the States have 4 years to pass legislation and make the necessary system changes before implementing the new CDL testing and CLP standards, and posting the data generated by these new requirements to the CDLIS driver record. The increase of 262,705 total annual burden hours for the 5th and subsequent years (1,891,287–1,628,582) is due to the implementation of the new requirements for CDL testing and the issuance of CLPs. This represents a decrease in the total annual burden estimate for the 5th and subsequent years of 120,733 hours (2,012,020–1,891,287) from the previously anticipated total (see ''Commercial Driver's License Testing and Commercial Learner's Permit Standards,'' 76 FR 26854, May 9, 2011) due to program changes in this rule, including the elimination of the second person to verify all documents and the elimination of the annual background checks for test examiners. A detailed analysis of the annual burden hour changes for each information collection activity can be found in the Supporting Statement of OMB Control Number 2126–0011.

CURRENT AND FUTURE INFORMATION COLLECTION BURDENS

Current and future information collection activities for States and CDL drivers	Currently approved annual burden hours	Future annual burden hours for first 4 years (program change)	Future annual burden hours for 5th and subsequent years (program change)
State recording medical examiner's certificate information	205,333	205,333	205,333
State recording of the self- certification of commercial motor vehicle operation on the CDLIS record	3,984	3,984	3,984
State verification of medical certification status of all interstate CDL drivers	2,593	2,593	2,593
Driver to notify employer of convictions/disqualifications	640,000	640,000	640,000
Driver to complete previous employment paperwork	403,200	403,200	403,200
States to complete compliance certification documents	1,632	1,632	1,632
State to complete compliance review documents	2,400	2,400	2,400
Data/document checks and CDLIS recordkeeping	212,224	212,224	461,632
Drivers to complete the CDL application	48,000	48,000	56,486
CDL tests recordkeeping	84,000	84,000	77,910
Knowledge and skills test examiner certification	25,216	25,216	7,578
Skills test examiner monitoring and auditing	0	0	28,539
Total Burden Hours	1,628,582	1,628,582	1,891,287

National Environmental Policy Act and Clean Air Act

The FMCSA analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under its environmental procedures Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action is categorically excluded (CE) from further environmental documentation under Paragraph 4.s of the Order. That CE relates to establishing regulations, and actions taken pursuant to these regulations, concerning requirements for drivers to have a single commercial motor vehicle driver's license. In addition, the Agency believes that this rule includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

The FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it involves rulemaking and policy development and issuance.

E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. The Agency has determined that it is not a ''significant energy action'' under that Executive Order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 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.

National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

Accordingly, FMCSA amends parts 383 and 384 of title 49 of the Code of Federal Regulations as set forth below:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 is revised to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 397; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1726; and 49 CFR 1.86.

■ 2. Amend § 383.73 by revising paragraphs (a)(2)(vi), (b)(6), (c)(7), (d)(7), (e)(5), (f)(2)(ii), and (m) to read as follows:

§ 383.73 State procedures.

(a) * * *

(2) * * *

(vi) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(a)(2)(v) and proof of State of domicile specified in § 383.71(a)(2)(vi). *Exception:* A State is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP

or Non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

(b) * * *

(6) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10). *Exception:* A State is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

* * * * *

(c) * * *

(7) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10). *Exception:* A State is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

* * * * *

(d) * * *

(7) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10). *Exception:* A State is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done; and

* * * * *

(e) * * *

(5) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10). *Exception:* A State is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and for initial issuance, renewal, upgrade, or transfer of a CDL or Non-domiciled CDL, for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

* * * * *

(f) * * *

(2) * * *

(ii) The State must add the word ''non-domiciled'' to the face of the CLP or CDL, in accordance with § 383.153(c); and

* * * * *

(m) *Document verification.* The State must require at least two persons within the driver licensing agency to participate substantively in the processing and verification of the documents involved in the licensing process for initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL. The documents being processed and verified must include, at a minimum, those provided by the applicant to prove legal presence and domicile, the information filled out on the application form, and knowledge and skills test scores. This section does not require two people to process or verify each document involved in the licensing process. *Exception:* For offices with only one staff member, at least some of the documents must be processed or verified by a supervisor before issuance or, when a supervisor is not available, copies must be made of some of the documents involved in the licensing process and a supervisor must verify them within one business day of issuance of the CLP, Non-domiciled CLP, CDL or Non-domiciled CDL.

* * * * *

■ 3. Amend § 383.75 by revising paragraphs (a)(7) and (a)(8)(v) to read as follows:

§ 383.75 Third party testing.

(a) * * *

(7) A skills test examiner who is also a skills instructor either as a part of a school, training program or otherwise is prohibited from administering a skills test to an applicant who received skills training by that skills test examiner; and

(8) * * *

(v) Require the third party tester to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. *Exception:* A third party tester that is a government entity is not required to maintain a bond.

* * * * *

■ 4. Amend § 383.153 by revising paragraphs (b)(1) and (h) to read as follows:

§ 383.153 Information on the CLP and CDL documents and applications.

* * * * *

(b) *Commercial Learner's Permit.* (1) A CLP may, but is not required to, contain a digital color image or photograph or black and white laser engraved photograph.

* * * * *

(h) On or after July 8, 2014 current CLP and CDL holders who do not have the standardized endorsement and restriction codes and applicants for a CLP or CDL are to be issued CLPs with the standardized codes upon initial issuance, renewal or upgrade and CDLs with the standardized codes upon initial issuance, renewal, upgrade or transfer.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 5. The authority citation for part 384 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31301, *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; and 49 CFR 1.87.

■ 6. Amend § 384.105 by revising the definition ''Issue and Issuance'' to read as follows:

§ 384.105 Definitions

* * * * *

Issue and issuance means the initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and the initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL, as described in § 383.73 of this subchapter.

* * * * *

■ 7. Amend § 384.227 to revise paragraph (c) and add paragraph (d) read as follows:

§ 384.227 Record of digital image or photograph.

* * * * *

(c) Check the digital color image or photograph or black and white laser engraved photograph on record whenever the CLP applicant or holder appears in person to issue, renew or upgrade a CLP and when a duplicate CLP is issued.

(d) If no digital color image or photograph or black and white laser engraved photograph exists on record, the State must check the photograph or image on the base-license presented with the CLP or CDL application.

■ 8. Amend § 384.228 by revising paragraph (h) to read as follows:

§ 384.228 Examiner training and record checks.

* * * * *

(h)(1) Complete nationwide criminal background check of all State and third party test examiners at the time of hiring.

(2) Complete nationwide criminal background check of any State and third party current test examiner who has not had a nationwide criminal background check.

* * * * *

■ 9. Amend § 384.301 by revising paragraph (f) to read as follows:

§ 384.301 Substantial compliance—general requirements.

* * * * *

(f) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of July 8, 2011 and April 24, 2013 as soon as practical but, unless otherwise specifically provided in this part, not later than July 8, 2015.

* * * * *

■ 10. Amend § 384.405 by revising paragraph (b)(1) to read as follows:

§ 384.405 Decertification of State CDL program.

* * * * *

(b) * * *

(1) The State computer system does not check the Commercial Driver's License Information System (CDLIS) and/or national Driver Registry problem Driver Pointer System (PDPS) as required by § 383.73 of this subchapter when issuing, renewing or upgrading a CLP or issuing, renewing, upgrading or transferring a CDL.

* * * * *

Issued under the authority of delegation in 49 CFR 1.73: March 18, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–06760 Filed 3–22–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130213132–3132–01]

RIN 0648–BD00

Recreational Closure Authority Specific to Federal Waters Off Individual States for the Recreational Red Snapper Component of the Gulf of Mexico Reef Fish Fishery

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

ACTION: Emergency rule.

SUMMARY: NMFS issues this emergency rule to authorize NMFS to set the closure date of the recreational red snapper fishing season in the exclusive economic zone (EEZ) off individual Gulf of Mexico (Gulf) states. At its February 2013 meeting, the Gulf of Mexico Fishery Management Council (Council) requested an emergency rule to give NMFS this authority. The intent of this rulemaking is to constrain recreational red snapper harvest within the quota while ensuring a fair and equitable distribution of fishing privileges among participants in all the Gulf states.

DATES: This emergency rule is effective March 25, 2013, through September 23, 2013.

ADDRESSES: Electronic copies of the documents in support of this emergency rule, which include an environmental assessment, may be obtained from the Southeast Regional Office Web site at *http://sero.nfms.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, Southeast Regional Office, NMFS, telephone: 727–824–5305, email: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

Background

The recreational fishing season for Gulf red snapper begins June 1 each year with a two-fish bag limit. The length of the season is determined by the amount of the quota, the average weight of fish landed, and the estimated catch rates over time. NMFS is responsible for ensuring the entire recreational Gulf harvest does not exceed the recreational quota, including harvest in state waters. Therefore, if states establish a longer season or a larger bag limit for state waters than the Federal regulations allow in the EEZ, the Federal season must be reduced to account for the additional expected harvest in state waters.

Since 2008, the red snapper recreational season has been shortened each year (except in 2010) in an attempt to constrain harvest to the quota; however, the quota continues to be exceeded because of increasing fish size and catch rates (with the exception of 2010). The 2013 recreational fishing season has been estimated to be 27 days, assuming all states have consistent regulations except Texas (Texas has a year-round season and a four-fish bag limit) and the recreational quota will be increased to 4.145 million lb (1.880 million kg), round weight, through separate rule making (currently under development). However, both Louisiana and Florida have recently indicated they will implement inconsistent recreational red snapper regulations for their state waters, as Texas has done in the past. Louisiana has proposed an 88-day season with a 3-fish bag limit and Florida has proposed a 44-day season with a 2-fish bag limit. Based on the regulations Louisiana and Florida have proposed and estimated catch rates in those state waters, without this emergency rule, the Federal recreational red snapper fishing season in the entire Gulf EEZ would need to be shortened to 22 days, to account for the additional harvest expected from state waters. Therefore, without this emergency rule, the closure date for all Federal waters would be June 22, 2013. Even further reductions would be needed if other Gulf states (Mississippi and Alabama) also implement inconsistent regulations in their state waters.

Through this emergency rule, if a Gulf state sets red snapper regulations that are inconsistent with Federal regulations, NMFS would calculate the recreational red snapper fishing season

in the EEZ off that state using an adjusted catch rate, to account for a longer season or larger bag limit in state waters. In some cases, this could allow the EEZ off states with consistent regulations to have a longer season than if the season for the entire Gulf was adjusted. However, if increased catch from a state with inconsistent regulations is too high, even allowing no season in the EEZ adjacent to that state may not be enough to prevent a reduction of the season in the rest of the Gulf. NMFS must continue to adjust the Federal season off other states so that harvest remains within the quota.

Based on the expected regulations for Texas, Louisiana, and Florida, and assuming the recreational quota is increased to 4.145 million lb (1.880 million kg), the closure dates for each state have been tentatively projected as follows: Texas, June 12, 2013; Louisiana, June 9, 2013; Mississippi, June 28, 2013; Alabama, June 28, 2013; and Florida, June 21, 2013. These dates were projected using estimated catch rates in state waters, assuming the proposed inconsistent regulations would take effect. The method for calculating these dates can be found in SERO–LAPP–2013–02 at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/red_snapper/documents/pdfs/2013_red_snapper_emergency_regs.pdf.* When NMFS has calculated final season dates for the EEZ off each Gulf state, NMFS will officially announce these closure dates in the **Federal Register**.

The Council has discussed other potential actions to address the current situation, including possible preemption of inconsistent state management pursuant to section 306(b) of the Magnuson-Stevens Act (16 U.S.C. 1856(b)). The Council is continuing to discuss this and other potential long-term actions to address the recreational harvest of red snapper.

Need for This Emergency Rule

The ''Policy Guidelines for the Use of Emergency Rules'' (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists.

(1) Results from recent, unforeseen events or recently discovered circumstances; and

(2) Presents serious conservation or management problems in the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process.

NMFS is promulgating these emergency regulations under the authority of the Magnuson-Stevens Act, consistent with these three criteria. For the first criteria for an emergency rule, the recently discovered circumstance is that states other than Texas intend to implement recreational red snapper regulations in state waters that are less restrictive than Federal regulations.

States setting less restrictive regulations presents serious conservation problems because, in the absence of new rules, those actions are likely to lead to red snapper harvest overages in violation of the Magnuson-Steven Act. This emergency rule will help NMFS to constrain recreational red snapper harvest within the quota, as required by section 407(d) of the Magnuson-Stevens Act (16 U.S.C. 1883(d)), which requires the councils to establish annual catch limits for each stock and accountability measures to ensure these catch limits are not exceeded. The in-season closures are the accountability measures for the recreational red snapper sector. This rule will also help ensure a fair and equitable distribution of fishing privileges among participants in all the Gulf states, in accordance with National Standard 4 of the Magnuson-Stevens Act.

The immediate benefit of implementing the emergency rule outweighs the value of advance notice and public comment. The recreational red snapper fishing season opens June 1, 2013. This emergency rule provides the authority to establish state by state closure dates, and announces preliminary closure dates for each area of the EEZ and therefore, gives the public preliminary notice of how long the fishing season will likely be off their respective state. Delaying announcement of this emergency rule to accommodate prior public notice and comment would result in significantly less advance notice of the EEZ closure dates off each Gulf state. This would decrease the time available for for-hire businesses to adjust their business plans and private anglers to plan their fishing seasons, which would be very disruptive to businesses dependent on the red snapper component of the Gulf reef fish fishery for revenue.

Measures Contained in This Emergency Rule

This emergency rule will allow NMFS to set different closure dates for the recreational red snapper fishing season in the EEZ adjacent to each Gulf state. The boundaries between the EEZ off each state were specifically identified by the Council during deliberations.

All other Federal regulations for recreational red snapper remain in effect. In particular, § 622.4(a)(1)(iv) states if Federal regulations for Gulf reef fish are more restrictive than state regulations, a person aboard a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. Relative to this emergency rule, that means if the EEZ off a particular state is closed to recreational red snapper harvest, then vessels with a Federal charter vessel/headboat permit may not harvest red snapper in those state waters.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary for the conservation and management of the recreational red snapper component of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

The AA finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B).

Providing prior notice and opportunity for public comment on this action would be contrary to the public interest. Many of those affected by these closures, particularly charter vessel and headboat operations, book trips for clients months in advance and many times these anglers are visiting from out-of-state and are also in need of as much advance notice as the for-hire operations they are hiring. Private anglers plan their fishing season sometimes months in advance as well, especially if they are visiting from out-of-state. They may be planning on renting a boat for their own use, thus advance notice is needed to know when to rent the boat. Therefore, both for-hire businesses and private anglers need as much time as possible to adjust their business plans and plan their fishing seasons to account for these closures. Delaying announcement of this emergency rule to accommodate prior public notice and comment would result in significantly less advance notice of the EEZ closure dates off each Gulf state. This would decrease the time available for affected participants to adjust their business plans and plan

their fishing seasons, and be very disruptive.

For the reasons listed above, the AA also finds good cause to waive the 30-day delay in effectiveness of the action under 5 U.S.C. 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 19, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.2, the definitions for ''Off Louisiana'', ''Off Mississippi'' and ''Off Alabama'' are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Off Alabama means the waters in the Gulf west of a rhumb line at 87°31.1′ W. long., which is a line directly south from the Alabama/Florida boundary, to a rhumb line at 88°23.1′ W. long., which is a line directly south from the Mississippi/Alabama boundary.

Off Louisiana means the waters in the Gulf west of a rhumb line at 89°10.0′ W. long., which is a line extending directly south from South Pass Light, to a rhumb line beginning at 29°32.1′ N. lat., 93°47.7′ W. long. and extending to 26°11.4′ N. lat., 92°53.0′ W. long., which line is an extension of the boundary between Louisiana and Texas.

* * * * *

Off Mississippi means the waters in the Gulf west of a rhumb line at 88°23.1′ W. long., which is a line directly south from the Mississippi/Alabama boundary, to a rhumb line at 89°10.0′ W. long., which is a line extending directly south from South Pass Light.

* * * * *

■ 3. In § 622.43, paragraph (a)(1)(ii) is suspended and paragraph (a)(1)(iv) is added to read as follows:

§ 622.43 Closures.

(a) * * *

(1) * * *

(iv) *Recreational quota for red snapper.* The bag and possession limit for red snapper in or from the Gulf EEZ is zero, off specified Gulf states and on specified dates as determined by NMFS and announced in the **Federal Register**. If one or more Gulf states establish less restrictive red snapper regulations than Federal regulations, NMFS may reduce the recreational red snapper season in the Gulf EEZ off those states (including a zero-day season) by the amount necessary to compensate for the additional harvest that would occur in state waters as a result of those inconsistent state regulations.

* * * * *

[FR Doc. 2013–06772 Filed 3–22–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XC585

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal to 50 Feet (15.2 Meters) Length Overall Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels (CVs) greater than or equal to 50 feet (15.2 meters (m)) in length overall (LOA) using hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2013 Pacific cod total allowable catch apportioned to CVs greater than or equal to 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 21, 2013, through 1200 hours, A.l.t., September 1, 2013.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The A season allowance of the 2013 Pacific cod total allowable catch (TAC) apportioned to CVs greater than or equal to 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA is 2,032 metric tons (mt), as established by the final 2013 and 2014 harvest specifications for groundfish of the GOA (78 FR 13162, February 26, 2013).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2013 Pacific cod TAC apportioned to CVs greater than or equal to 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,932 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by CVs greater than or equal to 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and

opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod for CVs greater than or equal to 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 19, 2013.

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

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

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

Dated: March 20, 2013.

Kara Meckley,

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

[FR Doc. 2013–06764 Filed 3–20–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XC584

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 50 Feet (15.2 Meters) Length Overall Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels (CVs) less than 50 feet (15.2 meters (m)) in length overall (LOA) using hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2013 Pacific cod total allowable catch apportioned to CVs less than 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 21, 2013, through 1200 hours, A.l.t., September 1, 2013.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The A season allowance of the 2013 Pacific cod total allowable catch (TAC) apportioned to CVs less than 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA is 3,375 metric tons (mt), as established by the final 2013 and 2014 harvest specifications for groundfish of the GOA (78 FR 13162, February 26, 2013).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2013 Pacific cod TAC apportioned to CVs less than 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,340 mt, and is setting aside the remaining 35 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by CVs less than 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by CVs less than 50 feet (15.2 m) LOA using hook-and-line gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 19, 2013.

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

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

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

Dated: March 20, 2013.

Kara Meckley,

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

[FR Doc. 2013–06769 Filed 3–20–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XC582

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to fully use the 2013 pollock total allowable catch in the West Yakutat District of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 22, 2013,

through 2400 hours, A.l.t., December 31, 2013. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 8, 2013.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2013–0180 by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-180,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

• *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

• *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

NMFS closed directed fishing for pollock in the West Yakutat District of the GOA under § 679.20(d)(1)(iii) on March 3, 2013 (78 FR 14465, March 6, 2013).

As of March 18, 2013, NMFS has determined that approximately 1,450 metric tons of pollock total allowable catch (TAC) remain in the West Yakutat District of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2013 TAC of pollock in the West Yakutat District of the GOA, NMFS is terminating the previous closure and is reopening directed fishing for pollock in the West Yakutat District of the GOA, effective 1200 hours, A.l.t., March 22, 2013.

The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of pollock in the West Yakutat District of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the directed pollock fishery in the West Yakutat District of the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 18, 2013.

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

Without this inseason adjustment, NMFS could not allow the pollock fishery in the West Yakutat District of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until April 8, 2013.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: March 20, 2013.

Kara Meckley,

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

[FR Doc. 2013–06763 Filed 3–22–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XC581

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 96 hours. This action is necessary to fully use the 2013 total allowable catch of pollock in Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 22, 2013, through 1200 hrs, A.l.t., March 26, 2013. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 8, 2013.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2012–0180 by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0180,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

• *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

• *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

NMFS closed directed fishing for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on March 10, 2013 (78 FR 15643, March 12, 2012).

As of March 18, 2013, NMFS has determined that approximately 2,400 metric tons of pollock remain in the B season directed fishing allowance for pollock in Statistical Area 630 of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the B season allowance of the 2013 TAC of pollock in Statistical Area 630 of the GOA, NMFS is terminating the previous closure and is reopening directed fishing pollock in Statistical Area 630 of the GOA, effective 1200 hrs, A.l.t., March 22, 2013.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 96 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA, effective 1200 hrs, A.l.t., March 26, 2013. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of pollock in Statistical Area 630 of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the directed pollock fishery in Statistical Area 630 of the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 18, 2013.

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

Without this inseason adjustment, NMFS could not allow pollock fishery in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until April 8, 2013.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: March 20, 2013.

Kara Meckley,

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

[FR Doc. 2013–06765 Filed 3–22–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 57
Monday, March 25, 2013

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 JUSTICE

2 CFR Chapter XXVII

5 CFR Chapter XXVIII

8 CFR Chapter V

21 CFR Chapter II

27 CFR Chapter II

28 CFR Chapters I, III, V and VI

31 CFR Chapter IX

40 CFR Chapter IV

41 CFR Chapter 128

45 CFR Chapter V

48 CFR Chapter 28

[Docket No. OLP 152]

Periodic Review of Existing Regulations; Retrospective Review Under E.O. 13563

AGENCY: Department of Justice.

ACTION: Request for comment.

SUMMARY: On January 18, 2011, the President issued Executive Order 13563, ''Improving Regulation and Regulatory Review,'' which sets forth principles and requirements designed to promote public participation, improve integration and innovation, increase flexibility, ensure scientific integrity, and increase retrospective analysis of existing rules. On August 22, 2011, pursuant to that Executive Order, the Department of Justice published its Final Plan for Retrospective Review of Existing Regulations. Then, on May 10, 2012, the President issued Executive Order 13610, ''Identifying and Reducing Regulatory Burdens,'' which requires agencies to ''invite, on a regular basis * * * public suggestions about regulations in need of retrospective review and about appropriate modifications to such regulations. In accordance with Executive Orders 13563 and 13610, and the Department's Final Plan, the Department invites interested members of the public to submit suggestions as to which Department of Justice Regulations should be modified, streamlined, expanded or repealed.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before May 24, 2013. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: Comments may be mailed to OLP Regulatory Docket Clerk, Department of Justice, 950 Pennsylvania Avenue NW., Room 4250, Washington, DC 20530. To ensure proper handling, please reference OLP Docket No. OLP 152 on your correspondence. You may submit comments electronically or view an electronic version of this notice with request for comments at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, 950 Pennsylvania Avenue NW., Room 4252, Washington, DC 20530; Telephone (202) 514–8059.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments. Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT**.

Such information includes personal identifying information (such as your name, address, *etc.*) voluntarily submitted by the commenter. If you do not wish personally identifying information to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted. Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online.

Overview

On January 18, 2011, President Barack Obama issued Executive Order 13563, ''Improving Regulation and Regulatory Review,'' to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. To that end, the Executive Order requires agencies to develop a plan ''under which the agency will periodically review its existing significant regulations.''

Pursuant to Executive Order 13563, the Department of Justice developed a preliminary plan for retrospective analysis in keeping with its resources, expertise, and regulatory priorities. The Department twice sought comment from regulated entities and the general public, and those previous public comments can be found online at *http://www.regulations.gov/#!docketDetail;dct=PS;rpp=25;po=0;D=DOJ-OAG-2011-0003* for Docket No. OLP 150, and at *http://www.regulations.gov/#!docketDetail;dct=PS%252BSR;rpp=25;po=0;D=DOJ-LA-2011-0016* for Docket No. DOJ–LA–2011–0016.

After careful review, the Department incorporated many of those suggestions in its preliminary and final retrospective review plans. The Department also considered and incorporated best practices from its extensive efforts already underway to review existing regulations, respond to petitions for rulemaking, modernize technologies, and engage the public. The Department published its Final Plan for Retrospective Review of Existing Regulations on August 22, 2011, which is available online at *http://www.justice.gov/open/doj-rr-final-plan.pdf.*

The Final Plan identified several regulations for an initial round of retrospective review, and indicated that the Department expected to identify additional regulations for retrospective review in the future. As part of its execution of this plan, the Department is again seeking public comment on which regulations should be prioritized for retrospective review.

Background

Executive Order 13563 calls for ''periodic review of existing significant regulations,'' with close reference to empirical evidence. Additionally,

Executive Order 13610 calls for regular participation of members of the public, including those directly and indirectly affected by regulations, as well as State, local, and tribal governments. Although the Department of Justice is primarily a law-enforcement agency, not a regulatory agency, some of its components have regulatory programs related to their responsibilities, and the Department is committed to the ongoing process of reviewing its existing regulations. Consistent with that commitment, the Department continues to assess its existing significant regulations in accordance with the requirements of the Executive Order through the implementation of its plan for retrospective review. As part of its Final Plan for Retrospective Review of Existing Regulations, the Department established a Department-wide working group to collaborate with rulemaking components to select rules for review, seek public comment, and recommend revisions as necessary.

Since publishing the final plan, the working group met and discussed the principles underlying Executive Order 13563 and the Departmental process for retrospective review. The working group heard presentations from the relevant components whose regulations had been selected for initial review in the Final Plan. After collaboration between the relevant components and the working group, the Department prepared rulemaking documents seeking public comment on particular rules identified for initial review.

Pursuant to the Final Plan, the Department continues to identify rules internally and seek suggestions from Department components regarding which rules should be prioritized in the retrospective review process. In addition, the Final Plan also calls for periodic solicitation of suggestions from the public. As part of this ongoing process, the Department is presently seeking public input as to which rules should be prioritized under the criteria identified in the Final Plan and reproduced below.

Request for Comments

The Department of Justice recognizes that valuable information as to the consequences of a rule, including its costs and benefits, comes from practical real-world experience (both on the part of the public and on the part of the Department) after the rule has been implemented. Consistent with the Department's commitment to public participation, the Department is seeking views from the public that identify specific rules or obligations that should be prioritized for review, including candidates for modification, streamlining, expansion or repeal. Comments should specifically describe how existing rules may be outmoded, ineffective, insufficient, or excessively burdensome.

The Department's internal working group, formed pursuant to its Final Plan for Retrospective Review of Existing Regulations, will evaluate suggestions of candidate rules. The Department has identified criteria that will guide the working group in prioritizing rules for retrospective review. The most important candidate rules for review are those that:

- Could result in greater net benefits to the public if modified; or
- Could be replaced by other, less burdensome regulatory alternatives without compromising regulatory objectives.

In identifying rules that may meet those criteria, the Department will focus on rules that:

- Have been overtaken by new circumstances or technologies; or
- Require outdated reporting practices, such as paper-based processes without an electronic alternative; or
- Have been in place for long periods of time without revision so that updating may be appropriate; or
- Overlap, duplicate, or conflict with other federal rules or with State and local rules; or
- Have been the subject of petitions for rulemaking suggesting ways to enhance net benefits or improve the efficacy of regulatory programs.

Finally, in selecting rules for review, the Department will prioritize rules that meet these criteria and:

- Impose high costs or burdens on the public; or
- Affect a large number of entities or have disproportionate distributional impacts on certain entities, such as small businesses.

In addition to the above criteria, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, the Department will consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

The Department of Justice is soliciting concrete reasons why particular rules should be prioritized according to the above criteria in its ongoing retrospective review of existing rules. Comments should focus on regulations that have demonstrated deficiencies and clearly reflect the criteria set forth above. Comments that reiterate previously submitted arguments relating to recently issued rules will be less useful. Furthermore, commenters are encouraged to focus on regulatory changes that will achieve a broad public impact, rather than an individual personal or corporate benefit. Comments should reference a specific regulation by the Code of Federal Regulations (CFR) cite, and provide specific information on what needs fixing and why. Lastly, the Department stresses that this review is for published final rules; the public should not use this process to submit comments on proposed rules.

The most useful comments will identify which specific regulations need to be changed, strengthened or clarified, or revoked. It will be most helpful to explain why the particular suggested change or revocation is necessary or desired, and to provide specific ways to improve the regulation, particularly any specific language modifications.

As part of its ongoing retrospective analysis, the Department's working group will again review the comments and suggestions previously submitted in response to the initial Requests for Comment in 2011, and it will consider whether to prioritize any regulations that had previously been the subject of public comments in the next round of retrospective analysis under Executive Order 13563. Thus, it is unnecessary for commenters to resubmit or reiterate previously-filed comments. Comments addressing more recent developments or offering a different or more thorough analysis relating to regulations that had previously been the subject of public comment for retrospective review would be welcome.

The Department notes that this Request for Comment is issued solely for information and program-planning purposes. The Department will give careful consideration to the responses, and may use them as appropriate during the retrospective review, but we do not anticipate providing a point-by-point response to each comment submitted. While responses to this Request for Comment do not bind the Department to any further actions related to the response, all submissions will be made publicly available on *http://www.regulations.gov.*

Dated: March 19, 2013.

Elana Tyrangiel,

Acting Assistant Attorney General, Office of Legal Policy.

[FR Doc. 2013–06729 Filed 3–22–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2012–BT–STD–0029]

RIN 1904–AC82

Energy Efficiency Program for Commercial and Industrial Equipment: Public Meeting and Availability of the Framework Document for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: On February 22, 2013, the U.S. Department of Energy (DOE) published a document in the **Federal Register** initiating a rulemaking to evaluate energy conservation standards for packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs). In that document, DOE announced the availability of a framework document. This document announces an extension of the public comment period for submitting comments on the framework document or any other aspect of the rulemaking for PTACs and PTHPs. The comment period is extended to April 25, 2013.

DATES: DOE will accept comments, data, and information regarding the framework document received no later than April 25, 2013.

ADDRESSES: Any comments submitted must identify the framework document for packaged terminal air conditioners and packaged terminal heat pumps and provide docket number EERE–2012–BT–STD–0029 and/or RIN number 1904–AC82. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: pkgTerminalAC-HP2012STD0029@ee.doe.gov.* Include EERE–2012–BT–STD–0029 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for PTACs and PTHPs, Docket No. EERE–2012–BT–STD–0029 and/or RIN 1904–AC82, 1000 Independence Avenue SW., Washington, DC 20585– 0121. Phone: (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Phone: (202) 586–2945. Please submit one signed paper original.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Majette, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7935. Email: *PTACs@ee.doe.gov.*

In the Office of the General Counsel, contact Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6111. Email: *Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On February 22, 2013, DOE published a document in the **Federal Register** announcing a public meeting and the availability of a framework document as a first step in the rulemaking process to consider amending energy conservation standards for packaged terminal air conditioners and packaged terminal heat pumps. 78 FR 12252. The document provided for the submission of written comments by March 25, 2013, and oral comments were also accepted at a public meeting held on March 18, 2013. Stakeholders have requested an extension of the comment period to allow additional time for the preparation of their comments and to respond to issues raised at the public meeting.

DOE has determined that a brief extension of the public comment period is appropriate to allow stakeholders additional time to submit comments to DOE for consideration. DOE will consider any comments received by April 25, 2013 to be timely submitted.

Issued in Washington, DC, on March 19, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–06747 Filed 3–22–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2013–N–0234]

Effective Date of Requirement for Premarket Approval for Automated External Defibrillator System.

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed order.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the following class III preamendments devices: Automated external defibrillators systems (AEDs), which includes the AED device and its accessories (i.e., pad electrodes, batteries, and adapters). The Agency is also summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring this device to meet the statute's premarket approval requirements and the benefits to the public from the use of the device. In addition, FDA is announcing the opportunity for interested persons to request that the Agency change the classification of the automated external defibrillator based on new information. This action implements certain statutory requirements.

DATES: Submit either electronic or written comments by June 24, 2013. FDA intends that, if a final order based on this proposed order is issued, anyone who wishes to continue to market the device will need to submit a PMA within 90 days of the publication date of the final order. Please see section III for more information about submitting a PMA. Please also see section IX for the proposed effective date of any final order that may publish based on this proposal.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2013–N–0234, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

• *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2013–N–0234 for this order. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), 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:

Melissa Burns, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1646, Silver Spring, MD 20993–0002, 301–796–5616, *Melissa.Burns@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act of 2004 (Pub. L. 108–214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), and the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144) establish a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513(d) of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices), are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and 21 CFR part 807.

A preamendments device that has been classified into class III and devices found substantially equivalent by means of premarket notification (510(k)) procedures to such a preamendments device or to a device within that type may be marketed without submission of a PMA until FDA issues a final order under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval. Section 515(b)(1) of the FD&C Act directs FDA to issue an order requiring premarket approval for a preamendments class III device.

Although, under the FD&C Act, the manufacturer of a class III preamendments device may respond to the call for PMAs by filing a PMA or a notice of completion of a PDP, in practice, the option of filing a notice of completion of a PDP has not been used. For simplicity, although corresponding requirements for PDPs remain available to manufacturers in response to a final order under section 515(b) of the FD&C Act, this document will refer only to the requirement for the filing and receiving approval of a PMA.

On July 9, 2012, FDASIA was enacted. Section 608(b) of FDASIA (126 Stat. 1056) amended section 515(b) of the FD&C Act, changing the process for requiring premarket approval for a preamendments class III device from rulemaking to an administrative order.

Section 515(b)(1) of the FD&C Act sets forth the process for issuing a final order. Specifically, prior to the issuance of a final order requiring premarket approval for a preamendments class III device, the following must occur: publication of a proposed order in the **Federal Register**, a meeting of a device classification panel described in section 513(b) of the FD&C Act, and consideration of comments from all affected stakeholders, including patients, payors, and providers. FDA has held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to AEDs, and therefore, has met this requirement under section 515(b)(1) of the FD&C Act. As explained further in section IV, a meeting of a device classification panel described in section 513(b) of the FD&C Act took place in 2011 (Ref. 1) to discuss whether AEDs should be reclassified or remain in class III. The panel recommended that because AEDs are lifesaving devices it is appropriate to regulate them in class III. Furthermore, the problems with medical device reporting (MDR) systems and recalls indicate that having these devices regulated under 510(k) has not been successful. FDA also considered information it received, pertaining to AEDs, in response to the Agency's order (74 FR 16214, April 9, 2009) requiring manufacturers to submit information about a number of preamendments devices under section 515(i) of the FD&C Act. Moreover, FDA is not aware of new information that would provide a basis for a different recommendation or findings. Information received since the 2011 panel meeting and discussed further in section IV.B only further highlights the need to review these devices under a PMA and reinforces the recommendation and findings of the panel.

Section 515(b)(2) of the FD&C Act provides that a proposed order to require premarket approval shall contain: (1) The proposed order; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed order and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(3) of the FD&C Act provides that FDA shall, after the close of the comment period on the proposed

order, consideration of any comments received, and a meeting of a device classification panel described in section 513(b) of the FD&C Act, issue a final order to require premarket approval or publish a document terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the FD&C Act, unless the reason for termination is that the device is a banned device under section 516 of the FD&C Act (21 U.S.C. 360f).

A preamendments class III device may be commercially distributed without a PMA until 90 days after FDA issues a final order (a final rule issued under section 515(b) of the FD&C Act prior to the enactment of FDASIA is considered to be a final order for purposes of section 501(f) of the FD&C Act (21 U.S.C. 351(f))) requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the FD&C Act, whichever is later (section 501(f) of the FD&C Act). For AEDs, the preamendments class III devices that are the subject of this proposal, the later of these two time periods is the 90-day period. Since these devices were classified in 2003, the 30-month period has expired (see 68 FR 61342, October 28, 2003). If a PMA is not filed for such devices within 90 days after the issuance of a final order, the devices would be deemed adulterated under section 501(f) of the FD&C Act.

However, because of the widespread distribution of AEDs, we are proposing to consider exercising enforcement discretion for devices lawfully distributed before the requirement to have a PMA goes into effect as long as manufacturers of such devices timely notify FDA of their intent to file a PMA within 90 days from the issuance of the final order. FDA intends to consider exercising enforcement discretion for 15 months from the date the final order is issued.

In accordance with section 515(b) of the FD&C Act, interested persons are being offered the opportunity to request reclassification of AEDs and AED accessories, the preamendments class III devices that are the subject of this proposed order.

II. Regulatory History of the Device

Low energy DC-defibrillators are preamendment class II devices under 21 CFR 870.5300. Arrhythmia detectors and alarms are also preamendment devices that were once classified as class III devices under 21 CFR 870.1025. AEDs were found substantially equivalent to the preamendment class III arrhythmia detector and alarm devices in response to a 510(k) in 1985, because the submission was a combination of the class II low energy defibrillator and the class III arrhythmia detector and alarm. FDA found AEDs equivalent to the higher class of the combined devices, and thus, AEDs were classified as class III devices. On October 28, 2003 (68 FR 61342), FDA published a final rule reclassifying arrhythmia detector and alarm devices into class II (special controls). In that rule, FDA also established a separate classification regulation for AEDs under § 870.5310 (21 CFR 870.5310) that retained these devices in class III and stated that it would address, at a later date, the possible reclassification of AEDs.

III. Dates New Requirements Apply

In accordance with section 515(b) of the FD&C Act, FDA is proposing to require that a PMA be filed with the Agency for AED devices and accessories within 90 days after issuance of any final order based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found to be substantially equivalent to such a device, will be permitted to continue marketing such class III devices during FDA's review of the PMA provided that a PMA is timely filed. FDA intends to review any PMA for the device within 180 days. FDA cautions that under section 515(d)(1)(B)(i) of the FD&C Act, the Agency may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the Agency finds that ''the continued availability of the device is necessary for the public health.''

Under the FD&C Act, AEDs and AED accessories currently in distribution for which no PMA is submitted within 90 days of a final order calling for PMAs, or for which a denial is rendered on its filed PMA, will be considered adulterated under section 501(f)(1) of the FD&C Act. As discussed in the paragraphs that follow, FDA believes that most AED manufacturers already have the clinical data they need to support a PMA. Nonetheless, because FDA recognizes that continued access to AEDs is important to the public health, FDA is proposing to consider exercising enforcement discretion for manufacturers of currently marketed AEDs, AED devices or accessories who cannot timely submit a PMA, but instead notify FDA of their intent to file a PMA within 90 days from the issuance of the final order based on this proposal. The notification of the intent to file a PMA submission should include a list of all model numbers for which a manufacturer plans to seek marketing approval through its PMA. FDA proposes further to consider exercising enforcement discretion for 15 months from the issuance of a final order requiring the filing of a PMA for such devices. Manufacturers should be able to collect additional scientific evidence, to the extent any is necessary, and prepare PMA submissions, in this time. No new devices will be allowed into interstate commerce without approval of a PMA. We request comment on whether it is appropriate to exercise enforcement discretion and, if so, whether the 15-month period proposed is reasonable.

FDA intends that under § 812.2(d) (21 CFR 812.2(d)), the publication in the **Federal Register** of any final order based on this proposal will include a statement that, as of the date on which the filing of a PMA is required, the exemptions from the requirements of the investigational device exemption (IDE) regulations for preamendments class III devices in § 812.2(c)(1) and (c)(2) will cease to apply to any device that is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA is not filed by that date, or for which PMA approval has been denied or withdrawn.

However, FDA intends to exercise enforcement discretion concerning IDE and PMA requirements for manufacturers of AEDs, AED devices and/or accessories who notify FDA of their intent to file a PMA for such devices within 90 days and file a PMA within 15 months after the date of issuance of any final order requiring premarket approval for these devices. FDA is aware that many existing AED manufacturers have already obtained significant clinical data on their devices. In most cases, FDA believes the clinical data that has been submitted for AEDs in 510(k) applications will suffice as valid scientific evidence necessary to support a PMA. However, a small number of manufacturers may need to conduct an additional investigation to support approval. In those circumstances, FDA will consider the least burdensome means of gathering information, and will consider whether reliance on post-market controls can reduce the extent of data that would otherwise be required to show effectiveness. FDA recommends that manufacturers file a pre-submission to discuss data requirements that may be necessary to support their individual PMA submission.

IV. Benefits of AED Systems

A. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the FD&C Act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that this device have an approved PMA, and (2) the benefits to the public from the use of the device.

These findings are based on the reports and recommendations of the advisory committee for the classification of this device along with information submitted in response to the 515(i) order (74 FR 16214) and any additional information that FDA has obtained. Additional information regarding the risks as well as classification associated with this device type can be found in the following proposed and final orders and notices published in the **Federal Register** on the following dates: October 28, 2003 (68 FR 61342) and March 8, 2004 (69 FR 10615).

B. Device Subject to This Proposal—Automated External Defibrillator (§ 870.5310)

1. Identification

An AED system consists of an AED device and its accessories, i.e., battery, pad electrode and, if applicable, an adapter. An AED system analyzes the patient's electrocardiogram, interprets the cardiac rhythm, and automatically delivers an electrical shock (fully automated AED), or advises the user to deliver the shock (semi-automated or shock advisory AED) to treat ventricular fibrillation or pulseless ventricular tachycardia.

2. Summary of Data

In response to the 515(i) order (74 FR 16214), manufacturers provided information to FDA that they believe supports reclassification of AED devices from class III to class II. One manufacturer submitted a reclassification petition to the Docket (FDA–2009–M–0101). The primary basis presented by the manufacturer for reclassification was that special controls could provide reasonable assurance of the safety and effectiveness of AEDs. Examples of applicable special controls that were cited include testing to industry standards, guidelines, device labeling, guidance documents, and postmarket surveillance.

A meeting of the Circulatory System Devices Panel (''Panel'') was held on January 25, 2011 (Ref. 1). The Panel discussed and made recommendations regarding the regulatory classification of AEDs to either reconfirm to class III (subject to premarket approval application) or reclassify to class II (subject to special controls), as directed by section 515(i) of the FD&C Act (21 U.S.C. 360e(i)).

FDA's presentation to the Panel included a summary of the adverse event reports and recalls received by FDA on AED systems. This summary indicated that the total number of MDRs submitted annually more than doubled from 2005 to 2010. A review of reports submitted from 2011 and 2012 shows that the number of submitted adverse events reports has continued to increase. Annual reporting (which occurs with PMA devices) would improve overall surveillance by providing denominator data for device distribution as well as current trend information on issues being followed by the manufacturer.

FDA's analysis of recalls associated with AEDs systems indicated that the majority of recalls were associated with a manufacturer's handling of purchasing controls (21 CFR 820.50) or design controls (21 CFR 820.30). In addition, FDA's analysis also noted the significant number of violative AED manufacturing facility inspections. FDA concluded from the recall and inspection information that the following requirements that are a part of the PMA process should be placed on AED manufacturers: (1) Premarket review of manufacturing information, including procedures and processes to ensure compliance with the requirements of 21 CFR part 820 (Quality System (QS) Regulation), (2) pre-approval inspections to determine manufacturers' compliance with the QS regulation to assure that the manufacturer's quality system is in place and appears to be adequate prior to manufacture and distribution of devices, (3) review of changes in manufacturing facilities to ensure facility, procedures, and systems are adequate, and (4) additional postmarket assurances available for PMA devices including the postmarket review of significant manufacturing changes to ensure that the changes are adequately evaluated.

Accordingly, FDA stated that the devices should remain in class III, and require PMAs, because of the level of regulatory control necessary to provide reasonable assurance of safety and effectiveness, including: premarket review of manufacturing information; pre-approval inspections; review of changes in manufacturing facility location where finished devices are manufactured; postmarket review of significant manufacturing changes to ensure that the changes are adequately evaluated and tested prior to implementation; and annual reporting of device performance. The majority of the Panel members recommended the reconfirmation of AEDs as class III devices. The Panel expressed significant concerns that the number of adverse events reported in MDRs and the increase in recalls indicate that regulating these devices under premarket notification has not been successful. Therefore, increased regulatory oversight would be prudent. The panel transcript and other meeting materials are available on FDA's Web site (Ref. 1).

The AED system is composed of the AED device and its accessories, i.e., pad electrodes, battery, and adapters. The reports of MDRs and recalls associated with AED devices have also included failures related to pad electrodes, batteries and adapters. Because failure of the pad electrode, battery or adapter results in the same risks to health as failure of the AED, these devices should be subject to the same regulatory oversight as the AEDs themselves to provide reasonable assurance of safety and effectiveness for the entire AED system. Thus, this proposed order confirms the classification of AED accessories as class III devices and requires that manufacturers of AED accessories submit PMAs for their devices.

3. Risks to Health

AEDs are devices that diagnose life-threatening abnormal heart rhythms, and treat them by delivering defibrillation shocks to the heart to restore its normal rhythm. Defibrillation shocks are used to treat patients with ventricular fibrillation (VF) or pulseless ventricular tachycardia (VT). AEDs should be able to be deployed quickly to provide defibrillation shocks to patients with VF or pulseless VT. These patients' survival depends upon a rapid sequence of rescue events that includes the successful delivery of a defibrillation shock from an AED. Rescuers have only minutes before these patients' heart rhythms degenerate beyond rescue capabilities.

a. Failure or delay to deliver a defibrillation shock. One risk to health associated with AEDs is that these devices can malfunction and fail to deliver a defibrillation shock to a patient in VF or pulseless VT. Such failure can result in permanent injury or prevent the rescue of the patient.

b. Inappropriate cardiac rhythm detection. AEDs should be able to recognize shockable and non-shockable algorithms. Shockable rhythms include VF and pulseless VT. Non-shockable

rhythms include normal sinus rhythm, supraventricular tachycardia, asystole, atrial fibrillation, sinus bradycardia, atrial flutter, and pulseless electrical activity. If the AED does not appropriately recognize a patient's cardiac rhythm it can fail to deliver or recommend a defibrillation shock to a shockable rhythm, or deliver or recommend a defibrillation shock to a non-shockable rhythm. Failure to deliver a defibrillation shock to a patient in VF or VT may result in death or permanent impairment of the patient. If the device delivers an inappropriate defibrillation shock to a patient in normal sinus rhythm it may induce ventricular fibrillation.

c. Inadvertent shocks to rescuers or bystanders. There is the potential risk of delivering an electrical shock during defibrillation of a patient to a rescuer or bystander if there is physical contact between them and the patient, or if there is a malfunction in the pad electrodes or device. There is concern that an inadvertent shock to a rescuer or bystander could induce cardiac arrhythmias or ventricular fibrillation.

4. Benefits of AED Systems

AEDs have a rhythm recognition detection system that delivers an electrical shock to treat VF or pulseless VT. The delivery of this therapy can be either fully automatic or semiautomatic. These devices are intended to be used on suspected victims of sudden cardiac arrest who are unresponsive and not breathing normally. AEDs are an important tool in providing a rapid response to victims of cardiac arrest and are successful at resuscitating victims of cardiac arrest by restoring normal cardiac rhythm.

V. PMA Requirements

A PMA for this device must include the information required by section 515(c)(1) of the FD&C Act. Such a PMA should also include a detailed discussion of the risks identified previously, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA must include valid scientific evidence to demonstrate reasonable assurance of the safety and effectiveness of the device for its intended use (§ 860.7(c)(2) (21 CFR 860.7(c)(2))). Valid scientific evidence is ''evidence from well-controlled investigations, partially controlled studies, studies and objective trials without matched controls, well-documented case histories conducted by qualified experts, and reports of significant human experience with a marketed device, from which it can fairly and responsibly be concluded by qualified experts that there is reasonable assurance of the safety and effectiveness of a device under its conditions of use. * * * Isolated case reports, random experience, reports lacking sufficient details to permit scientific evaluation, and unsubstantiated opinions are not regarded as valid scientific evidence to show safety or effectiveness.'' (§ 860.7(c)(2)).

For those manufacturers with multiple AED devices in their portfolio, a single PMA may be submitted for AEDs that are intended for lay users (public access AEDs) and another PMA for AEDs that incorporate additional functionality for medical professionals such as manual defibrillation, monitoring features, etc. (hospital use and emergency responder AEDs). Manufacturers of pad electrodes, batteries, and adapters may submit PMAs for the accessories they manufacture, which must be supported by valid scientific evidence that these accessory devices operate as intended when paired with a given AED(s) and are appropriately labeled to ensure use only with supported AEDs.

AED manufacturers will need to submit performance testing, including clinical trials of their device, in order to support PMA approval. FDA anticipates that many existing AED manufacturers have already obtained significant clinical data that may be sufficient to support PMA approval. Existing published clinical literature may also be leveraged as part of the PMA submission. Manufacturers of batteries, adapters, and pad electrode manufacturers may need to submit non-clinical performance testing with confirmatory animal studies in order to support independent PMA approval. Battery and adapter manufacturers may need to submit only bench testing. However, pad electrode manufacturers may need to submit animal studies in addition to bench testing if concerns arise during the premarket review process on defibrillation success or post-shock dysfunction. We request comment on the performance and clinical data requirements for AEDs and related devices.

VI. Opportunity To Request a Change in Classification

Before requiring the filing of a PMA, FDA is required by section 515(b)(2)(D) of the FD&C Act to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to the classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the FD&C Act.

A request for a change in the classification of this device is to be in the form of a reclassification petition containing the information required by 21 CFR 860.123, including new information relevant to the classification of the device.

VII. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) 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.

VIII. Paperwork Reduction Act of 1995

This proposed order refers to collections of information 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 collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231. The collections of information in part 807, subpart E, have been approved under OMB control number 0910–0120. The effect of this order, if finalized, is to shift certain devices from the 510(k) premarket notification process to the PMA process. To account for this change, FDA intends to transfer some of the burden from OMB control number 0910–0120, which is the control number for the 510(k) premarket notification process, to OMB control number 0910–0231, which is the control number for the PMA process. As noted previously, FDA estimates that it will receive 12 new PMAs for AED devices and 21.5 for AED accessories as a result of this order, if finalized. Based on FDA's most recent estimates, this will result in 22,378 hours burden increase to OMB control number 0910–0231. FDA also estimates that there will be 3.4 fewer 510(k) submissions as a result of this order, if finalized. Based on FDA's most recent estimates, this will result in a 269 hours burden decrease to OMB control number 0910–0120. Therefore, on net, FDA expects a burden hour increase of

22,109 hours due to this proposed regulatory change.

IX. Proposed Effective Date

FDA is proposing that any final order based on this proposal become effective on the date of its publication in the **Federal Register** or at a later date if stated in the final order.

X. Codification of Orders

Prior to the amendments by FDASIA, section 515(b) of the FD&C Act provided for FDA to issue regulations to require approval of an application for premarket approval for preamendments devices or devices found substantially equivalent to preamendments devices. Section 515(b) of the FD&C Act, as amended by FDASIA, provides for FDA to require approval of an application for premarket approval for such devices by issuing a final order, following the issuance of a proposed order in the **Federal Register**. FDA will continue to codify the requirement for an application for premarket approval, resulting from changes issued in a final order, in the Code of Federal Regulations (CFR). Therefore, under section 515(b)(1)(A) of the FD&C Act, as amended by FDASIA, in this proposed order, we are proposing to require approval of an application for premarket approval for AEDs and if this proposed order is finalized, we will make the language in 21 CFR 870.5310 consistent with the final version of this proposed order.

XI. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

XII. Reference

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at *http://www.regulations.gov.* (FDA has verified the Web site address in this reference section, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. The panel transcript and other meeting materials are available on FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/CirculatorySystemDevicesPanel/ucm240575.htm.*

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 870 be amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 870.5310 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 870.5310 Automated external defibrillator system.

(a) *Identification.* An automated external defibrillator (AED) system consists of an AED device and its accessories, i.e., battery, pad electrode and, if applicable, an adapter. An AED system analyzes the patient's electrocardiogram, interprets the cardiac rhythm, and automatically delivers an electrical shock (fully automated AED), or advises the user to deliver the shock (semi-automated or shock advisory AED) to treat ventricular fibrillation or pulseless ventricular tachycardia.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA is required to be submitted to the Food and Drug Administration by [A DATE WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF A FUTURE FINAL ORDER IN THE **FEDERAL REGISTER**], for any automated external defibrillator that was in commercial distribution before May 28, 1976, or that has, by [A DATE WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF A FUTURE FINAL ORDER IN THE **FEDERAL REGISTER**], been found to be substantially equivalent to any automated external defibrillator that was in commercial distribution before May 28, 1976. Any other automated external defibrillator and automated external defibrillator accessories, i.e., pad electrodes, adaptors, and batteries shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: March 19, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–06723 Filed 3–22–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–370]

Schedules of Controlled Substances: Placement of Alfaxalone into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) proposes the placement of 5α-pregnan-3α-ol-11,20-dione (alfaxalone) including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into Schedule IV of the Controlled Substances Act (CSA). This proposed action is pursuant to the CSA which requires that such actions be made on the record after opportunity for a hearing through formal rulemaking.

DATES: DEA will permit interested persons to file written comments on this proposal pursuant to 21 CFR 1308.43(g). Electronic comments must be submitted and written comments must be postmarked on or before April 24, 2013. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

Interested persons, defined at 21 CFR 1300.01 as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811),'' may file a request for hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and 1316.47. Requests for hearing and waivers of participation must be received on or before April 24, 2013.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA 370'' on all electronic and written correspondence. DEA encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document and supplemental

information to this proposed rule are also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *www.regulations.gov* will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/OD, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation must be sent to Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: John W. Partridge, Executive Assistant, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 307–7165.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the ''For Further Information Contact'' paragraph, above.

Request for Hearing, Notice of Appearance at or Waiver of Participation in Hearing

In accordance with the CSA, this action is a formal rulemaking ''on the record after opportunity for a hearing.'' 21 U.S.C. 811(a). Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557) and 21 CFR 1308.41. Pursuant to 21 CFR 1308.44(a)–(c), requests for hearings, notices of appearances, and waivers of participation may be submitted only by interested persons, defined at 21 CFR 1300.01 as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811).'' Such requests or notices must conform to the requirements of 21 CFR 1308.44(a) or (b) and 1316.47 or 1317.48, as applicable. A request or notice should state, with particularity, the interest of the person in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any waiver must conform to the requirements of 21 CFR 1308.44(c) and 1316.49, including a written statement regarding the interested person's position on the matters of fact and law involved in any hearing.

Please note that pursuant to 21 U.S.C. 811(a), the purpose and subject matter of the hearing is restricted to ''(A) find[ing] that such drug or other substance has a potential for abuse, and (B) mak[ing] with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed* * *.'' Requests for hearing, notices of appearance at the hearing, and waivers of participation in the hearing should be submitted to DEA using the address information provided above.

Legal Authority

The DEA implements and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act and the Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended (hereinafter, ''CSA''). The implementing regulations for these statutes are found in Title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. Under the CSA, controlled substances are classified in one of five schedules based upon their potential for abuse, their currently accepted medical use, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances by statute are found at 21 U.S.C. 812(c) and the current list of scheduled substances are published at 21 CFR Part 1308.

The CSA permits these schedules to be modified by providing that scheduling of any drug or other substance may be initiated by the Attorney General: (1) On his own motion; (2) at the request of the Secretary of Health and Human Services (HHS); or (3) on the petition of any interested party. 21 U.S.C. 811(a). The Attorney General may, by rule, ''add to such a schedule or transfer between such schedules any drug or other substance if he (A) finds that such drug or other substance has a potential for abuse, and (B) makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed* * *.'' 21 U.S.C. 811(a). The findings required for the placement of a controlled substance in Schedule IV are: the drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule III; the drug or substance has a currently accepted medical use in treatment in the United States; and abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III. 21 U.S.C. 812(b)(4).

Background

Alfaxalone (5α-pregnan-3α-ol-11,20-dione, previously spelled alphaxalone), a substance with central nervous system (CNS) depressant properties, is a neurosteroid that is a derivative of 11-alpha-hydroxy-progesterone. A New Animal Drug Application (NADA) for alfaxalone, as an intravenous injectable anesthetic, was recently approved by the Food and Drug Administration (FDA) for the induction and maintenance of anesthesia and for induction of anesthesia followed by maintenance of anesthesia with an inhalant anesthetic, in cats and dogs.

Alfaxalone primarily acts as an agonist at the gamma-aminobutyric acid (GABA) receptor-channel complex, with a mechanism of action at this site similar to that of barbiturates like phenobarbital (Schedule IV) and methohexital (Schedule IV), benzodiazepines such as diazepam (Schedule IV) and midazolam (Schedule IV), as well as the anesthetic agents, propofol (Schedule IV under consideration) and fospropofol (Schedule IV).

Proposed Determination to Schedule Alfaxalone

Pursuant to 21 U.S.C. 811(a), proceedings to add a drug or substance to those controlled under the CSA may be initiated by request of the Secretary of HHS. On July 17, 2012, HHS provided DEA with a scientific and medical evaluation document prepared by FDA entitled ''Basis for the Recommendation for Control of alfaxalone in Schedule IV of the Controlled Substances Act.'' Pursuant to 21 U.S.C. 811(b), this document contained an eight-factor analysis of the abuse potential of alfaxalone, along with HHS' recommendation to control alfaxalone under Schedule IV of the CSA.

In response, DEA conducted an eight-factor analysis of alfaxalone's abuse potential pursuant to 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in the scheduling decision. Please note that both the DEA and HHS analyses are available in their entirety under ''Supporting and Related Material'' of the public docket for this rule at www.regulations.gov under docket number DEA–370.

1. *The Drug's Actual or Relative Potential for Abuse:* The abuse potential of alfaxalone is associated with its ability to evoke pharmacological effects similar to those evoked by the Schedule IV substances such as fospropfol, propofol (Schedule IV under consideration), and midazolam.

Since alfaxalone is a new veterinary product and has not been marketed in the United States, information on actual abuse of alfaxalone in the United States is not available. However, the legislative history of the CSA offers another methodology for assessing a drug or substance's potential for abuse:

> The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.[1]

According to HHS, alfaxalone is thought to interact with the gamma-aminobutyric acid subtype A (GABA)-A receptors, and to enhance the activity of GABA, the principal inhibitory neurotransmitter in the central nervous system (CNS). This pharmacological evidence suggests that the abuse potential of alfaxalone is comparable to other drugs with a similar mechanism of action, and similar anesthetic properties, such as midazolam (Schedule IV), methohexital (Schedule IV), fospropofol (Schedule IV) and propofol (Schedule IV under consideration). Similar to the above mentioned Schedule IV sedative-hypnotics, alfaxalone acts as an inhibitor on the CNS and produces sedation and anesthesia. Based on the similarities between propofol and alfaxalone regarding their mechanisms of action and their intended routes of administration for clinical use, and the fact that 96% of propofol abuse reports involved abuse by medical professionals, HHS reasoned that alfaxalone abuse might be by medical professionals who have access to the drug and have knowledge in the intravenous administration of drugs.

There are no published studies of abuse potential for alfaxalone in humans. However, there is evidence that alfaxalone produces the sedative-hypnotic midazolam-like discriminative stimulus effects in rats and monkeys, as well as some ethanol-like effects in rats. Based on the pharmacological similarities to other Schedule IV potent sedative-hypnotic drugs, such as midazolam, methohexital and fospropofol, the consequences of abuse of alfaxalone can be predicted to be similar to those drugs mentioned above. Furthermore, abuse and misuse of these drugs might result in death. The overt behavioral effects and adverse events produced by alfaxalone in animals are similar to those caused by Schedule IV benzodiazepines and barbiturates.

In summary, the relative abuse potential of alfaxalone can be considered no greater than the Schedule IV substances such as fospropfol, propofol, and midazolam and less than that of other sedatives in Schedule III.

2. *Scientific Evidence of the Drug's Pharmacological Effects, If Known:* According to the HHS review, alfaxalone acts directly through the GABA–A receptor-channel complex and increases the probability that the channel will enter into naturally-occurring open states of relatively long duration. The activity of alfaxalone on GABA receptors is similar to that of barbiturates like phenobarbital and methohexital (Schedule IV) as well as anesthetic agents like propofol (Schedule IV under consideration) and fospropofol (Schedule IV). Furthermore, similar to benzodiazepines such as diazepam and midazolam, alfaxalone can also increase the frequency of single channel openings. Additionally alfaxalone has been shown to inhibit T-type calcium channels. Alfaxalone does not affect cannabinoid (CB1 subtype), dopamine (D1-, D2-, D3-, D4- and D5-subtype), glutamate (AMPA, kainate, and NMDA subtype), opioid (mu, kappa and delta subtype), and serotonin (1A, 2B, 2C, 3, 5A and 6 subtype) receptors, nor does it affect the transporters for dopamine, norepinephrine and serotonin. In addition, alfaxalone does not significantly bind to major steroid nuclear receptors including androgens, estrogens, glucocorticoids or progesterone receptors.

Pre-clinical behavioral studies showed that, similar to chlordiazepoxide (Schedule IV), alfaxalone produces anxiolytic-like behavioral effects in rat models of anxiety, such as the elevated plus maze, the conflict test and restraint stress. In a published drug discrimination study, in which rats were trained to discriminate midazolam (Schedule IV) from saline, alfaxalone fully generalized to the midazolam discriminative cue. These results are consistent with previously published studies showing ethanol-like discriminative stimulus effects of alfaxalone and with other studies showing that other neurosteroids have barbiturate-like or benzodiazepine-like discriminative stimulus effects in rats and monkeys. This pharmacological profile of alfaxalone is consistent with neurosteroids with GABAergic effects.

According to the HHS review, the oral administration of alfaxalone as compared to its intravenous administration is 100 times less potent for producing midazolam-like effects. Alfaxalone has a low oral bioavailability (about 2%). It has been shown that an intravenous dose of about 50 mg of alfaxalone results in anesthesia in humans with a plasma level of 3 mg/L. Accordingly, an oral dose of about 2500 mg might be expected to result in anesthesia at the plasma level of 3 mg/L in humans, and thus oral doses of 250

[1] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970); 1970 U.S.C.C.A.N. 4566, 4601.

to 800 mg of alfaxalone should be needed to produce a sub-anesthetic intoxication at plasma levels in a range of 0.3 to 1.0 mg/L. For a vial containing 100 mg of alfaxalone for an oral use, an amount of 2.5 to 8 vials would be needed to produce a ''high''.

As stated in the HHS review, self-administration studies in animals with pregnanolone, allopregnanolone, endogenous metabolites of progesterone and a neuroactive steroid, Co 8–7071, showed that these substances produce some positive reinforcing effects in rats and rhesus monkeys. These substances, similar to alfaxalone, positively modulate GABA–A receptors by binding at the neurosteroid modulatory site. HHS stated that these data are predictive of abuse potential of alfaxalone. HHS review also cited recent evidence that alpha4, beta3 and delta GABA–A receptors are modulated by both THDOC, a neurosteroid, and propofol. Based on this potential overlap in cellular targets, comparable kinetic profiles, and similar clinical indications for propofol and alfaxalone, HHS reasoned that alfaxalone may produce reinforcing effects similar to those of propofol.

In summary, alfaxalone, similar to chlordiazepoxide (Schedule IV), has anxiolytic activity in animals. Alfaxalone produced midazolam-like (Schedule IV) discriminative stimulus effects in rats, and it may share propofol's reinforcing effects. The abuse-related neuropharmacology profile of alfaxalone is similar to that of Schedule IV substances.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* The chemical name of alfaxalone is 5α-pregnan-3α-ol-11, 20-dione. Alfaxalone has a molecular formula of $C_{21}H_{32}O_3$ and a molecular weight of 332.5 g/mol, and a melting point of 165° to 171°C. Alfaxalone has a poor water solubility (< 5 μg/ml), but its water solubility increases to 80 mg/ml via complexation with cyclodextrins, especially 2-hydroxypropyl-beta-cyclodextrin (2HPCD). According to the HHS review, the alfaxalone product for veterinary anesthesia will be formulated as a 10 mg/ml solution of alfaxalone in 2HPCD (80 mg/ml), sodium phosphate buffer and water, adjusted to a pH of 6.5 to 7. According to the Sponsor's information cited by the HHS review, the processes involved in the synthesis and purification of alfaxalone are highly complex and require expertise in chemistry manufacture.

According to the HHS, the half-lives of alfaxalone are 24–37 and 45–77 minutes in dogs and cats, respectively. The clearance of alfaxalone is 59 ml/min/kg in dogs and 28 ml/min/kg in cats. The primary routes of elimination in the rat are biliary (65%) and renal (35%) routes. The half-life of alfaxalone in humans is about 35 minutes. The major metabolites in humans are glucuronidated and the primary route of elimination is through renal (80%). Oral bioavailability of alfaxalone is about 2% as compared to its intravenous administration in humans. A clinical study showed that an intravenous administration of 30 mg alfaxalone produced plasma levels of about 3 mg/L, accompanied by anesthesia in humans. The veterinary alfaxalone product that is recently approved by the FDA contains 100 mg/vial (a vial of 10 ml formulated solution, 10 mg/ml of alfaxalone) which would be sufficient to produce anesthesia in two individuals when administered intravenously. HHS also states that because alfaxalone can be abused at subanesthetic doses, a 100 mg vial of alfaxalone drug product administered intravenously could be used repeatedly by the same individual, or by multiple individuals, who intended to abuse the substance.

4. *Its History and Current Pattern of Abuse:* Since alfaxalone is a new veterinary product and has not been marketed in the United States, information on actual abuse of alfaxalone in the United States is not available. Because alfaxalone has been marketed under the trade name Alfaxan® in the United Kingdom (UK) since 2007, the Sponsor submitted to HHS the results of a search of pharmacovigilance reports to the UK Veterinary Medicines Directorate. According to HHS, the Sponsor also provided information obtained from several other sources regarding diversion and abuse of alfaxalone. None of the above sources contained evidence of abuse of alfaxalone by humans. According to the HHS review, a search conducted by the Sponsor of the publically-available pharmacovigilance database provided by the UK's Medicines and Healthcare Products Regulatory Agency (MHRA) Web site also did not produce reports related to alfaxalone abuse. DEA conducted a comprehensive search of several major national drug abuse monitoring programs and found no evidence of alfaxalone abuse. It may be due to the fact that alfaxalone-containing products have not been marketed in the United States to date. However, alfaxalone's pharmacological properties suggest that its pattern of abuse would be similar to other drugs used in maintenance and induction of anesthesia, such as midazolam (Schedule IV) and propofol (Schedule IV under consideration).

5. *The Scope, Duration, and Significance of Abuse:* As mentioned above, a comprehensive search by DEA of the major national drug abuse monitoring programs found no evidence of human abuse of alfaxalone in the U.S. However, as stated in the HHS review, the ''suspicious order monitor system'' of the U.S. distributor of alfaxalone, will be utilized to monitor the diversion of this product. This monitoring system of evaluates order quantities, buying patterns, and customer class regarding orders of unusual volume that could indicate diversion. As part of their monitoring, daily searches of the DEA Web site for new abuse issues and for abuse-related data from HHS's Substance Abuse and Mental Health Administration Services (SAMHSA) will be conducted. Additionally, the Sponsor will provide FDA with pharmacovigilance information for both animal and human adverse events from all markets.

6. *What, if any, Risk There is to the Public Health:* According to the HHS review, the public health risks of alfaxalone are mostly risks to the individual abuser and the risks are similar to those associated with the abuse of other sedative hypnotics and CNS depressants, such as midazolam and methohexital. Abuse of alfaxalone may lead to the death of the abuser or other adverse events that affect behavior, reaction ability and timing in operating a motor vehicle or machinery. As an anesthetic, the adverse events (AEs) that are likely to result from alfaxalone use are usually similar to those arising from the use of most general anesthetics. These events include apnea, bradycardia, bradypnea, hypertension, hypotension, hypothermia, hypoxia, unacceptable anesthesia quality, tachycardia and emesis. These AEs were found in animal studies involving cats and dogs. Alfaxalone, as anesthetic product if used in excess, carries potential for overdose.

HHS cited two cases involving the accidental overdose of the alfaxalone human product, Althesin®, a human product containing combination of alfaxalone/alfadolone which was previously withdrawn from market. HHS stated that the occurrence of an accidental or purposeful overdose of Alfaxan® (containing 10 mg/ml of alfaxalone) is unlikely. HHS reasoned that if a person were trying to duplicate the same accidental overdose of injectable alfaxalone solution, he or she would be required to draw up a large volume of alfaxalone solution into the

syringe. The intravenous self-administration of such large volume of Alfaxan® would be a very difficult if not impossible to perform, as the person would likely be anesthetized after the first 4.2 ml of the injection. If a person were to drink Alfaxan® to try to cause overdose, it would require 100 times more drug because of alfaxalone's poor oral bioavailability (1–2%). According to HHS, little is known about other health effects that might occur in someone abusing the drug chronically. In summary, the public health risks of alfaxalone abuse are similar to those associated with the abuse of other sedative hypnotics and CNS depressants, such as midazolam and methohexital which are controlled in Schedule IV of the CSA and propofol (Schedule IV under consideration). The major adverse events of these anesthetics include respiratory depression and deaths.

7. *Its Psychic or Physiological Dependence Liability:* According to HHS, studies of abrupt discontinuation of alfaxalone were not conducted. However, a study cited (McMohan et al., 2007) by the HHS review suggested the ability of alfaxalone to produce physical dependence. McMahon and his associates found that alfaxalone reduced the discriminative cue produced by flumazenil-precipitated withdrawal following chronic administration of benzodiazepines such as diazepam or lorazepam (both Schedule IV) in Rhesus monkeys (McMahon et al., 2007). The HHS review concludes that alfaxalone can decrease withdrawal resulting from chronic administration of other positive GABA–A receptor modulators. According to HHS, there is no data available on the effects of abrupt discontinuation of alfaxalone because, as an anesthetic, it is not used chronically and not available for chronic use.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:* Alfaxalone is not considered an immediate precursor of any controlled substance of the CSA as defined by 21 U.S.C 802(23).

Conclusion: Based on consideration of the scientific and medical evaluation and accompanying recommendation of HHS, and based on DEA's consideration of its own eight-factor analysis, DEA finds that these facts and all relevant data constitute substantial evidence of potential for abuse of alfaxalone. As such, DEA hereby proposes to schedule alfaxalone as a controlled substance under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as Schedules I, II, III, IV, and V. The statute outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendations of the Assistant Secretary for Health of HHS and review of all available data, the Administrator of DEA, pursuant to 21 U.S.C. 812(b)(4), finds that:

(1) 5α-pregnan-3α-ol-11,20-dione (alfaxalone) has a low potential for abuse relative to the drugs or other substances in Schedule III;

(2) 5α-pregnan-3α-ol-11,20-dione (alfaxalone) has a currently accepted medical use in treatment in the United States. Alfaxalone was approved for marketing by FDA as a veterinary anesthetic product for the induction and maintenance of anesthesia in cats and in dogs; and

(3) abuse of 5α-pregnan-3α-ol-11,20-dione (alfaxalone) may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

Based on these findings, the Administrator of DEA concludes that 5α-pregnan-3α-ol-11,20-dione (alfaxalone) including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, warrants control in Schedule IV of the CSA (21 U.S.C. 812(b)(4)).

Requirements for Handling Alfaxalone

If this rule is finalized as proposed, alfaxalone would be subject to the CSA and the Controlled Substances Import and Export Act (CSIEA) regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule IV controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with alfaxalone or who desires to manufacture, distribute, dispense, import, export, engage in research or conduct instructional activities with alfaxalone would need to be registered to conduct such activities pursuant to 21 U.S.C. 822 and 958 and in accordance with 21 CFR part 1301.

Security. Alfaxalone would be subject to Schedule III–V security requirements and would need to be manufactured, distributed, and stored in accordance with 21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77.

Labeling and Packaging. All labels and labeling for commercial containers of alfaxalone which is distributed on or after the effective date of the finalization of this rule would need to be in accordance with 21 CFR 1302.03–1302.07, pursuant to 21 U.S.C. 825.

Inventory. Every registrant required to keep records and who possesses any quantity of alfaxalone would be required to keep an inventory of all stocks of alfaxalone on hand pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Every registrant who desires registration in Schedule IV for alfaxalone would be required to conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants would be required to keep records pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23.

Prescriptions. Alfaxalone or products containing alfaxalone would be required to be distributed or dispensed pursuant to 21 U.S.C. 829 and in accordance with 21 CFR 1306.03–1306.06, 1306.08, 1308.09, and 1306.21–1306.27.

Importation and Exportation. All importation and exportation of alfaxalone would need to be done in accordance with 21 CFR part 1312, pursuant to 21 U.S.C. 952, 953, 957, and 958.

Criminal Liability. Any activity with alfaxalone not authorized by, or in violation of, the CSA occurring on or after effective date of the finalization of this proposed rule would be unlawful.

Regulatory Analyses

Executive Orders 12866 and 13563

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures done ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget pursuant to Section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate ambiguity, minimizes

litigation, establish clear legal standards, and reduce burden.

Executive Order 13132

This proposed rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 13175

This proposed rule will not have tribal implications and will not impose substantial direct compliance costs on Indian tribal governments.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is proposed to be amended to read as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Section 1308.14 is amended by redesignating paragraphs (c)(1) through (c)(53) as paragraphs (c)(2) through (c)(54) and adding a new paragraph (c)(1) as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(1) 5α-pregnan-3α-ol-11,20-dione (Alfaxalone) * * * (2731)

* * * * *

Dated: March 15, 2013.

Michele M. Leonhart,

Administrator.

[FR Doc. 2013–06651 Filed 3–22–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–148500–12]

RIN 1545–BL36

Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing (REG–148500–12) that was published in the **Federal Register** on Friday, February 1, 2013 (78 FR 7314). The proposed regulations relate to the requirement to maintain minimum essential coverage enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the TRICARE Affirmation Act and Public Law 111–173. These proposed regulations provide guidance on the liability for the shared responsibility payment for not maintaining minimum essential coverage.

FOR FURTHER INFORMATION CONTACT: Sue-Jean Kim or John B. Lovelace, (202) 622–4960 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing (REG–148500–12) that is the subject of these corrections are under Section 5000A of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (REG–148500–12) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of public hearing (REG–148500–12), that was the subject of FR Doc. 2013–02141, is corrected as follows:

1. On page 7316, in the preamble, column 1, under the paragraph heading ''*Exempt Individuals'',* line 7 of the third full paragraph, the language ''consultation with the Secretary of '' is corrected to read ''consultation with the Secretary of the''.

2. On page 7316, in the preamble, column 3, under the paragraph heading ''*Computation of Shared Responsibility Payment'',* lines 5 and 6 from the top of the column, the language ''the following amounts: (1) The flat dollar amount, or (2) the percentage of'' is corrected to read ''the following amounts: (1) the flat dollar amount, or (2) the percentage of''.

3. On page 7316, in the preamble, column 3, under the paragraph heading ''*Minimum Essential Coverage'',* lines 3 through 32 of the third and fourth full paragraph of the column, the language ''following: (1) Coverage under a specified government sponsored program, (2) coverage under an eligible employer-sponsored plan, (3) coverage under a health plan offered in the individual market within a State, (4) coverage under a grandfathered health plan, and (5) other health benefits coverage that the Secretary of Health and Human Services, in coordination with the Secretary, recognizes for purposes of section 5000A(f).

Under section 5000A(f)(1)(A), specified government sponsored programs include the following: (1) The Medicare program under part A of title XVIII of the Social Security Act, (2) the Medicaid program under title XIX of the Social Security Act, (3) the Children's Health Insurance Program (CHIP) under title XXI of the Social Security Act, (4) medical coverage under chapter 55 of title 10, United States Code, including the TRICARE program, (5) veterans health care programs under chapter 17 or 18 of title 38, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary of Treasury, (6) a health plan'' is corrected to read ''following: (1) coverage under a specified government sponsored program; (2) coverage under an eligible employer-sponsored plan; (3) coverage under a health plan offered in the individual market within a State; (4) coverage under a grandfathered health plan; and (5) other health benefits coverage that the Secretary of Health and Human Services, in coordination with the Secretary, recognizes for purposes of section 5000A(f).

Under section 5000A(f)(1)(A), specified government sponsored programs include the following: (1) the Medicare program under part A of title XVIII of the Social Security Act; (2) the Medicaid program under title XIX of the Social Security Act; (3) the Children's Health Insurance Program (CHIP) under title XXI of the Social Security Act; (4) medical coverage under chapter 55 of title 10, United States Code, including the TRICARE program; (5) veterans health care programs under chapter 17

or 18 of title 38, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary of Treasury; (6) a health plan''.

4. On page 7317, in the preamble, column 1, under the paragraph heading ''*Minimum Essential Coverage'',* line 1 from the top of the column, the language ''to Peace Corps volunteers, and (7) the'' is corrected to read ''to Peace Corps volunteers; and (7) the''.

5. On page 7317, in the preamble, column 2, under the paragraph heading ''*Minimum Essential Coverage'',* line 6 of the first full paragraph of the column, the language ''possession for the month or (2) if the'' is corrected to read ''possession for the month, or (2) if the''.

6. On page 7318, in the preamble, column 2, under the paragraph heading ''i. In General'', lines 6 through 10 of the first full paragraph of the column, the language ''either of the following: (1) A governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act (PHSA) (42 U.S.C. 300gg-91(d)(8)) or (2) any other plan or'' is corrected to read ''either of the following: (1) a governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act (PHSA) (42 U.S.C. 300gg-91(d)(8)), or (2) any other plan or''.

7. On page 7321, in the preamble, column 1, under the paragraph heading ''B. Credit Allowable Under Section 36B'', lines 9 through 14 of the second full paragraph of the column, the language ''The monthly premiums for the month for one or more qualified health plans in which the taxpayers or a member of the taxpayers family (coverage family) is enrolled through the Exchange serving the rating area where they reside'' is corrected to read ''the monthly premiums for the month for one or more qualified health plans in which the taxpayers or a member of the taxpayers family (coverage family) is enrolled through the Exchange serving the rating area where they reside,''.

8. On page 7321, in the preamble, column 2, under the paragraph heading ''f. Household Income Below Return Filing Threshold'', line 9 of the second full paragraph of the column, the language ''as a dependent also is exempt as well'' is corrected to ''as a dependent also is exempt''.

§ 1.5000A–1 [Corrected]

9. On page 7325, column 1, paragraph (d)(4), the language ''*Rating area. Rating area* has the same meaning as in § 1.38B–1(n).'' is corrected to read ''*Rating area. Rating area* has the same meaning as in § 1.36B–1(n).''.

§ 1.5000A–2 [Corrected]

10. On page 7325, column 2, line 4 of paragraph (b)(7), the language ''of the National Defense authorization'' is corrected to read ''of the National Defense Authorization''.

11. On page 7325, column 3, line 7 of paragraph (c)(1), the language ''by an employer to the employee, which'' is corrected to read ''by an employer to the employee that''.

§ 1.5000A–3 [Corrected]

12. On page 7326, column 3, line 8 of paragraph (e)(3)(ii)(A), the language ''(whether though salary reduction or'' is corrected to read ''(whether through salary reduction or''.

13. On page 7327, column 3, line 9 of paragraph (e)(4)(ii)(B)(*1*), the language ''plan though the Exchange) that would'' is corrected to read ''plan through the Exchange) that would''.

14. On page 7328, column 2, line 16 of paragraph (e)(4)(iii) *Example 2*.(ii), the language ''$2,600. Under paragraph (f)(2) of this section,'' is corrected to read ''$2,600. Under paragraph (e)(1) of this section,''.

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2013–06702 Filed 3–22–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–141066–09]

RIN 1545–BL08

Awards for Information Relating to Detecting Underpayments of Tax or Violations of the Internal Revenue Laws

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Extension of time to receive outlines of topics to be discussed at public hearing.

SUMMARY: This document extends the due date to submit outlines of testimony on proposed regulations that provide comprehensive guidance for the award program authorized under Internal Revenue Code section 7623, as amended. The regulations provide guidance on submitting information regarding underpayments of tax or violations of the internal revenue laws and filing claims for award, as well as on the administrative proceedings applicable to claims for award under section 7623. The regulations also provide guidance on the determination and payment of awards, and provide definitions of key terms used in section 7623. Finally, the regulations confirm that the Director, officers, and employees of the Whistleblower Office are authorized to disclose return information to the extent necessary to conduct whistleblower administrative proceedings.

DATES: The public hearing is being held on Wednesday, April 10, 2013, at 10:00 a.m. The IRS must now receive outlines of the topics to be discussed at the public hearing by Friday, March 29, 2013.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224. 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.

Send Submissions to CC:PA:LPD:PR (REG–141066–09), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–141066–09), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (REG–141066–09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Melissa Jarboe at (202) 622–3620; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Oluwafunmilayo Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–141066–09) that was published in the **Federal Register** on Tuesday, December 18, 2012 (77 FR 74798).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by February 19, 2013, must submit an outline of the topics to be addressed and the amount of time to be denoted to each topic by Friday, March 29, 2013. The notice of public hearing published in the **Federal Register** on March 15, 2013 (78 FR 16446), inadvertently limited the period for submitting outlines to five days.

This notice extends this period for outlines to be submitted by members of the public who previously submitted written comments. This notice does not affect the date or time of the scheduled public hearing, which will be held on April 10, 2013 at 10 a.m.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue NW., entrance, 1111 Constitution Avenue NW., Washington, DC 20224.

Because of access restrictions, the IRS will not admit visitors 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 document.

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2013–06709 Filed 3–20–13; 11:15 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2012–0971; 9793–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of California; Redesignation of San Diego County to Attainment for the 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, as a revision of the California state implementation plan, a request from the California Air Resources Board to redesignate the San Diego County ozone nonattainment area to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (1997 ozone standard) because the request meets the statutory requirements for redesignation under the Clean Air Act. EPA is also proposing to approve the State's plan for maintaining the 1997 ozone standard in San Diego County for ten years beyond redesignation, and the inventories and related motor vehicle emissions budgets within the plan, because they meet the applicable requirements for such plans and budgets.

DATES: Comments must be received on or before April 24, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R09–OAR–2012–0971, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: r9_airplanning@epa.gov.*
3. *Fax:* 415–947–3579
4. *Mail or deliver:* John Ungvarsky (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3963, *ungvarsky.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

Table of Contents

I. Summary of Today's Proposed Action
II. Background
III. Procedural Requirements for Adoption and Submittal of SIP Revisions
IV. Substantive Requirements for Redesignation
V. Evaluation of the State's Redesignation Request for the San Diego County 8-Hour Ozone Nonattainment Area
A. Determination That the Area Has Attained the Applicable NAAQS
B. The Area Must Have a Fully Approved SIP Meeting Requirements Applicable for Purposes of Redesignation Under Section 110 and Part D
1. Basic SIP Requirements Under CAA Section 110
2. Part D Requirements
a. Introduction
b. Subpart 1 Requirements
c. Subpart 2 Requirements
C. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions
D. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A
1. Attainment Inventory
2. Maintenance Demonstration
3. Monitoring Network
4. Verification of Continued Attainment
5. Contingency Provisions
6. Subsequent Maintenance Plan Revisions
7. Motor Vehicle Emissions Budgets
VI. Proposed Action and Request for Public Comment
VII. Statutory and Executive Order Reviews

I. Summary of Today's Proposed Action

EPA is proposing to take several related actions. First, under Clean Air Act (CAA or ''Act'') section 110(k)(3), EPA is proposing to approve a maintenance plan for the 1997 8-hour ozone standard (''San Diego 8-hour maintenance plan'') for the San Diego County 1997 ozone nonattainment area (''San Diego 8-hour area'') as a revision to the California state implementation plan (SIP).[1] The San Diego 8-hour maintenance plan is included in a document titled *Redesignation Request and Maintenance Plan for the 1997 National Ozone Standard for San Diego County (December 2012)* submitted by

[1] On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm (the 2008 8-hour ozone standard), and on May 21, 2012, EPA designated San Diego County as nonattainment for the 2008 8-hour ozone standard (77 FR 30088). This rulemaking relates only to the 1997 8-hour ozone standard and does not relate to the 2008 8-hour ozone standard.

the California Air Resources Board (CARB) on December 28, 2012.

In connection with the San Diego 8-hour maintenance plan, EPA finds that the maintenance demonstration showing how the area will continue to attain the 1997 8-hour ozone national ambient air quality standard (1997 ozone NAAQS or 1997 ozone standard) for at least 10 years beyond redesignation (i.e., through 2025) and the contingency provisions describing the actions that the San Diego County Air Pollution Control District (SDAPCD) will take in the event of a future monitored violation meet all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A. EPA is also proposing to approve the motor vehicle emissions budgets (MVEBs) in the San Diego 8-hour maintenance plan because we find they meet the applicable transportation conformity requirements under 40 CFR 93.118(e).

Second, under CAA section 107(d)(3)(D), EPA is proposing to approve CARB's request that accompanied the submittal of the San Diego 8-hour maintenance plan, that is, to redesignate the San Diego 8-hour area to attainment for the 1997 ozone standard. We are doing so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E). Our conclusion in this regard is in turn based on our proposed determination that the area has attained the 1997 ozone standard, that relevant portions of the California SIP are fully approved, that the improvement in air quality is due to permanent and enforceable reductions in emissions, that California has met all requirements applicable to the San Diego 8-hour area with respect to section 110 and part D of the CAA, and based on our proposed approval as part of this action of the San Diego 8-hour maintenance plan.

II. Background

Ground-level ozone is generally not emitted directly by sources. Rather, directly-emitted oxides of nitrogen (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight to form ground-level ozone, as a secondary pollutant, along with other secondary compounds. NO_X and VOC are ''ozone precursors.'' Reduction of peak ground-level ozone concentrations is typically achieved through controlling VOC and NO_X emissions.

In 1971, under section 109 of the Act, as amended in 1970, EPA promulgated the original NAAQS for several pervasive air pollutants, including photochemical oxidants. NAAQS represent concentration levels the attainment and maintenance of which, allowing for an adequate margin of safety, EPA has determined to be requisite to protect public health (''primary'' NAAQS) and welfare (''secondary'' NAAQS).

In 1978, EPA designated the San Diego Air Basin as a nonattainment area (SDAB nonattainment area) for the photochemical oxidant NAAQS. See 43 FR 8962 (March 3, 1978). In 1979, EPA revised the NAAQS from an hourly average of 0.08 parts per million (ppm) oxidant to an hourly average of 0.12 ppm ozone (1979 ozone standard). See 44 FR 8202 (February 8, 1979). The nonattainment designation for the SDAB nonattainment area for photochemical oxidants carried over to the 1979 ozone standard (SDAB 1-hour area).

During the 1980s, SDAPCD adopted a number of rules and prepared a number of nonattainment plans to address planning requirements under the CAA, as amended in 1977. CARB submitted these rules and plans to EPA at various times, and EPA approved a number of them into the California SIP. Among the rules approved by EPA as revisions to the California SIP as part of the ozone control strategy in San Diego County are SDAPCD Rules: 67.0 Architectural Coatings; 67.6.2 Vapor Degreasing Operations; and 69.2 Industrial and Commercial Boilers, Process Heaters and Steam Generators.

In 1997, EPA revised the NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour time frame (1997 ozone NAAQS or 1997 ozone standard). EPA set the 1997 ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 1997 ozone standard would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

In 2002, in light of monitored levels below the 1979 ozone standard, EPA determined that the SDAB 1-hour nonattainment area attained the 1979 ozone standard. See 67 FR 54580 (August 23, 2002). In 2003, EPA redesignated the San Diego area to attainment for the 1979 ozone standard. See 68 FR 37976 (June 26, 2003).

In 2004, EPA designated areas of the country with respect to the 1997 ozone standard. See 69 FR 23857 (April 30, 2004). Under EPA's ''Phase 1'' implementation rule for the 1997 ozone standard (69 FR 23951, April 30, 2004), a nonattainment area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration at the worst-case monitoring site in the area), if it had a 1979 1-hour ozone standard design value [2] at the time of designation at or above 0.121 ppm. All other areas were to be implemented under subpart 1 based on their 1997 8-hour ozone standard design values [3] (69 FR 23958). San Diego County was designated as a ''subpart 1'' ozone nonattainment area (San Diego 8-hour area) by EPA on April 30, 2004 based on air quality monitoring data from 2001–2003,[4] (69 FR 23887, April 30, 2004). The designation became effective on June 15, 2004.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's Phase 1 implementation rule for the 1997 ozone standard (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit Court (Court) clarified that the Phase 1 rule was vacated only for those parts of the rule that had been successfully challenged. The June 8, 2007 clarification left intact the Court's vacature of portions of EPA's Phase 1 rule that related to implementing the 1997 ozone standard in certain nonattainment areas under subpart 1 in lieu of subpart 2 of Title 1 Part D of the CAA.

On June 15, 2007, CARB submitted the *Eight-Hour Ozone Attainment Plan for San Diego County (May 2007)* (''2007 8-hour attainment plan'') to EPA as a

[2] The design value for the 1979 1-hour ozone standard is the fourth-highest daily maximum 1-hour ozone concentration over a three-year period at the worst-case monitoring site in the area.

[3] The design value for the 1997 8-hour ozone standard is the three-year average of the annual fourth-highest daily maximum 8-hour ozone concentration at the worst-case monitoring site in the area.

[4] That portion of San Diego County that excludes the areas listed below: La Posta Areas #1 and #2; Cuyapaipe Area; Manzanita Area; and Campo Areas #1 and #2. The boundaries for these designated areas are based on coordinates of latitude and longitude derived from EPA Region 9's GIS database and are illustrated in a map entitled ''Eastern San Diego County Attainment Areas for the 8-Hour Ozone NAAQS,'' dated March 9, 2004, including an attached set of coordinates. The map and attached set of coordinates are available at EPA's Region 9 Air Division office. The designated areas roughly approximate the boundaries of the reservations for these tribes, but their inclusion is intended for CAA planning purposes only and is not intended to be a federal determination of the exact boundaries of the reservations. Also, the specific listing of these tribes does not confer, deny, or withdraw Federal recognition of any of the tribes so listed nor any of the tribes not listed.

revision to the California SIP. The 2007 8-hour attainment plan included Motor Vehicle Emissions Budgets (MVEBs) of 53 and 98 tons per day (ozone season) for VOC and NO_X, respectively, for 2008. On May 23, 2008, EPA found the MVEBs in the 2007 8-hour attainment plan adequate for the purposes of transportation conformity. See 73 FR 30098 (May 23, 2008). Since the effective date of EPA's adequacy finding (i.e., June 9, 2008), the applicable metropolitan planning organization (MPO), i.e., San Diego Association of Governments, and the U.S. Department of Transportation, have been required to use these budgets in transportation conformity analyses for regional transportation plans, programs projects and amendments.

On May 14, 2012, in response to the Court's vacature of the provisions of the Phase 1 rule that allowed for implementation of the 1997 ozone standard for certain nonattainment areas, including San Diego County, solely under subpart 1, EPA classified the San Diego 8-hour area as a moderate nonattainment area for the 1997 ozone standard under subpart 2 of the CAA (77 FR 28424).

In a letter dated November 26, 2012, CARB requested parallel processing of the San Diego 8-hour maintenance plan, which was scheduled for adoption by the SDAPCD on December 5, 2012.[5] On December 28, 2012, CARB submitted the San Diego 8-hour maintenance plan and requested that EPA redesignate the San Diego 8-hour area to attainment for the 1997 ozone standard. We are proposing action today on CARB's December 28, 2012 redesignation request and submittal of the San Diego 8-hour maintenance plan.

III. Procedural Requirements for Adoption and Submittal of SIP Revisions

Section 110(l) of the Act requires States to provide reasonable notice and public hearing prior to adoption of SIP revisions. In this action, we are proposing action on CARB's December 28, 2012 submittal of the San Diego 8-hour maintenance plan as a revision to the California SIP.

Documents in CARB's submittal describe the public review process followed by SDAPCD in adopting the plan prior to transmittal to CARB for subsequent submittal to EPA as a revision to the California SIP. The documentation provides evidence that reasonable notice of a public hearing was provided to the public and that a public hearing was conducted prior to adoption.

On November 2, 2012, SDAPCD published in the *San Diego Commerce,* a newspaper of general circulation within the San Diego area, an announcement that a public hearing would be held on December 5, 2012 to consider and approve the San Diego 8-hour maintenance plan. Copies of the plan were made available for viewing at SDAPCD's offices and on their Web site.[6] On December 5, 2012, the Air Pollution Control Board of San Diego County adopted the San Diego 8-hour maintenance plan at the publicly noticed public hearing. Following adoption, SDAPCD forwarded the plan to CARB, the Governor of California's designee for SIP matters, and CARB then submitted the plan on December 28, 2012 as a revision to the California SIP to EPA for approval.

Based on the documentation provided by ARB, we find that the submittal of the San Diego 8-hour maintenance plan as a SIP revision satisfies the procedural requirements of section 110(l) of the Act for revising SIPs.

IV. Substantive Requirements for Redesignation

The CAA establishes the requirements for redesignation of a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that the following criteria are met: (1) EPA determines that the area has attained the applicable NAAQS; (2) EPA has fully approved the applicable implementation plan for the area under section 110(k); (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable federal air pollution control regulations, and other permanent and enforceable reductions; (4) EPA has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA. Section 110 identifies a comprehensive list of elements that SIPs must include, and part D establishes the SIP requirements for nonattainment areas. Part D is divided into six subparts. The generally-applicable nonattainment SIP requirements are found in part D, subpart 1, and the ozone-specific nonattainment SIP requirements are found in part D, subpart 2.

EPA provided guidance on redesignations in a document entitled, ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published in the **Federal Register** on April 16, 1992 (57 FR 13498), and supplemented on April 28, 1992 (57 FR 18070) (referred to herein as the ''General Preamble''). Another relevant EPA guidance document includes ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, September 4, 1992 (referred to herein as the ''Calcagni memo'').

For the reasons set forth below in section V of this document, we propose to approve CARB's request for redesignation of the San Diego County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS based on our conclusion that all of the criteria under CAA section 107(d)(3)(E) have been satisfied.

V. Evaluation of the State's Redesignation Request for the San Diego County 8-Hour Ozone Nonattainment Area

A. Determination That the Area Has Attained the Applicable NAAQS

CAA section 107(d)(3)(E)(i) requires that we determine that the area has attained the NAAQS. EPA generally makes the determination of whether an area's air quality meets the ozone NAAQS based upon the most recent three years of complete, quality-assured data gathered at established State and Local Air Monitoring Stations (SLAMS) in the nonattainment area and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to AQS. Heads of monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in AQS when determining the attainment status of areas. *See* 40 CFR 50.10; 40 CFR part 50, appendix I; 40 CFR part 53; 40 CFR part 58, appendices A, C, D and E. All data are reviewed to

[5] On November 26, 2012, James Goldstene, Executive Officer of CARB, submitted a request to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, for parallel processing of the *Redesignation Request and Maintenance Plan for the 1997 National Ozone Standard for San Diego County,* for which CARB had scheduled for Board action at a December 6, 2012 public hearing.

[6] The redesignation request and maintenance plan, titled ''Redesignation Request and Maintenance Plan for the 1997 National Ozone Standard for San Diego County,'' may be found at the following SDAPCD Web address: *http://www.sdapcd.org/planning/8_Hour_O3_Maint-Plan.pdf.*

determine the area's air quality status in accordance with 40 CFR part 50, appendix I.

Under EPA regulations at 40 CFR part 50, the 1997 ozone standard is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. See 40 CFR 50.10; 40 CFR part 50, appendix I. This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm (based on the rounding convention in 40 CFR part 50, appendix I) at each monitoring site within the area, then the area is meeting the NAAQS. The data completeness requirement is met when the three-year average percent of days with valid ambient monitoring data is at least 90% of the days during the designated ozone monitoring season, and no single year has less than 75% data completeness as determined in appendix I of 40 CFR part 50.

The SDAPCD is responsible for monitoring ambient air quality within San Diego County. SDAPCD submits monitoring network plan reports to EPA on an annual basis. These reports discuss the status of the air monitoring network, as required under 40 CFR part 58. Beginning in 2007, EPA has reviewed these annual plans for compliance with the applicable reporting requirements in 40 CFR 58.10. With respect to ozone, we have found SDAPCD's annual network plans to meet the applicable requirements under 40 CFR part 58. See EPA letters to SDAPCD concerning SDAPCD's annual network plan reports for 2010, 2011, and 2012 included in the docket for this rulemaking. Furthermore, we concluded in our Technical System Audit Report (*System Audit of the Ambient Monitoring Program: San Diego County Air Pollution Control District, September 28–September 30, 2010,* April 2012) that SDAPCD's ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for all of the criteria pollutants. Whereas EPA regulations require two ozone monitoring sites in this region, SDAPCD operated ten ozone monitors during the 2009–2011 attainment period, substantially exceeding the requirement. Also, SDAPCD annually certifies that the data it submits to AQS are complete and quality-assured. See, e.g., Letter dated March 2, 2012, from Mahmood Hoosain, Chief of the Monitoring & Technical Services Division, SDAPCD, to Matthew Lakin, Chief Air Quality Analysis Office, EPA Region IX.

SDAPCD operated ten ozone SLAMS monitoring sites during the 2009–2011 period [7] within the San Diego County ozone nonattainment area: Alpine, Camp Pendleton, Chula Vista, Del Mar, Downtown, El Cajon, Escondido, Kearney Mesa, Kearny Villa [8] and Otay Mesa. All ten sites have monitored ozone concentrations on a continuous basis using ultraviolet absorption monitors. The spatial scale of most of SDAPCD's ozone monitoring sites are ''neighborhood'' and the site types (i.e., monitoring purpose) are ''background level'' or ''representative concentration''. The exceptions are the Otay Mesa site, whose spatial scale is ''micro'' and site type is ''source impact,'' and the Alpine site, whose spatial scale is ''neighborhood'' and site type is ''highest concentration.'' See *2011 Ambient Air Quality Network Plan Report,* San Diego County Air Pollution Control District.[9] [10]

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the ozone ambient air monitoring data for the monitoring period from 2009 through 2011 collected at the monitoring sites discussed above, as recorded in AQS and summarized in table 1, and found that the data meet our completeness criteria.

Table 1 summarizes the site-specific annual fourth-highest daily maximum 8-hour ozone concentrations and 3-year ozone design values for all monitoring sites within the San Diego County 8-hour ozone nonattainment area for the period of 2009–2011. As shown in table 1, the design value for the 2009–2011 period was less than 0.084 ppm at all of the monitors. Therefore, we are proposing to determine, based on the complete, quality-assured data for 2009–2011, that the San Diego County 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard. Because the Kearny Mesa monitoring site closed in February 2012, there are nine ozone monitors currently operating in the nonattainment area. Preliminary SLAMS data for 2012 from these monitors, which are summarized in table 2, are also consistent with continued attainment.

TABLE 1—SUMMARY OF AMBIENT DATA FOR OZONE COLLECTED WITHIN SAN DIEGO COUNTY 8-HOUR OZONE NONATTAINMENT AREA, 2009–2011

Monitor	Site code	4th Highest value (ppm)			
		2009	2010	2011	2009–2011 design value
Alpine	06–073–1006	0.085	0.081	0.082	0.082
Camp Pendleton	06–073–1008	0.071	0.064	0.067	0.067
Chula Vista	06–073–0001	0.067	0.068	0.055	0.063
Del Mar	06–073–1001	0.067	0.063	0.064	0.064
Downtown	06–073–1010	0.060	0.058	0.060	0.059
El Cajon	06–073–0003	0.071	0.073	0.070	0.071
Escondido	06–073–1002	0.074	0.075	0.068	0.072
Kearny Mesa	06–073–0006	0.069	0.070	0.069	0.069
Kearny Villa [a]	06–073–1016	.....	.....	0.066	0.066
Otay Mesa	06–073–2007	0.061	0.056	0.059	0.058

Source: AQS Preliminary Design Value Report. January 28, 2013.
[a] 2011 is the first year with complete data—the 4th maximum value is provided.

[7] San Diego County's monitoring network exceeded the number of required monitors throughout the referenced time period.

[8] The Kearney Villa site was not operational for the entire 2009–2011 time frame. It was established in 2010 to replace Kearny Mesa, which closed in February 2012.

[9] 2011 Ambient Air Quality Network Plan Report, SDAPCD, June 30, 2012, is available at *http://www.sdapcd.org/air/reports/2011_network_plan.pdf.*

[10] In the network plan ''site type'' is referred to as ''monitoring objective''.

TABLE 2—PRELIMINARY 4TH HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR 2012

Monitor	Site code	4th Highest value (ppm)
Alpine	06–073–1006	0.080
Camp Pendleton	06–073–1008	0.059
Chula Vista	06–073–0001	0.064
Del Mar	06–073–1001	0.058
Downtown	06–073–1010	0.048
El Cajon	06–073–0003	0.067
Escondido	06–073–1002	0.065
Kearny Mesa	06–073–0006	incomplete data [b]
Kearny Villa	06–073–1016	0.066
Otay Mesa	06–073–2007	0.057

Source: Same as table 1.
[b] The Kearny Mesa site closed February 2012.

B. The Area Must Have a Fully Approved SIP Meeting Requirements Applicable for Purposes of Redesignation Under Section 110 and Part D

Section 107(d)(3)(E)(ii) and (v) require EPA to determine that the area has a fully approved applicable SIP under section 110(k) that meets all applicable requirements under section 110 and part D for the purposes of redesignation.

1. Basic SIP Requirements Under CAA Section 110

Section 110(a)(2) sets forth the general elements that a SIP must contain in order to be fully approved. EPA has analyzed the California SIP and determined that it is consistent with the requirements of section 110(a)(2). The San Diego County portion of the approved California SIP contains enforceable emission limitations; requires monitoring, compiling and analyzing of ambient air quality data; requires preconstruction review of new or modified stationary sources; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and provides the necessary assurances that the State maintains responsibility for ensuring that the CAA requirements are satisfied in the event that San Diego County is unable to meet its CAA obligations.[11]

On numerous occasions, CARB has submitted and we have approved provisions addressing the basic CAA section 110 provisions. There are no outstanding or disapproved applicable SIP submittals with respect to the San Diego County portion of the SIP that prevent redesignation of the San Diego County 8-hour ozone nonattainment area for the 1997 8-hour ozone standard. Therefore, we propose to conclude that CARB and San Diego County have met all SIP requirements for San Diego County applicable for purposes of redesignation under section 110 of the CAA (General SIP Requirements).

2. Part D Requirements

a. Introduction

The CAA contains two sets of provisions, subparts 1 and 2, that address planning and emission control requirements for ozone nonattainment areas. Both of these subparts are found in title I, part D of the CAA; sections 171–179 and sections 181–185, respectively. Subpart 1 contains general, less prescriptive requirements for all nonattainment areas of any pollutant, including ozone, governed by a NAAQS. Subpart 2 contains additional, more specific requirements for ozone nonattainment areas classified under subpart 2.

b. Subpart 1 Requirements

The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and 176 of the CAA. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Since EPA is proposing here to determine that the San Diego area has attained the 1997 ozone standard, under 40 CFR 51.918, if these determinations are finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the reasonably available control measure (RACM) requirement of section 172(c)(1) of the CAA, the reasonable further progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (c)(6) of the CAA, and the requirement for contingency measures for RFP and attainment in section 172(c)(9) of the CAA, would be suspended for the area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble EPA stated that:

[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by

[11] The applicable SIP for CARB and SDAPCD may be found at *http://yosemite.epa.gov/r9/r9sips.nsf/Casips?readform&count=100&state=California.* We note that SIPs must be fully approved only with respect to applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). Thus, for example, CAA section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the San Diego County ozone planning area is redesignated. The section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request.

This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. See Reading, Pennsylvania, proposed and final rulemakings 61 FR 53174–53176 (October 10, 1996), 62 FR 24816 (May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking 61 FR 20458 (May 7, 1996); and Tampa, Florida, final rulemaking 60 FR 62748 (December 7, 1995). See also the discussion of this issue in the Cincinnati redesignation 65 FR 37890 (June 19, 2000), in the Pittsburgh redesignation 66 FR 50399 (October 19, 2001), and in the South Coast redesignation 72 FR 6986 (February 14, 2007) and 72 FR 26718 (May 11, 2007). Again, EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation.

*the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans * * * provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. See ''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990, (General Preamble) 57 FR 13498, 13564 (April 16, 1992).*

See also Calcagni memo (''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.'').

Each subpart 1 requirement and how it is addressed with respect to the San Diego 8-hour area is described below.

• Implementation of all RACM, including, at a minimum, reasonably available control technology for existing sources and attainment of the standard (section 172(c)(1)).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the primary NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Because attainment has been reached, no additional measures are needed to provide for attainment, and the section 172(c)(1) requirement is no longer considered to be applicable as long as the area continues to attain the standard until redesignation. See 40 CFR 51.918.

• Reasonable further progress (section 172(c)(2)).

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the San Diego County area has monitored attainment of the ozone NAAQS. See General Preamble (57 FR 13564, April 16, 1992). See also 40 CFR 51.918.

• A comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the area (section 172(c)(3)).

CAA section 172(c)(3) requires states submit a comprehensive, accurate, current inventory of actual VOC and NO_X emissions for the baseline year from all sources within the nonattainment area. The inventory is to address actual VOC and NO_X emissions during the ozone season, and all stationary (generally referring to larger stationary source or point sources), area (generally referring to smaller stationary and fugitive (non-smokestack) sources), and mobile (on-road, nonroad, locomotive and aircraft) sources are to be included in the inventory. We interpret the Act such that the emission inventory requirements of section 172(c)(3) are satisfied by the inventory requirements of the maintenance plan. See 57 FR 13498, at 13564 (April 16, 1992). Thus, our proposed approval of the San Diego 8-hour maintenance plan and related VOC and NO_X emission inventories and our proposed approval of CARB's redesignation request would satisfy the requirements of section 172(c)(3) for the purposes of redesignation of the San Diego 8-hour area to attainment for the 1997 ozone NAAQS.

• Identification and quantification of the emissions, if any, of any such pollutants which will be allowed in accordance with section 173(a)(1)(B) (i.e., new or modified stationary sources located in established economic development zones) (section 172(c)(4)).

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in a zone identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone where economic development should be targeted. We note that the State has not sought to exercise the option available under CAA section 172(c)(4) (identification and quantification of certain emissions increases).

• Permits for the construction and operation of new and modified major stationary sources in the nonattainment area (section 172(c)(5)).

Section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. To meet the requirements, states must submit SIP revisions that meet the requirements under 40 CFR 51.165 (''Permit requirements''), and EPA regulations at 40 CFR 51.914 extend the SIP requirements of 40 CFR 51.165 to areas designated as nonattainment for the 1997 8-hour ozone standard.

Under 40 CFR 51.165, states are required to submit SIP revisions that establish certain requirements for new or modified stationary sources in nonattainment areas, including provisions to ensure that major new sources or major modifications of existing sources of nonattainment pollutants incorporate the highest level of control, referred to as the ''Lowest Achievable Emission Rate'' (LAER), and that increases in emissions from such stationary sources are offset so as to provide for reasonable further progress towards attainment in the nonattainment area.

The process for reviewing permit applications and issuing permits for new or modified major stationary sources of air pollution is referred to as ''New Source Review'' (NSR). With respect to nonattainment pollutants in nonattainment areas, this process is often referred to as ''nonattainment NSR.'' With respect to pollutants for which an area is designated as attainment or unclassifiable, states are required to submit SIP revisions that ensure that major new stationary sources and major modifications of existing stationary sources meet the federal requirements for ''Prevention of Significant Deterioration'' (PSD), including application of ''Best Available Control Technology'' (BACT), for each applicable pollutant emitted in significant amounts, among other requirements.

SDAPCD is responsible for stationary source emissions units, and SDAPCD regulations govern air pollutant permits issued for such units. Under the Clean Air Act Amendments of 1977, states with designated nonattainment areas were required to amend their NSR rules to impose LAER and offset requirements on new major sources and major modifications of nonattainment pollutants in nonattainment areas. As noted previously, under the 1977 Act Amendments, we designated the San Diego Air Basin as a nonattainment area for photochemical oxidants, later changed to ozone. To address the nonattainment NSR requirements arising from the 1977 Act Amendments, SDAPCD amended its nonattainment NSR rules, and CARB submitted them to EPA for approval as part of the California SIP. In 1981, we approved the following amended NSR rules: 20—Standards for Granting Applications; 20.1—Definitions, Emission Calculations, Emission Offsets and Banking, Exemptions, and Other Requirements; 20.2—Standards for Authority to Construct—Best Available Air Pollution Control Technology; 20.3—Standards for Authority to Construct—Air Quality Analysis; 20.4—Standards for Authority to Construct—Best Available Air Pollution Control Technology; 20.5—Power Plants; and 20.6—Standards for Authority to Construct—Air Quality Analysis. See 46 FR 21749 (April 14, 1981). Under these SIP-approved rules, LAER and offsets

have been required for new ''point sources'' that cause emissions greater than 100 tons per year of ozone precursors in ozone nonattainment areas.

The 1990 Clean Air Act Amendments retained the core nonattainment NSR elements of LAER and offsets but revised the applicability thresholds based on an area's non-attainment classification. The San Diego 8-hour area is currently classified as a moderate ozone non-attainment area, and therefore the NSR applicability thresholds at which LAER and offsets are required is 100 tpy of NO_X or VOC for new sources and 40 tpy for modifications made to existing major sources. EPA has reviewed SDAPCD's existing SIP-approved NSR rules and determined that they meet the current 40 CFR 51.165 requirements related to the application of LAER and offsets for areas classified as moderate for ozone. Thus, San Diego County has a nonattainment NSR program meeting the requirements of 40 CFR 51.165 for sources within the San Diego 8-hour area.

SDAPCD does not currently have an approved PSD program. Even if EPA finalizes the actions in today's proposed rulemaking, the federal PSD requirements under 40 CFR 52.21 will not apply to new major sources or major modifications to existing major sources of ozone precursors under SDAPCD's jurisdiction until the San Diego County 8-hour area is redesignated to attainment for the 2008 ozone standard. On April 4, 2012, SDAPCD adopted Rule 20.3.1 to address PSD requirements, and CARB submitted the rule to EPA on February 13, 2013 for inclusion in the SIP. If it is approved by EPA, SDAPCD will have a SIP-approved PSD program.

• Enforceable emission limitations as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date (section 172(c)(6)).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

• Compliance with section 110(a)(2) of the Act (section 172(c)(7)).

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the California SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

• Use of equivalent modeling emission inventory, and planning procedures if approved by EPA (CAA section 172(c)(8)).

The State of California has not sought to exercise the options available under CAA section 172(c)(8).

• Contingency measures for RFP and attainment of the NAAQS (CAA section 172(c)(9)).

Because the San Diego 8-hour area has attained the 1997 ozone NAAQS and is no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. See General Preamble (57 FR 13564, April 16, 1992). See also 40 CFR 51.918.

• Interagency consultation and enforceability for the purposes of transportation conformity (CAA section 176(c)(5) and 40 CFR 51.390).

Under section 176(c) of the Clean Air Act Amendments of 1990, states are required to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. Section 176(c) further provides that state conformity provisions must be consistent with federal conformity regulations that the CAA requires EPA to promulgate. EPA's conformity regulations are codified at 40 CFR part 93, subparts A (referred to herein as ''transportation conformity'') and B (referred to herein as ''general conformity''). Transportation conformity applies to transportation plans, programs, and projects developed, funded, and approved under title 23 U.S.C. or the Federal Transit Act, and general conformity applies to all other federally-supported or funded projects. SIP revisions intended to address the conformity requirements are referred to herein as ''conformity SIPs.''

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of a redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA,* 265 F. 3d 426 (6th Cir. 2001), upholding this interpretation. See also, 60 FR 62748 (December 7, 1995).

c. Subpart 2 Requirements

With respect to the requirements associated with subpart 2, we note that, as discussed in more detail above, the San Diego 8-hour area is classified as moderate nonattainment for the 1997 ozone standard under subpart 2 of part D of the CAA. See 77 FR 28424 (May 14, 2012). EPA issued a final rule classifying the San Diego 8-hour area as moderate for the 1997 ozone standard, along with a number of other areas of the country (2012 ozone classification). States with these affected areas, including California, were given one year from the effective date of the 2012 ozone classification to submit SIP revisions that applied to the areas as a result of their new classification. See 77 FR 28426 and 28429 (May 14, 2012). The effective date of EPA's classification of the San Diego 8-hour area as moderate for the 1997 ozone standard was June 13, 2012. Therefore, the deadline for California to submit any necessary SIP revisions that are now required for the San Diego 8-hour area, due to the area's new moderate classification, is June 13, 2013.

CARB has not submitted any SIP revisions for the San Diego 8-hour area in response to the area's 2012 ozone classification as moderate. However, as EPA articulated in the 2012 ozone classification, EPA believes that this fact does not preclude redesignation based upon the following factors: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time a redesignation request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, CARB submitted the redesignation request on December 28, 2012, well before the State's June 13, 2013 deadline to submit subpart 2 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. See the Calcagni memo and September 17, 1993, Michael Shapiro Memorandum (''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation), and: 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) (upholding this interpretation); and 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit Court (Court) has recognized the inequity in such

retroactive rulemaking (see *Sierra Club* v. *Whitman,* 285 F. 3d 63 (D.C. Cir. 2002)), in which the Court upheld a district court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated, ''[a]lthough EPA failed to make the nonattainment determination within the statutory frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the states, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly here, it would be unfair to penalize the San Diego 8-hour area by applying to it, for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect or yet due at the time it submitted its redesignation request, or the time that the San Diego 8-hour area attained the 1997 ozone NAAQS.

Based on the above, EPA proposes to find that the San Diego 8-hour area has a fully approved SIP meeting requirements applicable for purposes of redesignation under CAA section 110 and title I part D.

C. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) precludes redesignation of a nonattainment area to attainment unless EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollution control regulations and other permanent and enforceable regulations. Under this criterion, the state must be able to reasonably attribute the improvement in air quality to emissions reductions which are permanent and enforceable. Attainment resulting from temporary reductions in emissions rates (e.g., reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.

Table 3 summarizes the reductions in ozone precursors (i.e., VOCs and NO_X) between 2002 and 2011 sufficient to attain the 1997 ozone standard in the San Diego County 8-hour ozone nonattainment area (San Diego 8-hour area).

TABLE 3—SAN DIEGO COUNTY 2002–2011 REDUCTIONS IN OZONE PRECURSOR EMISSIONS (TONS PER DAY, TPD) [12]

Source category	VOC 2002	VOC 2011	VOC reduction (percent)	NO_X 2002	NO_X 2011	NO_X reduction (percent)
Consumer Solvent Products	22.5	17.9	3	.....	.....	.....
On-road Motor Vehicles	63.4	35.3	15	119.9	70.9	25
Non-road Mobile Sources	49.1	40.3	5	68.0	58.6	5
Stationary and Area Sources	48.0	49.1	0	10.1	8.1	1
Total	183.1	142.6	22	198.1	137.5	31

Source: California Air Resources Board, Southern California 2012 SIP Baseline Emission Projection—Version 1.02 Planning Inventory Tool Web site.

The effectiveness of the control measures to reduce VOC and NO_X emissions can be assessed by comparing emissions in 2002 (the nonattainment base year, for planning purposes) with those in 2011 (an attainment year for the area). The emission reductions presented in table 3 were calculated relative to the 2002 base year emissions inventory of 183 tpd of VOC and 198 tpd of NO_X. Between 2002 and the 2011 attainment year VOC and NO_X emissions were reduced 22% and 31%, respectively. On-road motor vehicle control programs provided reductions of 15% and 25% of the VOC and NO_X, and non-road mobile sources control programs resulted in reductions of 5% from both VOC and NO_X. These reductions were achieved despite an increase in population and vehicle miles traveled (VMT) of approximately 7% and 9%, respectively, during the same time period.[13]

The emissions reductions between 2002 and 2011 resulted primarily from EPA and CARB mobile source control programs. SDAPCD's stationary source control programs had mostly been implemented and provided significant emissions reductions prior to 2002; however, SDAPCD Rules 67.6.1—Cold Solvent Cleaning and Stripping Operations and 67.6.2—Vapor Degreasing Operations,[14] adopted in 2007, provided an additional 1 tpd of VOC reductions towards attainment, and these reductions occurred after the 2002 base year.

Source categories for which CARB has primary responsibility for reducing emissions in California include most new and existing on- and off-road engines and vehicles, motor vehicle fuels, and consumer products. In addition, California has unique authority under CAA section 209 (subject to being granted a waiver by EPA) to adopt and implement new emission standards for many categories of on-road vehicles and engines, and new and in-use off-road vehicles and engines. California has been a leader in the development of some of the most stringent control measures nationwide for on-road and off-road mobile sources and the fuels that power them. These measures have helped reduce VOC and NO_X in the San Diego ozone nonattainment area and throughout the State.

CARB has provided a summary of the measures adopted and implemented by the State. See ''Air Resources Board's Proposed State Strategy for California's 2007 State Implementation Plan,'' release date: April 26, 2007 (2007 State

[12] Emissions data reflect a ''summer day,'' as required by EPA policy guidance. Emissions data assume no emissions reductions from NSR or Title V permit programs. Source category-specific data are listed in Appendix A of the San Diego 8-hour maintenance plan. Emission reduction percentages are relative to the 2002 base year emissions totals of 183 tpd of VOC and 198 tpd of NO_X for the entire SDAPCD.

[13] See Figure 4–1 in the San Diego 8-hour maintenance plan. Additional information provided in personal communication (via email) from Carl Selnick, SDAPCD, to John Ungvarsky, USEPA, on January 2, 2013.

[14] These rules were approved by EPA on October 13, 2009. See 74 FR 52427. EPA intends to act in the coming months on SDAPCD Rules 67.0—Architectural Coatings (amended) and 67.11—Wood Products Coating Operation, for possible inclusion in the SIP. Documentation included in the submittal to EPA for these two rules indicates that together they have achieved approximately 1.5 tpd in VOC reductions. And again, these reductions occurred after the 2002 base year.

Strategy). From 1994 to 2006, the State took approximately 45 rulemaking actions which have achieved significant emission reductions contributing to attainment and continued attainment in the San Diego 8-hour area. See 2007 State Strategy, p. 38.[15] These measures include new emission standards and in-use requirements that have resulted in significant reductions in emissions of VOCs and NO_X from mobile source categories such as passenger cars, trucks, buses, motorcycles, locomotives, cargo handling equipment, and large off-road equipment. EPA has generally approved all of the State's measures that the State has submitted to EPA as revisions to the SIP and that are not subject to the CAA section 209 waiver process. See, for example, EPA's final approval of the San Joaquin Valley $PM_{2.5}$ plan at 76 FR 69896 (November 9, 2011) and accompanying *Technical Support Document and Responses to Comments.*[16] Since 2006, ARB has adopted additional measures that will provide further reductions in the San Diego 8-hour area. The 2007 State Strategy measures listed in table 4 reduce emissions of VOCs and NO_X and have been approved into the SIP or granted a waiver.

TABLE 4—STATUS OF CONTROL MEASURES IN CARB'S 2007 STATE STRATEGY CONTRIBUTING TOWARDS ATTAINMENT AND/OR CONTINUED ATTAINMENT OF THE 1997 OZONE NAAQS IN THE SAN DIEGO 8-HOUR AREA

Measure	Date of adoption	Current status
Modifications to Reformulated Gasoline	June 14, 2007	Approved 75 FR 26653, May 12, 2010.
Clean Up Existing Harbor Craft	November 15, 2007	Waiver granted; 76 FR 77521, December 13, 2011.
Ship Auxiliary Engine Cold Ironing and Clean Technology.	December 6, 2007	Waiver granted; 76 FR 77515, December 13, 2011.
Consumer Products Program Regulations	May 6, 2005; September 26, 2007; May 5, 2009; August 6, 2010.	Approved: 74 FR 57074, November 4, 2009; 76 FR 27613, May 12, 2011; 77 FR 7535, February 13, 2012.
Smog Check Improvements	August 31, 2009	Elements approved 75 FR 38023, July 1, 2010.
Cleaner In-Use Heavy-Duty Trucks	December 16, 2010	Approved 77 FR 20308, April 4, 2012.
Cleaner In-Use Off-Road Equipment	December 17, 2010	Waiver decision pending.
Port Truck Modernization	December 17, 2010	Adopted December 2007 and December 2008.

A detailed list of the SDAPCD, CARB, and EPA measures, including those adopted and implemented prior to 2002, contributing to attainment and maintenance of the 1997 ozone standard can be found in Appendix B of the San Diego 8-hour maintenance plan.[17]

We note that the control measures cited in the San Diego 8-hour maintenance plan, in particular those for on-road and non-road sources, have provided emissions reductions since 2002, and thus, the improvement in air quality since 2002 may reasonably be attributed to them. For instance, the federal gasoline and diesel fuel standards adopted in 2010 (65 FR 6698, February 10, 2000) have greatly lowered the allowable sulfur content of fuels and resulted in lower emissions, especially NO_X, from cars and trucks. The State and federal on-road and nonroad vehicle and engine standards have contributed to improved air quality through the gradual, continued turnover and replacement of older model vehicles with newer model vehicles manufactured to meet increasingly stringent tailpipe emissions standards.

With respect to the connection between emissions reductions and improvement in air quality, we also conclude that the air quality improvement since 2002 in the San Diego 8-hour area is not the result of a local economic downturn or unusual or extreme weather patterns. San Diego did not observe any anomaly over the period from 2002 to 2011 relative to long-term averages. We do recognize that a significant economic slowdown occurred nationally starting in 2008, but we note that the downward trend in VOC and NO_X emissions had already been established before that time.[18] We also reviewed temperature data for the 1993–2011 period[19] and the analysis of this data included in the San Diego 8-hour maintenance plan. The data indicate that although the 2009–2011 attainment period was slightly cooler than the long-term average, there were six other three-year periods since 1993 that were at least as cool or cooler than the 2009–2011 period, that also had 8-hour design values above the 1997 ozone NAAQS. Thus, the temperature records support the conclusion that attainment did not result from unusually favorable meteorology during 2009–2011.

We find that the improvement in air quality in the San Diego 8-hour area is the result of permanent and enforceable emissions reductions from a combination of federal vehicle and fuel measures and EPA-approved state and local control measures. As such, we propose to find that the criterion for redesignation set forth at CAA section 107(d)(3)(E)(iii) is satisfied.

D. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from

[15] The 2007 State Strategy can be found at: *http://arb.ca.gov/planning/sip/2007sip/apr07draft/sipback.pdf.* See page 38 for a list of actions.

[16] This document, titled ''Technical Support Document and Responses to Comments: Final Rule on the San Joaquin Valley 2008 $PM_{2.5}$ State Implementation Plan,'' dated September 30, 2011, can be found on the Internet in the docket for EPA's final approval of the San Joaquin Valley plan to attain the 1997 $PM_{2.5}$ NAAQS at: *http://www.regulations.gov/#!documentDetail;D=EPA-R09-OAR-2010-0516-0175.*

[17] In addition, the U.S. Secretary of State has accepted the designation by the International Maritime Organization of an Emission Control Area (ECA) in the waters off the North American coasts. Under this designation, ships are required to meet tighter fuel and emissions standards than would otherwise apply. Within the North American ECA, the effective date of the first-phase fuel sulfur standard was August 2012, and the second phase begins January 2015. Beginning in 2016, NO_X aftertreatment requirements become applicable. San Diego County will benefit from the ECA because ships complying with ECA standards will reduce their emissions of NO_X, sulfur oxides, and fine particulate matter. Appendix B of the San Diego 8-hour maintenance plan does not include this measure.

[18] See Figure 4–1, titled ''San Diego County VOC + NO_X Emission Reductions Despite Growth,'' on page 4–3 of the San Diego 8-hour maintenance plan.

[19] See Figure 4–2, titled ''San Diego County Three-Year Average Ozone Season Daily Maximum Temperatures,'' on page 4–5 of the San Diego 8-hour maintenance plan.

nonattainment to attainment. We interpret this section of the Act to require, in general, the following core elements: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan. See Calcagni memo, pages 8 through 13.

Under CAA section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency provisions, that EPA deems necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area to attainment. Based on our review and evaluation of the plan, as detailed below, we are proposing to approve the San Diego maintenance plan because we believe that it meets the requirements of CAA section 175A.

1. Attainment Inventory

A maintenance plan for the 1997 8-hour ozone standard must include an inventory of emissions of ozone precursors (VOC and NO_X) in the area to identify a level of emissions that are sufficient to attain the 1997 ozone NAAQS. This inventory must be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The inventory must also be comprehensive, including emissions from stationary, area, nonroad mobile, and on-road mobile sources, and must be based on actual ''ozone season data'' (i.e., summertime) emissions.

SDAPCD selected year 2011 as the year for the attainment inventory in the San Diego maintenance plan. The attainment inventory will generally be the actual inventory during the time period the area attained the standard. Thus, SDAPCD's selection of 2011 for the attainment inventory is acceptable.

In addition to the 2011 attainment inventory, the San Diego 8-hour maintenance plan also includes emissions inventories for 2002, 2015, 2020, and 2025. Based on our review of the San Diego 8-hour maintenance plan, we find that the emissions inventories in the plan are comprehensive in that they include estimates of VOC and NO_X emissions for 2002, 2011, 2015, 2020, and 2025 from 69 relevant source categories, which the plan groups among stationary, areawide, on-road mobile, and non-road mobile sources. See tables A–1 and A–2 in Appendix A of the San Diego 8-hour maintenance plan.

The stationary source category includes non-mobile, fixed sources of air pollution. Examples of sources included in this category include fuel combustion (e.g., electric utilities), waste disposal (e.g., landfills), and oil and gas production. SDAPCD's 2002, 2011, 2015, 2020, and 2025 inventories for stationary sources were developed using ARB's Southern California 2012 SIP Baseline Emission Projection—Version 1.02 Planning Inventory Tool, which is based on methodologies in CARB's *California Almanac of Emissions and Air Quality—2009 Edition* (CARB's 2009 Almanac).[20] Information reported by emission sources to SDAPCD and entered into the California Emission Inventory Development and Reporting System (CEIDARS) database[21] was also used to generate actual emissions data for stationary sources. For areawide sources, CARB calculated emissions based on reported data for fuel usage, product sales, population, employment data, and other parameters covering a wide range of activities.[22]

The on-road mobile source category consists of mobile sources such as trucks, automobiles, buses, and motorcycles. The on-road emissions inventory estimates in the San Diego 8-hour maintenance plan were prepared by CARB using EMFAC2011, a CARB model for on-road motor vehicle emissions.[23] The vehicle miles traveled estimates needed for input into the emissions model were developed by the San Diego Association of Governments (SANDAG) for the 2050 Regional Transportation Plan. The transportation modeling process used by SANDAG is described in Appendix B (Air Quality Planning and Transportation Conformity) of the 2050 Regional Transportation Plan.[24]

With respect to nonroad mobile sources, the category includes aircraft, trains and boats, and off-road vehicles and equipment used for construction, farming, commercial, industrial, and recreational activities. CARB used its OFFROAD2007 model to calculate the nonroad emissions.[25] In general, emissions are calculated using equipment population, engine size and load, usage activity, and emission factors.

Tables 5 and 6 below present the VOC and NO_X emissions inventory estimates contained in the San Diego 8-hour maintenance plan for actual 2011 emissions and projected 2015, 2020, and 2025 emissions. Based on the 2011 estimates in tables 5 and 6, mobile sources accounted for 53% of the VOC and 94% of NO_X emissions within the San Diego 8-hour area. Stationary sources, consumer products, and other areawide sources represented 22%, 12%, and 13% of VOC emissions, respectively. Stationary and areawide sources accounted for only 6% of the NO_X emissions. Future emissions levels for 2015, 2020, and 2025 are forecasted by adjusting the attainment year emissions inventory to reflect projected growth in emitting activities and additional control of emission rates that will be provided by continued implementation of the existing federal, State and SDAPCD emissions control regulations. Growth in emitting activities is projected basedon

[20] CARB's 2009 Almanac contains information about current and historical air quality and emissions in California. In addition, forecasted emissions are presented. See *http://www.arb.ca.gov/aqd/almanac/almanac09/almanac09.htm.*

[21] The CEIDARS database consists of two categories of information: source information (for further information, see: *http://www.arb.ca.gov/ei/drei/maintain/dbstruct.htm#source*) and utility information (for further information, see: *http://www.arb.ca.gov/ei/drei/maintain/dbstruct.htm#utility*). Source information includes the basic inventory information generated and collected on all point and area sources. Utility information generally includes auxiliary data, which helps categorize and further define the source information. Used together, CEIDARS is capable of generating complex reports based on a multitude of category and source selection criteria.

[22] For more information on emissions from the area-wide source category, see the CARB Web site: *http://www.arb.ca.gov/ei/areasrc/areameth.htm.*

[23] See 78 FR 14533 (March 6, 2013) regarding EPA approval of the latest version of the California EMFAC model (short for EMissionFACtor) and announcement of its availability. The software and detailed information on the EMFAC vehicle emission model can be found on the following CARB Web site: *http://www.arb.ca.gov/msei/msei.htm.*

[24] SANDAG's transportation activity modeling process is described in Appendix B (Air Quality Planning and Transportation Conformity) of the 2050 Regional Transportation Plan, which can be found on the Internet at: *http://www.sandag.org/index.asp?projectid=349&fuseaction=projects.detail.*

[25] See *http://www.arb.ca.gov/msei/offroad/offroad.htm.*

[26] Because potential changes in military activities do not follow socio-economic factors, SDAPCD obtained from the Department of the Navy, for inclusion in the maintenance demonstration, a projection of future mobile source emissions from potential additional military activity (beyond that assumed in the baseline emissions) that may occur during the maintenance period at Coast Guard, Navy, and Marine Corps facilities in San Diego County. See ''Department of Navy Emissions Growth Increment Request for the San Diego Air Pollution Control District,'' May 24, 2011.

forecasted growth in socio-economic factors such as population, employment, industrial production, and vehicle miles of travel.

TABLE 5—2011 AND PROJECTED 2015, 2020, AND 2025 VOC EMISSIONS TOTAL DAILY EMISSIONS

[tpd, average summer weekday]

Source category	VOC			
	2011	2015	2020	2025
Stationary	31.1	33.1	35.8	36.8
Consumer Products	17.9	16.9	17.6	18.3
Other Areawide	18.0	18.4	19.1	19.2
On-road Motor Vehicles	35.3	26.4	20.5	18.3
Non-road Mobile	40.3	37.1	35.4	36.1
Banked Emission Credits	.....	0.9	0.9	0.9
Military [26]	.....	1.0	1.0	1.0
Total	142.6	133.9	130.3	130.6

Source: Appendix A, San Diego 8-hour maintenance plan.

TABLE 6—2011 AND PROJECTED 2015, 2020, AND 2025 NO_X EMISSIONS TOTAL DAILY EMISSIONS

[tpd, average summer weekday]

Source category	NO_X			
	2011	2015	2020	2025
Stationary	6.3	5.6	5.5	5.6
Areawide	1.7	1.8	1.9	2.0
On-road Motor Vehicles	70.9	52.5	35.9	27.6
Non-road Mobile	58.6	54.9	50.4	47.5
Banked Emission Credits	.....	0.7	0.7	0.7
Military [27]	.....	4.4	4.4	4.4
Total	137.5	119.9	98.9	87.8

Source: Appendix A, San Diego 8-hour maintenance plan.

Based on our review of the emissions inventories (and related documentation) from the San Diego 8-hour maintenance plan, we find that the 2011 attainment year emissions inventory is comprehensive, that the methods and assumptions used by SDAPCD and CARB to develop the inventory are reasonable, and that the inventory reasonably estimates actual ozone season emissions in the 2011 attainment year. Moreover, we find that the 2011 emissions inventory reflects the latest planning assumptions and emissions models available at the time the plan was developed, and provides a comprehensive and reasonably accurate basis upon which to forecast ozone precursor emissions for years 2015, 2020 and 2025.

2. Maintenance Demonstration

CAA section 175A(a) requires that the maintenance plan ''provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation.'' Generally, a state may demonstrate maintenance of the 1997 ozone standard by either showing that future emissions will not exceed the level of the attainment year inventory or by modeling to show that the future mix of sources and emissions rates will not cause a violation of the NAAQS. For areas that are required under the Act to submit modeled attainment demonstrations, the maintenance demonstration should use the same type of modeling. See Calcagni memo, page 9. The San Diego 8-hour area was not required to submit a modeled attainment demonstration, and thus, the San Diego 8-hour maintenance plan may demonstrate maintenance based on a comparison of existing and future emissions of ozone precursors.[28]

In addition to accounting for area-wide growth trends, SDAPCD included a growth increment for potential future military projects that may become operational during the maintenance period at Coast Guard, Navy, or Marine Corps facilities in the San Diego 8-hour area. SDAPCD also added to the maintenance-year inventory banked emissions reduction credits (ERCs) of 0.9 tpd of VOCs and 0.7 tpd of NO_X from stationary sources in the event that the ERCs are used for the purpose of issuing permits for new or modified stationary sources in the San Diego 8-hour area. We have reviewed the methods and assumptions, as described in connection with the attainment year inventory, that SDAPCD and CARB used to project emissions to 2015, 2020, and 2025 for the various source categories and find the methods and assumptions to be reasonable.

Tables 5 and 6 compare the VOC and NO_X emissions estimated for the San Diego 8-hour area for the 2011 attainment year with the 2015 and 2020 interim years, and 2025 maintenance year. By 2025, San Diego County ozone precursor emissions are projected to decrease by 12.1 tons per day (8%) for VOC and 49.7 tons per day (36%) for NO_X relative to the 2011 attainment year inventory. The projected VOC and NO_X emissions show that VOC and NO_X emissions would remain well below the attainment year levels through 2025 and thereby adequately demonstrate

[27] See previous footnote.

[28] A maintenance demonstration need not be based on ozone modeling. See *Wall* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, at pages 53099–53100 (October 19, 2001), and 68 FR 25413, pages 25430–25432 (May 12, 2003).

maintenance through at least a 10-year period.

3. Monitoring Network

Continued ambient monitoring of an area is generally required over the maintenance period. As discussed in section V.A of this document, ozone is currently monitored by SDAPCD at nine sites within the San Diego 8-hour area. SDAPCD also commits to continue operating the ambient ozone monitoring network, quality assuring the resulting monitoring data, and entering all data into the AQS in accordance with federal requirements and guidelines to verify continued attainment of the 1997 8-hour ozone NAAQS.[29] See page 5–5 of the San Diego 8-hour maintenance plan. We find SDAPCD's commitment for continued ambient ozone monitoring as set forth in its San Diego 8-hour maintenance plan to be acceptable.

4. Verification of Continued Attainment

CARB and SDAPCD have the legal authority to implement and enforce the requirements of the San Diego 8-hour maintenance plan. This includes the authority to adopt, implement and enforce any emission control contingency measures determined to be necessary to correct violations of the 1997 ozone standard. To verify continued attainment, SDAPCD commits to the continued operation of an ozone monitoring network in accordance with federal requirements and guidelines to verify continued attainment of the 1997 ozone standard. SDAPCD also commits to annually reviewing ozone monitoring data from the three most recent, consecutive years to verify continued attainment of the 1997 ozone standard through the maintenance period.

In addition, the transportation conformity process, which requires a comparison of on-road motor vehicle emissions that would occur under new or amended regional transportation plans and programs with the MVEBs in the San Diego 8-hour maintenance plan, represents another means by which to verify continued attainment of the 1997 ozone standard in the San Diego 8-hour area. This alternate means of verifying continued attainment during the maintenance period is especially relevant for the San Diego 8-hour area, given the importance of motor vehicle emissions to the overall emissions inventories of ozone precursors in the area. It is important to note also that conformity applies to an area during its entire maintenance period. See page 5–3 of the San Diego 8-hour maintenance plan.

Lastly, while not cited in the San Diego 8-hour maintenance plan, CARB and SDAPCD must inventory emissions sources and report to EPA on a periodic basis under 40 CFR part 51, subpart A (''Air Emissions Reporting Requirements''). These emissions inventory updates will provide a third means with which to track emissions in the area relative to those projected in the maintenance plan and thereby verify continued attainment of the 1997 ozone standard. These methods are sufficient for the purpose of verifying continued attainment.

5. Contingency Provisions

Section 175A(d) of the Act requires that maintenance plans include contingency provisions, as EPA deems necessary, to promptly correct any violations of the NAAQS that occur after redesignation of the area to attainment. Such provisions must include a requirement that the state will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area.

Under section 175A(d), contingency measures identified in the contingency plan do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event. The maintenance plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific timeline for action by the state. As a necessary part of the plan, the state should also identify specific indicators or triggers, which will be used to determine when the contingency measures need to be implemented.

As required by section 175A of the CAA, SDAPCD has adopted a contingency plan to address possible future ozone air quality problems. See section 5.7 of the San Diego 8-hour maintenance plan. SDAPCD commits to annually review ozone monitoring data from the three most recent, consecutive years to verify continued attainment of the 1997 ozone standard through the maintenance period.

California's on-going emissions control program includes several recently adopted CARB mobile source control regulations (collectively referred to as California's Advanced Clean Cars Program) that will be implemented and achieve additional reductions in the San Diego 8-hour area during the maintenance period regardless of monitored ozone levels. The Advanced Clean Cars Program (ACCP), adopted on January 27, 2012,[30] will progressively tighten emissions control requirements for motor vehicles through model year 2025, and thus will provide additional emissions reductions over and above those needed for attainment and beyond those that are relied on to demonstrate maintenance in the San Diego 8-hour maintenance plan. The ACCP was not reflected in EMFAC2011, and the emissions inventories used for the maintenance demonstration in the San Diego 8-hour maintenance plan are based on EMFAC2011.[31] Therefore, the emission reductions from the ACCP are surplus to the maintenance demonstration, and thus the ACCP is eligible as a contingency measure.

The ACCP will provide continuing emissions reductions through the maintenance period and provide adequate additional reductions to address the CAA's contingency requirements. By 2025, the existing control program, not including CARB's ACCP adopted in 2012, is projected to reduce ozone precursor emissions in the San Diego 8-hour area by 20 tpd (14%) for VOC, and 52 tpd (39%) for NO_X, below the 2011 attainment year emissions levels. Therefore, if new violations were to occur during the maintenance period, sufficient continuing emissions reductions are projected to ensure any violation will be quickly corrected and then provide for continued maintenance of the 1997 ozone NAAQS in the San Diego 8-hour area through the maintenance period. In a March 6, 2013 letter to EPA, SDAPCD clarified information in the San Diego 8-hour maintenance plan by stating the ACCP is the initial contingency measure for promptly correcting a violation. If after implementation of the ACCP a subsequent violation occurs, SDAPCD commits to work with EPA and CARB to adopt and implement additional contingency measure(s), as deemed necessary, as soon as possible but no later than 12 months after the date of the second violation.

Upon our review of the plan and the March 6, 2013 clarification, as summarized above, we find that the

[29] Although the San Diego 8-hour maintenance plan is not explicit in this regard, we presume that SDAPCD's intention to continue operation of a monitoring network means that the agency intends to do so consistent with EPA's monitoring requirements in 40 CFR part 58 (''Ambient Air Quality Surveillance'').

[30] On January 9, 2013, EPA approved CARB's request for a waiver of preemption under section 209(b) for its ACC regulations. See 78 FR 2112.

[31] See page 5–5 of San Diego 8-hour maintenance plan.

contingency provisions of the San Diego 8-hour maintenance plan identify specific contingency measures, contain tracking and triggering mechanisms to determine when contingency measures are needed, contain a description of the process of recommending and implementing contingency measures, and contain specific timelines for action. Thus, we conclude that the contingency provisions of the San Diego 8-hour maintenance plan are adequate to ensure prompt correction of a violation and therefore comply with section 175A(d) of the Act.

6. Subsequent Maintenance Plan Revisions

CAA section 175A(b) provides that states shall submit a SIP revision eight years after redesignation providing for maintaining the NAAQS for an additional ten years. In the San Diego 8-hour maintenance plan, SDAPCD commits to prepare and submit a revised maintenance plan eight years after redesignation to attainment. See pages 5–6 of the San Diego 8-hour maintenance plan.

7. Motor Vehicle Emissions Budgets

Transportation conformity is required by section 176(c) of the CAA. Our transportation conformity rule (codified in 40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to the SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards or delay any required interim milestones.

Ozone maintenance plan submittals must specify the maximum emissions of transportation-related VOC and NO_X emissions allowed in the last year of the maintenance period, i.e., the motor vehicle emissions budgets (MVEBs). (MVEBs may also be specified for additional years during the maintenance period.) The MVEBs serve as a ceiling on emissions that would result from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble describes how to establish MVEBs in the SIP and how to revise the MVEBs if needed.

A maintenance plan submittal must also demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with maintenance of the NAAQS. In order for us to find these emissions levels or ''budgets'' adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5). For more information on the transportation conformity requirements and applicable policies on MVEBs, please visit our transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) making a finding of adequacy or inadequacy. The process for determining the adequacy of a submitted MVEB is codified at 40 CFR 93.118.

The San Diego 8-hour maintenance plan contains new VOC and NO_X MVEBs for 2020 and 2025 as shown in table 7. The MVEBs are the projected on-road mobile source VOC and NO_X emissions for the San Diego 8-hour area for 2020 and 2025. They include a small safety margin created by rounding up the projected on-road mobile source emissions to the next whole number and adding two tons per day. The MVEBs are compatible with the 2020 and 2025 on-road mobile source VOC and NO_X emissions included in the San Diego 8-hour maintenance plan's 2020 and 2025 VOC and NO_X emission inventories, as summarized above in tables 5 and 6. The conformity rule allows for a safety margin, and even with the small safety margin added to the on-road emissions, the overall emissions in the San Diego 8-hour area are consistent with continued maintenance of the 1997 ozone standard. The derivation of the MVEBs is discussed in section 5.3 of the San Diego 8-hour maintenance plan. The MVEBs incorporate: (1) On-road motor vehicle emission inventory factors of EMFAC2011; and (2) updated recent vehicle activity data from SANDAG generated using TransCAD 5.0, ArcInfo, and other information sources as described in Appendix B of the 2050 Regional Transportation Plan (October, 2011).[32]

TABLE 7—MOTOR VEHICLE EMISSIONS BUDGETS IN THE SAN DIEGO 8-HOUR MAINTENANCE PLAN

Budget year	VOC (tpd, average summer weekday)	NO_X (tpd, average summer weekday)
2020 ..	23	38
2025 ..	21	30

Source: Table 5–3 on page 5–4 of the San Diego 8-hour maintenance plan.

The availability of the SIP submission with MVEBs was announced for public comment on EPA's Adequacy Web site on December 20, 2012, at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm,* which provided a 30-day public comment period. The comment period for this notification ended on January 22, 2013, and EPA received no comments from the public. On March 11, 2013, EPA determined the 2020 and 2025 MVEBs were adequate.[33] The new MVEBs will be effective 15 days after a notice of adequacy is published in the **Federal Register**. After the effective date the new MVEBs must be used in future transportation conformity determinations for the San Diego 8-hour area.

EPA proposes to approve 2020 and 2025 MVEBs in the San Diego 8-hour maintenance plan for transportation conformity purposes in the final rulemaking on CARB's redesignation request for the San Diego 8-hour area. EPA has determined through its thorough review of the submitted maintenance plan that the MVEB emission targets are consistent with emission control measures in the SIP and that the San Diego 8-hour area can maintain attainment of the 1997 ozone NAAQS. The details of EPA's evaluation of the MVEBs for compliance with the budget adequacy criteria of 40 CFR 93.118(e) are provided in a separate adequacy letter[34] included in the docket of this rulemaking. As indicated above, the MVEBs must be used in any conformity determination made after the adequacy finding on the budgets is effective, which will be 15 days after the notice of adequacy is published in the **Federal Register**.[35]

[32] See *http://www.sandag.org/uploads/2050RTP/F2050rtp_all.pdf.*

[33] See March 11, 2013 letter from Deborah Jordan, Director, Air Division, USEPA Region 9, to James Goldstene, Executive Officer, CARB. A notice of adequacy will also be published in the **Federal Register** to notify the public that the Agency has found that the MVEBs for ozone for the years 2020 and 2025 are adequate for transportation conformity purposes.

[34] See March 11, 2013 letter in footnote 33 and enclosure titled, ''Transportation Conformity Adequacy Review,'' for Motor Vehicle Emission Budgets in San Diego 8-hour maintenance plan.

[35] The **Federal Register** notice announcing the notice of adequacy will be in the docket for this

VI. Proposed Action and Request for Public Comment

Under CAA section 110(k)(3), and for the reasons set forth above, EPA is proposing to approve CARB's submittal dated December 28, 2012 of the *Redesignation Request and Maintenance Plan for the 1997 National Ozone Standard for San Diego County* (December 2012) as a revision to the California state implementation plan (SIP). In connection with the San Diego 8-hour maintenance plan, EPA finds that the maintenance demonstration showing how the area will continue to attain the 1997 8-hour ozone NAAQS for 10 years beyond redesignation (i.e., through 2025) and the contingency provisions describing the actions that SDAPCD and CARB will take in the event of a future monitored violation meet all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A. EPA is also proposing to approve the motor vehicle emissions budgets (MVEBs) in the San Diego 8-hour maintenance plan (shown in table 7 of this document) because we find they meet the applicable transportation conformity requirements under 40 CFR 93.118(e).

Second, under CAA section 107(d)(3)(D), we are proposing to approve CARB's request, which accompanied the submittal of the maintenance plan, to redesignate the San Diego County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS. We are doing so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E). Our conclusion in this regard is in turn based on our proposed determination that the area has attained the 1997 ozone NAAQS, that relevant portions of the California SIP are fully approved, that the improvement in air quality is due to permanent and enforceable reductions in emissions, that California has met all requirements applicable to the San Diego 8-hour area with respect to section 110 and part D of the CAA, and based on our proposed approval as part of this action of the San Diego 8-hour maintenance plan.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. We will accept comments from the public on this proposal for the next 30 days. We will consider these comments before taking final action.

rulemaking and on EPA adequacy web page: *http://www.epa.gov/otaq/stateresources/transconf/reg9sips.htm#ca.*

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by State law. Redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions merely propose to approve a State plan and redesignation request as meeting Federal requirements and do not impose additional requirements beyond those by State law. For these reasons, these proposed actions:

- Are not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law. Nonetheless, in accordance with EPA's 2011 Policy on Consultation and Coordination with Tribes, EPA has notified Tribes located within the San Diego County 8-hour ozone nonattainment.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 14, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013–06767 Filed 3–22–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2012–0233; FRL–9793–7]

EPA Responses to State and Tribal 2010 Sulfur Dioxide Designation Recommendations: Notice of Availability and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reopening of public comment period.

SUMMARY: The EPA is announcing the reopening of the public comment period for the EPA's responses to state and tribal designation recommendations for the 2010 Sulfur Dioxide National Ambient Air Quality Standard. The EPA sent the responses directly to the states and tribes on or about February 7, 2013. On February 15, 2013, the EPA published a notice of availability in the

Federal Register that the EPA had posted the responses on its Internet Web site and the EPA invited public comment. In the notice of availability, the EPA stated that public comments must be received on or before March 18, 2013. The EPA has received several requests from stakeholders for additional time to prepare their comments. Some of the requesters asserted that they needed additional time to review the EPA's response to state's proposed designation and prepare their responses due to the complexity of the issues impacting their area. Taking that into consideration, the EPA is reopening the comment period until April 8, 2013. The EPA intends to make final the designation determinations for the areas of the country addressed by these responses in June 2013.

DATES: Comments on the notice of availability published February 15, 2013 (78 FR 11124) must be received on or before April 8, 2013. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0233, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov. Attention Docket ID No. EPA–HQ–OAR–2012–0233.*
- *Fax:* 202–566–9744. *Attention Docket ID No. EPA–HQ–OAR–2012–0233.*
- *Mail:* Air Docket, *Attention Docket ID No. EPA–HQ–OAR–2012–0233,* Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0233. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk you submit. If the EPA is unable to read your comment and cannot contact you for clarification due to technical difficulties, the EPA may not be able to consider your input. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general questions concerning this action, please contact Rhonda Wright, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Planning Division, C539–04, Research Triangle Park, NC 27711, telephone (919) 541–1087, email at *wright.rhonda@epa.gov.* For questions regarding areas in EPA Region 1, please contact Donald Dahl, U.S. EPA, telephone (617) 918–1657, email at *dahl.donald@epa.gov.* For questions regarding areas in EPA Region 2, please contact Kenneth Fradkin, U.S. EPA, telephone (212) 637–3702, email at *fradkin.kenneth@epa.gov.* For questions regarding areas in EPA Region 3, please contact Irene Shandruk, U.S. EPA, telephone (215) 814–2166, email at *shandruk.irene@epa.gov.* For questions regarding areas in EPA Region 4, please contact Lynorae Benjamin, U.S. EPA, telephone (404) 562–9040, email at *benjamin.lynorae@epa.gov.* For questions regarding areas in EPA Region 5, please contact John Summerhays, U.S. EPA, telephone (312) 886–6067, email at *summerhays.john@epa.gov.* For questions regarding areas in EPA Region 6, please contact Dayana Medina, U.S. EPA, telephone (214) 665–7241, email at *medina.dayana@epa.gov.* For questions regarding areas in EPA Region 7, please contact Larry Gonzalez, U.S. EPA, telephone (913) 551–7041, email at *gonzalez.larry@epa.gov.* For questions regarding areas in EPA Region 8, please contact Crystal Ostigaard, U.S. EPA, telephone (303) 312–6602, email at *ostigaard.crystal@epa.gov.* For questions regarding areas in EPA Region 9, please contact John Kelly, U.S. EPA, telephone (415) 947–4151, email at *kelly.johnj@epa.gov.* For questions regarding areas in EPA Region 10, please contact Steve Body, U.S. EPA, telephone (206) 553–0782, email at *body.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Instructions for Submitting Public Comments and Internet Web Site for Rulemaking Information

A. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as confidential business information. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning

and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0880, email at *morales.roberto@epa.gov,* Attention Docket ID No. OAR–2012–0233.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

B. Where can I find additional information for this rulemaking?

The EPA has also established a Web site for this rulemaking at *http://www.epa.gov/so2designations.* The Web site includes the EPA's state and tribal designation recommendations, information supporting the EPA's preliminary designation decisions, as well as the rulemaking actions and other related information that the public may find useful.

Dated: March 19, 2013.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2013–06649 Filed 3–22–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 10

[Docket No. USCG–2013–0009]

Medical Waivers for Merchant Mariner Credential Applicants With a History of Seizure Disorders

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed policy change and request for comments.

SUMMARY: The Coast Guard is seeking public comment regarding criteria for granting medical waivers to merchant mariners with a history of seizure disorders. Coast Guard regulations provide that convulsive disorders (also known as seizure disorders) are conditions that may lead to disqualification for a merchant mariner credential (MMC). Because a significant number of merchant mariner applicants have suffered from seizure disorders, it is important for the Coast Guard to develop and publish clear guidance regarding how such MMC applicants are evaluated. Prior to issuing a policy change on when waivers should be granted for seizure disorders, the Coast Guard will accept comments from the public on whether the proposed criteria adequately address safety concerns.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before April 24, 2013 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0009 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or email Lieutenant Ashley Holm, Mariner Credentialing Program Policy Division (CG–CVC–4), U.S. Coast Guard, telephone 202–372–1128, email *MMCPolicy@uscg.mil.* If you have questions on viewing material in the docket, call Docket Operations at 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation

You may submit comments and related material regarding this proposed policy change. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2013–0009) and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and use ''USCG–2013–0009'' as your search term. Locate this notice in the results and click the corresponding ''Comment Now'' box to submit your comment. 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.

Viewing the comments: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov* and use ''USCG–2013–0009'' as your search term. Use the filters on the left side of the page to highlight ''Public Submissions'' or other document types. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Background and Purpose

Coast Guard regulations in 46 CFR 10.215 contain the medical standards that merchant mariner applicants must meet prior to being issued an MMC. In cases where the MMC applicant does not meet the medical standards in 46 CFR 10.215, the Coast Guard may issue a waiver when extenuating circumstances exist that warrant special consideration (46 CFR 10.215(g)).

On September 15, 2008, the Coast Guard issued Navigation and Vessel Inspection Circular (NVIC) 04–08, ''Medical and Physical Evaluation Guidelines for Merchant Mariner

Credentials.'' [1] NVIC 04–08 provides that MMC applicants with a history of seizure disorders should contact the National Maritime Center (NMC) for guidance. Since the issuance of NVIC 04–08, a number of MMC applicants have sought and received waivers for seizure disorders in accordance with 46 CFR 10.215(g). However, because NVIC 04–08 does not identify waiver criteria associated with seizure disorders, it has been difficult for Coast Guard personnel to consistently evaluate MMC applicants with a history of seizures and assess whether an individual applicant's medical condition warrants granting a medical waiver under 46 CFR 10.215(g). Accordingly, the Coast Guard is considering whether to change its policy regarding waivers for seizure disorders, and under what criteria an MMC applicant may be eligible for waiver consideration.

The Coast Guard intends to consider public input as well as the recommendations of the Merchant Mariner Medical Advisory Committee (MMMAC), established under the authority of 46 U.S.C. 7115, prior to establishing a final policy regarding which circumstances warrant granting waivers for seizure disorders. Due to the complexity of the medical and policy issues involved, the Coast Guard intends to thoroughly analyze the issues prior to issuing the final policy.

Because there is no medical literature that specifically addresses the safety implications that seizure disorders in mariners might have on both mariners and the public, the Coast Guard reviewed the guidelines and recommendations of the Federal Motor Carrier Safety Administration (FMCSA) Medical Review Board (January 28, 2008) and FMCSA's Medical Expert Panel (MEP) (October 15, 2007) with regard to commercial motor vehicle drivers with seizure disorders. Although the FMCSA provides guidelines and medical regulations specific to drivers of commercial motor vehicles, the FMCSA's mission of promoting public safety by evaluating the medical fitness of drivers is similar to the Coast Guard's mission of promoting public and maritime safety by evaluating the medical fitness of merchant mariners. While the FMCSA standards are not binding on the Coast Guard, they provide a sound basis for the Coast Guard to use in formulating policy with respect to evaluating merchant mariner applicants with seizure disorders and assessing whether an MMC applicant's condition warrants granting a medical waiver. We used the FMCSA standards as a starting point in formulating our proposed policy detailed below.

In October 2007, the MEP conducted a review of the medical literature and revised its recommendations for medical certification of commercial motor vehicle drivers with seizure disorders. The MEP presented the following recommendations and findings to the FMCSA Medical Review Board on January 28, 2008: [2]

(1) On the basis of the medical literature review, the MEP concluded that the longer an individual remains seizure-free, the less likely the individual is to have a recurrent seizure. Specifically, the MEP found that individuals who have been seizure-free for at least 8 years have less than a 2 percent risk of seizure recurrence per year, while those who have been seizure-free for 10 years have less than a 1 percent chance of seizure recurrence per year.

(2) The MEP asserted that a seizure recurrence risk of less than two percent was sufficiently low so as to permit an individual to be certified to drive a commercial motor vehicle. The MEP recommended that an individual with a history of epilepsy (a type of seizure disorder) may be granted conditional certification to drive, provided that the individual meets certain criteria. Although the MEP recommended an 8-year seizure-free period, the FMCSA Medical Review Board opted to retain stricter guidelines, recommending a minimum 10-year seizure-free period, to reduce the risk of seizure recurrence to less than 1 percent.

Proposed Policy

The Coast Guard is considering granting waivers to MMC applicants with seizure disorders under the conditions delineated below. The Coast Guard has been using an interim policy of an eight-year seizure-free period for determining whether or not a waiver is warranted. The Coast Guard recognizes that in some situations, a shorter period may be justified. The Coast Guard requests public comment on whether the criteria listed below are appropriate and sufficient for determining whether an MMC applicant should be eligible for consideration for a medical waiver under 46 CFR 10.215(g).

Unprovoked Seizures

Unprovoked seizures are those seizures not precipitated by an identifiable trigger. Mariners with a history of unprovoked seizure(s) may be considered for a waiver.

(1) Mariners with a history of epilepsy or seizure disorder may be considered for a waiver if the mariner has been seizure-free for a minimum of eight years (on or off anti-epileptic drugs (AEDs)); *and*

(a) If AEDs have been stopped, the mariner must have been seizure-free for a minimum of eight years since cessation of medication; *or*

(b) If still using AEDs, the mariner must have been on a stable medication regimen [3] for a minimum of two years.

(2) Mariners with a single unprovoked seizure may be considered for a waiver if the mariner has been seizure-free for a minimum of four years (on or off AEDs); *and*

(a) If all AEDs have been stopped, the mariner must have been seizure-free for a minimum of four years since cessation of medication; *or*

(b) If still using AEDs, the mariner must have been on a stable medication regimen for a minimum of two years.

Provoked Seizures

Provoked seizures are those seizures precipitated by an identifiable trigger. Mariners with a history of provoked seizure(s) may be considered for a waiver. Mariners in this group can be divided into those with low risk of recurrence and those with a higher risk of recurrence (e.g., with a structural brain lesion).

(1) If a mariner is determined to be low-risk for seizure recurrence, does not require AEDs, and the precipitating factor is unlikely to recur, a waiver may be considered when the mariner has been seizure-free and off AEDs for a minimum of one year.

(2) Generally, mariners with one of the following precipitating factors will be considered low-risk for recurrence:

(a) Lidocaine-induced seizure during a dental appointment;

(b) Concussive seizure, loss of consciousness ≤30 minutes with no penetrating injury;

(c) Seizure due to syncope not likely to recur;

(d) Seizure from an acute metabolic derangement not likely to recur;

[1] NVIC 04–08 is available for viewing on the Coast Guard's Web site at: *http://www.uscg.mil/hq/cg5/nvic/2000s.asp#2008.*

[2] *Seizure Disorders and CMV Driver Safety: Recommendations of the MEP,* October 15, 2007; available for viewing at *http://www.fmcsa.dot.gov/rules-regulations/TOPICS/mep/report/Seizure-Disorders-MEP-Recommendations-v2-prot.pdf.*

[3] As used in this document, a *stable medication regimen* is considered to be a dosage within the therapeutic range that is consistent given changes in the mariner's weight or other factors such as drug interactions. Significant dosage reductions or tapering of the medication dosage would not be considered stable. Additionally, changes in the type or classification of anti-epileptic medication utilized would not be considered stable.

(e) Severe dehydration;
(f) Hyperthermia; or
(g) Drug reaction or withdrawal.
(2) If a mariner is determined to be at higher risk for seizure recurrence, a waiver may be considered if the mariner has been seizure-free for a minimum of eight years (on or off AEDs); *and*
(a) If all AEDs have been stopped, the mariner must have been seizure-free for a minimum of eight years since cessation of medication; *or*
(b) If still using AEDs, the mariner must have been on a stable medication regimen for a minimum of two years.
(3) Generally, mariners with a history of provoked seizures caused by a structural brain lesion (e.g., tumor, trauma, or infection) characterized by one of the following precipitating factors will be considered at higher risk for recurrence:
(a) Head injury with loss of consciousness or amnesia ≥30 minutes or penetrating head injury;
(b) Intracerebral hemorrhage of any etiology, including stroke and trauma;
(c) Brain infection, such as encephalitis, meningitis, abscess, or cysticercosis;
(d) Stroke;
(e) Intracranial hemorrhage;
(f) Post-operative brain surgery with significant brain hemorrhage; or
(g) Brain tumor.
(4) Under exceptional circumstances in which a mariner has had provoked seizures with structural brain lesions, individuals may be considered for a waiver once they have been seizure-free for a minimum of four years, provided that objective evidence supports extremely low risk of seizure recurrence.

Additional Specific Questions

The Coast Guard also specifically requests public comment on the following questions:

(1) Is there evidence that the chronic use of AEDs for the treatment of epilepsy impairs judgment or reaction time?
(2) Is there evidence that individuals who have been seizure-free and off AEDs for a period of time have a lower likelihood of seizure recurrence than individuals who have been apparently seizure-free and on stable AED dosing?
(3) What is the risk of seizure recurrence as a function of time since last seizure among individuals on AEDs who are apparently seizure-free?
(4) What is the likelihood of seizure recurrence as a function of time in individuals who are seizure-free following removal of a benign brain tumor?
(5) Are there instances in which the Coast Guard should issue credentials to mariners with seizure disorders, provided that the credentials contain operational limitations that would allow such mariners a limited role in industry without causing an undue safety risk?
(6) Should mariners who are granted a waiver be restricted from solo-watchkeeping in ports, harbors, and other waters subject to congested vessel traffic or other hazardous circumstances?
(7) Are there individuals with seizure disorders due to a structural brain lesion that are at low-risk for seizure recurrence?

In addition to submitting public comments in response to this notice, the public may also wish to participate in the MMMAC public meetings. MMMAC meetings are advertised separately in the **Federal Register** and on the NMC's Web site at *http://www.uscg.mil/nmc.*

Authority

This notice is issued under the authority of 5 U.S.C. 552(a), 46 U.S.C. 7101 *et seq.,* 46 CFR 10.215, and Department of Homeland Security Delegation No. 0710.1.

Dated: March 14, 2013.

P.F. Thomas,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2013–06704 Filed 3–22–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 130104011–3011–01]

RIN 0648–BC87

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2013–2014

Correction

In proposed rule document 2013–05330, appearing on pages 14755–14762 in the issue of Thursday, March 7, 2013, make the following correction:

On page 14755, in the third column, under the sub-heading ''*Electronic Submission*'', beginning in the fourth line, ''*www.regulations.gov/#!docketDetail;D=;NOAA-NMFS-2013-0043*'' is corrected to read ''*www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0043*''.

[FR Doc. C1–2013–05330 Filed 3–22–13; 8:45 am]

BILLING CODE 1505–01–D

Notices

Federal Register
Vol. 78, No. 57
Monday, March 25, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 19, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 24, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725-17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: National Veterinary Service Laboratories; Bovine Spongiform Encephalopathy Surveillance Program Documents.

OMB Control Number: 0579–NEW.

Summary of Collection: Under the Animal Health Protection Act (7 U.S.C. 8301 et. seq.) the Animal and Plant Health Inspection Service (APHIS) is authorized, among other things, to carry out activities to detect, control, and eradicate pests and diseases of livestock within the United States. APHIS' National Veterinary Services Laboratories (NVSL) safeguard U.S. animal health and contribute to public health by ensuring that timely and accurate laboratory support is provided by their nationwide animal health diagnostic system. In 2006, APHIS Veterinary Services implemented the bovine spongiform encephalopathy (BSE) ongoing surveillance program. As part of the surveillance program, NVSL tests and analyzes samples are assembled from a variety of sites and from the cattle populations where BSE is most likely to be detected.

Need and Use of the Information: APHIS will collect information using forms VS 17–146 and VS 17–146a, BSE Surveillance Submission Form/ Continuation Sheet and VS 17–131, BSE Surveillance Data Collection Form. APHIS will use the information collected to safeguard the U.S. animal health population against BSE. Without the information APHIS would be unable to monitor and prevent the incursion of BSE into the United States.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 60.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,004.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–06711 Filed 3–22–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent to Seek Reinstatement of an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the Farm and Ranch Irrigation Survey. Revision to previous burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by May 24, 2013 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0234, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building,1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Farm and Ranch Irrigation Survey.

OMB Control Number: 0535–0234.

Type of Request: Intent to Seek Approval to Reinstate and Revise an Information Collection.

Abstract: Abstract: The Farm and Ranch Irrigation Survey is conducted every 5 years as authorized by the Census of Agriculture Act of 1997 (Pub.

L. No. 105–113). The 2013 Farm and Ranch Irrigation Survey will use a combined probability sample of all farms and horticultural operations that reported irrigation on the 2012 Census of Agriculture. This irrigation survey has questions for commodities other than horticultural specialties that will provide a comprehensive inventory of farm irrigation practices with detailed data relating to acres irrigated by category of land use, acres and yields of irrigated and non-irrigated crops, quantity of water applied, and method of application to selected crops. Also included will be 2013 expenditures for maintenance and repair of irrigation equipment and facilities; purchase of energy for on-farm pumping of irrigation water; investment in irrigation equipment, facilities, and land improvement; cost of water received from off-farm water supplies; and questions related to water reuse and security. The irrigation questions for horticultural specialties will provide the area irrigated in the open and under protection, source of water, and the irrigation by method used at the State level and by 20 Water Resource Regions (WRR). A new combined table will be published showing the total estimated quantity of water applied for crops including horticultural specialties. Irrigation data are used by the farmers, their representatives, government agencies, and many other groups concerned with the irrigation industry and water use issues. This survey will provide the only source of dependable, comparable irrigation data by State and Water Resources Region (WRR). The National Agricultural Statistics Service will use the information collected only for statistical purposes and will publish the data only as tabulated totals.

Authority: The census of agriculture and subsequent follow-on censuses are required by law under the ''Census of Agriculture Act of 1997,'' Public Law 105–113, 7 U.S.C. 2204(g). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, et seq.) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362. The law guarantees farm operators that their individual information will be kept confidential. NASS uses the information only for statistical purposes and publishes only tabulated total data. These data are used by Congress when developing or changing farm programs. Many national and state programs are designed or allocated based on census data, i.e., soil conservation projects, funds for cooperative extension programs, and research funding. Private industry uses the data to provide more effective production and distribution systems for the agricultural community.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30–60 minutes per response. Publicity materials and instruction sheets will account for about 20 minutes of additional burden per respondent. Respondents who refuse to complete the survey will be allotted 2 minutes of burden per attempt to collect the data.

Respondents: Farmers, Ranchers, Farm Managers, and producers of Nursery, Greenhouse and Floricultural Products.

Estimated Number of Respondents: 35,000.

Estimated Total Annual Burden on Respondents: 32,000 hours.

Copies of this information collection and related instructions can be obtained without charge from NASS Clearance Officer, at (202) 720–2248.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, March 12, 2013.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2013–06740 Filed 3–22–13; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Reinstatement of an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the 2013 Census of Aquaculture. Revision to previous burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by May 24, 2013 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0237, by any of the following methods:

- E-mail: *ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD-ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, D.C. 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION: *Title:* 2013 Census of Aquaculture.

OMB Control Number: 0535–0237.

Type of Request: Statement to Seek Reinstatement of an Information Collection:

Abstract: The 2013 Census of Aquaculture will include all operations in each State that produced and sold $1,000 or more of aquaculture or aquaculture products during 2013. The aquaculture census will provide data on the number of farms, acreage, method of production, production and sales by aquaculture species, and sales outlets. Census data are used by the farmers, their representatives, the government, and many other groups of people

concerned with the aquaculture industry. The census will provide a comprehensive inventory of aquaculture farms and their production. Results from the census will be used to evaluate new programs, disburse Federal funds, analyze market trends, and help determine the economic impact aquaculture has on the economy. The aquaculture census will provide the only source of dependable, comparable data by State.

Authority: The census of agriculture and subsequent follow-on censuses are required by law under the ''Census of Agriculture Act of 1997,'' Public Law 105–113, 7 U.S.C. 2204(g). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362. The law guarantees farm operators that their individual information will be kept confidential. NASS uses the information only for statistical purposes and publishes only tabulated total data.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 35 minutes per positive response, 10 minutes per screen-out, and 2 minutes per refusal.

Respondents: Farmers and Farm Managers.

Estimated Number of Respondents: 11,500.

Estimated Total Annual Burden on Respondents: 11,000 hours.

Copies of this information collection and related instructions can be obtained without charge from the NASS Clearance Officer, at (202) 720–2248.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, D.C., March 12, 2013.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2013–06742 Filed 3–22–13; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Antarctic Marine Living Resources Conservation and Management Measures.

OMB Control Number: 0648–0194.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 86.

Average Hours per Response: Ecosystem monitoring application and annual report, one hour each; applications for new or exploratory fisheries, 28 hours; harvest/transshipment applications, 2 hours; occasional radio transmissions to NMFS and phone calls to request an observer, 5 minutes each; vessel monitoring system installation, certification and annual maintenance, annualized to 3 hours; vessel marking, 45 minutes; gear marking, 2 hours; import and/or re-export permit applications and dealer preapproval of catch and re-export catch documents and import tickets, 15 minutes each; catch data submission, 30 minutes.

Burden Hours: 386.

Needs and Uses: This request is for revision and extension of a current information collection. The revision refers to minor changes to the re-export catch document.

The 1982 Convention on the Conservation of Antarctic Marine Living Resources (Convention) established the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). CCAMLR meets annually to adopt measures to conserve and manage the marine living resources of the Convention Area. The United States is a Contracting Party to the Convention and a member of CCAMLR and its Scientific Committee. The Antarctic Marine Living Resources Convention Act (AMLRCA) directs and authorizes the United States to take actions necessary to meet its treaty obligations as a Contracting Party to the Convention. The regulations implementing AMLRCA are at 50 CFR part 300, Subpart G.

The recordkeeping and reporting requirements at 50 CFR part 300 form the basis for this collection of information. The reporting requirements included in this collection concern CCAMLR Ecosystem Monitoring Program activities, United States (U.S.) harvesting permit applicants and/or harvesting vessel operators, and U.S. importers and re-exporters of Antarctic Marine Living Resources.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: March 20, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–06721 Filed 3–22–13; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA-DR Agreement'')

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

DATES: *Effective Date:* March 25, 2013.

SUMMARY: The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain three-thread fleece fabric with soft hand pigment, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

FOR FURTHER INFORMATION ON–LINE: *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf* under ''Approved Requests,'' Reference number: 177.2013.02.21.Fabric.SoriniSametforGaranMfg.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''CAFTA–DR Implementation Act''), Pub. Law 109–53; the Statement of Administrative Action, accompanying the CAFTA–DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

Background

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)–(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA-DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA-DR Implementation Act.

The CAFTA-DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA-DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement,* 73 FR 53200) (''CITA's procedures'').

On February 21, 2013, the Chairman of CITA received a request for a Commercial Availability determination (''Request'') from Sorini Samet & Associates LLC on behalf of Garan Manufacturing, Inc. for certain three-thread fleece fabric with soft hand pigment, as specified below. On February 25, 2013, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for CAFTA-DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by March 7, 2013, and any Rebuttal Comments to a Response must be submitted by March 13, 2013, in accordance with sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, and section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and providing an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings.

Specifications: Certain Three-Thread Fleece Fabric With Soft Hand Pigment

HTS: 6001.21.

Overall fiber content: Cotton—57 to 63%; Polyester—37 to 43%.

Gauge: 21.

Face Yarn

Fiber content: 57–63% combed cotton; 37–43% polyester ring spun.

Yarn size: 47.4/1–57.6/1 (metric); 28/1—34/1 (English).

Tie Yarn

Fiber content: 100% polyester.

Yarn size: 157.9–191.5/48 filament (metric); 47–57 denier 48 filament (English).

Fleece Yarn

Fiber content: 72–78% carded cotton, 22–28% polyester.

Yarn Size: 18.6/1–28.8/1(metric); 11/1–17/1 (English).

Weight: 233.9–267.8 g/square meter (6.9–7.8 oz./square yard).

Width: 152.4 cm cuttable or greater, open width (60'' cuttable or greater, open width).

Finish: Bleached and rotary printed with soft hand pigment (process), or piece dyed and rotary printed with soft hand pigment (process) (see note).

Performance Criteria

1. Torque must not exceed 4% (must meet AATCC 179).
2. Vertical and horizontal shrinkage must be under 5%.
3. Must meet a class-1 flammability rating.

Note: The attributes listed for yarn size relate to the size of the yarn prior to knitting. The measurements for fabric construction and weight relate to the fabric prior to garment production. Some variations may occur in these measurements as a result of the manufacturing process.

Note (Finishing): A soft hand pigment is a known industry term. It refers a process which involves the use of special binding agents, typically acrylic polymers used to affix the pigments to fabrics. The bonding agents used in soft hand pigment printing process have lower glass transition temperatures. The glass-transition, or glass transition, is the reversible transition in amorphous materials (or in amorphous regions within semi-crystalline materials) from a hard and relatively brittle state into a molten or rubber-like state.

Kim Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2013–06681 Filed 3–22–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group; Notice of Federal Advisory Committee Closed Meeting

AGENCY: Department of Defense.

ACTION: Notice of Federal Advisory Committee closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C. App 2, Section 1), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.150, the Department of Defense announces the following closed meeting notice pertaining to the following federal advisory committee: U.S. Strategic Command Strategic Advisory Group.

DATES: April 18, 2013, from 8:00 a.m. to 5:00 p.m.

ADDRESSES: Dougherty Conference Center, Building 432, 906 SAC Boulevard, Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Sudduth, Designated Federal Officer, (402) 294–4102, 901 SAC Boulevard, Suite 1F7, Offutt AFB, NE 68113–6030.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans.

Agenda: Topics include: Policy Issues, Space Operations, Nuclear Weapons Stockpile Assessment, Weapons of Mass Destruction, Intelligence Operations, Cyber Operations, Global Strike, Command and Control, Science and Technology, Missile Defense.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, General C. Robert Kehler, Commander, U.S. Strategic Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1).

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Strategic Advisory Group at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.* Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: March 19, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–06691 Filed 3–22–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0036]

Agency Information Collection Activities; Comment Request; Application for Grants Under the Predominantly Black Institutions Program

AGENCY: The Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before May 24, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0036 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

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 Grants Under the Predominantly Black Institutions Program.

OMB Control Number: 1840–0812.

Type of Review: an extension of a previously approved information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 35.

Total Estimated Number of Annual Burden Hours: 700.

Abstract: The Higher Education Opportunity Act of 2008 amended Title III, Part A of the Higher Education Act to include Section 318—The Predominantly Black Institutions (PBI) Program. The PBI Program makes 5-year grant awards to eligible colleges and universities to plan, develop, undertake and implement programs to enhance the institution's capacity to serve more low- and middle-income Black American students; to expand higher education opportunities for eligible students by

encouraging college preparation and student persistence in secondary school and postsecondary education; and to strengthen the financial ability of the institution to serve the academic needs of these students. The Department will use the data collected in the PBI Application to evaluate the projects submitted by the specified institutions of higher education and to determine allowable multi-year project expenses based on statutory requirements.

Dated: March 19, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–06690 Filed 3–22–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. DW–010]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to BSH Corporation from the Department of Energy Residential Dishwasher Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. DW–010) that grants to BSH Corporation (BSH) a waiver from the DOE dishwasher test procedure for certain basic models containing integrated or built-in water softeners. Under today's decision and order, BSH shall be required to test and rate its dishwashers with integrated water softeners using an alternate test procedure that takes this technology into account when measuring energy and water consumption.

DATES: This Decision and Order is effective March 25, 2013 through May 29, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants BSH a waiver from the applicable residential dishwasher test procedure in 10 CFR part 430, subpart B, appendix C for certain basic models of dishwashers with built-in or integrated water softeners, provided that BSH tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits BSH from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions of the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results.

Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products.

Issued in Washington, DC, on March 19, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: BSH Corporation (Case No. DW–010).

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' [1] 42 U.S.C. 6291–6309. Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6293(b)(3). The test procedure for residential dishwashers, the subject of today's notice, is contained in 10 CFR part 430, subpart B, appendix C.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics.

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. BSH's Petition for Waiver: Assertions and Determinations

On January 21, 2013, BSH submitted the instant petition for waiver and interim waiver from the test procedure applicable to dishwashers set forth in 10 CFR part 430, subpart B, appendix C. BSH's petition was published in the **Federal Register** on February 7, 2013. 78 FR 9039. DOE received no comments on the petition. In every respect except the introduction of a new model number, the instant petition is identical to petitions submitted by BSH on February 4, 2011, December 7, 2011, March 27, 2012, and November 30, 2012 (DW–005, DW–007, DW–008, and DW–009 respectively) with the exception of the model numbers. DOE granted the February 4th petition on June 29, 2011 (76 FR 38144); the December 7th and March 27th petitions on October 1, 2012 (77 FR 59916 and 77 FR 59918 respectively). Elsewhere in today's **Federal Register**, DOE published a

[1] For editorial reasons, on codification in the U.S. Code, Part B was re-designated Part A.

decision and order granting the November 30th petition.

BSH states that ''hard'' water can reduce customer satisfaction with dishwasher performance resulting in increased pre-rinsing and/or hand washing as well as increased detergent and rinse agent usage. According to BSH, a dishwasher equipped with a water softener will minimize pre-rinsing and rewashing, and consumers will have less reason to periodically run their dishwasher through a clean-up cycle.

BSH also states that the amount of water consumed by the regeneration operation of a water softener in a dishwasher is very small, but that it varies significantly depending on the adjustment of the softener. The regeneration operation takes place infrequently, and the frequency is related to the level of water hardness. BSH included test results and calculations showing the water and energy use of the specified dishwasher models using the same method as that used by Whirlpool in its petition for waiver, which was granted previously by DOE. (75 FR 62127, Oct. 7, 2010). Specifically, BSH requested that constant values of 47.6 gallons per year for water consumption and 8.0 kWh per year for energy consumption be used.

DOE notes that use of industry standard European Standard EN 50242, ''Electric Dishwashers for Household Use—Methods for Measuring the Performance'' would provide repeatable results, but would underestimate the energy and water use of the specified models. If water consumption of a regeneration operation were apportioned across all cycles of operation, manufacturers would need to make calculations regarding average water hardness and average water consumptions due to regeneration operations. In lieu of these calculations, constant values could also be used to approximate the energy and water use due to softener regeneration. As noted above, BSH provided data on the constant values that should be added to approximate the energy and water use of the basic models listed in its petition that have an integrated water softener.

Because of the variability in test results described by BSH in its petition, DOE has determined that testing the basic models for which BSH has requested a waiver according to the DOE test procedure at appendix C may evaluate the basic models in a manner so unrepresentative of their true energy and water consumption so as to provide materially inaccurate comparative data. As a result, and as described in Section III, DOE grants BSH's waiver subject to use of the alternate test procedure prescribed by DOE.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the BSH petition for waiver. The FTC staff did not have any objections to granting a waiver to BSH.

III. Conclusion

After careful consideration of all the material that was submitted by BSH and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the BSH Corporation (Case No. DW–010) is hereby granted as set forth in the paragraphs below.

(2) BSH shall be required to test and rate the following models according to the alternate test procedure as set forth in paragraph (3) below:

Bosch brand:

- Basic Model—SHE43T5###
- Basic Model—SHX43T5###
- Basic Model—SHE33T5###

Kenmore brand:

- Basic Model—S38KML4###
- Basic Model—S48KML2###
- Basic Model—S48KML3###
- Basic Model—S38KML5###
- Basic Model—S37KMK2###

Gaggenau brand:

- Basic Model—DF261761
- Basic Model—DF260761

(3) BSH shall be required to test the products listed in paragraph (2) above according to the test procedures for dishwashers prescribed by DOE at 10 CFR part 430, appendix C, except that, for the BSH products listed in paragraph (2) only:

In Section 4.1, *Test cycle,* add at the end, ''The start of the DOE test should begin on a cycle immediately following a regeneration cycle.''

In Section 4.3, the water energy consumption, W or Wg, is calculated based on the water consumption as set forth below:

§ 4.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter as specified in section 3.3 of this Appendix.

Where the regeneration of the water softener depends on demand and water hardness, and does not take place on every cycle, BSH shall measure the water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration. If a regeneration operation takes place within the test, the water consumed by the regeneration operation shall be disregarded when declaring water and energy consumption. Constant values of 47.6 gallons/year of water and 8 kWh/year of energy shall be added to the values measured by appendix C.

(4) Representations. BSH may make representations about the energy use of its dishwashers containing integrated or built-in water softeners for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m). The dishwasher test procedure final rule, issued on September 14, 2012 and available at *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/aham-1_tp_final_rule.pdf,* includes procedures to measure the energy and water use of integrated or built-in water softeners. The compliance date for these procedures is May 30, 2013. Therefore, this Decision and Order is valid through May 29, 2013. Beginning on May 30, 2013, all manufacturers must use the amended test procedures to determine the energy and water use associated with water softener regeneration.

(6) This waiver is granted for only those models specifically set out in BSH's petition, not future models that may be manufactured by BSH. BSH may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional dishwasher models for which it seeks a waiver from the DOE test procedure. Grant of this waiver also does not release BSH from the certification requirements set forth at 10 CFR part 429.

(7) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on March 19, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–06743 Filed 3–22–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. DW–009]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to BSH Corporation From the Department of Energy Residential Dishwasher Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. DW–009) that grants to BSH Corporation (BSH) a waiver from the DOE dishwasher test procedure for certain basic models containing integrated or built-in water softeners. Under today's decision and order, BSH shall be required to test and rate its dishwashers with integrated water softeners using an alternate test procedure that takes this technology into account when measuring energy and water consumption.

DATES: This Decision and Order is effective March 25, 2013 through May 29, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants BSH a waiver from the applicable residential dishwasher test procedure in 10 CFR part 430, subpart B, appendix C for certain basic models of dishwashers with built-in or integrated water softeners, provided that BSH tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits BSH from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions of the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products.

Issued in Washington, DC, on March 19, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: BSH Corporation (Case No. DW–009).

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' [1] 42 U.S.C. 6291–6309. Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6293(b)(3). The test procedure for residential dishwashers, the subject of today's notice, is contained in 10 CFR part 430, subpart B, appendix C.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics.

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. BSH's Petition for Waiver: Assertions and Determinations

On November 30, 2012, BSH submitted the instant petition for waiver and interim waiver from the test procedure applicable to dishwashers set forth in 10 CFR part 430, subpart B, appendix C. BSH's petition was published in the **Federal Register** on December 31, 2012. 77 FR 77064. In every respect except the introduction of a new model number, the instant petition is identical to petitions submitted by BSH on February 4, 2011, December 7, 2011, and March 27, 2012 (DW–005, DW–007, and DW–008, respectively) with the exception of the model numbers. DOE granted the February 4th petition on June 29, 2011 (76 FR 38144), and the December 7th and March 27th petitions on October 1, 2012 (77 FR 59916 and 77 FR 59918 respectively).

DOE received one comment on the petition recommending that BSH provide sufficient market, equipment price, shipments and other manufacturer impact information prior to allowing the interim waiver. DOE may grant interim waivers on the basis of economic hardship but, in the absence of such information, may grant interim waivers if it appears likely that the petition for waiver will be granted, or it would be desirable for public policy reasons to grant immediate relief while the petition for waiver is pending. 10 CFR 430.27(g). BSH's interim waiver was granted on these alternative grounds.

BSH stated in its petition that ''hard'' water can reduce customer satisfaction with dishwasher performance resulting in increased pre-rinsing and/or hand washing as well as increased detergent and rinse agent usage. According to BSH, a dishwasher equipped with a

[1] For editorial reasons, on codification in the U.S. Code, Part B was re-designated Part A.

water softener will minimize pre-rinsing and rewashing, and consumers will have less reason to periodically run their dishwasher through a clean-up cycle.

BSH also stated that the amount of water consumed by the regeneration operation of a water softener in a dishwasher is very small, but that it varies significantly depending on the adjustment of the softener. The regeneration operation takes place infrequently, and the frequency is related to the level of water hardness. BSH included test results and calculations showing the water and energy use of the specified dishwasher models using the same method as that used by Whirlpool in its petition for waiver, which was granted previously by DOE. (75 FR 62127, Oct. 7, 2010). Specifically, BSH requested that constant values of 47.6 gallons per year for water consumption and 8.0 kWh per year for energy consumption be used.

DOE notes that use of industry standard European Standard EN 50242, ''Electric Dishwashers for Household Use—Methods for Measuring the Performance'' would provide repeatable results, but would underestimate the energy and water use of the specified models. If water consumption of a regeneration operation were apportioned across all cycles of operation, manufacturers would need to make calculations regarding average water hardness and average water consumptions due to regeneration operations. In lieu of these calculations, constant values could also be used to approximate the energy and water use due to softener regeneration. As noted above, BSH provided data on the constant values that should be added to approximate the energy and water use of the basic models listed in its petition that have an integrated water softener.

Because of the variability in test results described by BSH in its petition, DOE has determined that testing the basic models for which BSH has requested a waiver according to the DOE test procedure at appendix C may evaluate the basic models in a manner so unrepresentative of their true energy and water consumption so as to provide materially inaccurate comparative data. As a result, and as described in Section III, DOE grants BSH's waiver subject to use of the alternate test procedure prescribed by DOE.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the BSH petition for waiver. The FTC staff did not have any objections to granting a waiver to BSH.

III. Conclusion

After careful consideration of all the material that was submitted by BSH and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the BSH Corporation (Case No. DW–009) is hereby granted as set forth in the paragraphs below.

(2) BSH shall be required to test and rate the following models according to the alternate test procedure as set forth in paragraph (3) below:

Bosch brand:

- Basic Model—SHX7PT####
- Basic Model—SHP7PT####
- Basic Model—SHE7PT####
- Basic Model—SHV7PT####
- Basic Model—SHX8PT####
- Basic Model—SHE8PT####
- Basic Model—SHE9PT####
- Basic Model—SHX9PT####
- Basic Model—SHV9PT####
- Basic Model—SGV63E####

Gaggenau brand:

- Basic Model—DF2417####

(3) BSH shall be required to test the products listed in paragraph (2) above according to the test procedures for dishwashers prescribed by DOE at 10 CFR part 430, appendix C, except that, for the BSH products listed in paragraph (2) only:

In Section 4.1, *Test cycle,* add at the end, ''The start of the DOE test should begin on a cycle immediately following a regeneration cycle.''

In Section 4.3, the water energy consumption, W or Wg, is calculated based on the water consumption as set forth below:

§ 4.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter as specified in section 3.3 of this Appendix.

Where the regeneration of the water softener depends on demand and water hardness, and does not take place on every cycle, BSH shall measure the water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration. If a regeneration operation takes place within the test, the water consumed by the regeneration operation shall be disregarded when declaring water and energy consumption. Constant values of 47.6 gallons/year of water and 8 kWh/year of energy shall be added to the values measured by appendix C.

(4) Representations. BSH may make representations about the energy use of its dishwashers containing integrated or built-in water softeners for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m). The dishwasher test procedure final rule, issued on September 14, 2012 and available at *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/aham-1_tp_final_rule.pdf,* includes procedures to measure the energy and water use of integrated or built-in water softeners. The compliance date for these procedures is May 30, 2013. Therefore, this Decision and Order is valid through May 29, 2013. Beginning on May 30, 2013, all manufacturers must use the amended test procedures to determine the energy and water use associated with water softener regeneration.

(6) This waiver is granted for only those models specifically set out in BSH's petition, not future models that may be manufactured by BSH. BSH may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional dishwasher models for which it seeks a waiver from the DOE test procedure. Grant of this waiver also does not release BSH from the certification requirements set forth at 10 CFR part 429.

(7) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on March 19, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–06736 Filed 3–22–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–625–001.

Applicants: Public Service Company of Colorado.
Description: 2013–03–15–NSP–CDTT-Tran-to Load-545 to be effective 1/1/2013.
Filed Date: 3/18/13.
Accession Number: 20130318–5002.
Comments Due: 5 p.m. ET 4/8/13.

Docket Numbers: ER13–797–001.
Applicants: EBRFUEL, LLC.
Description: Ebrfuel LLC, FERC Electric Tariff to be effective 4/1/2013.
Filed Date: 3/18/13.
Accession Number: 20130318–5054.
Comments Due: 5 p.m. ET 4/8/13.

Docket Numbers: ER13–1113–002.
Applicants: PJM Interconnection, L.L.C.
Description: Ministerial revision to OATT Sch 7 replacing No. ''6'' in footnote-Eff 6/1/2011 to be effective 6/1/2011.
Filed Date: 3/18/13.
Accession Number: 20130318–5000.
Comments Due: 5 p.m. ET 4/8/13.

Docket Numbers: ER13–1113–003.
Applicants: PJM Interconnection, L.L.C.
Description: Ministerial revision to OATT Sch 7 replacing No. ''6'' in footnote-Eff 1/1/2012 to be effective 1/1/2012.
Filed Date: 3/18/13.
Accession Number: 20130318–5001.
Comments Due: 5 p.m. ET 4/8/13.

Docket Numbers: ER13–1117–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Service Agreement 41 to be effective 5/31/2013.
Filed Date: 3/18/13.
Accession Number: 20130318–5075.
Comments Due: 5 p.m. ET 4/8/13.

Docket Numbers: ER13–1118–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Rate Schedule No. 106 to be effective 5/31/2013.
Filed Date: 3/18/13.
Accession Number: 20130318–5080.
Comments Due: 5 p.m. ET 4/8/13.

Docket Numbers: ER13–1119–000.
Applicants: Louisville Gas & Electric Company.
Description: Notice of Termination of Interconnection and Operating Agreement of Louisville Gas and Electric Company.
Filed Date: 3/18/13.
Accession Number: 20130318–5085.
Comments Due: 5 p.m. ET 4/8/13.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF13–357–000.
Applicants: BC Jaclen Tower LP.
Description: Form 556—Notice of self-certification of qualifying cogeneration facility status of BC Jaclen Tower LP.
Filed Date: 3/14/13.
Accession Number: 20130314–5186.
Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 18, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–06707 Filed 3–22–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1627–001.
Applicants: ISO New England Inc.
Description: Compliance Filing: Docket No. ER12–1627–000 to be effective N/A.
Filed Date: 3/15/13.
Accession Number: 20130315–5123.
Comments Due: 5 p.m. ET 4/5/13.

Docket Numbers: ER13–645–001.
Applicants: Public Service Company of Colorado.
Description: 2013–03–15–NSP–BLMR-Tran-to Load-544 to be effective 1/1/2013.
Filed Date: 3/15/13.
Accession Number: 20130315–5121.
Comments Due: 5 p.m. ET 4/5/13.

Docket Numbers: ER13–655–001.
Applicants: Public Service Company of Colorado.
Description: 2013–03–15–NSP–CRNLL-Tran-to Load-546 to be effective 1/1/2013.
Filed Date: 3/15/13.
Accession Number: 20130315–5104.
Comments Due: 5 p.m. ET 4/5/13.

Docket Numbers: ER13–1110–000.
Applicants: PJM Interconnection, L.L.C.
Description: Cancellation of PJM Service Agreement Nos. 2861, 2986, 3145 and 3164 to be effective 2/13/2013.
Filed Date: 3/15/13.
Accession Number: 20130315–5103.
Comments Due: 5 p.m. ET 4/5/13.

Docket Numbers: ER13–1111–000.
Applicants: New England Power Company.
Description: Serv Agmt TSA–NEP–85 effective April 9, 2012—Notice Requirement Waiver Request to be effective 3/15/2013.
Filed Date: 3/15/13.
Accession Number: 20130315–5128.
Comments Due: 5 p.m. ET 4/5/13.

Docket Numbers: ER13–1112–000.
Applicants: Westar Energy, Inc.
Description: Notice of Cancellation of RS FERC No. 236 with the City of Eudora, Kansas to be effective 6/1/2013.
Filed Date: 3/15/13.
Accession Number: 20130315–5140.
Comments Due: 5 p.m. ET 4/5/13.

Docket Numbers: ER13–1113–000.
Applicants: PJM Interconnection, L.L.C.
Description: Ministerial revision to OATT Sch 7 replacing No. ''6'' in footnote—Eff 9/17/2010 to be effective 9/17/2010.
Filed Date: 3/15/13.
Accession Number: 20130315–5144.
Comments Due: 5 p.m. ET 4/5/13.

Docket Numbers: ER13–1113–001.
Applicants: PJM Interconnection, L.L.C.
Description: Ministerial revision to OATT Sch 7 replacing No. ''6'' in footnote—Eff 1/1/2011 to be effective 1/1/2011.
Filed Date: 3/15/13.
Accession Number: 20130315–5146.
Comments Due: 5 p.m. ET 4/5/13.

Docket Numbers: ER13–1114–000.
Applicants: Wisconsin Electric Power Company.
Description: Notice of Cancellation of Wisconsin Electric Power Company.
Filed Date: 3/15/13.
Accession Number: 20130315–5147.
Comments Due: 5 p.m. ET 4/5/13.

Docket Numbers: ER13–1115–000.
Applicants: FirstEnergy Solutions Corp.
Description: Application of FirstEnergy Solutions Corp. for authorization to sell electricity to Potomac Edison Company, an affiliate.
Filed Date: 3/15/13.
Accession Number: 20130315–5148.
Comments Due: 5 p.m. ET 4/5/13.

Docket Numbers: ER13–1116–000.
Applicants: FirstEnergy Solutions Corp.

Description: Application of FirstEnergy Solutions Corp. for authorization to sell electricity to West Penn Power Company, an affiliate.

Filed Date: 3/15/13.

Accession Number: 20130315–5149.

Comments Due: 5 p.m. ET 4/5/13.

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: March 18, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–06708 Filed 3–22–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL- 9793–8]

National Rivers and Streams Assessment 2008–009 Draft Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: Notice is hereby given for a 45-day public review and comment period on the draft report of the National Rivers and Streams Assessment 2008–2009 (NRSA). The NRSA draft report describes the results of the nationwide probabilistic survey that was conducted in the summers of 2008 and 2009. EPA and its state/tribal partners looked at biological conditions in rivers and streams of the conterminous United States. The draft NRSA 2008–2009 report includes information on how the survey was implemented, what the findings were on a national and ecoregional scale, and future actions and challenges.

DATES: Comments must be received by 11:59 p.m. May 9, 2013.

ADDRESSES: Email your comments to *nrsa-hq@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Alice Mayio, Assessment and Watershed Protection Division, Office of Water, Washington DC Phone: 202–566–1184; email: *mayio.alice@epa.gov.*

SUPPLEMENTARY INFORMATION: To better answer questions about the condition of waters across the country, EPA and its state and tribal partners have embarked on a series of surveys under the National Aquatic Resource Surveys (NARS) program. The draft NRSA 2008–2009 is the most recent in this series of surveys. The goals of the draft NRSA 2008–2009 are to:

- Generate scientifically valid and environmentally relevant information on the condition of the nation's river and stream resources
- Identify key stressors to river and stream health and explore their relative importance
- Establish baseline information for future trends assessment

Using a statistical survey design, sites were selected at random to represent the condition of the larger population of rivers and streams across the lower 48 states, from the largest ''great rivers'' to the smallest headwater streams. 1,924 sites were sampled.

The draft NRSA finds that 55% of the nation's river and stream miles do not support healthy biological communities when compared to least disturbed sites in similar ecological regions. Fair conditions are found in 23% of river and stream miles, while 21% are in good condition and support healthy aquatic communities. Of the stressors that were examined, phosphorus and nitrogen are the most widespread. Biological communities are at increased risk for poor condition when phosphorus and nitrogen levels are high. This is the first time a national monitoring study of the overall condition of rivers and streams has been conducted using a statistically-valid random sample approach.

The draft report has undergone State and EPA review. EPA, through this public review, is seeking comment on the information contained in the draft report, the reasonableness of the conclusions, and the clarity with which the information is presented. You may view and download the draft report from EPA's Web site at *http://water.epa.gov/type/rsl/monitoring/riverssurvey/index.cfm.*

Dated: March 14, 2013.

Nancy K. Stoner,

Acting Assistant Administrator for Water.

[FR Doc. 2013–06753 Filed 3–22–13; 8:45 am]

BILLING CODE 6560–50–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 April 19, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Minier Financial, Inc. Employee Stock Ownership Plan with 401(k) Provisions,* Minier, Illinois, to acquire additional voting shares, for a total of up to 51 percent, of Minier Financial, Inc., and thereby indirectly acquire voting shares of First Farmers State Bank, both of Minier, Illinois.

Board of Governors of the Federal Reserve System, March 19, 2013.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2013–06675 Filed 3–22–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan 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 application also will 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 HOLA (12 U.S.C. 1467a(e)). 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 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). 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 April 19, 2013.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Sunnyside Bancorp, Inc.,* Irvington, New York, to become a savings and loan holding company by acquiring 100 percent of the voting shares of Sunnyside Federal Savings and Loan Association of Irvington, Irvington, New York, following it conversion from a federally chartered mutual savings and loan association to a federally chartered stock savings and loan association.

Board of Governors of the Federal Reserve System, March 19, 2013.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2013–06676 Filed 3–22–13; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0288; Docket 2013–0001, Sequence 2]

Information Collection; Open Government Citizen Engagement Ratings, Rankings, and Flagging

AGENCY: Office of Citizen Services, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension of an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement regarding open government citizen engagement ratings, rankings, and flagging.

DATES: Comments must be submitted on or before May 24, 2013.

ADDRESSES: Submit comments identified by Information Collection 3090–0288, Open Government Citizen Engagement Ratings, Rankings, and Flagging, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0288, Open Government Citizen Engagement Ratings, Rankings, and Flagging''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0288, Open Government Citizen Engagement Ratings, Rankings, and Flagging'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0288, Open Government Citizen Engagement Ratings, Rankings, and Flagging.

Instructions: Please submit comments only and cite Information Collection 3090–0288, Open Government Citizen Engagement Ratings, Rankings, and Flagging, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Rubin, General Services Administration, Office of Citizen Services, 1275 First Street NE., Washington, DC 20417; telephone number: 202–501–0855; email address: *jonathan.rubin@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The ''Open Government Citizen Engagement'' is a response to the Open Government Directive, which was issued on December 8, 2009 by the Director of OMB. This directive asked that executive departments and agencies take specific actions to implement the principles of transparency, participation and collaboration, as set forth in the President's January 21, 2009 Memorandum on Transparency and Open Government. GSA is creating an Open Government Citizen Engagement tool, an online collaboration tool powered by IdeaScale, as one example of methods for agencies to use in extensively engaging the public. The Open Government Citizen Engagement will allow the public to weigh in on their support for agency and public ideas, comments, suggestions, data sets, and the like, and allow agencies to engage with the public via Ratings, Rankings and Flaggings. The goal is to allow the public to rate and rank open-ended, general questions, comments and suggestions. Tools that allow rating, ranking and flagging (for example, many blogs, ideation, challenge grant platforms, and other social media tools) can be used across government. This information collection request for an emergency clearance is being submitted in order to fulfill the public engagement aspects of the Open Government initiative, and to allow all agencies to use this and similar rating, ranking, voting and flagging tools in this exercise and other exercises and meet the goals of Open Government.

B. Public Comments Are Particularly Invited On

Pursuant to section 3506(c)(2)(A) of the PRA, GSA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

C. Annual Reporting Burden

The annual public reporting and recordkeeping burden for this collection of information is estimated to average up to 1,666 hours per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The estimated annual burden:

Respondents: 1,200,000.

Responses per Respondent: 1.

Total number of responses: 1,200,000.

Hours per Response: .0013886.

Total hours per response: 1,200,000.

Total Burden Hours: 1,666.

Obtaining Copies Of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone 202–501–4755. Please cite 3090–0288, Open Government Citizen Engagement Ratings, Rankings, and Flagging, in all correspondence.

Dated: March 19, 2013.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2013–06732 Filed 3–22–13; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0033]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 24, 2013.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0658. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, 301–796–5733, *domini.bean@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water—21 CFR 129.35(a)(3)(i), 129.80(g), and 129.80(h) (OMB Control Number 0910–0658)—Extension

The bottled water regulations in parts 129 and 165 (21 CFR parts 129 and 165) require that if any coliform organisms are detected in weekly total coliform testing of finished bottled water, followup testing must be conducted to determine whether any of the coliform organisms are *Escherichia coli.* The adulteration provision of the bottled water standard (§ 165.110(d)) provides that a finished product that tests positive for *E. coli* will be deemed adulterated under section 402(a)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(3)). In addition, the current good manufacturing practice (CGMP) regulations for bottled water in part 129 require that source water from other than a public water system (PWS) be tested at least weekly for total coliform. If any coliform organisms are detected in the source water, the bottled water manufacturers are required to determine whether any of the coliform organisms are *E. coli.* Source water found to contain *E. coli* is not considered water of a safe, sanitary quality and would be unsuitable for bottled water production. Before a bottler may use source water from a source that has tested positive for *E. coli,* a bottler must take appropriate measures to rectify or otherwise eliminate the cause of the contamination. A source previously found to contain *E. coli* will be considered negative for *E. coli* after five samples collected over a 24-hour period from the same sampling site are tested and found to be *E. coli* negative.

Description of Respondents: The respondents to this information collection are domestic and foreign bottled water manufacturers that sell bottled water in the United States.

In the **Federal Register** of January 18, 2013 (78 FR 4152), FDA published a 60-day notice requesting public comment on the proposed extension of this collection of information. FDA received two letters in response to the notice, which contained multiple comments.

One comment suggested that laboratory quality assurance practices should be required for the testing of bottled water. FDA's CGMP regulations for bottled water in 21 CFR 129 do not specifically require laboratory quality assurance practices, and FDA does not have the specific statutory authority to require bottlers to use certified laboratories for water quality tests.[1] However, the CGMP regulations for source water testing do require that ''[t]est and sample methods shall be those recognized and approved by the government agency or agencies having jurisdiction over the approval of the water source, and shall be consistent with the minimum [standard of quality] requirements set forth in § 165.110(b) of this chapter'' (§ 129.35(a)(3)(ii)). The CGMP regulations also state that

[1] U.S. Government Accountability Office (GAO), 2009. Bottled Water: FDA Safety and Consumer Protections Are Often Less Stringent Than Comparable EPA Protections for Tap Water.

''[a]nalysis of the sample may be performed for the plant by competent commercial laboratories (e.g., Environmental Protection Agency (EPA) and State-certified laboratories)'' (§ 129.35(a)(3)(iii)). For product water, the regulations also state that bottled water manufacturers will ''[a]nalyze such samples by methods approved by the government agency or agencies having jurisdiction'' (§ 129.80(g)(3)).

One comment noted that the EPA issued a final rule on February 13, 2013, that established a maximum contaminant level for *E. coli* and stated that *E. coli* is a more specific indicator of fecal contamination and the potential presence of associated pathogen occurrence than fecal coliforms. FDA agrees that *E. coli* is an appropriate indicator of fecal contamination and that the presence of fecal indicators demonstrates the potential for the presence of fecal pathogens. FDA requires bottled water manufacturers to sample and analyze source water obtained from other than a public water system for total coliform at least once each week. If any coliform organisms are detected, manufacturers must conduct followup testing to determine whether any of the coliform organisms are *E. coli.* Source water found to contain *E. coli* is not considered water of a safe, sanitary quality as required for use in bottled water. Manufacturers must also analyze product water samples at least once a week for total coliform, and, if any coliform organisms are detected, they must conduct followup testing to determine whether any of the coliform organisms are *E. coli.* Product water containing *E. coli* is considered adulterated. Thus, the presence of the fecal indicator *E. coli* is the key factor for determining whether source water is of a safe, sanitary quality, and whether product water is adulterated. FDA is reviewing the EPA final rule referenced in the comment (National Primary Drinking Water Regulations: Revisions to the Total Coliform Rule, 78 FR 10269; February 13, 2013) to determine what actions, if any, FDA needs to take to respond to the rule.

To the extent that the comments recommended changes to FDA's bottled water regulations, which can only be accomplished by rulemaking, the comments were outside the scope of the four collection of information topics on which the notice requested comments and will not be discussed in this document.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
§§ 129.35(a)(3)(i) and 129.80(h)	319 (bottlers subject to source water and finished product testing).	6	1,914	0.08 (5 minutes)	153
§ 129.80(g) and 129.80(h)	95 (bottlers testing finished product only).	3	285	0.08 (5 minutes)	23
§§ 129.35(a)(3)(i) and 129.80(h)	3 (bottlers conducting secondary testing of source water).	5	15	0.08 (5 minutes)	1
§§ 129.35(a)(3)(i) and 129.80(h)	3 (bottlers rectifying contamination)	3	9	0.25 (15 minutes)	2
Total					179

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The current CGMP regulations already reflect the time and associated recordkeeping costs for those bottlers that are required to conduct microbiological testing of their source water, as well as total coliform testing of their finished bottled water products. We therefore conclude that any additional burden and costs in recordkeeping based on followup testing that is required if any coliform organisms detected in the source water test positive for *E.coli* are negligible. We estimate that the labor burden of keeping records of each test is about 5 minutes per test. We also require followup testing of source water and finished bottled water products for *E. coli* when total coliform positives occur. We expect that 319 bottlers that use sources other than PWSs may find a total coliform positive sample about 3 times per year in source testing and about 3 times in finished product testing, for a total of 153 hours of recordkeeping. In addition to the 319 bottlers, about 95 bottlers that use PWSs may find a total coliform positive sample about 3 times per year in finished product testing, for a total of 23 hours of recordkeeping. Upon finding a total coliform sample, bottlers will then have to conduct a followup test for *E. coli.*

We expect that recordkeeping for the followup test for *E. coli* will also take about 5 minutes per test. As shown in table 1 of this document, we expect that 3 bottlers per year will have to carry out the additional *E. coli* testing, with a burden of 1 hour. These bottlers will also have to keep records about rectifying the source contamination, for a burden of 2 hours. For all expected total coliform testing, *E. coli* testing, and source rectification, we estimate a total burden of 179 hours. We base our estimate on our experience with the current CGMP regulations.

Dated: March 20, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–06727 Filed 3–22–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0320]

Determination That BENADRYL (diphenhydramine hydrochloride) Injection and Two Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the three drug products listed in this document were not withdrawn from

sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Mark Geanacopoulos, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6206, Silver Spring, MD 20993–0002, 301–796–6925.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed.

Application No.	Drug	Applicant
NDA 006146	BENADRYL (diphenhydramine hydrochloride) Injection, 50 milligrams (mg)/milliliter (mL).	McNeil Consumer Healthcare, 7050 Camp Hill Rd., Fort Washington, PA 19034.
NDA 009486	BENADRYL PRESERVATIVE FREE (diphenhydramine hydrochloride) Injection, 50 mg/mL.	Do.
NDA 017821	FLEXERIL (cyclobenzaprine hydrochloride) Tablets, 5 mg and 10 mg.	Janssen Research & Development, LLC, 920 Rt. 202, Raritan, NJ 08869.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: March 19, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–06726 Filed 3–22–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1205]

Accessible Medical Device Labeling in a Standard Content and Format Public Workshop; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period for the notice that appeared in the **Federal Register** of January 7, 2013 (78 FR 951). In the notice, FDA requested comments on the public workshop entitled ''Accessible Standardized Medical Device Labeling.'' The agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

DATES: Submit either electronic or written comments by May 17, 2013.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2012–N–1205, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

• *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. FDA–2012–N–1205. All comments received may be posted

without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Request for Comments'' heading of the **SUPPLEMENTARY INFORMATION** section.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary Weick-Brady, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5426, 301–796–6089, FAX: 301–847–8510, email: *Mary.Brady@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 7, 2013 (78 FR 951), FDA published a notice of public workshop with a 90-day comment period to request comments on all aspects of the public workshop, including topics outlined in section II of that document (78 FR 951 at 952).

The agency has received a request for an extension of the comment period until May 30, 2013. The request conveyed concern that the current comment period does not allow sufficient time to develop a meaningful or thoughtful response that allows for consideration of presentations by FDA and other stakeholders at the public workshop on April 29 and 30, 2013.

FDA has considered the request and is extending the comment period for the notice of public workshop until May 17, 2013. The agency believes that the extension allows adequate time for interested persons to submit comments without significantly delaying consideration of these important issues.

II. Request for Comments

Regardless of attendance at the public workshop, interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section II of the notice of public workshop (78 FR 951 at 952), please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: March 20, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–06725 Filed 3–22–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request: NIH Office of Intramural Training & Education Application

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Intramural Training & Education/OIR/OD, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: NIH Office of Intramural Training & Education Application. *Type of Information Collection Request:* Revision. *Form Number:* 0925–0299. *Expiration Date:* March 31, 2014. *Need and Use of Information Collection:* The Office of Intramural Training & Education (OITE) administers a variety of programs and initiatives to recruit pre-college through post-doctoral educational level individuals into the National Institutes of Health Intramural Research Program (NIH–IRP) to facilitate develop into future biomedical scientists. The proposed information collection is necessary in order to determine the eligibility and quality of potential awardees for traineeships in these programs. The applications for admission consideration include key areas such as: personal information, eligibility criteria, contact information, student identification number, training program selection, scientific discipline interests, educational history, standardized examination scores, reference information, resume components, employment history, employment interests, dissertation research details, letters of recommendation, financial aid history, sensitive data, future networking contact, travel information, as well as feedback questions about interviews and application submission experiences. Sensitive data collected on the applicants, race, gender, ethnicity, disability, and recruitment method, are made available only to OITE staff members or in aggregate form to select NIH offices and are not used by the admission committee for admission consideration; optional to submit.

Frequency of Response: On occasion. *Affected Public:* Individuals seeking intramural training opportunities and references for these individuals. *Type of Respondents:* students, post-baccalaureates, technicians, graduate students, post-doctorates, references, and alumni. There are no capital costs, operating costs, and/or maintenance costs to report.

The annual reporting burden is displayed in the following table:

Type of respondent	Estimated No. of respondents	Estimated No. of responses annually per respondent	Estimated total annual burden hours	Estimated total annual burden hours
Summer Internship Program in Biomedical Research (SIP)	6,820.0	1.0	1.0	6,820.00
Biomedical Engineering Summer Internship Program (BESIP)	80.0	1.0	1.0	80.00
Post-baccalaureate Training Program (PBT)	1,885.0	1.0	1.0	1,885.00
Community College Summer Enrichment Program (CCSEP)	100.0	1.0	1.0	100.00
Technical Training Program (PBT)	115.0	1.0	1.0	115.00
Graduate Partnerships Program (GPP)—Application (Select Institutional Partnerships)	250.0	1.0	1.0	250.00
Graduate Partnerships Program (GPP)—Registration (Select Institutional Partnerships + Individual Partnership)	140.0	1.0	1.0	140.00
National Graduate Student Research Conference (NGSRC)	800.0	1.0	1.0	800.00

Type of respondent	Estimated No. of respondents	Estimated No. of responses annually per respondent	Estimated total annual burden hours	Estimated total annual burden hours
Undergraduate Scholarship Program (UGSP)	200.0	1.0	1.0	200.00
Alumni Database	1,900.0	1.0	1.0	1,900.00
UGSP—Certificate of Eligibility (Completed by Applicant)	200.0	1.0	3/60	10.00
UGSP—Certificate of Eligibility (Completed by University Staff)	200.0	1.0	15/60	50.00
UGSP—Deferment Form (Completed by Applicant)	40.0	1.0	3/60	2.00
UGSP—Deferment Form (Completed by University Staff)	40.0	1.0	15/60	10.00
Reference Recommendation Letters for All Programs	23,235.0	1.0	15/60	5,808.75
Survey—Race-Ethnicity-Gender-Birth Year (25% Response Rate)	3,073.0	1.0	3/60	153.65
Survey—Time to Complete Application Form (4% Response Rate)	492.0	1.0	3/60	24.60
Survey—GPP Interview Experience (60% Response Rate)	30.0	1.0	10/60	5.0
Totals	39,600.0	N/A	N/A	18,354.00

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Patricia Wagner, Director of Admissions & Registrar, Office of Intramural Training & Education, National Institutes of Health, 2 Center Drive, Building 2/Room 2E06, Bethesda, Maryland 20892–0234, or call 240–476–3619 or email your request, including your address to: *wagnerpa@od.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: March 14, 2013.

Michael M. Gottesman,

Deputy Director for Intramural Research, National Institutes of Health.

[FR Doc. 2013–06773 Filed 3–22–13; 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 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: Center for Scientific Review Special Emphasis Panel; *Member Conflict:* Neuroscience.

Date: April 8, 2013.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard D Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7850, Bethesda, MD 20892, 301–435–1220, *rc218u@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: March 18, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06685 Filed 3–22–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, April 24, 2013, 8:30 a.m.–4:30 p.m., 9000 Rockville Pike, Building 45, Conference Room D, Bethesda, MD 20892 which was published in the **Federal Register** on March 8, 2013, 78FR15021.

This notice is being amended to change the meeting format from a face to face meeting to a teleconference on Wednesday April 24, 2013, 8:30 a.m.–4:30 p.m. The meeting is closed to the public.

Dated: March 18, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06688 Filed 3–22–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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; Nephrology Small Business.

Date: April 11–12, 2013.

Time: 8:00 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, (Virtual Meeting).

Contact Person: Ryan G Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Virology.

Date: April 22, 2013.

Time: 1:00 p.m. to 2:00 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: Alexander D. Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 18, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06689 Filed 3–22–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: May 17, 2013.

Open: 9:00 a.m. to 12:30 p.m.

Agenda: Report from the Institute Director, other Institute Staff and scientific presentation.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Closed: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Anthony Demsey, Ph.D., Director, National Institute of Biomedical Imaging, and Bioengineering, 6707 Democracy Boulevard, Room 241, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm,* where an agenda and any additional information for the meeting will be posted when available.

Dated: March 19, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06686 Filed 3–22–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NIH Centers for Accelerated Innovations.

Date: April 18–19, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, 301–435–0297, *goltrykl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 19, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–06687 Filed 3–22–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–12]

Notice of Proposed Information Collection for Public Comment; FHA Lender Approval, Annual Renewal, Periodic Updates and Noncompliance Reporting by FHA Approved Lenders

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 24, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within sixty (60) days from the date of this Notice. Comments should refer to the proposal by name/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Richard G. Toma, Deputy Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, 451 7th Street SW., Room B133–P3214, Washington, DC 20410, telephone (202) 708–1515 (this is not a toll free number). Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Toma.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: FHA Lender Approval, Annual Renewal, Periodic Updates and Noncompliance Reports by FHA Approved Lenders.

OMB Control Number, if applicable: 2502–0005.

Description of the need for the information and proposed use: The information is used by FHA to verify that lenders meet all approval, renewal, update and compliance requirements at all times. It is also used to assist FHA in managing its financial risks and protect consumers from lender noncompliance with FHA rules and regulations.

Agency form numbers, if applicable:

HUD–92001–A—FHA Lender Approval Application Form

HUD–92001–B—FHA Branch Registration Form

HUD 92001–C—Non-compliances on Title I Lenders

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 13,155. The number of respondents is 3,851, the number of responses is 14,739, the frequency of response is annually and on occasion, and the burden hour per response is .89.

Status of the proposed information collection: This is a revision of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 19, 2013.

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing—Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2013–06777 Filed 3–22–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5684–N–03]

Notice of Proposed Information; Collection for Public Comment; Recordkeeping for HUD's Continuum of Care Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 24, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone (202) 402–3400, (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov* for a copy of proposed forms, or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1590 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: HUD will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Recordkeeping for HUD's Continuum of Care Program.

Description of the need for the information proposed: This submission is to request a new OMB number for the information collection for the recordkeeping requirements that Continuum of Care program recipients will be expected to implement and retain. On May 20, 2009, the President signed into law ''An Act to Prevent Mortgage Foreclosures and Enhance Mortgage Credit Availability,'' which

became Public Law 111–22; Division B of this law is the HEARTH Act. As amended by the HEARTH Act, Subpart C of the McKinney-Vento Homeless Assistance Act establishes the Continuum of Care Program. The Continuum of Care Program is formed from the consolidation and amendment of three separate homeless assistance programs (The Supportive Housing Program, the Shelter Plus Care Program, and the Moderate Rehabilitation/Single Room Occupancy Program) into one single grant program. The three programs that had been carried out under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 et seq.). The HEARTH Act was designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons through the Continuum of Care Program. The purpose of the program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.

Publication of the interim rule for the Continuum of Care Program on July 31, 2012, found at 24 CFR part 578, continues HUD's implementation of the HEARTH Act. This rule establishes the regulatory framework for the Continuum of Care Program and the Continuum of Care planning process, including requirements applicable to the establishment of a Continuum of Care. A Continuum of Care is designed to address the critical problem of homelessness through a coordinated community-based process of identifying needs and building a system of housing and services to address those needs.

The statutory provisions and implementing interim regulations govern the Continuum of Care Program recordkeeping requirements for recipient and subrecipients and the standard operating procedures for ensuring that Continuum of Care Program funds are used in accordance with the program requirements. To see the regulations for the new CoC program and applicable supplementary documents, visit HUD's Homeless Resource Exchange at *https://www.onecpd.info/resource/2033/hearth-coc-program-interim-rule/*.

Agency Form Numbers: None.

Members of the affected public: Continuum of Care program recipients and subrecipients.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The CoC record keeping requirements include 45 distinct activities. Each activity requires a different number of respondents ranging from 10 to 350,000. Each activity also has a unique frequency of response, ranging from once to 200 times annually, and a unique associated number of hours of response, ranging from 15 minutes to 180 hours. The total number of hours needed for all reporting is 1,921,711 hours.

Status of proposed information collection: New Request.

Authority: Section 3506 of the Paperwork Reduction act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 15, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2013–06771 Filed 3–22–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5600–FA–43]

Announcement of Funding Awards; Capital Fund Safety and Security Grants; Fiscal Year 2012

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department. The public was notified of the availability of the Safety and Security funds with PIH Notice 2012–38 (Notice), which was issued September 7, 2012. Public Housing Authorities (PHAs) were funded in accordance with the terms of the Notice. This announcement contains the consolidated names and addresses of this year's award recipients under the Capital Fund Safety and Security grant program.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Safety and Security awards, contact Jeffrey Riddel, Director, Office of Capital Improvements, Office of Public Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC 20410, telephone (202) 708–1640. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Capital Fund Safety and Security program provides grants to PHAs for physical safety and security measures necessary to address crime and drug-related emergencies. More specifically, in accordance with Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) (1937 Act), and the Department of Defense and Full-Year Continuing Appropriations Act, 2012 (Pub. L. 112–55, approved April 15, 2011) (FY 2012 appropriations), Congress appropriated funding to provide assistance to ''public housing agencies for emergency capital needs including safety and security measures necessary to address crime and drug-related activity as well as needs resulting from unforeseen or unpreventable emergencies and natural disasters excluding Presidentially declared disasters occurring in fiscal year [2012].''

The FY 2012 awards in this Announcement were evaluated for funding based on the criteria in the Notice. These awards are funded from the set-aside in the FY 2012 appropriations.

In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 18 awards made under the set aside in Appendix A to this document.

Dated: March 15, 2013.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

APPENDIX A—CAPITAL FUND SAFETY AND SECURITY PROGRAM FY2012 AWARDS

Name/address of applicant	Amount funded	Project description
Jasper City Housing Authority, 1005 Highway 69 South, Jasper City, AL 35501.	$250,000	Security Cameras, Lighting, Fencing, and DVRs.
Oakland Housing Authority, 1619 Harrison Street, Oakland, CA 94612.	250,000	Security Camera Surveillance System including digital video recorders.
Housing Authority of the City of Lakeland, 430 Hartsell Avenue, Lakeland, FL 33815.	250,000	Security Cameras and Lighting.
Pahokee Housing Authority, 465 Friend Terrace, Pahokee, FL 33476–1941.	250,000	Security Cameras, Lighting, and Fencing.
Hawaii Public Housing Authority, 1002 N. School Street, Honolulu, HI 96817.	250,000	Security Cameras, Lighting, and Fencing.
Livingston County Housing Authority, 903 W North Street , Pontiac, IL 61764–1062.	250,000	Security Cameras.
Housing Authority of Covington, 2300 Madison Avenue, Covington, KY 41014.	245,180	Security Cameras and License Plate Readers.
Worcester Housing Authority, 40 Belmont Street, Worcester, MA 01605–2655.	179,685	Doors, Access Control System.
Malden Housing Authority, 630 Salem Street, Malden, MA 02148–4361.	170,000	Security Cameras, Lighting, and entrance doors.
Sanford Housing Authority, 1000 Carthage Street, Sanford, NC 27330.	244,500	Security Cameras, Security Camera, infrastructure, Lighting, and Doors.
Jersey City Housing Authority, 400 U.S. Highway #1, (Marion Gardens) Building #7, Jersey City, NJ 07306.	152,000	Security Cameras, Repair/Replace entrances.
Pleasantville Housing Authority, 156 North Main Street, Pleasantville, NJ 08232–2569.	216,757	Security Camera Surveillance System.
Port Chester Housing Authority, P.O. Box 347, Port Chester, NY 10573.	225,000	Security Camera Surveillance System.
Ithaca Housing Authority, 798 South Plain St, Ithaca, NY 14850–5359.	250,000	Security Cameras, Exterior Access Controls, DVRs.
Housing Authority of the Town of Temple, 100 McClain Street, Temple, OK 73568.	6,000	Deadbolt Locks.
Wilkes-Barre Housing Authority, 50 Lincoln Plaza, Wilkes-Barre, PA 18702.	250,000	Security Cameras, Network Video Recorders, and Lighting.
Ft. Worth Housing Authority, 1201 E 13th Street, Ft. Worth, TX 76102–5764.	250,000	Security Cameras.
Suffolk Redevelopment and Housing Authority, 530 E Pinner Street, Suffolk, VA 23434–3023.	250,000	Security Cameras and Network Video Recorders.

[FR Doc. 2013–06778 Filed 3–22–13; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2945]

Certain Computerized Orthopedic Surgical Devices, Software, Implants, and Components Thereof; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Computerized Orthopedic Surgical Devices, Software, Implants, and Components Thereof,* DN 2945; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS*,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *USITC.*[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS.*[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of MAKO Surgical Corp. on March 19, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain computerized orthopedic surgical devices, software, implants, and components thereof. The complaint names as respondents Stanmore Implants Worldwide of the United Kingdom and Stanmore Inc. of MA.

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2945'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures.*[4]) Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS*.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: March 20, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–06722 Filed 3–22–13; 8:45 am]

BILLING CODE 7020–02–P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 19, 2013, a proposed Consent Decree in *United States* v. *SL Industries, Inc. and SL Surface Technologies, Inc.,* Civil Action No. 1:13-cv-01690–JBS–KMW, was lodged with the United States Court for the District of New Jersey.

In this action brought pursuant to Sections 106, 107, and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606, 9607 and 9613(g)(2) (''CERCLA''), the United States seeks injunctive relief requiring SL Industries, Inc. and SL Surface Technologies, Inc. (''Settling Defendants'') to perform the remedy selected by the Environmental Protection Agency (''EPA'') in the Record of Decision for Operable Unit 2 (''OU2'') of the Puchack Well Field Superfund Site (''Site'') located in Pennsauken Township, Camden County, New Jersey. The United States also seeks to recover costs incurred and to be incurred by the United States in response to releases or threatened releases of hazardous substances at or from the Site.

The settlement, based on Settling Defendants' limited ''ability to pay,'' requires Settling Defendants to undertake a Remedial Design/Remedial Action for OU2, which includes remediation of hexavalent chromium in soils at Settling Defendants' facility. The settlement also requires Settling Defendants to reimburse EPA $10,704,583 in past response costs by making five equal payments, plus interest, over the course of approximately four years. The Consent Decree also requires Settling Defendants to reimburse EPA's future oversight costs related to OU2.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *SL Industries, Inc. and SL Surface Technologies, Inc..,* D.J. Ref. No. 90–11–3–09813. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decrees may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide paper copies of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $73.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–06741 Filed 3–22–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1618]

Draft of SWGDOC Standard for Indentation Examinations

AGENCY: National Institute of Justice.

ACTION: Notice and request for comments.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Scientific Working Group for Forensic Document Examination will make available to the general public a draft document entitled, ''SWGDOC Standard for Indentation Examinations''. The opportunity to provide comments on this document is open to forensic document examiners, law enforcement agencies, organizations, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft document under consideration are directed to the following Web site: *http://www.swgdoc.org.*

DATES: Comments must be received on or before April 30, 2013.

FOR FURTHER INFORMATION CONTACT: Patricia Kashtan, by telephone at 202–353–1856 [**Note:** this is not a toll-free telephone number], or by email at *Patricia.Kashtan@usdoj.gov.*

Greg Ridgeway,

Acting Director, National Institute of Justice.

[FR Doc. 2013–06677 Filed 3–22–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Data Users Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Data Users Advisory Committee will meet on Tuesday May 7, 2013. The meeting will be held in the Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities, on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function.

The meeting will be held in Meeting Rooms 1, 2, and 3 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

8:30 a.m. Registration
9:00 a.m. Commissioner's Welcome and Review of Agency Developments
10:00 a.m. Occupational Requirements Survey—What are the options for data presentation?
11:15 a.m. Geographic Display of Data
1:30 p.m. Outreach Efforts at BLS
- BLS Speaker's Page and Trending News—Identifying Interesting and Timely Topics for Public Presentation
- EA&I and Local Outreach—Customizing Local Data

4:15 p.m. Meeting Wrap-up

The meeting is open to the public. Any questions concerning the meeting should be directed to Kathy Mele, Data Users Advisory Committee, on 202.691.6102. Individuals who require special accommodations should contact Ms. Mele at least two days prior to the meeting date.

Signed at Washington, DC, this 20th day of March 2013.

Kimberley D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2013–06751 Filed 3–22–13; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that five meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506 as follows (ending times are approximate):

Design (application review): In Room 730. This meeting will be closed.

Dates: April 18, 2013; 9:00 a.m. to 5:30 p.m. EDT.

Design (application review): In Room 730. This meeting will be closed.

Dates: April 19, 2013; 9:00 a.m. to 5:30 p.m. EDT.

Design (application review): In Room 730. This meeting will be closed.

Dates: April 23, 2013; 9:00 a.m. to 5:30 p.m. EDT.

Design (application review): In Room 730. This meeting will be closed.

Dates: April 25, 2013; 9:00 a.m. to 5:30 p.m. EDT.

Design (application review): In Room 730. This meeting will be closed.

Dates: April 26, 2013; 9:00 a.m. to 5:30 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov* or call 202–682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: March 20, 2013.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2013–06706 Filed 3–22–13; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Request To Amend a License To Export High-Enriched Uranium

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license amendment. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory

Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81 should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this export license amendment application follows.

NRC EXPORT LICENSE AMENDMENT APPLICATION

Description of Material

Name of applicant Date of application Date received Application No. Docket No.	Material type	Total quantity	End use	Recipient country
U.S. Department of Energy, National Nuclear Security Administration. March 6, 2013 March 11, 2013 XSNM3622/02 11006024	No change in material (High-Enriched Uranium (93.35%))	No increase (93.1 kilograms U–235 contained in 99.7 kilograms uranium)	Amend to add the LVR–15 Research Reactor in the Czech Republic to the list of research reactor intermediate foreign consignees for target irradiation. No other changes to the existing license which authorizes the export of HEU to Belgium for ultimate use as fuel or targets for medical isotope production	Irradiated targets will ultimately be processed for medical isotope production at the Institute for Radioelements in Belgium.

Dated this 14th day of March 2013 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Mark R. Shaffer,

Deputy Director, Office of International Programs.

[FR Doc. 2013–06733 Filed 3–22–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0052]

Draft Program-Specific Guidance About Fixed Gauge Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is revising its licensing guidance for fixed gauge licenses. The NRC is requesting public comment on draft NUREG–1556, Volume 4, Revision 1, ''Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Fixed Gauge Licenses.'' The document has been updated from the previous revision to include safety culture, security of radioactive materials, protection of sensitive information, and changes in regulatory policies and practices. This document is intended for use by applicants, licensees, and the NRC staff and will also be available to Agreement States.

DATES: Submit comments by April 24, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to assure consideration of comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0052. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0052. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tomas Herrera, Office of Federal and State Materials and Environmental Management Programs; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7138; email: *Tomas.Herrera@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0052 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0052.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft NUREG–1556, Volume 4, Revision 1, is available in ADAMS under Accession No. ML13073A053.

• *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.

The draft NUREG–1556, Volume 4, Revision 1, is also available on the NRC's public Web site on the: (1) ''Consolidated Guidance About Materials Licenses (NUREG–1556)'' page at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/;* and the (2) ''Draft NUREG-Series Publications for Comment'' page at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/docs4comment.html.*

B. Submitting Comments

Please include Docket ID NRC–2013–0052 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

The NUREG provides guidance to an applicant applying for a fixed gauge license and provides the NRC criteria for evaluating a fixed gauge license application. The purpose of this notice is to provide the public with an opportunity to review and provide comments on draft NUREG–1556, Volume 4, Revision 1; ''Draft Program-Specific Guidance about Fixed Gauge Licenses.'' These comments will be considered in the final version or subsequent revisions.

Dated at Rockville, Maryland, this 18th day of March, 2013.

For the Nuclear Regulatory Commission.

Pamela J. Henderson,

Deputy Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2013–06739 Filed 3–22–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting onb April 10, 2013, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, April 10, 2013–12:00 p.m. Until 1:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Antonio Dias (Telephone 301–415–6805 or Email: *Antonio.Dias@nrc.gov*) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: March *13, 2013.*

Cayetano Santos,

Chief, Reactor Safety Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013–06738 Filed 3–22–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Radiation Protection and Nuclear Materials; Notice of Meeting

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on April 9, 2013, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of a portion that may be closed to protect information that is propriety pursuant to 5 U.S.C. 552(c)(4). The agenda for the subject meeting shall be as follows:

Tuesday, April 9, 2013—8:30 a.m. Until 12:00 p.m.

The Subcommittee will review and discuss proposed revisions to 10 CFR part 61 to add requirements for Performance Assessment and Intruder Analysis and Waste Acceptance Criteria. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301–415–7366 or Email: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: March 14, 2013.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013–06735 Filed 3–22–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Fukushima; Notice of Meeting

The ACRS Subcommittee on Fukushima will hold a meeting on April 10, 2013, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 10, 2013–8:30 a.m. until 12:00 p.m.

The Subcommittee will review and discuss the guidance documents for conducting seismic reevaluations requested in the March 2012 10 CFR 50.54(f) letters to address Fukushima Near-Term Task Force Report Task 2.1. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301–415–7366 or Email: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: March 14, 2013.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013–06737 Filed 3–22–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Future Plant Designs; Notice of Meeting

The ACRS Subcommittee on Future Plant Designs will hold a meeting on April 9, 2013, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, April 9, 2013—10:00 a.m. until 5:00 p.m.

The Subcommittee will review and discuss the development of risk-informed performance based licensing framework for the Next Generation Nuclear Plant (NGNP). The Subcommittee will hear presentations by and hold discussions with the Department of Energy, Idaho National Laboratory, NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions

and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Maitri Banerjee (Telephone 301–415–6973 or Email: *Maitri.Banerjee@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: March 14, 2013.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013–06734 Filed 3–22–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 28, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: March 21, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–06928 Filed 3–21–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69157; File No. SR–CTA/CQ–2013–01]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Sixteenth Charges Amendment to the Second Restatement of the CTA Plan and Eighth Charges Amendment to the Restated CQ Plan

March 18, 2013.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on March 11, 2013,[3] the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan participants (''Participants'')[4] filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the ''Plans'').[5] The proposal represents the sixteenth charges amendment to the CTA Plan (''Sixteenth Charges Amendment to the CTA Plan'') and the eighth charges amendment to the CQ Plan (''Eighth Charges Amendment to the CQ Plan''), and reflects changes unanimously adopted by the Participants.

The purpose of the Sixteenth Charges Amendment to the CTA Plan and Eighth Charges Amendment to the CQ Plan (collectively, the ''Amendments''), is to simplify the Plans' existing market data fee schedules by compressing the current 14-tier Network A device rate schedule into four tiers, by consolidating the Plans' eight fee schedules into one, and by realigning the Plans' charges more closely with the services the Plans provide, without materially changing the revenues the current fee schedules generate. The Participants' goal is to achieve greater simplicity and a reduction of administrative burdens.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The proposal was originally submitted on January 30, 2013. It was resubmitted on February 5, 2013, February 28, 2013, and on March 11, 2013.

[4] Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc., BATS–Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), International Securities Exchange, LLC, NASDAQ OMX BX, Inc. (''Nasdaq BX''), NASDAQ OMX PHLX, Inc. (''Nasdaq PSX''), Nasdaq Stock Market LLC, National Stock Exchange, New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (formerly NYSE Amex, Inc.), and NYSE Arca, Inc. (''NYSE Arca'').

[5] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

Pursuant to Rule 608(b)(3)(i) under Regulation NMS,[6] the Participants designated the Amendments as establishing or changing a fee or other charge collected on their behalf in connection with access to, or use of, the facilities contemplated by the Plans. As a result, the Amendments became effective upon filing with the Commission. At any time within 60 days of the filing of the Amendments, the Commission may summarily abrogate the Amendments and require that the Amendments be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments.

I. Rule 608(a)

A. Description and Purpose of the Amendments

1. In General

The Participants filed the last significant fee structure change in 1986. Since then, however, significant change has characterized the industry, stemming in large measure from technological advances, the advent of trading algorithms and automated trading, new investment patterns, new securities products, unprecedented levels of trading, internationalization and developments in portfolio analysis and securities research.

Industry representatives who sit on the Plans' Advisory Committee have noted these changes and have urged adoption of a modernized, simpler, easier to read fee schedule. They have noted the desirability of reducing the rate spread inherent in the 14-tier Network A device rate structure and the need for reducing administrative burdens. The Participants have discussed these goals with those industry representatives. The proposed changes respond to the industry representatives' comments and seek to establish a simplified pricing structure that is consistent with current technology, that reduces administrative burdens and that promotes the use of real-time market data.

The Amendments also move in the direction of harmonizing fees between Network A and Network B and of harmonizing fees under the Plans with fees under two other transaction reporting plans: the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (the ''Nasdaq/UTP Plan'') and the Options Price Reporting Authority Plan (''OPRA Plan''). This would reduce administrative burdens for broker-dealers and other market data users and simplify fee calculations.

The Amendments also propose to consolidate, simplify and update the market data fee schedules under both Plans to arrive at a single, consolidated CTA/CQ Fee Schedule. This should make it easier for market data users to understand and apply the fee schedule.

The Participants anticipate that the fee changes would not materially change the market data revenues generated under the Plans.

The text of the proposed Amendments is available on the CTA's Web site (*http://www.nysedata.com/cta*), at the principal office of the CTA, and at the Commission's Public Reference Room.

2. The Proposed Fee Schedule Changes

a. Professional Subscriber Charges

i. Network A

A principal purpose of the proposed fee schedule changes is to address the 14-tier fee structure that the Participants have in place for Network A professional subscribers. That structure has been in place for more than 25 years. Under the tiered structure, a firm reports how many display devices its professional subscribers use and that number then is used to determine the tier within which the firm falls.

For reporting purposes, a display device is any device capable of displaying market data. Where a professional subscriber receives market data services from multiple vendors, separate device fees apply for each vendor's service. Where a vendor provides market data to a professional subscriber by means of multiple applications, separate device fees apply for each application.

At one extreme, the current Network A fee tiered structure imposes a monthly charge of $18.75 per device for firms employing professional subscribers who use more than 10,000 devices. At the other extreme, it imposes a monthly charge of $127.25 per device for a single professional subscriber. (For Network A, the rates entitle the professional subscriber to receive both Network A last sale information under the CTA Plan and Network A quotation information under the CQ Plan.)

Market data users have told the Participants that they find the 14-tier structure challenging to administer and the $18.75-to-$127.25 spread between the highest and lowest tiers too wide. The proposed changes seek to address both concerns. The Participants propose a new four-tier monthly Network A fee structure for the display units of professional subscribers, as follows:

1. 1–2 devices: $50.00.
2. 3–999 devices: $30.00.
3. 1,000–9,999 devices: $25.00.
4. 10,000 devices or more: $20.00.

The proposed narrowing of the gap between the highest rates and the lowest rates would benefit both individuals who have not qualified as nonprofessional subscribers and smaller firms. In particular, individuals and firms having one device would see their monthly Network A rate drop from $127.25 to $50, and firms having two devices would see their monthly Network A rate drop from $79.50 per device to $50 per device. Firms whose professional subscriber employees use between 3 and 29 devices would also have lower rates.

On the other hand, larger firms would see higher rates in respect of their internal distribution of market data to their employees. For example, the rates for firms whose employees use between 750 devices and 9,999 devices would rise from $19.75 or $20.75 per device to $25 per device, and the rates for firms whose employees use more than 10,000 devices would rise from $18.75 to $20.00.

Many firms distribute market data to ''Customers'' and pay CTA/CQ fees on behalf of those Customers. Those firms should pay less for their external distribution to each Customer because the rates that they would pay on behalf of each Customer would drop (assuming that the firms do not provide service to more than 29 Customer devices). The amount of the decrease would depend on the tier into which the Customer falls.

''Customer'' refers to an individual client of the firm, an independent contractor who may be associated with the firm but is not an employee of the firm, a trading company that receives market data from the firm for use by its traders, and any other corporate, broker-dealer or other entity to which the firm provides data.

A firm may only include its own employees in determining the tier that

[6] 17 CFR 242.608(b)(3)(i).

applies to it. It may not include in that determination any Customer to which it provides market data or the employees of any Customer. The rate applicable to each Customer is separately determined based on the tier into which the Customer falls. The Amendments propose to add a footnote (proposed footnote 2) to explain this. This explanation seeks to prevent efforts to misuse the tiered rate structure. For the same reason, the Amendments also propose to eliminate the reference to a firm's officers and partners as authorized internal distributees of the firm.

Together with the other proposed amendments to the fee schedule, the Participants anticipate that the changes to the Network A professional subscriber tiered fee structure would not result in a material change in overall revenues under the Plans.

ii. Network B

Professional subscribers currently pay one amount for Network B last sale information and a separate amount for Network B quotation information. Firms that are members of a Participant currently pay slightly less than non-members. A member pays $27.25 per month per device to receive both last sale and quotation information for Network B and a non-member pays $30.20. Network B is the only network that still distinguishes between members and non-members.

To simplify Network B professional subscriber rates and to remove the differential, the Participants propose a single monthly rate of $24.00 per device, applicable to both members and non-members.

The $24.00 Network B rate would amount to a savings for most nonprofessional subscribers, the majority of which currently receive both last sale and quotation information. Network B has a small number of data recipients who receive last sale information or quotation information, but not both. The change would amount to a fee increase for them. The Network B Participants note that Network A and the Participants in the Nasdaq/UTP Plan and the OPRA Plan have not charged separately for last sale information and quotation information for many years.

The Participants believe that a single fee for Network B devices would prove administratively efficient for data users and the network administrators. They note that the Nasdaq/UTP Plan imposes a single fee of $20 for each device and that the OPRA Plan imposes a single fee (currently $25) for each device.

iii. Broker-Dealer Enterprise Maximums

Currently, the monthly broker-dealer enterprise maximums are at $660,000 per month for Network A and $500,000 per month for Network B. For that amount, the enterprise maximums allow a broker-dealer to provide last sale and quotation information to an unlimited number of its own employees and the brokerage account customers its nonprofessional subscribers. The Plans provide that the amounts of the broker-dealer enterprise maximums increase each calendar year by an amount equal to the percentage increase in the annual composite share volume for the preceding calendar year, subject to a maximum annual increase of five percent.

The Participants propose to modify the means for determining the increase in the broker-dealer enterprise maximums. Under the proposal, the Participants may increase the broker-dealer enterprise maximums for Network A and Network B by the affirmative vote of not less than two-thirds of the Participants, provided, however, that they may not increase either network's enterprise maximum by more than four percent for any calendar year. The Participants may elect not to increase the fee for any calendar year.

This proposed means for determining the increase in the broker-dealer enterprise maximums would reduce the amount of any one year's permissible increase from five percent to four percent and would better reflect inflation than does the current means. The maximum four percent increase is consistent with the average cost of living adjustment (''COLA'') as published by the Social Security Administration for the past 38 years.

The Participants have not increased the Network A broker-dealer enterprise maximum for more than five years. They have not increased the Network B broker-dealer enterprise maximum since they first adopted it in 1999. They propose to increase the amount of both networks' enterprise maximums for 2013. As a result, the monthly Network A broker-dealer enterprise maximum would increase to $686,400 and the monthly Network B broker-dealer enterprise maximum would increase to $520,000. These changes would not take effect until the implementation date for the other charges set forth in these Amendments. The number of firms reaching the enterprise caps is minimal and these firms may benefit from proposed fee reductions in other areas.

b. Nonprofessional Subscriber Charges

Currently, a firm pays $1.00 per month in respect of its first 250,000 Network A nonprofessional subscribers and $0.50 for Network A nonprofessional subscribers in excess of 250,000. A firm pays $1.00 per month for each of its Network B nonprofessional subscribers, regardless of how many such subscribers a firm has.

The Participants propose to harmonize the treatment of large and small firms by applying the $1.00 per month rate in respect of all Network A nonprofessional subscribers, regardless of the number of nonprofessional subscribers. This would also harmonize the Network A nonprofessional subscriber fee with the Network B nonprofessional subscriber fee, as well as the $1.00 nonprofessional subscriber fee payable under the Nasdaq/UTP Plan. (The fee applicable to nonprofessional subscribers under the OPRA Plan is $1.25.) The Participants note that the number of firms that have more than 250,000 Network A nonprofessional subscribers is very small.

c. Per-Query Charges

Currently, Network A and Network B impose identical three-tiered per-query rates as follows:

1 to 20 million quotes $.0075 each
20 to 40 million quotes $.005 each
Over 40 million quotes $.0025 each

The Participants propose to modify their per-query rate structure by replacing the three-tier structure with the same one rate as the Nasdaq/UTP Plan and the OPRA Plan imposes: $.005 for each inquiry for both Network A and Network B.

As before, a vendor's per-query fee exposure for any nonprofessional subscriber is limited to $1.00 per month (*i.e.,* the nonprofessional subscriber rate.)

The single rate would simplify per-query calculations. It would also harmonize the Network A and Network B per-query fees with the Nasdaq/UTP Plan and the OPRA Plan per-query fees.

d. Access Fees

Current and proposed access fees for direct access to last sale prices are as follows:

Current Fees:
Network A: $1,000.00
Network B: $350.00
Proposed Fees:
Network A: $1,250.00
Network B: $750.00

Current and proposed access fees for indirect access to last sale prices are as follows:

Current Fees:
Network A: $500.00
Network B: $200.00
Proposed Fees:
Network A: $750.00
Network B: $400.00

Current and proposed access fees for direct access to quotation information are as follows:

Current Fees:
Network A: $1,100.00
Network B: $400.00
Proposed Fees:
Network A: $1,750.00
Network B: $1,250.00

Current and proposed access fees for indirect access to quotation information are as follows:

Current Fees:
Network A: $700.00
Network B: $250.00
Proposed Fees:
Network A: $1,250.00
Network B: $600.00

Access fees are charged to those who obtain Network A and Network B data feeds. Consistent with current practice, within each of a firm's billable accounts, the Participants only charge one access fee for last sale information and one access fee for quotation information, regardless of the number of data feeds that the firm receives for that account. The Participants believe that increases in these fees are fair and reasonable because today's data feeds provide significant incremental value in comparison to the data feeds that the Participants provided when they first set the access fees.

For example, the data feeds contain a vastly larger number of last sale prices and bids and offers. The growth in Exchange Traded Products has contributed to a significant increase in Network B activity. The data feeds also contain far more information beyond prices and quotes, such as the national best bid and offer (''NBBO''), short sale restriction indications, circuit breaker tabs, retail price improvement indications, and, coming soon, limit up/limit down information. In addition to the vast increase in content, there has been significant improvement in the latency of the data feeds.

Further, data feeds have become more valuable, as recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.

The Participants estimate the revenues resulting from the revised access fees would increase total Network A and Network B by six percent, but this increase would be largely offset by an estimated five percent decrease in total revenues resulting from the revised professional subscriber device fees and an estimated two percent decrease resulting from the revised quote usage fees. The majority of customers taking data feeds are also benefiting from lower professional subscriber fees and/or lower quote-usage fees.

CTA and CQ data feeds include a full consolidated data set of last sale and quotation information across all exchanges and FINRA's Trade Reporting Facilities. In contrast, the data feeds found in the proprietary data products of individual exchanges contain a far more limited set of data. The following chart compares access fees for the receipt of last sale information and quotation information:

Proposed CTA Network A:
Direct Access: $3,000
Indirect Access: $2,000
Proposed CQ Network B:
Direct Access: $2,000
Indirect Access: $1,000
NYSE: $5,000
Nasdaq: $2,000
Nasdaq BX: $1,000
Nasdaq PSX: $1,000
NYSE Arca: $750
EDGA: $500
EDGX: $500

e. Data Redistribution Charges

The Participants propose to establish a new monthly charge of $1,000 for the redistribution of Network A last sale price information and/or Network A quotation information and a similar $1,000 monthly charge for the redistribution of Network B last sale price information and/or Network B quotation information. This will not necessitate any additional reporting obligations.

The redistribution charges would apply to any entity that makes last sale information or quotation information available to any other entity or to any person other than its own employees, irrespective of the means of transmission or access. That is, all firms that redistribute market data outside of their organization would be required to pay the redistribution fee. The fee would not apply to a firm whose receipt, use and distribution of market data are limited to its own employees in a controlled environment.

The proposed redistribution charge harmonizes CTA/CQ fees with OPRA Plan fees, which impose a redistribution charge on every vendor that redistributes OPRA data to any person. OPRA's redistribution fee is $1,500 per month (or $650 for an internet-only service). Redistribution fees are also common for exchange proprietary data products.

Revenues from the redistribution charge along with the access fees would help to offset anticipated decreases in revenues resulting from the proposed changes to the professional subscriber device fees. Vendors base their business models on procuring data from exchanges and turning around and redistributing that data to their subscribers. The costs that market data vendors incur for acquiring their inventory (*i.e.,* CTA/CQ market data) are very low, sometimes amounting only to their payment of access fees. The proposed redistribution charges would require them to contribute somewhat more, relative to the end-user community.

f. Television Broadcast Charges

The Participants do not propose to make any changes to current television broadcast charges. In the case of Network A, the Participants do not propose to change the maximum amount payable for television broadcasts. However, the Plans provide for an annual increase to that maximum amount. The Network A Participants in some years have elected not to apply the annual increase. The Network A Participants propose to codify the practice of voting to waive a calendar year's maximum increase by adding footnote language to that effect.

g. Multiple Data Feed Charges

The Participants propose to establish a new monthly fee for firms that take more than one primary data feed and one backup data feed. (This will not necessitate any additional reporting obligations.) The fee would be as follows:

$50 for Network A last sale information data feeds
$50 for Network A quotation information data feeds
$50 for Network B last sale information data feeds
$50 for Network B quotation information data feeds.

For both last sale and bid-ask data feeds, this charge would apply to each data feed that a data recipient receives in excess of the data recipient's receipt of one primary data feed and one backup data feed.

To date, the Participants have not required data recipients that receive

multiple data feeds to pay any more than data recipients that receive one primary and one back up data feed. The Participants believe that it is appropriate to have them do so. The Participants note that the OPRA Plan imposes a charge of $100 per connection for circuit connections in addition to the primary and backup connections.

h. Late/Clearly Erroneous Reporting Charges

The Participants propose to establish a new monthly fee for firms that fail to comply with their reporting obligations in a timely manner. The charge is $2500 for each network. The charge would not be assessed until a firm fails to report its data usage and entitlements for more than three months. A report is not considered to have been provided if the report is clearly incomplete or inaccurate, such as a report that fails to report all data products or a report for which the reporting party did not make a good faith effort to assure the accuracy of data usage and entitlements.

The late reporting charges would be assessed for each month in which there is a failure to provide a network's required data-usage report, commencing with reporting failures lasting more than three months from the date on which the report is first due. By way of example, if a network's data-usage report is due on May 31, the charge would commence to apply as of September 1 and would appear on the market data invoice for September. The network administrator would assess the charge as of September 1, and would continue to assess the charge each month until the network administrator receives the firm's complete and accurate data-usage report.

The purpose of the charges is to provide incentives to those firms that are delinquent in reporting their data-usage activity and to place them on a level playing field with compliant firms.

i. Network B Ticker Charge

As part of the process of simplifying the fee structure, the Participants have determined to eliminate the Network B ticker charge. This would harmonize Network B rates with those of Network A (which phased out its ticker charge many years ago), and with the Nasdaq/UTP Plan and the OPRA Plan, neither of which imposes a ticker charge.

3. Impact of the Proposed Fee Changes

As with any reorganization of a fee schedule, some data recipients may pay higher total market data fees and others may pay less. On balance, if customer usage were to remain the same, the Participants estimate that the fee changes would increase consolidated tape revenue for Network A and Network B by no more than 2.9 percent. Customer usage trends, however, have declined year-over-year since 2008, including declines in access feeds, professional and nonprofessional subscribers, and quote usage. This has led to a significant decline in revenues generated under the Plans. (More information on these declines can be found in the Participants' *Consolidated Data Quarterly Operating Metrics Reports.* Those reports can be found at *http://www.nyxdata.com/CTA.*) Additionally, broker-dealers increasingly have reported their executions to FINRA's Trade Reporting Facilities (''TRFs''). Because the TRFs re-allocate a portion of their consolidated tape revenues back to their broker-dealer customers, this significant and growing share of trading reduces the consolidated tape revenues remaining with the markets. For these reasons, the Participants believe that the proposed fee changes would not result in a material increase in overall revenues under the Plans.

4. Changes to the Form of the CTA/CQ Fee Schedule

The Amendments propose to simplify, consolidate, and update the market data fee schedules under both Plans to arrive at a single, consolidated CTA/CQ Fee Schedule that sets forth the applicable charges from time to time in effect under both Plans. The Participants propose to set forth the CTA/CQ Fee Schedule in Exhibit E to the CTA Plan. It would replace the eight CTA/CQ fee schedules currently in effect: Schedules A–1 through A–4 of Exhibit E to the CTA Plan and Schedules A–1 through A–4 of Exhibit E to the CQ Plan. As a result, Exhibit E to the CTA Plan would contain the entire CTA/CQ Fee Schedule and Exhibit E to the CQ Plan would be eliminated.

The simplifications and updates that the consolidated CTA/CQ Fee Schedule proposes include the following:

- Adopting changes that make fee-disclosure more transparent, such as the addition of descriptions of what constitutes internal and external distribution;
- removing the Network B communications facilities and line splitter charges, which no longer apply;
- removing outdated footnotes that no longer apply;
- posting the amounts of the broker/dealer enterprise charge and the maximum television broadcast charge on the CTA Web site (although the amounts would also remain on the CTA/CQ Fee Schedule);
- granting the Participants the authority to waive the annual increase for any calendar year for the Network A and Network B broker-dealer enterprise charges and the Network A maximum television broadcast charge; and
- changing references to the ''high speed line'' to read ''output feed.''

B. Additional Information Required by Rule 608(a)

1. Governing or Constituent Documents

Not applicable.

2. Implementation of the Amendments

The Participants anticipate implementing the proposed fee changes in 2013, after giving notice to data recipients and end users of the proposed fee changes.

3. Development and Implementation Phases

See Item I(B)(2) above.

4. Analysis of Impact on Competition

The proposed Amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee changes respond to the suggestions of industry representatives and reflect the Participants' own views that it is appropriate to establish a simplified pricing structure that is consistent with current technology, that reduces administrative burdens and that promotes the use of real-time market data.

The Participants have not significantly revised the CTA and CQ market data fee schedules in many years. They adopted the 14-tier Network A professional subscriber rate structure in 1986 and that structure has changed very little ever since. Numerous technological advances, the advent of trading algorithms and automated trading, different investment patterns, a plethora of new securities products, unprecedented levels of trading, internationalization and developments in portfolio analysis and securities research warrant the revision.

In general, the proposed fee changes would cause Network A fees to sync more closely with Network B fees and would cause Network A and Network B fees to sync more closely with fees payable under the Nasdaq/UTP Plan and the OPRA Plan. The proposed fees would compare reasonably with the fees payable under those other Plans.

As a result, these Amendments promote consistency in price structures among the national market system

plans, as well as consistency with the preponderance of other market data providers. This would make market data fees easier to administer. It would enable data recipients to compare their charges under the respective national market system plans more easily. It also would make for a more straightforward and streamlined administrative process for both the network administrator and market data users.

In the Participants' view, the proposed fee schedule would allow each category of data recipient and data user to contribute an appropriate amount for their receipt and use of market data under the Plans. The proposed fee schedule would provide for an equitable allocation of dues, fees, and other charges among broker-dealers, vendors, end users and others receiving and using market data made available under the Plans.

The Participants propose to apply the revised fee schedule uniformly to all constituents (including members of the Participant markets and non-members). The Participants do not believe that the proposed fee changes introduce terms that are unreasonably discriminatory.

5. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

6. Approval by Sponsors in Accordance with Plan

In accordance with Section XII(b)(iii) of the CTA Plan and Section IX(b)(iii) of the CQ Plan, each of the Participants has approved the rate changes.

7. Description of Operation of Facility Contemplated by the Proposed Amendments

Not applicable.

a. Terms and Conditions of Access

See Item I(A) above.

b. Method of Determination and Imposition, and Amount of, Fees and Charges

The Participants took a number of factors into account in deciding to propose the Amendments.

Most significantly, they listened to the information needs and suggestions of industry representatives. In particular, the Participants received input from members of their Advisory Committee. The CTA and CQ Plans require the Advisory Committee to include, at a minimum, a broker-dealer with a substantial retail investor customer base, a broker-dealer with a substantial institutional investor customer base, an alternative trading system, a data vendor, and an investor. Advisory Committee members attend and participate in meetings of the Participants and receive meeting materials. Members of the Advisory Committee gave valuable input that the Participants used in crafting the proposed fee changes.

The Participants also took into consideration a number of other factors in addition to the views of its constituents, including:

(A) crafting fee changes that will not have a significant impact on total revenues generated under the Plans;

(B) setting fees that compare favorably with fees that participants in the Nasdaq/UTP Plan and the OPRA Plan charge for similar services;

(C) setting fees that allow each category of market data recipient and user to contribute market data revenues that the Participants believe is appropriate for that category;

(D) crafting fee changes that appropriately differentiate between constituents in today's environment (*e.g.,* large firms vs. small firms; redistributors vs. end users); and

(E) crafting a fee schedule that is easy to read and use and minimizes administrative burdens.

c. Method of Frequency of Processor Evaluation

Not applicable.

d. Dispute Resolution

Not applicable.

II. Rule 601(a) (solely in its application to the Amendments to the CTA Plan)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

See Item I(A) above.

H. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendments to the CTA Plan 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. Please include File Number* SR–CTA/CQ–2013–01 *on the subject line.*

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CTA/CQ–2013–01. 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 Amendments that are filed with the Commission, and all written communications relating to the Amendments 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 Amendments also will be available for inspection and copying at the principal office of the CTA.

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–CTA/CQ–2013–01 and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06730 Filed 3–22–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69179; File No. SR–BX–2013–024]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Elimination of SPY Position Limits

March 19, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate position limits for options on the SPDR® S&P 500® exchange-traded fund (''SPY ETF''),[3] which list and trade under the symbol SPY.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add new rule text in a new section entitled ''Supplementary Material'' at the end of Chapter III, Section 7 (Position Limits) to specifically state that there shall be no position limits for SPY options subject to a Pilot Program.

Background

Position limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. The Exchange understands that the Commission, when considering the appropriate level at which to set option position and exercise limits, has considered the concern that the limits be sufficient to prevent investors from disrupting the market in the security underlying the option.[4] This consideration has been balanced by the concern that the limits ''not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.''[5]

SPY options are currently the most actively traded option class in terms of average daily volume (''ADV'').[6] The Exchange believes that, despite the popularity of SPY options as evidenced by their significant volume, the current position limits on SPY options could be a deterrent to the optimal use of this product as a hedging tool. The Exchange further believes that position limits on SPY options may inhibit the ability of certain large market participants, such as mutual funds and other institutional investors with substantial hedging needs, to utilize SPY options and gain meaningful exposure to the hedging function they provide.

The Exchange believes that current experience with the trading of SPY options, as well as the Exchange's surveillance capabilities, has made it appropriate to consider other, less prophylactic alternatives to regulating SPY options, while still seeking to ensure that large positions in SPY options will not unduly disrupt the options or underlying cash markets. Generally with respect to position limits for options traded on CBOE and BX, the CBOE position limits are the applicable position limits pursuant to the Exchange's Rules at Chapter III, Section 7(a). CBOE recently filed to eliminate SPY position limits.[7] Accordingly, the Exchange's position limits on SPY options shall also be eliminated in accordance with CBOE's Rules. The Exchange is memorializing the elimination of SPY options [sic], which is subject to a Pilot Program, in the Supplementary Material at Chapter III, Section 7.

In proposing the elimination of position limits on SPY options, the Exchange has considered several factors, including (1) the availability of economically equivalent products and their respective position limits, (2) the liquidity of the option and the underlying security, (3) the market capitalization of the underlying security and the related index, (4) the reporting of large positions and requirements surrounding margin, and (5) the potential for market on close volatility.

Economically Equivalent Products

The Exchange has considered the existence of economically equivalent or similar products, and their respective position limits, if any, in assessing the appropriateness of proposing an elimination of position limits for SPY options.

[7] 17 CFR 200.30–3(a)(27).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''SPDR®,'' ''Standard & Poor's®,'' ''S&P®,'' ''S&P 500®,'' and ''Standard & Poor's 500'' are registered trademarks of Standard & Poor's Financial Services LLC. The SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

[4] *See* Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911, 4912–4913 (February 1, 1999) (SR–CBOE–98–23) (citing H.R. No. IFC–3, 96th Cong., 1st Sess. at 189–91 (Comm. Print 1978)).

[5] *Id.* at 4913.

[6] SPY ADV was 2,156,482 contracts in April 2012. ADV for the same period for the next four most actively traded options was: Apple Inc. (option symbol AAPL)—1,074,351; S&P 500 Index (option symbol SPX)—656,250; PowerShares QQQ Trust℠, Series 1 (option symbol QQQ)—573,790; and iShares® Russell 2000® Index Fund (option symbol IWM)—550,316.

[7] *See* Securities Exchange Act Release No. 67937 (September 27, 2012), 77 FR 60489 (October 3, 2012) (SR–CBOE–2012–091). Prior to this filing CBOE's position limit for SPY options was 900,000 contracts on the same side of the market.

For example, AM-settled options on the S&P 500 Index, which list and trade exclusively on CBOE under the symbol SPX, are currently not subject to position limits.[8] Moreover, SPX options are 10 times the size of SPY options, so that a position of only 90,000 SPX options is the equivalent of a position of 900,000 SPY options, which is the current position limit for SPY options.[9]

Similarly, the C2 Options Exchange (''C2'') has recently introduced a PM-settled S&P 500 cash settled contract (''SPXPM''), which also is not subject to position limits.[10] This contract, unlike the existing SPX contract, is cash-settled based on the closing value of the S&P 500 Index. In this respect, SPXPM is very much like SPY options in that it is settled at the close, albeit into cash as opposed to shares of the underlying like SPY options.

The Exchange believes that, because SPX, SPXPM, and SPY options are ultimately derivative of the same benchmark—the S&P 500 Index—they should be treated equally from a position limit perspective. As a practical matter, investors utilize SPX, SPXPM, and SPY options and their respective underlying instruments and futures to gain exposure to the same benchmark index: The S&P 500. Further, because the creation and redemption process for the underlying SPY ETF allows large investors to transfer positions from a basket of stocks comprising the S&P 500 index to an equivalent number of ETF shares (and the reverse) with relative ease, there is no reason to disadvantage options overlying the one versus the other. The Exchange believes that this view is supported by the recent expansion on other options exchanges, including CBOE, of various exemptions from position limits, such as the Delta-Based Equity Hedge Exemptions which allows SPY option positions to be delta-hedged by positions in SPX options. Given that SPX options are not subject to position limits, a member or member organization (or non-member affiliate thereof) could theoretically establish a position in SPY options far in excess of the current 900,000 contract limit, provided that the position is hedged with SPX options. The Exchange believes that this situation accurately reflects the economic equivalence of SPX and SPY options, supporting the Exchange's proposal to further acknowledge this equivalence by eliminating position limits in SPY options.

The Exchange also believes that Commission findings in approving the SPXPM options further support treating SPY options in the same manner as SPX and SPXPM options for purposes of position limits. In particular, the Commission noted in approving SPXPM options that ''C2's proposal will offer investors another investment option through which they could obtain and hedge exposure to the S&P 500 stocks,'' and that ''C2's proposal will provide investors with the ability to trade an option on the S&P 500 index in an all-electronic market, which may better meet the needs of investors who may prefer to trade electronically.''[11] The Commission also noted that ''C2's proposal will provide investors with added flexibility through an additional product that may be better tailored to meet their particular investment, hedging, and trading needs.''[12] The Exchange believes that these Commission findings apply equally to SPY options. In this respect, SPY options with no position limit will (1) offer investors another investment option through which they could obtain and hedge significant levels of exposure to the S&P 500 stocks, (2) be available to trade on the Exchange (and presumably all other U.S. options exchanges) electronically, and (3) provide investors with added flexibility through an additional product that may be better tailored to meet their particular investment, hedging, and trading needs, because, among other things, they are PM-settled.

The Exchange notes that, with respect to competition amongst economically equivalent products, a 2005 paper by Hans Dutt and Lawrence Harris that set forth a model to determine appropriate position limits for cash-settled index derivatives observed that ''markets and their regulators should take a closer look at the underlying economic rationale for the levels at which they currently set their position limits to ensure that the limits adequately protect markets from manipulation and that inconsistent position limits do not produce competitive advantages and disadvantages among contracts.''[13] On this point, the Exchange believes that if no position limits have been found to be warranted on both SPX and SPXPM options, then such treatment should be extended to SPY options so that inconsistent position limits do not produce competitive advantages and disadvantages among contracts.

In addition, the Exchange notes that the Dutt-Harris Paper focuses its attention on the concerns relating to manipulation of cash-settled derivatives, stating that ''[a]lthough several scholars have argued that cash settlement may increase the risk of market manipulation, until recently, the theoretical problems arising from potential cash settlement manipulation has been considered minor, as evidenced by the lack of academic interest in this area.''[14] The paper further noted that ''[t]he reason for this may arise from the fact that most exchange-traded derivative index contracts that are cash settled are broad-based, and each of the underlying components typically possesses ample liquidity,'' and that ''manipulation of the underlying components would likely be extremely costly to the would-be manipulator.''[15] This suggests that whatever manipulation risk does exist in a cash-settled, broad-based product such as SPXPM, the corresponding manipulation risk in a physically-settled, but equally broad-based product such as SPY, is likely to be equally low, if not lower.

Similarly, the Exchange notes that in the Dutt-Harris Paper the authors observed that the lack of scholarly interest in the cash-settlement manipulation problem may have been ''due to the fact that, until recently, most U.S. exchange-traded cash-settled derivative contracts were based on broad indices of very liquid stocks,'' and that ''[m]anipulation of such instruments require very large trades that are costly to make and easy to detect through conventional surveillance.''[16] This observation applies equally to SPY options, which are based on a broad index of very liquid stocks and can easily be created by submitting a position in the underlying securities. Moreover, it

[8] *See* Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (SR–CBOE–2001–22). Position limits were also eliminated for options on the S&P 100 Index (option symbol OEX) and the Dow Jones Industrial Average (option symbol DJX).

[9] The Exchange notes that the reduced-value option on the S&P 500 Index (option symbol XSP) is the equivalent size of SPY options and, similar to SPX options, is not subject to position limits. *See* Securities Exchange Act Release No. 56350 (September 4, 2007), 72 FR 51878 (September 11, 2007) (SR–CBOE–2007–79).

[10] *See* Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR–C2–2011–008) (''SPXPM Approval'').

[11] *See* SPXPM Approval at 55975.

[12] *Id.*

[13] *The Journal of Futures Markets,* Vol. 25, no. 10, 945–965, 949 (2005) (''Position Limits for Cash-Settled Derivative Contracts,'' by Hans R. Dutt and Lawrence E. Harris) (''Dutt-Harris Paper''). In the paper, the authors examined existing position limits to determine whether they were consistent with the model the authors developed, and found that the results indicated that existing limits were not correlated with the limits suggested by their model.

[14] *Id.* at 946.

[15] *Id.*

[16] *Id.* at 948.

provides additional support for the Exchange's view that the enhanced reporting and surveillance for SPY options discussed below adequately address concerns about manipulation.[17]

Liquidity in the Option and the Underlying Security

The Exchange has also considered the liquidity of SPY options and the underlying SPY ETF in assessing the appropriateness of proposing an elimination of position limits for SPY options.

In approving the elimination of position and exercise limits on SPX options, the Commission noted that the deep, liquid markets for the securities underlying the S&P 500 Index reduced concerns regarding market manipulation or disruption in the underlying markets.[18] The Commission further noted that removing position limits for SPX options could also bring additional depth and liquidity, in terms of both volume and open interest, without increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.[19] The Exchange similarly believes that this would be the case if position limits for SPY options were eliminated.

In this regard, both the SPY ETF and SPY options similarly exhibit deep, liquid markets. However, SPY options are not as active as SPX options when adjusted for the difference in their notional size.[20] As described below, the Exchange believes that this is partly due to the existence of position limits for SPY options. The table below compares the ADV in both SPX and SPY options, and includes an ''implied SPY volume'' figure that reflects theoretical SPY ADV without the constraint of position limits:

Date range	Trade days	SPX options ADV	SPY options ADV	Implied SPY option ADV	Implied SPY option ADV shortfall
Jan. 1, 2011 to Dec. 31, 2011	252	1,567,535	5,789,511	15,675,353	9,885,842
Jan. 1, 2012 to Apr. 19, 2012	75	1,343,735	4,525,709	13,437,353	8,911,644

The Exchange believes that certain factors may result in SPX options—adjusted for their larger notional size—currently trading with greater volume than SPY options.[21] In this regard, the Exchange believes that, based on input from various market participants, the existence of position limits in SPY options is reason in itself to instead utilize SPX options. Anecdotally, market participants perceive value in avoiding the regulatory risk of exceeding the SPY option position limit by instead using SPX options for their hedging needs. The Exchange also believes that, while exemptions are available with respect to position limits for SPY options, such exemptions, and the regulatory burden attendant therewith, may dissuade investors from using SPY options when they can instead use an SPX option without the need for such an exemption. Because SPY and SPX options are economically equivalent products, an investor deciding between the two would generally trade the product with the least barriers or requirements to engage in such activity. In this respect, SPX options are currently the easier product to trade.

As a further comparison, the following table sets forth certain data for both the SPY ETF and the combined volume for the component securities upon which the S&P 500 Index is based:

Date range	S&P 500 Index underlying component ADV[22]	S&P 500 Index underlying component average daily value traded	SPY ETF ADV	SPY ETF average daily value traded
Jan. 1, 2011 to Dec. 31, 2011	3,289,595,675	$4,149,726,217,456	218,227,747	$27,297,097,993
Jan. 1, 2012 to Apr. 19, 2012	2,851,457,600	3,860,704,307,080	145,164,527	19,684,577,239

This data shows that there is tremendous liquidity in both SPY ETF shares and the component securities upon which the S&P 500 Index is based. While the ADV for the components underlying the S&P 500 Index is greater than the ADV for the SPY ETF, the Exchange believes that SPY ETF volume has been, is currently and will likely continue to be within a range that the Commission has previously determined to be a deep, liquid market.[23]

Market Capitalization of the Underlying Security and the Related Index

The Exchange has also considered the market capitalization of the SPY ETF and the S&P 500 Index in assessing the appropriateness of proposing an elimination of position limits for SPY options.

The Exchange understands that the Commission similarly considered the market capitalization of the underlying index when it approved the elimination of position limits in SPX options. Accordingly, the Exchange believes that the capitalization of and the deep, liquid markets for the underlying SPY ETF reduces concerns regarding market manipulation or disruption in the underlying market. The table below shows the market capitalization of the SPY ETF and the S&P 500 Index:

[17] The authors of the Dutt-Harris Paper further posited that ''position limits need only apply during the period when cash settlement takes place.'' *Id.* at 964. The Exchange notes that no such period exists with respect to SPY options, which are physically settled.

[18] *See supra* note 4 at 4913.

[19] *Id.*

[20] SPX options have a notional value 10 times greater than SPY options (i.e., one SPX contract equals 10 SPY contracts).

[21] The Exchange notes that the ''Implied SPY Option ADV Shortfall'' has narrowed over time and at an accelerated rate, which the Exchange believes is a direct result of the implementation of the Delta-Based Equity Hedge Exemption that allows SPY options to be hedged via SPX options.

[22] The data considers the aggregate volume for all component stocks of the S&P 500 Index.

[23] *See supra* note 4 at n. 13. The ADV for the components of the indexes underlying the options for which position limits were eliminated were 94.77 million shares (DJX), 244.3 million shares (OEX), and 757.5 million shares (SPX).

Date range average S&P 500 Index	Date range average S&P 500 Index	Date range average S&P 500 Index
Jan. 1, 2011 to Dec. 31, 2011	$11,818,270,341,270	$89,533,777,897
Jan. 1, 2012 to Apr. 19, 2012	12,547,946,920,000	99,752,986,022

This data shows the enormous capitalization of both the SPY ETF and the component securities upon which the S&P 500 Index is based. While the capitalization for the components underlying the S&P 500 Index is greater than that for the SPY ETF, the Exchange believes that the SPY ETF capitalization has nonetheless been, is currently and will likely continue to be at a level consistent with that which the Commission has previously determined to be enormously capitalized.[24]

The Exchange notes that the theoretical limit on one's ability to hedge both SPX and SPY options is the full market capitalization of the S&P 500 Index itself. This similarly contributes to the Exchange's determination that it is appropriate for position limits on SPY options to be eliminated.

Large Position Reporting and Margin Requirements

The Exchange has also considered the reporting of large option positions and related margin requirements in assessing the appropriateness of proposing an elimination of position limits for SPY options.

The Exchange notes that the Exchange's Rules at Chapter III, Section 10 entitled ''Reports Related to Position Limits'' would continue to apply. Section 10 of Chapter III requires Participants to maintain and furnish to BX Regulation all reports required by the applicable rule of any options exchange of which it is a member with respect to reports related to position limits. Additionally, it should be noted that the clearing firm carrying the account will be subject to capital charges under Securities Exchange Act Rule 15c3–1 to the extent of any margin deficiency resulting from the higher margin requirements.

Monitoring accounts maintaining large positions provides the Exchange with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, the Commission's net capital rule, Rule 15c3–1 under the Securities Exchange Act of 1934 (the ''Act''),[25] imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement, which should serve as an additional form of protection.

In approving SPXPM, the Commission addressed concerns about the lack of a position limit by noting that the Exchange will rely on its enhanced surveillance requirements and procedures for SPX options to monitor trading activity in SPXPM options.[26] Similarly, the Exchange notes that certain option products are currently traded without position limits (e.g., the NASDAQ® 100 Index option (option symbol NDX) and the Russell 2000® Index option (option symbol RUT)), and believes that the reporting, surveillance and monitoring mechanisms in place for these products are effective and could easily accommodate SPY options if position limits thereon are eliminated.

Market on Close Volatility

The Exchange has also considered the potential for resulting or increased market on close volatility in assessing the appropriateness of proposing an elimination of position limits for SPY options.

SPY options are American-style, physically settled options that can be exercised at any time and settle into shares of the underlying SPY ETF. A key characteristic of the SPY ETF is that the number of shares outstanding is limited only by the number of shares available in the component securities of the S&P 500 Index, which can be used to create additional SPY ETF shares as needed. This in-kind creation and redemption mechanism has proven to be quite robust, as evidenced by the SPY ETF's close tracking of its benchmark index and the relatively small premiums or discounts to Net Asset Value (''NAV'') that it has historically exhibited.[27] Additionally, the ability to hedge with SPX options against the stocks underlying the S&P 500 is limited to the shares outstanding for those stocks—the same limit that applies to hedging with SPY options. Accordingly, the Exchange believes that the risk of distortions to the market resulting from the elimination of position limits in SPY options is no greater than the risk presented by SPX options not being subject to position limits.

As a physically-settled option, SPY options can be easily hedged via long or short positions in SPY ETF shares, which, as noted above, can be easily created or redeemed as needed. With a physically-settled contract such as SPY options, once a hedge in the form of a long or short position is obtained, that hedge can only be lost if the underlying security becomes hard to borrow and the short position is bought in.[28] The Exchange believes that this ability to hedge with shares of the SPY ETF is very important, and reduces the likelihood of market on close volatility in the component securities underlying the S&P 500 Index (i.e., a market participant can remain fully hedged through expiration via shares of the SPY ETF), which should also be the case if position limits for SPY options are eliminated. At the same time, the Exchange believes that the elimination of position limits for SPY options would not increase market volatility or facilitate the ability to manipulate the market. The Exchange believes that any potential concern regarding volatility at the closing that could result from an elimination in the position limits for SPY options is further alleviated by the current trading environment, including that there are markets for individual securities on more than one exchange, via unlisted trading privileges, that there is wide dispersion of trading across multiple exchanges, and that exchange procedures and systems are designed to facilitate orderly closings, even when there is volatility.[29]

Implementation

In addition to Commission approval [sic], the implementation of this proposed rule change will be contingent on other factors, including the completion of any changes that may be necessary to the Exchange's regulatory

[24] *See supra* note 9 at 51879. Specifically, the market capitalization of the component securities of the Russell 2000 Index (''RUT'') of $1.73 trillion was determined to be enormously capitalized.

[25] 17 CFR 240.15c3–1.

[26] *See* SPXPM Approval at 55972.

[27] *See* SPDR® S&P 500® ETF Trust, Annual Report (September 30, 2011), available at *https://www.spdrs.com/librarycontent/public/SPY%20Annual%20Report%2009.30.11.pdf.*

[28] As noted, the in-kind creation and redemption process allows for short term imbalances in supply and demand to be resolved readily, which in turn reduces the likelihood of getting ''bought in'' on a short position in SPY. Since the implementation of Regulation SHO, SPY has never been on the threshold security list, which further evidences the efficacy of the in-kind creation and redemption process in resolving imbalances in supply and demand.

[29] *See, e.g.,* Rule 133 titled ''Trading Halts Due to Extraordinary Market Volatility'' [sic].

and surveillance program. The Exchange will announce the implementation of the elimination of position limits on SPY options through a notice to ATP holders after any Commission approval of this proposed rule change [sic].

Pilot Program

The Exchange proposes that this rule change be adopted pursuant to a pilot program, set to expire [fourteen (14) months after the beginning of the Pilot Progam [sic]]. The Exchange will perform an analysis of the initial pilot program to eliminate position limits in SPY after the first twelve (12) months of the pilot program (the ''Pilot Program'' [sic]). The Pilot Report will be submitted within thirty (30) days of the end of such twelve (12) month time period. The Pilot Report will detail the size and different types of strategy employed with respect to positions established as a result of the elimination of position limits in SPY. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program. The Pilot Report will compare the impact of the pilot program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY shares, particularly at expiration. In preparing the report the Exchange will utilize various data elements such as volume and open interest. In addition the Exchange will make available to Commission staff data elements relating to the effectiveness of the pilot program.

Conditional on the findings in the Pilot Report, the Exchange will file with the Commission a proposal to either extend the pilot program, adopt the pilot program on a permanent basis or terminate [fourteen (14) months after the beginning of [sic] the Pilot Program.] If the Pilot Program is not extended or adopted on a permanent basis by [fourteen (14) months after the beginning of the Pilot Program], the position limits for SPY would revert to limits in effect at the commencement of the pilot program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [30] in general, and furthers the objectives of Section 6(b)(5) of the Act [31] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would be beneficial to market participants, including market makers, institutional investors and retail investors, by permitting them to establish greater positions when pursuing their investment goals and needs. The Exchange also believes that economically equivalent products should be treated in an equivalent manner so as to avoid regulatory arbitrage, especially with respect to position limits. Treating SPY and SPX options differently by virtue of imposing different position limits is inconsistent with the notion of promoting just and equitable principles of trade and removing impediments to perfect the mechanisms of a free and open market. At the same time, the Exchange believes that the elimination of position limits for SPY options would not increase market volatility or facilitate the ability to manipulate the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to similar filings by other options exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish uniform positions for a multiply listed options class.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [32] and Rule 19b–4(f)(6) thereunder.[33]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [34] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [35] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, noting that doing so will ensure fair competition among options exchanges and immediately benefit market participants who are Exchange members and members of other exchanges, such as NYSE Amex and CBOE, by ensuring consistency and uniformity across options exchanges with respect to the multiply listed SPY options class. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[36]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 17 CFR 240.19b–4(f)(6).

[35] 17 CFR 240.19b–4(f)(6).

[36] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2013–024 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2013–024. 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–BX–2013–024 and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06719 Filed 3–22–13; 8:45 am]

BILLING CODE 8011–01–P

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69172; File No. SR–CME–2013–02]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Additional Series of Credit Default Index Swaps Available for Clearing

March 19, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2013, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III, below, which items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(4)(i)[4] thereunder. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME proposes amendments that would facilitate offering additional series of Credit Default Index Swaps for clearing. The amendments would also remove from the current list of accepted credit default swap indices certain CDX North American Investment Grade products whose termination dates have already passed.

The text of the proposed changes is available at the CME's Web site at *http://www.cmegroup.com,* at the principal office of CME, and at the Commission's Public Reference Room.

II. Self-Regulatory Organizations 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 and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[5]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME offers clearing services for certain credit default swap index products. Currently, CME offers clearing of the Markit CDX North American Investment Grade Index Series 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 and also offers clearing of the Markit CDX North American High Yield Index Series 11, 12, 13, 14, 15, 16, 17, 18 and 19.

The proposed rule changes would expand CME's Markit CDX North American Investment Grade (''CDX IG'') Index and Markit CDX North American High Yield (''CDX HY'') Index product offerings by incorporating the upcoming Series 20 for both sets of index products. Additionally, the proposed changes would remove from the current list of accepted CDX Indices certain CDX North American Investment Grade products whose termination dates have passed and make certain typographical corrections.

The proposed rule changes are immediately effective but will become operational as follows: CME will accept CDX IG Series 20 for clearing on March 20, 2013, and will accept CDX HY Series 20 for clearing on March 27, 2013. CME notes that it has also certified the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC''), in CFTC Submission 13–071R.

The proposed CME rule amendments merely (1) incorporate one additional series to CME's existing offering of broad-based Markit CDX North American Investment Grade and High Yield Index credit default swaps and (2) remove from the current list of accepted CDX Indices certain CDX North American Investment Grade products whose termination dates have passed. As such, the proposed amendments simply effect changes to an existing service of a registered clearing agency that (1) do not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (2) do not significantly affect the respective rights or obligations of the clearing agency or persons using its clearing agency services. Therefore, the proposed rule change is therefore properly filed under Section 19(b)(3)(A) and Rule 19b–4(f)(4)(i) thereunder.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(i).

[5] The Commission has modified the text of the summaries prepared by CME.

B. Self-Regulatory Organization's Statement on Burden on Competitions.

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed pursuant to Section 19(b)(3)(A) [6] of the Act and paragraph (f)(4)(i) of Rule 19b–4 [7] thereunder and will become effective on filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comment@sec.gov.* Please include File No. SR–CME–2013–02 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CME–2013–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of CME. 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–CME–2013–02 and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06714 Filed 3–22–13; 8:45 am]

BILLING CODE 8011–01–P

[6] *Supra* note 3.

[7] *Supra* note 4.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69176; File No. SR–MIAX–2013–08]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Revise and Clarify Market Maker Continuous Quoting Obligations

March 19, 2013.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rules 406, 503, 603 and 604 to revise and clarify Market Maker continuous quoting obligations.

The text of the proposed rule change is provided in *Exhibit 5.* The text of the proposed rule change is also available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise and clarify the continuous quoting obligations of Market Makers. Specifically, (i) decrease the percentage of time a Primary Lead Market Maker (''PLMM'') is required to continuously quote from 99% to 90%; (ii) clarify which series the continuous quoting obligations apply to for all Market Makers; (iii) set forth how the continuous quoting obligations are applied; and (iv) set forth how compliance with the continuous quoting obligations will be determined. Each of these changes, which are described in detail below, will make MIAX's Market Maker obligations more consistent with market maker obligations at other options exchanges. MIAX is also proposing to clarify certain other rules related to the Market Maker obligations as described below.

Continuous Quoting

The only substantive change in the continuous quoting obligations for Market Makers being proposed herein is the reduction in the percentage of time for which a PLMM is required to provide continuous quotes in an

appointed option class on a given trading day, the rest of the proposed changes relate to clarifying which series in an option class the requirements apply, the manner in which the obligations will apply and how compliance will be determined. Rule 604(e)(1)(i) currently requires PLMMs to provide continuous two-sided Standard quotes and/or Day eQuotes in their appointed option classes, which for purposes of the paragraph means 99% of the time. The Exchange now proposes to reduce the percentage of time a PLMM is required to provide continuous quotes in its appointed option classes to 90% of the time. This proposed rule change is comparable to the rules of the other options exchanges.[3] The reduction to 90% of the time also makes the obligation for PLMMs consistent with the obligations for MIAX's other categories of Market Maker, Lead Market Maker (''LMM'') and Registered Market Maker (''RMM''). The Exchange does not believe that the proposed rule change will adversely affect the quality of the Exchange's markets or lead to a material decrease in liquidity. Rather the Exchange believes that making MIAX's PLMM obligations consistent with obligations at other options exchanges may increase the number of Market Makers willing to be appointed PLMM to make markets and provide liquidity at the Exchange.

The Exchange also proposes to amend Rule 604(e)(1)(ii) and adopt new subparagraph (iii) to clarify which series within an options class the continuous quoting standard will apply for PLMMs. The percentage of series requirement for PLMMs remains the same (the lesser of 99% or 100% minus one put-call pair in each class), but subparagraph (e)(1)(ii) is amended to include a definition of ''put-call pair'' and to provide that the continuous quoting standard will now only apply to ''non-adjusted option series''. The term ''non-adjusted option series'' is not defined in the rule, however, new subparagraph (e)(1)(iii) defines ''adjusted option series'' as an option series wherein one option contract represents the delivery of something other than 100 shares of the underlying security.[4] Thus, a ''non-adjusted option series'' is a standard option contract representing the delivery of 100 shares of the underlying security. New subparagraph (e)(1)(iii) also clarifies that the continuous quoting standard does not apply to adjusted series; which limitation and definition is in place at other options exchanges.[5]

Rule 604(e)(1)(ii) is also being amended to provide that PLMM's continuous quoting requirement will be applied to all options classes collectively, rather than on a class-by-class basis and compliance will be determined on a monthly basis. The Exchange believes that applying the quoting requirements for PLMMs collectively across all options classes and reviewing such compliance over a monthly basis is a fair and more efficient way for the Exchange and market participants to evaluate compliance with the continuous quoting requirements.[6] Applying the continuous quoting requirement collectively across all option classes rather than on a class-by-class basis, is beneficial to Market Makers by providing some flexibility to choose which series in their appointed classes they will continuously quote—increasing the continuous quoting obligation in the series of one class to allow for a decrease in the continuous quoting obligation in the series of another class. This flexibility, however, does not diminish the Market Maker's obligation to continuously quote a significant part of the trading day in a significant percentage of series. This flexibility is especially important for classes that have relatively few series and may prevent the PLMM, in particular, from breaching the continuous quoting requirement when failing to quote 90% of the trading day (as proposed) in more than one series in an appointed class. In addition, determining compliance with the continuous quoting requirement on a monthly basis does not relieve the PLMM of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a PLMM for failing to meet the continuous quoting obligation each trading day. Compliance on a monthly basis allows the Exchange to review the PLMM's daily compliance in the aggregate and determine the appropriate disciplinary action for single or multiple failures to comply with the continuous quoting requirement during the month period. The Exchange believes that the proposal will not diminish, and in fact may increase, market making activity on the Exchange, by establishing quoting compliance standards that are reasonable and are already in place on other options exchanges.[7]

Rules 604(e)(2) and (e)(3), which govern the continuous quoting requirements for LMMs and RMMs are being amended in much the same way as Rule 604(e)(1) is being amended for PLMMs, except that since LMMs and RMMs already are at a ''90% of the time'' standard for continuous quoting, no changes to that requirement will be made for LMMs and RMMs. New paragraph (e)(2)(iii) to Rule 604 governing which series the continuous quoting obligations do not apply for LMMs includes series with a time to expiration of nine months or greater. This provision, which is already in place for RMMs,[8] eliminates the continuous quoting requirement for LMMs when quoting the long-term option contracts described in MIAX Rule 406.[9] It should be noted that not applying the continuous quoting requirement to long-term option series does not prevent LMMs from quoting those series, nor does it prevent LMMs from receiving directed orders in accordance with the provisions set forth in Rule 514(h) and (i), which require, among other things, for [sic] the Directed LMM to be at the NBBO in order to receive the Directed LMM participation entitlement. The Exchange believes that continuing to provide the Directed LMM participation entitlement is appropriate because it provides an incentive for LMMs to quote in as many series as possible, even long term option series, which they will no longer be required to continuously quote. Further, the Exchange does not believe eliminating the LMM requirement to continuously quote in long term option series will adversely affect the quality of the Exchange's markets or lead to a material decrease in liquidity since PLMMs will continue to be required to continuously quote in long term option series. Also, eliminating the LMM requirement to continuously quote in

[3] *See* NYSE Amex LLC (''NYSE Amex'') Rules 925.1NY and 964.1NY; NYSE Arca, Inc. (''NYSE Arca'') Rules 6.37B and 6.88; NASDAQ OMX PHLX LLC (''PHLX'') Rule 1014(b)(ii)(D)(1); and Chicago Board Options Exchange, Incorporated (''CBOE'') Rule 1.1(ccc).

[4] The rules and requirements governing the adjustment of options contracts are set forth in Article VI, Section 11A of The Options Clearing Corporation By-Laws.

[5] CBOE Rules 8.13, 8.15A, 8.85 and 8.93; NASDAQ Options Market (''NOM'') Chapter VII, Section 6(d)i.2); NYSE Arca 6.37B, Commentary .01 and NYSE Amex Rule 925.1NY.

[6] On the basis of the daily reports, the Exchange will continue to inform PLMMs if they are failing to achieve their quoting requirements. Moreover, on the basis of daily monitoring activity, the Exchange can determine whether PLMMs violated any other Exchange rules such as, for example, Rule 301 regarding just and equitable principles of trade. Such daily monitoring will allow the Exchange to investigate unusual activity and to take appropriate regulatory action.

[7] PHLX Rule 1014(b)(ii)(D)(1) and (2); NYSE Amex Rule 925.1NY; and NYSE Arca Rule 6.37B.

[8] *See* Rule 604(e)(3)(i).

[9] *See* CBOE Rule 8.7(d)(iii); NYSE Amex Rule 925.1NY, Commentary .01; PHLX Rule 1014(b)(ii)(D)(4); NOM Chapter VII, Section 6(d)i.2); and NYSE Arca 6.37B, Commentary .01

long term option series will benefit the Exchange's efforts at quote mitigation.

Finally, paragraph (e)(2)(ii) for LMMs and paragraph (e)(3)(i) for RMMs have been revised so that their continuous quoting requirements will be applied to all options classes collectively, rather than on a class-by-class basis and compliance will be determined on a monthly basis. The Exchange believes that applying the quoting requirements for LMMs and RMMs collectively across all options classes traded by an LMM or RMM and reviewing such compliance over a monthly basis is a fair and more efficient way for the Exchange and market participants to evaluate compliance with the continuous quoting requirements.[10] Applying the continuous quoting requirement collectively across all option classes rather than on a class-by-class basis, is beneficial to Market Makers by providing some flexibility to choose which series in their appointed classes they will continuously quote. This flexibility, however, does not diminish the Market Maker's obligation to continuously quote a significant part of the trading day in a significant percentage of series. This flexibility is especially important for classes that have relatively few series and may prevent the LMM, in particular, from breaching the continuous quoting requirement when failing to quote 90% of the trading day in more than one series in an appointed class. In addition, determining compliance with the continuous quoting requirement on a monthly basis does not relieve the LMMs and RMMs of the obligation to provide continuous two-sided quotes on a daily basis, or will it prohibit the Exchange from taking disciplinary action against an LMM or RMM for failing to meet the continuous quoting obligation each trading day. Compliance on a monthly basis allows the Exchange to review the LMM's or RMM's daily compliance in the aggregate and determine the appropriate disciplinary action for single or multiple failures to comply with the continuous quoting requirement during the month period. The Exchange believes that the proposal will not diminish, and in fact may increase, market making activity on the Exchange, by establishing quoting compliance standards that are reasonable and are already in place on other options exchanges.[11]

Bid/Ask Differentials

In conjunction with the changes to the continuous quoting obligations, the Exchange seeks to clarify the provision in Rule 603(b)(4) governing bid/ask differentials. As part of a Market Maker's general obligations to maintain a fair and orderly market, Market Makers are required to price option contracts fairly by bidding and offering so as to create differences of no more than a certain amount depending on whether the quoting is occurring before the opening or after the opening. Rule 603(b)(4) is being separated into three subparagraphs; the first subparagraph will contain the bid/ask differential requirement for quoting after the opening, the second subparagraph will contain the bid/ask differential requirement for quoting prior to the opening and the third subparagraph, which applies to both previous subparagraphs, indicates that the Exchange may establish bid/ask differentials other than the ones specified in subparagraphs (i) and (ii). MIAX seeks this flexibility, which is used at other options exchanges, to establish bid/ask differentials for long-term options, options on select high-priced stocks and exchange-traded funds, and in other special circumstances such as periods of high volatility.[12]

Long-Term Option Contracts—Rule 406

Rule 406 describes Long-Term Option Contracts as option contracts that expire twelve to thirty nine months from the time they are listed. Rule 406 further provides ''[s]trike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine (9) months.'' The Exchange is proposing to eliminate the reference to ''continuity rules'' since the Exchange chose not to adopt such rules[13] and add a reference to continuous quoting rules since continuous quoting obligations do not apply to long-term option contracts being quoted by LMMs and RMMs. Rule 406(a) is also being revised to include references to rule numbers where appropriate.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(5) of the Act[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to 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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

In particular, the Exchange believes this proposed rule change promotes just and equitable principles of trade because it reduces a burden and unnecessary restrictiveness on PLMMs. The Exchange still imposes many obligations on all Market Makers, including PLMMs, to maintain a fair and orderly market in their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity. While the time during which PLMMs must provide continuous quotes will be slightly reduced, PLMMs will still be obligated to provide continuous quotes for a significant part of the trading day in a significant percentage of series in each appointed class.

Accordingly, the proposal supports the quality of MIAX's markets by helping to ensure that PLMMs will continue to be obligated to quote in series when necessary. The benefit provided to the PLMM from the proposed reduction in required quoting time is offset by the required percentage of series in which the PLMM must provide continuous quotes. Ultimately, the benefit the proposed rule change confers upon PLMMs is offset by the continued responsibilities to provide significant liquidity to the market to the benefit of market participants.

In addition, the Exchange believes this proposed rule change promotes just and equitable principles of trade because it reduces a burden and unnecessary restrictiveness on LMMs. Eliminating the LMM requirement to continuously quote in long term option series will contribute to the Exchange's efforts at quote mitigation without impacting the liquidity and quality of

[10] On the basis of the daily reports, the Exchange will continue to inform LMMs and RMMs if they are failing to achieve their quoting requirements. Moreover, on the basis of daily monitoring activity, the Exchange can determine whether LMMs or RMMs violated any other Exchange rules such as, for example, Rule 301 regarding just and equitable principles of trade. Such daily monitoring will allow the Exchange to investigate unusual activity and to take appropriate regulatory action.

[11] PHLX Rule 1014(b)(ii)(D)(1) and (2); NYSE Amex Rule 925.1NY; and NYSE Arca Rule 6.37B.

[12] CBOE Rule 8.7(b)(iv) provides that the CBOE can establish bid/ask differential requirements on a class-by-class basis.

[13] Continuity rules have been eliminated at other options exchanges; *see* Securities Exchange Act Release No. 60897 (October 28, 2009) 74 FR 57217 (November 4, 2009) (SR–ISE–2009–85) citing Securities Exchange Act Release No. 60295 (July 13, 2009) 74 FR 35215 (July 20, 2009) (SR–CBOE–2009–49).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

the Exchange's markets in those long term option series. Allowing LMMs to continue to receive directed orders in long term option series and the Directed LMM participation entitlement, when they no longer have the requirement to continuously quote such long term series is appropriate because it encourages LMMs to quote the long term series, which benefits all investors by supporting the quality and liquidity of the market in such series. This benefit is offset by the LMM's continued quoting obligations in other series and the fact that directed LMMs must still satisfy all of their other obligations in order to receive the Directed LMM participation entitlement.

The proposed rule change also protects investors and the public interest by creating more uniformity and consistency among the Exchange's rules related to Market-Maker quoting obligations. The proposed rule change allows the Exchange to require PLMMs to provide continuous quotes in a percentage of series in their appointed classes for a portion of the trading day that is the same as that of market-makers at other exchanges, which the Exchange believes will ultimately make the Exchange more competitive and help remove impediments to and promote a free and open market. For the foregoing reasons, the Exchange believes that the balance between the benefits provided to Market-Makers and the obligations imposed upon Market-Makers by the proposed rule change is appropriate.

Further, providing Market Makers with flexibility by providing the continuous quoting obligation collectively across all option classes will not diminish the Market Maker's obligation to continuously quote a significant part of the trading day in a significant percentage of series. Additionally, with respect to compliance standards, the Exchange believes that adopting the proposed standards will enhance compliance efforts by Market Makers and the Exchange, and are consistent with the requirement currently in place on other exchanges. The proposal ensures that compliance standards for continuous quoting will be the same on the Exchange as on other options exchanges. The Exchange believes that the proposal will not diminish and in fact may increase, market making activity on the Exchange, by establishing a quoting compliance standard that is reasonable and is already in place on other options exchanges.

Finally, in determining to revise requirements for its Market Makers, MIAX is mindful of the balance between the obligations and the benefits bestowed on its Market Makers. The proposal will change obligations currently in place for Market Makers; however, the Exchange does not believe that these changes reduce the overall obligations applicable to Market Makers. In this respect, the Exchange notes that its Market Makers are subject to many obligations, including the obligation to maintain a fair and orderly market in their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity. MIAX continues to believe the balance of obligations and benefits is appropriate given the following: (i) Although the percentage of the trading day PLMMs will be required to quote will decrease from 99% to 90%, PLMMs will continue to have heightened quoting requirements based on the significant percentage of series PLMMs are required to quote, the proposed change is also consistent with requirements in place at other option exchanges and with requirements for other MIAX Market Makers; (ii) the proposed clarification in the rule text of which series the continuous quoting obligations apply to does not diminish the continuous quoting obligation and is consistent with requirements in place at other option exchanges; and (iii) the flexibility being provided by the proposal to apply the continuous quoting obligation collectively across all option classes also does not diminish the Market Maker's obligations and is consistent with requirements in place at other options exchanges. MIAX believes that its proposal is consistent with the Act in that providing clarification and flexibility does not detract from the overall market making obligations of Market Makers. The requirement that a market maker hold itself out as willing to buy and sell options for its own account on a regular or continuous basis is better supported by these proposed revisions and clarifications. Accordingly, the benefits the proposed rule change confers upon Market Makers are offset by the continued responsibilities to provide significant liquidity to the market to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. MIAX's proposal to revise and clarify the Market Makers' continuous quoting obligations is consistent with what is already occurring on other markets. By providing Market Maker obligations that are more consistent with market maker obligations in place at other option exchanges, competition for the liquidity providing services of market makers is enhanced. MIAX is better able to compete for the services of market makers when its requirements for market makers are consistent with the other options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited or [sic] received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) [17] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Number SR–MIAX–2013–08 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2013–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2013–08 and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06717 Filed 3–22–13; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69180; File No. SR–NASDAQ–2013–046]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Elimination of SPY Position Limits

March 19, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. 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

NASDAQ proposes to eliminate position limits for options on the SPDR® S&P 500® exchange-traded fund (''SPY ETF''),[3] which list and trade under the symbol SPY.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''SPDR®,'' ''Standard & Poor's®,'' ''S&P®,'' ''S&P 500®,'' and ''Standard & Poor's 500'' are registered trademarks of Standard & Poor's Financial Services LLC. The SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

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 add new rule text in a new section entitled ''Supplementary Material'' at the end of Chapter III, Section 7 (Position Limits) to specifically state that there shall be no position limits for SPY options subject to a Pilot Program.

Background

Position limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. The Exchange understands that the Commission, when considering the appropriate level at which to set option position and exercise limits, has considered the concern that the limits be sufficient to prevent investors from disrupting the market in the security underlying the option.[4] This consideration has been balanced by the concern that the limits ''not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.'' [5]

SPY options are currently the most actively traded option class in terms of average daily volume (''ADV'').[6] The Exchange believes that, despite the popularity of SPY options as evidenced by their significant volume, the current position limits on SPY options could be a deterrent to the optimal use of this product as a hedging tool. The Exchange further believes that position limits on SPY options may inhibit the ability of certain large market participants, such as mutual funds and other institutional investors with substantial hedging needs, to utilize SPY options and gain meaningful exposure to the hedging function they provide.

The Exchange believes that current experience with the trading of SPY

[4] *See* Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911, 4912–4913 (February 1, 1999) (SR–CBOE–98–23) (citing H.R. No. IFC–3, 96th Cong., 1st Sess. at 189–91 (Comm. Print 1978)).

[5] *Id.* at 4913.

[6] SPY ADV was 2,156,482 contracts in April 2012. ADV for the same period for the next four most actively traded options was: Apple Inc. (option symbol AAPL)—1,074,351; S&P 500 Index (option symbol SPX)—656,250; PowerShares QQQ Trust℠, Series 1 (option symbol QQQ)—573,790; and iShares® Russell 2000® Index Fund (option symbol IWM)—550,316.

options, as well as the Exchange's surveillance capabilities, has made it appropriate to consider other, less prophylactic alternatives to regulating SPY options, while still seeking to ensure that large positions in SPY options will not unduly disrupt the options or underlying cash markets. Generally with respect to position limits for options traded on CBOE and NOM, the CBOE position limits are the applicable position limits pursuant to the Exchange's Rules at Chapter III, Section 7(a). CBOE recently filed to eliminate SPY position limits.[7] Accordingly, the Exchange's position limits on SPY options shall also be eliminated in accordance with CBOE's Rules. The Exchange is memorializing the elimination of SPY options [sic], which is subject to a Pilot Program, in the Supplementary Material at Chapter III, Section 7.

In proposing the elimination of position limits on SPY options, the Exchange has considered several factors, including (1) the availability of economically equivalent products and their respective position limits, (2) the liquidity of the option and the underlying security, (3) the market capitalization of the underlying security and the related index, (4) the reporting of large positions and requirements surrounding margin, and (5) the potential for market on close volatility.

Economically Equivalent Products

The Exchange has considered the existence of economically equivalent or similar products, and their respective position limits, if any, in assessing the appropriateness of proposing an elimination of position limits for SPY options.

For example, AM-settled options on the S&P 500 Index, which list and trade exclusively on CBOE under the symbol SPX, are currently not subject to position limits.[8] Moreover, SPX options are 10 times the size of SPY options, so that a position of only 90,000 SPX options is the equivalent of a position of 900,000 SPY options, which is the current position limit for SPY options.[9]

Similarly, the C2 Options Exchange (''C2'') has recently introduced a PM-settled S&P 500 cash settled contract (''SPXPM''), which also is not subject to position limits.[10] This contract, unlike the existing SPX contract, is cash-settled based on the closing value of the S&P 500 Index. In this respect, SPXPM is very much like SPY options in that it is settled at the close, albeit into cash as opposed to shares of the underlying like SPY options.

The Exchange believes that, because SPX, SPXPM, and SPY options are ultimately derivative of the same benchmark—the S&P 500 Index—they should be treated equally from a position limit perspective. As a practical matter, investors utilize SPX, SPXPM, and SPY options and their respective underlying instruments and futures to gain exposure to the same benchmark index: The S&P 500. Further, because the creation and redemption process for the underlying SPY ETF allows large investors to transfer positions from a basket of stocks comprising the S&P 500 index to an equivalent number of ETF shares (and the reverse) with relative ease, there is no reason to disadvantage options overlying the one versus the other. The Exchange believes that this view is supported by the recent expansion on other options exchanges, including CBOE, of various exemptions from position limits, such as the Delta-Based Equity Hedge Exemptions which allows SPY option positions to be delta-hedged by positions in SPX options. Given that SPX options are not subject to position limits, a member or member organization (or non-member affiliate thereof) could theoretically establish a position in SPY options far in excess of the current 900,000 contract limit, provided that the position is hedged with SPX options. The Exchange believes that this situation accurately reflects the economic equivalence of SPX and SPY options, supporting the Exchange's proposal to further acknowledge this equivalence by eliminating position limits in SPY options.

The Exchange also believes that Commission findings in approving the SPXPM options further support treating SPY options in the same manner as SPX and SPXPM options for purposes of position limits. In particular, the Commission noted in approving SPXPM options that ''C2's proposal will offer investors another investment option through which they could obtain and hedge exposure to the S&P 500 stocks,'' and that ''C2's proposal will provide investors with the ability to trade an option on the S&P 500 index in an all-electronic market, which may better meet the needs of investors who may prefer to trade electronically.'' [11] The Commission also noted that ''C2's proposal will provide investors with added flexibility through an additional product that may be better tailored to meet their particular investment, hedging, and trading needs.'' [12] The Exchange believes that these Commission findings apply equally to SPY options. In this respect, SPY options with no position limit will (1) offer investors another investment option through which they could obtain and hedge significant levels of exposure to the S&P 500 stocks, (2) be available to trade on the Exchange (and presumably all other U.S. options exchanges) electronically, and (3) provide investors with added flexibility through an additional product that may be better tailored to meet their particular investment, hedging, and trading needs, because, among other things, they are PM-settled.

The Exchange notes that, with respect to competition amongst economically equivalent products, a 2005 paper by Hans Dutt and Lawrence Harris that set forth a model to determine appropriate position limits for cash-settled index derivatives observed that ''markets and their regulators should take a closer look at the underlying economic rationale for the levels at which they currently set their position limits to ensure that the limits adequately protect markets from manipulation and that inconsistent position limits do not produce competitive advantages and disadvantages among contracts.'' [13] On this point, the Exchange believes that if no position limits have been found to be warranted on both SPX and SPXPM options, then such treatment should be extended to SPY options so that inconsistent position limits do not produce competitive advantages and disadvantages among contracts.

In addition, the Exchange notes that the Dutt-Harris Paper focuses its attention on the concerns relating to manipulation of cash-settled

[7] *See* Securities Exchange Act Release No. 67937 (September 27, 2012), 77 FR 60489 (October 3, 2012) (SR–CBOE–2012–091). Prior to this filing CBOE's position limit for SPY options was 900,000 contracts on the same side of the market.

[8] *See* Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (SR–CBOE–2001–22). Position limits were also eliminated for options on the S&P 100 Index (option symbol OEX) and the Dow Jones Industrial Average (option symbol DJX).

[9] The Exchange notes that the reduced-value option on the S&P 500 Index (option symbol XSP) is the equivalent size of SPY options and, similar to SPX options, is not subject to position limits. *See* Securities Exchange Act Release No. 56350 (September 4, 2007), 72 FR 51878 (September 11, 2007) (SR–CBOE–2007–79).

[10] *See* Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR–C2–2011–008) (''SPXPM Approval'').

[11] *See* SPXPM Approval at 55975.

[12] *Id.*

[13] *The Journal of Futures Markets,* Vol. 25, No. 10, 945–965, 949 (2005) (''Position Limits for Cash-Settled Derivative Contracts,'' by Hans R. Dutt and Lawrence E. Harris) (''Dutt-Harris Paper''). In the paper, the authors examined existing position limits to determine whether they were consistent with the model the authors developed, and found that the results indicated that existing limits were not correlated with the limits suggested by their model.

derivatives, stating that ''[a]lthough several scholars have argued that cash settlement may increase the risk of market manipulation, until recently, the theoretical problems arising from potential cash settlement manipulation has been considered minor, as evidenced by the lack of academic interest in this area.'' [14] The paper further noted that ''[t]he reason for this may arise from the fact that most exchange-traded derivative index contracts that are cash settled are broad-based, and each of the underlying components typically possesses ample liquidity,'' and that ''manipulation of the underlying components would likely be extremely costly to the would-be manipulator.'' [15] This suggests that whatever manipulation risk does exist in a cash-settled, broad-based product such as SPXPM, the corresponding manipulation risk in a physically-settled, but equally broad-based product such as SPY, is likely to be equally low, if not lower.

Similarly, the Exchange notes that in the Dutt-Harris Paper the authors observed that the lack of scholarly interest in the cash-settlement manipulation problem may have been ''due to the fact that, until recently, most U.S. exchange-traded cash-settled derivative contracts were based on broad indices of very liquid stocks,'' and that ''[m]anipulation of such instruments require very large trades that are costly to make and easy to detect through conventional surveillance.'' [16] This observation applies equally to SPY options, which are based on a broad index of very liquid stocks and can easily be created by submitting a position in the underlying securities. Moreover, it provides additional support for the Exchange's view that the enhanced reporting and surveillance for SPY options discussed below adequately address concerns about manipulation.[17]

Liquidity in the Option and the Underlying Security

The Exchange has also considered the liquidity of SPY options and the underlying SPY ETF in assessing the appropriateness of proposing an elimination of position limits for SPY options.

In approving the elimination of position and exercise limits on SPX options, the Commission noted that the deep, liquid markets for the securities underlying the S&P 500 Index reduced concerns regarding market manipulation or disruption in the underlying markets.[18] The Commission further noted that removing position limits for SPX options could also bring additional depth and liquidity, in terms of both volume and open interest, without increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.[19] The Exchange similarly believes that this would be the case if position limits for SPY options were eliminated.

In this regard, both the SPY ETF and SPY options similarly exhibit deep, liquid markets. However, SPY options are not as active as SPX options when adjusted for the difference in their notional size.[20] As described below, the Exchange believes that this is partly due to the existence of position limits for SPY options. The table below compares the ADV in both SPX and SPY options, and includes an ''implied SPY volume'' figure that reflects theoretical SPY ADV without the constraint of position limits:

Date range	Trade days	SPX options ADV	SPY options ADV	Implied SPY option ADV	Implied SPY option ADV shortfall
Jan. 1, 2011 to Dec. 31, 2011	252	1,567,535	5,789,511	15,675,353	9,885,842
Jan. 1, 2012 to Apr. 19, 2012	75	1,343,735	4,525,709	13,437,353	8,911,644

The Exchange believes that certain factors may result in SPX options—adjusted for their larger notional size—currently trading with greater volume than SPY options.[21] In this regard, the Exchange believes that, based on input from various market participants, the existence of position limits in SPY options is reason in itself to instead utilize SPX options. Anecdotally, market participants perceive value in avoiding the regulatory risk of exceeding the SPY option position limit by instead using SPX options for their hedging needs. The Exchange also believes that, while exemptions are available with respect to position limits for SPY options, such exemptions, and the regulatory burden attendant therewith, may dissuade investors from using SPY options when they can instead use an SPX option without the need for such an exemption. Because SPY and SPX options are economically equivalent products, an investor deciding between the two would generally trade the product with the least barriers or requirements to engage in such activity. In this respect, SPX options are currently the easier product to trade.

As a further comparison, the following table sets forth certain data for both the SPY ETF and the combined volume for the component securities upon which the S&P 500 Index is based:

Date range	S&P 500 Index underlying component ADV [22]	S&P 500 Index underlying component average daily value traded	SPY ETF ADV	SPY ETF average daily value traded
Jan. 1, 2011 to Dec. 31, 2011	3,289,595,675	$4,149,726,217,456	218,227,747	$27,297,097,993
Jan. 1, 2012 to Apr. 19, 2012	2,851,457,600	3,860,704,307,080	145,164,527	19,684,577,239

[14] *Id.* at 946.

[15] *Id.*

[16] *Id.* at 948.

[17] The authors of the Dutt-Harris Paper further posited that ''position limits need only apply during the period when cash settlement takes place.'' *Id.* at 964. The Exchange notes that no such period exists with respect to SPY options, which are physically settled.

[18] *See supra* note 4 at 4913.

[19] *Id.*

[20] SPX options have a notional value 10 times greater than SPY options (i.e., one SPX contract equals 10 SPY contracts).

[21] The Exchange notes that the ''Implied SPY Option ADV Shortfall'' has narrowed over time and at an accelerated rate, which the Exchange believes is a direct result of the implementation of the Delta-Based Equity Hedge Exemption that allows SPY options to be hedged via SPX options.

This data shows that there is tremendous liquidity in both SPY ETF shares and the component securities upon which the S&P 500 Index is based. While the ADV for the components underlying the S&P 500 Index is greater than the ADV for the SPY ETF, the Exchange believes that SPY ETF volume has been, is currently and will likely continue to be within a range that the Commission has previously determined to be a deep, liquid market.[23]

Market Capitalization of the Underlying Security and the Related Index

The Exchange has also considered the market capitalization of the SPY ETF and the S&P 500 Index in assessing the appropriateness of proposing an elimination of position limits for SPY options.

The Exchange understands that the Commission similarly considered the market capitalization of the underlying index when it approved the elimination of position limits in SPX options. Accordingly, the Exchange believes that the capitalization of and the deep, liquid markets for the underlying SPY ETF reduces concerns regarding market manipulation or disruption in the underlying market. The table below shows the market capitalization of the SPY ETF and the S&P 500 Index:

Date range average S&P 500 Index	Date range average S&P 500 Index	Date range average S&P 500 Index
Jan. 1, 2011 to Dec. 31, 2011	$11,818,270,341,270	$89,533,777,897
Jan. 1, 2012 to Apr. 19, 2012	12,547,946,920,000	99,752,986,022

This data shows the enormous capitalization of both the SPY ETF and the component securities upon which the S&P 500 Index is based. While the capitalization for the components underlying the S&P 500 Index is greater than that for the SPY ETF, the Exchange believes that the SPY ETF capitalization has nonetheless been, is currently and will likely continue to be at a level consistent with that which the Commission has previously determined to be enormously capitalized.[24]

The Exchange notes that the theoretical limit on one's ability to hedge both SPX and SPY options is the full market capitalization of the S&P 500 Index itself. This similarly contributes to the Exchange's determination that it is appropriate for position limits on SPY options to be eliminated.

Large Position Reporting and Margin Requirements

The Exchange has also considered the reporting of large option positions and related margin requirements in assessing the appropriateness of proposing an elimination of position limits for SPY options.

The Exchange notes that the Exchange's Rules at Chapter III, Section 10 entitled ''Reports Related to Position Limits'' would continue to apply. Section 10 of Chapter III requires Participants to maintain and furnish to Nasdaq Regulation all reports required by the applicable rule of any options exchange of which it is a member with respect to reports related to position limits. Additionally, it should be noted that the clearing firm carrying the account will be subject to capital charges under Securities Exchange Act Rule 15c3–1 to the extent of any margin deficiency resulting from the higher margin requirements.

Monitoring accounts maintaining large positions provides the Exchange with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, the Commission's net capital rule, Rule 15c3–1 under the Securities Exchange Act of 1934 (the ''Act''),[25] imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement, which should serve as an additional form of protection.

In approving SPXPM, the Commission addressed concerns about the lack of a position limit by noting that the Exchange will rely on its enhanced surveillance requirements and procedures for SPX options to monitor trading activity in SPXPM options.[26] Similarly, the Exchange notes that certain option products are currently traded without position limits (e.g., the NASDAQ® 100 Index option (option symbol NDX) and the Russell 2000® Index option (option symbol RUT)), and believes that the reporting, surveillance and monitoring mechanisms in place for these products are effective and could easily accommodate SPY options if position limits thereon are eliminated.

Market on Close Volatility

The Exchange has also considered the potential for resulting or increased market on close volatility in assessing the appropriateness of proposing an elimination of position limits for SPY options.

SPY options are American-style, physically settled options that can be exercised at any time and settle into shares of the underlying SPY ETF. A key characteristic of the SPY ETF is that the number of shares outstanding is limited only by the number of shares available in the component securities of the S&P 500 Index, which can be used to create additional SPY ETF shares as needed. This in-kind creation and redemption mechanism has proven to be quite robust, as evidenced by the SPY ETF's close tracking of its benchmark index and the relatively small premiums or discounts to Net Asset Value (''NAV'') that it has historically exhibited.[27] Additionally, the ability to hedge with SPX options against the stocks underlying the S&P 500 is limited to the shares outstanding for those stocks—the same limit that applies to hedging with SPY options. Accordingly, the Exchange believes that the risk of distortions to the market resulting from the elimination of position limits in SPY options is no greater than the risk presented by SPX options not being subject to position limits.

As a physically-settled option, SPY options can be easily hedged via long or short positions in SPY ETF shares, which, as noted above, can be easily created or redeemed as needed. With a physically-settled contract such as SPY options, once a hedge in the form of a long or short position is obtained, that hedge can only be lost if the underlying security becomes hard to borrow and

[22] The data considers the aggregate volume for all component stocks of the S&P 500 Index.

[23] *See supra* note 4 at n. 13. The ADV for the components of the indexes underlying the options for which position limits were eliminated were 94.77 million shares (DJX), 244.3 million shares (OEX), and 757.5 million shares (SPX).

[24] *See supra* note 9 at 51879. Specifically, the market capitalization of the component securities of the Russell 2000 Index (''RUT'') of $1.73 trillion was determined to be enormously capitalized.

[25] 17 CFR 240.15c3–1.

[26] *See* SPXPM Approval at 55972.

[27] *See* SPDR® S&P 500® ETF Trust, Annual Report (September 30, 2011), available at *https://www.spdrs.com/librarycontent/public/SPY%20Annual%20Report%2009.30.11.pdf.*

the short position is bought in.[28] The Exchange believes that this ability to hedge with shares of the SPY ETF is very important, and reduces the likelihood of market on close volatility in the component securities underlying the S&P 500 Index (i.e., a market participant can remain fully hedged through expiration via shares of the SPY ETF), which should also be the case if position limits for SPY options are eliminated. At the same time, the Exchange believes that the elimination of position limits for SPY options would not increase market volatility or facilitate the ability to manipulate the market. The Exchange believes that any potential concern regarding volatility at the closing that could result from an elimination in the position limits for SPY options is further alleviated by the current trading environment, including that there are markets for individual securities on more than one exchange, via unlisted trading privileges, that there is wide dispersion of trading across multiple exchanges, and that exchange procedures and systems are designed to facilitate orderly closings, even when there is volatility.[29]

Implementation

In addition to Commission approval [sic], the implementation of this proposed rule change will be contingent on other factors, including the completion of any changes that may be necessary to the Exchange's regulatory and surveillance program. The Exchange will announce the implementation of the elimination of position limits on SPY options through a notice to ATP holders after any Commission approval of this proposed rule change [sic].

Pilot Program

The Exchange proposes that this rule change be adopted pursuant to a pilot program, set to expire [fourteen (14) months after the beginning of the Pilot Progam [sic]]. The Exchange will perform an analysis of the initial pilot program to eliminate position limits in SPY after the first twelve (12) months of the pilot program (the ''Pilot Program'' [sic]). The Pilot Report will be submitted within thirty (30) days of the end of such twelve (12) month time period. The Pilot Report will detail the size and different types of strategy employed with respect to positions established as a result of the elimination of position limits in SPY. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program. The Pilot Report will compare the impact of the pilot program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY shares, particularly at expiration. In preparing the report the Exchange will utilize various data elements such as volume and open interest. In addition the Exchange will make available to Commission staff data elements relating to the effectiveness of the pilot program.

Conditional on the findings in the Pilot Report, the Exchange will file with the Commission a proposal to either extend the pilot program, adopt the pilot program on a permanent basis or terminate [fourteen (14) months after the beginning of [sic] the Pilot Program.] If the Pilot Program is not extended or adopted on a permanent basis by [fourteen (14) months after the beginning of the Pilot Program], the position limits for SPY would revert to limits in effect at the commencement of the pilot program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[30] in general, and furthers the objectives of Section 6(b)(5) of the Act[31] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would be beneficial to market participants, including market makers, institutional investors and retail investors, by permitting them to establish greater positions when pursuing their investment goals and needs. The Exchange also believes that economically equivalent products should be treated in an equivalent manner so as to avoid regulatory arbitrage, especially with respect to position limits. Treating SPY and SPX options differently by virtue of imposing different position limits is inconsistent with the notion of promoting just and equitable principles of trade and removing impediments to perfect the mechanisms of a free and open market. At the same time, the Exchange believes that the elimination of position limits for SPY options would not increase market volatility or facilitate the ability to manipulate the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to similar filings by other options exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish uniform positions for a multiply listed options class.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[32] and Rule 19b–4(f)(6) thereunder.[33]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[34] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[35]

[28] As noted, the in-kind creation and redemption process allows for short term imbalances in supply and demand to be resolved readily, which in turn reduces the likelihood of getting ''bought in'' on a short position in SPY. Since the implementation of Regulation SHO, SPY has never been on the threshold security list, which further evidences the efficacy of the in-kind creation and redemption process in resolving imbalances in supply and demand.

[29] *See, e.g.,* Rule 133 titled ''Trading Halts Due to Extraordinary Market Volatility'' [sic].

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 17 CFR 240.19b–4(f)(6).

[35] 17 CFR 240.19b–4(f)(6).

permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, noting that doing so will ensure fair competition among options exchanges and immediately benefit market participants who are Exchange members and members of other exchanges, such as NYSE Amex and CBOE, by ensuring consistency and uniformity across options exchanges with respect to the multiply listed SPY options class. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[36]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–046. 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–NASDAQ–2013–046 and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06720 Filed 3–22–13; 8:45 am]

BILLING CODE 8011–01–P

[36] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69156; File No. SR–C2–2013–014]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend C2 Rule 6.3 for Mini-Options Launch

March 18, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 14, 2013, the C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

C2 proposes to amend C2 Rule 6.3 (Meaning of Premium Bids and Offers) by adding how bids and offers will be expressed for option contracts overlying 10 shares of a security. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

C2 Chapter 5 (Securities Dealt In) was recently amended to allow for the listing of option contracts that deliver 10 physical shares on SPDR S&P 500 (''SPY''), Apple, Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG'') and Amazon.com Inc. (''AMZN'') (''mini-options''). The purpose of this proposed rule change is to amend C2 Rule 6.3 (Meaning of Premium Bids and Offers) by adding how bids and offers would be expressed for mini-options.

CBOE Rules Incorporated by Reference Into C2's Rules

The majority of C2's rules are the same as Chicago Board Options Exchange, Incorporated's (''CBOE'') rules and were adopted as part of the Securities and Exchange Commission's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

(''SEC or Commission'') order approving C2's application for registration as a national securities exchange.[5] CBOE Rule 5.5.22 was recently adopted to provide for the listing and trading of mini-options.[6] C2 Chapter 5 provides, ''[t]he rules contained in CBOE Chapter V, as such rules may be in effect from time to time, shall apply to C2 and are hereby incorporated into this Chapter.'' Accordingly, mini-options trading is permitted on C2. Mini-options trading on CBOE and C2 is expected to commence on March 18, 2013.

The premium multiplier for mini-options is $10, rather than $100, which reflects the smaller unit of trading. To reflect this mini-option feature, new subparagraph (c) was added to CBOE Rule 6.41 (Meaning of Premium Bids and Offers) and provides that bids and offers for an option contract overlying 10 shares will be expressed in terms of dollars per 1/10th part of the total value of the contract.[7] Thus, an offer of ''.50'' shall represent an offer $5.00 for an option contract having a unit of trading consisting of 10 shares.

Chapter 6 to C2's rules does not incorporate CBOE's rules by reference. However, C2 Rule 6.3 (Meaning of Premium Bids and Offers) is identical to CBOE Rule 6.41 (Meaning of Premium Bids and Offers). Accordingly, C2 proposes to add new subparagraph (c) to C2 Rule 6.3 to provide that bids and offers for an option contract overlying 10 shares will be expressed in terms of dollars per 1/10th part of the total value of the contract. Thus, an offer of ''.50'' shall represent an offer $5.00 for an option contract having a unit of trading consisting of 10 shares.

No other changes to C2's rules are being proposed by this filing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[8] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that investors would benefit from the current rule proposal because it would specify how premium bids and offers would be expressed for mini-options traded on C2. The Exchange believes that the marketplace and investors will be expecting that premium bids and offers for mini-options traded on C2 would be expressed in the same manner as premium bids and offers for mini-options traded on CBOE (and other exchanges). As a result, the Exchange believes that this change would lessen investor and marketplace confusion because C2 Rule 6.3 will be clear as to how premium bids and offers for mini-options would be expressed.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed to ready C2 for mini-options trading which is scheduled to commence on March 18, 2013. The Exchange notes that the CBOE mini-option filing (which permits C2 to list mini-options as well) was submitted as a competitive response to approved NYSE Arca and ISE filings. C2 believes this proposed rule change is necessary to permit fair competition among the options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may coincide with the anticipated launch of trading in Mini Options. The Commission believes that waiving the 30-day operative delay

[5] *See* Securities Exchange Act Release No. 61152 (December 10, 2009), 74 FR 66699, 66709–10 (December 16, 2009) (In the Matter of the Application of C2 Options Exchange, Incorporated for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission (File No. 10–191). In the Order, the Commission granted C2's request for exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that C2 proposed to incorporate by reference. The exemption was conditioned upon C2 providing written notice to its members whenever CBOE proposes to change a rule that C2 has incorporated by reference. In the Order, the Commission stated its belief that ''this exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule flings based on simultaneous changes to identical rules sought by more than one SRO.''

C2 satisfied this requirement with respect to mini-options by posting a copy of the CBOE rule filing to list mini-options (SR–CBOE–2013–001) on C2's rule filing Web site at the same time the CBOE rule filing was posted to the CBOE rule filing Web site. The C2 rule filing Web site is located at: *http://www.c2exchange.com/Legal/RuleFilings.aspx*. By posting CBOE rule filings to C2's rule filing Web site that amend C2's rule by reference, the Exchange provides its members with notice of the proposed rule change so that they have an opportunity to comment on it.

[6] *See* Securities Exchange Act Release No. 68656 (January 15, 2013), 78 FR 4526 (January 22, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to List and Trade Option Contracts Overlying 10 Shares of Certain Securities) (SR–CBOE–2013–001) (''CBOE mini-option filing''). The Exchange notes that CBOE also adopted CBOE Rule 4.11.08 which addresses position limits for mini-options. CBOE Rule 4.11.08 is also incorporated by reference into C2's rules. *See* C2 Chapter 4 that provides, ''[t]he rules contained in CBOE Chapter IV, as such rules may be in effect from time to time, shall apply to C2 and are hereby incorporated into this Chapter.''

[7] *See* 78 FR at 4527 (CBOE mini-option filing). The Exchange notes that NYSE Arca, Inc. (''NYSE Arca'') and International Securities Exchange, LLC (''ISE'') have similar rules governing how bids and offers for mini-options will be expressed. *See* Securities Exchange Act Release No. 67948 (September 28, 2012) 77 FR 60735 (October 4, 2012) (Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes as Modified by Amendments No. 1 to List and Trade Option Contracts Overlying 10 Shares of Certain Securities) (SR–NYSEArca–2012–64 and SR–ISE–2012–58).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

is consistent with the protection of investors and the public interest.[12] Waiver of the operative delay will allow the Exchange to implement its proposal consistent with the commencement of trading in Mini Options as scheduled and expected by members and other participants on March 18, 2013. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2013–014 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2013–014 *on the subject line.* 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–C2–2013–014 on the subject line and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06694 Filed 3–22–13; 8:45 am]

BILLING CODE 8011–01–P

[12] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69173; File No. SR–FINRA–2013–013]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Require Members To Report OTC Equity Transactions as Soon as Practicable, But No Later Than 10 Seconds, Following Execution

March 19, 2013.

On February 1, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA trade reporting rules. The proposed rule change was published for comment in the **Federal Register** on February 12, 2013.[3] The Commission received five comment letters on the proposal.[4]

Section 19(b)(2) of the Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 29, 2013.

The Commission is extending this time period an additional 45 calendar days. The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change. In particular, the extension will ensure that the Commission has sufficient time to consider and take action on FINRA's proposal, in light of, among other things, the comments received on the proposal, and any response to the comments submitted by FINRA.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates May 13, 2013 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–FINRA–2013–013).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06713 Filed 3–22–13; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68842 (February 6, 2013), 78 FR 9963.

[4] *See* Letter from Christopher Nagy, President, KOR Trading LLC to Elizabeth M. Murphy, Secretary, Commission, dated March 5, 2013; Letter from David J. Amster, Chief Compliance Officer, CRT Capital Group to the Commission, dated March 5, 2013; Letter from David S. Sieradzki, Partner, Bracewell & Giuliani LLP on behalf of GFI Securities LLC to Elizabeth M. Murphy, Secretary, Commission, dated March 5, 2013; Letter from Manisha Kimmel, Executive Director, Financial Information Forum to Elizabeth M. Murphy, Secretary, Commission, dated March 6, 2013; and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association to Elizabeth M. Murphy, Secretary, Commission, dated March 18, 2013.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69166; File No. SR–MIAX–2013–10]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Permit the Minimum Price Variation for Mini-Option Contracts To Be the Same as Permitted for Standard Options on the Same Underlying Security

March 18, 2013.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to permit the minimum price variation for mini-option contracts that deliver 10 shares to be the same as permitted for standard options that deliver 100 shares on the same security.

The text of the proposed rule change is provided in *Exhibit 5.* The text of the proposed rule change is also available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

MIAX recently amended its rules to allow for the listing of mini-options that deliver 10 physical shares on SPDR S&P 500 (''SPY''), Apple, Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG'') and Amazon.com Inc. (''AMZN'').[3] Mini-options trading is expected to commence in March 2013. Prior to the commencement of trading mini-options, the Exchange proposes to establish and permit the minimum price variation for mini-option contracts to be the same as permitted for standard options on the same security. In addition to giving market participants clarity as to the minimum pricing increments for mini-options, the filing would harmonize penny pricing between mini-options and standard options on the same security.

Of the five securities on which mini-options are permitted, four of them (SPY, AAPL, GLD and AMZN) participate in the Penny Pilot Program. Under the Penny Pilot Program:

- The minimum price variation for AAPL, GLD and AMZN options is $0.01 for all quotations in series that are quoted at less than $3 per contract and $0.05 for all quotations in series that are quoted at $3 per contract or greater; and
- The minimum price variation for SPY options is $0.01 for all quotations in all series.

Another options exchange, as stated in a recent rule filing, has polled firms with customer bases of potential product users and they have indicated a preference that premium pricing for mini-options match what is currently permitted for standard options that deliver 100 physical shares on the same securities.[4] Specifically, firms' systems are configured using the ''root symbol'' of an underlying security and cannot differentiate, for purposes of minimum variation pricing, between contracts on the same security. Mini-options will be loaded into firms' systems using the same ''root symbol'' that is used for standard options on the same security. As a result, it is believed that existing systems will not be able to assign different minimum pricing variations to different contracts on the same security. As a result, firms have indicated their preference that there be matched pricing between mini-options and standard options on the same security because their systems, which are programmed using ''root symbols,'' would not be able to assign different minimum pricing variations to mini-options and standard options on the same security.

Because mini-options are a separate class from standard options on the same security, mini-options would have to qualify separately for entry into the Penny Pilot Program. This, however, is not possible by product launch (or possibly ever) for a number of reasons. First, there is a six calendar month trading volume criteria for entry into the Penny Pilot Program, which mini-options cannot satisfy prior to launch. Second, even if mini-options met the trading volume criteria, replacement classes are only added to the Penny Pilot Program on the second trading day following January 1 and July 1 in a given year. Finally, there is a price test for entry into the Penny Pilot Program which excludes ''high premium'' classes, which are defined as classes priced at $200 per share or higher at the time of selection. As of the date of this filing, three of the five securities (AAPL, AMZN and GOOG) eligible for mini-options would be excluded as ''high premium'' classes, even though two of those securities (AAPL and AMZN) are in the Penny Pilot Program for standard options. The Exchange notes that GOOG is not in the Penny Pilot Program.[5]

The Exchange, therefore, is proposing to establish a pricing regime for mini-options separate from the Penny Pilot Program that permits the minimum price variation for mini-option contracts to be the same as permitted for standard options on the same security, which would encompass penny pricing for mini-option contracts on securities that participate in the Penny Pilot Program.[6]

As to the Penny Pilot Program, the Exchange believes that there are several good reasons to allow penny pricing for

[3] *See* Securities Exchange Act Release No. 34–69136 (March 14, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to List and Trade Option Contracts Overlying 10 Shares of Certain Securities) (SR–MIAX–2013–06).

[4] *See* Securities Exchange Act Release No. 34–68873 (February 8, 2013), 78 FR 10671 (February 14, 2013) (Notice of Filing Proposed Rule Change To Permit the Minimum Price Variation for Mini-Options To Be the Same as Permitted for Standard Options on the Same Security) (SR–CBOE–2013–016).

[5] The minimum price variation for standard options on GOOG is $0.05 for all quotations in series that are quoted at less than $3 per contract and $0.10 for all quotations in series that are quoted at $3 per contract or greater. *See* MIAX Rule 510(a).

[6] As noted in the Exchange's original mini-option filing, mini-options are limited to five securities and any expansion of the program would require that a subsequent proposed rule change be submitted to the Commission. The current proposal is limited to the five securities originally approved to underlie mini-options. The Exchange anticipates that a similar minimum pricing variation regime would be included in any rule change to expand the mini-option program.

mini-options on securities that currently participate in the Penny Pilot Program, without requiring mini-options to separately qualify for the Penny Pilot Program. First, the Penny Pilot Program applies to the most actively-traded, multiply-listed option classes. Likewise, the five securities which may underlie mini-options were chosen because of the significant liquidity in standard options on the same security. The Exchange also believes that the marketplace and investors will be expecting the minimum price variation for contracts on the same security to be the same. Second, one of the primary goals of the Penny Pilot Program is to narrow the bid-ask spreads of exchange-traded options to reduce the cost of entering and exiting positions. This same goal can similarly be accomplished by permitting penny pricing for mini-option contracts on securities that already participate in the Penny Pilot Program. Finally, the Exchange believes that penny pricing for mini-options is desirable for a product that is geared toward retail investors. Mini-options are on high priced securities and are meant to be an investment tool with more affordable and realistic prices for the average retail investor. Penny pricing for mini-options on securities that are currently in the Penny Pilot Program would benefit the anticipated users of mini-options by providing more price points. The Exchange notes that it is not requesting penny pricing for all of the five securities eligible for mini-options trading; but rather is seeking to permit matched penny pricing for mini-options on those securities for which standard options already trade in pennies.

In addition to an expressed market preference for matched minimum increment pricing (including penny pricing) between mini-options and standard options on the same securities, the Exchange believes that the rules of another options exchange, Chicago Board of Options Exchange (''CBOE''), has established precedent for the current proposal. Specifically, CBOE Rule 6.42.03 provides, among other things, that matched penny pricing between SPY and Mini-S&P 500 Index (''XSP'') options is permitted. As to SPY and XSP options, the rationale for matched pricing was that the underlying SPY ETF is designed to track the performance of the S&P 500 Index and XSP options are options based on the S&P 500 Index.[7] In support of this earlier filing, CBOE asserted that having the same minimum price variation for SPY and XSP options was necessary for consistency and for competitive reasons.

To effect the current proposed rule changes, MIAX proposes to amend MIAX Rules 510 and 404. As to MIAX Rule 510 (Minimum Price Variations and Minimum Trading Increments), MIAX proposes adding new Interpretation and Policy .02 that would be an internal cross reference to new proposed Interpretation and Policy .08(d) to MIAX Rule 404 as the provision that sets forth the minimum price variation for bids and offers for mini-options. Proposed Interpretation and Policy .8(d) to MIAX Rule 404 would provide as follows:

> The minimum price variation for bids and offers for mini-options shall be the same as permitted for standard options on the same security. For example, if a security participates in the Penny Pilot Program, mini options on the same underlying security may be quoted in the same minimum increments, *e.g.,* $0.01 for all quotations in series that are quoted at less than $3 per contract and $0.05 for all quotations in series that are quoted at $3 per contract or greater, $0.01 for all SPY option series, and mini-options do not separately need to qualify for the Penny Pilot Program.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with this proposal. The Exchange does not believe that this increased traffic will become unmanageable since mini-options are limited to a fixed number of underlying securities.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to 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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

Specifically, the Exchange believes that investors and other market participants would benefit from the current rule proposal because it would clarify and establish the minimum price variation for mini-options prior to the commencement of trading. The Exchange believes that the marketplace and investors will be expecting the minimum price variation for contracts on the same security to be the same. As a result, the Exchange believes that this change would lessen investor and marketplace confusion because mini-options and standard options on the same security would have the same minimum price variation.

While price protection between mini-options and standard options on the same security is not required, the Exchange believes that consistency between mini-options and standard options as to the minimum price variation is desirable and is designed to promote just and equitable principles of trade. Matching the minimum price variation between mini-options and standard options on the same security would help to eliminate any unnecessary arbitrage opportunities that could result from having contracts on the same underlying security traded in different minimum price increments. Similarly, matched minimum pricing would hopefully generate enhanced competition among liquidity providers. The Exchange believes that matched pricing for mini-options and standard options on the same security would attract additional liquidity providers who would make markets in mini-options and standard options on the same security. In addition to the possibility of more liquidity providers, the Exchange believes that the ability to quote mini-options and standard options on the same security in the same minimum increments would hopefully result in more efficient pricing via arbitrage and possible price improvement in both contracts on the same security. The Exchange also believes that allowing penny pricing for mini-options on securities that currently participate in the Penny Pilot Program (without mini-options having to qualify separately for entry into the Penny Pilot Program) will benefit the marketplace and investors because penny pricing in mini-options may also accomplish one of the primary goals of the Penny Pilot Program, which is to narrow the bid-ask spreads of exchange-traded options to reduce the cost of entering and exiting positions. Finally, the proposed rule would be beneficial from a logistical perspective since firms' existing systems

[7] *See* Securities Exchange Act Release No. 56565 (September 27, 2007), 72 FR 56403 (October 3, 2007) (Order Granting Approval to a Proposed Rule Change Regarding the Extension and Expansion of the Penny Pilot Program) (SR–CBOE–2007–98).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

are configured using the ''root symbol'' of an underlying security and would not be able to assign different minimum pricing variations to mini-options and standard options on the same security.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, since mini-options are permitted on multiply-listed classes, other exchanges that have received approval to trade mini-options will have the opportunity to similarly establish the minimum price variation for mini-options prior to the anticipated launch in March 2013. MIAX also believes that the proposed rule change will enhance competition by allowing products on the same security to be priced in the same minimum price increments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may coincide with the anticipated launch of trading in Mini Options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[12] Waiver of the operative delay will allow the Exchange to implement its proposal consistent with the commencement of trading in Mini Options as scheduled and expected by members and other participants on March 18, 2013. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2013–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2013–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2013–10 and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06693 Filed 3–22–13; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[12] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69161; File No. SR–NYSEArca–2013–26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain Rules To Accommodate the Trading of Option Contracts Overlying 10 Shares of Certain Securities

March 18, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 15, 2013, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rules to accommodate the trading of option contracts overlying 10 shares of a security (''mini-options contracts''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently adopted a Commentary to Rule 6.3 which establishes the listing and trading of mini-options contracts (which represent a deliverable of 10 shares of an underlying, as opposed to the deliverable of 100 shares of an underlying for standard options contracts).[4] This filing is to clarify the treatment of mini-options contracts with respect to certain trading rules. Specifically, this proposal seeks to: (a) Permit mini-options to trade in the same minimum increments as standard contracts for the same underlying, (b) include mini-options in calculations for the Risk Limitation Mechanism, and (c) establish the trading of Qualified Contingent Cross Orders in mini-options.

Trading Differentials

Of the five securities on which mini-options are permitted, four of them (SPY, AAPL, GLD and AMZN) participate in the penny pilot. Under the penny pilot, (1) the minimum price variation for AAPL, GLD and AMZN options is $0.01 for all quotations in series that are quoted at less than $3.00 per contract and $0.05 for all quotations in series that are quoted at $3.00 per contract or greater and (2) the minimum price variation for SPY options is $0.01 for all quotations in all series.[5]

This proposed rule change will permit the minimum trading increment for mini-options contracts to be identical to the minimum trading increment applicable to standard options on the same underlying security and is consistent with recently approved proposals of other markets.[6] The Exchange believes having different trading increments for mini-options contracts than those permitted for standard options on the same underlying security would be detrimental to the success of this new product offering and would also lead to investor confusion. The Exchange notes that the Commission approved mini-options contracts on SPY, AAPL, GLD, GOOG and AMZN because of their high price and current volume levels and because of the level of retail investor participation in trading options in these classes. Mini-options are a natural extension to the options overlying these securities and therefore should retain the most important characteristic, *i.e.,* trading increments. The Exchange believes that by reducing the minimum trading increments for mini-options contracts, the proposed rule change will provide market participants with meaningful trading opportunities in this product. Further, quoting and trading in smaller increments will enable market participants to trade mini-options with greater precision as to price. Providing these more refined increments will permit the Exchange's market makers the opportunity to provide better fills (meaning less spread than the current wider minimum increments rules allow) to customers. Therefore, the Exchange proposes to amend its rules to permit the listing and trading of mini-options in the same increment permitted for standard options on the same underlying security. The Exchange notes that it is not requesting penny pricing for all of the five securities eligible for mini-options trading; but rather is seeking to permit matched penny pricing for mini-options contracts on those securities for which standard options already trade in pennies.

With this proposed rule change, although mini-options contracts would be trading in narrower increments, they would not be considered part of the penny pilot.

The Exchange's proposal to quote and trade certain option classes that are outside of the penny pilot in $0.01 increments is not novel. Specifically, the Commission has permitted the International Stock [sic] Exchange, LLC (''ISE'') to set the minimum increment for all Foreign Currency Options traded on the ISE at $0.01 regardless of the price at which the option is quoted.[7] The Commission has also previously approved a proposal by NASDAQ OMX PHLX, Inc. permitting that exchange to also trade its foreign currency options in $0.01 increments.[8]

Further, the Exchange agrees with the statements made by the Commission in approving similar filings of ISE and Chicago Board Options Exchange, Incorporated (''CBOE''). In particular, the Exchange believes that maintaining consistency in trading increments between mini-options contracts and standard options contracts for the same underlying security: (a) Should help prevent investor confusion that could otherwise result if the standard and mini-options were not aligned;[9] (b) should provide additional market benefits (such as attracting additional liquidity providers who already make markets in the underlying symbols which hopefully would result in more efficient pricing via arbitrage);[10] and (c) is consistent with the current operation of member firms' systems (which are programmed to use root symbols and would not be able to assign different minimum price variations to mini-options contracts).[11]

In support of this proposed rule change, the Exchange proposes to amend its Rules 6.4 and 6.72. As to Rule 6.72, the Exchange proposes to add new Commentary .03 which provides that the minimum trading increment for mini-options contracts shall be determined in accordance with Commentary .14(d) to Rule 6.4. Proposed Commentary .14(d) to Rule 6.4 provides that the minimum trading increment for mini-options contracts shall be the same as the minimum trading increment permitted for standard options on the same underlying security.

With regard to the impact of this proposal on system capacity, the

[4] *See* Securities Exchange Act Release Nos. 67948 (September 28, 2012), 77 FR 60735 (October 4, 2012) (SR–NYSE–Arca–2012–64) (SR–ISE–2012–58).

[5] *See* Exchange Rule 6.72.

[6] *See* Securities Exchange Act Release No. 69124 (March 12, 2013) (approving SR–CBOE–2013–16 and SR–ISE–2013–08).

[7] *See* Securities Exchange Act Release No. 57019 (December 20, 2007), 72 FR 73937 (December 28, 2007) (SR–ISE–2007–120).

[8] *See* Securities Exchange Act Release No. 56933 (December 7, 2007), 72 FR 71185 (December 14, 2007)(Approving SR–PHLX–2007–70).

[9] *See supra* note 6 at 4–5.

[10] *See supra* note 6 at 5.

[11] *See supra* note 6 at 6.

Exchange represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with this proposal. The Exchange does not believe that this increased traffic will become unmanageable since mini-options are limited to a fixed number of underlying securities.

Treatment of Mini-Options

Pursuant to Rule 6.40, the Exchange employs a number of mechanisms designed to mitigate risks of OTP Holders and serve as additional safeguards that could help limit potential harm from extreme number of executions. The Exchange believes that, since these mechanisms are intended to prevent repetitive executions, for purposes of calculating the trade counter, mini-options contracts should be calculated as part of the underlying symbol. As a result, the Exchange proposes to amend Rule 6.40 to include mini-options contracts in the Risk Limitation Mechanism. Accordingly, OTP Holders will be able to continue to customize their thresholds based upon underlying symbol.

Certain orders have minimum thresholds assigned by rule. Given the reduced delivery of mini-options contracts, there is a risk that those thresholds could be circumvented by the use of mini-options contracts instead of (or in combination with) standard options. To make clear that such loopholes are not available, the Exchange seeks to establish the standards that apply to mini-options contracts.

Similarly, the Exchange also proposes to amend the definition of Qualified Contingent Cross Order to accommodate the reduced deliverables of mini-options contracts. When Qualified Contingent Cross Orders were originally proposed, they had a size requirement of only 500 standard contracts.[12] However, in gaining ultimate approval the minimum size was increased to the current level of 1000 standard contracts representing 100,000 shares.[13] The reduced deliverable of mini-options contracts potentially threatens that standard in a manner that was never intended and not discussed in the adoption of mini-options contracts.[14] As such, to maintain the current threshold, the Exchange proposes that orders for mini-options must be of 10,000 contracts or more to qualify as a Qualified Contingent Cross Order.[15] Without such a change, market participants could trade Qualified Contingent Cross Orders for the underlying share equivalent of merely 100 standard contracts.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[16] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[17] in particular, because it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that investors and market participants would benefit from the current rule proposal because it (a) assures that standard options and mini-options on the same underlying security will trade in similar increments and therefore provide market participants meaningful trading opportunities and enable [sic] to trade mini-options contracts with greater precision as to price; (b) permit OTP Holders to continue to customize their thresholds based upon underlying symbol by including mini-options in the Risk Limitation Mechanism; and (c) allow market participants to execute Qualified Contingent Cross Orders in mini-options contracts. The Exchange believes that these proposed rule changes will avoid investor confusion that could otherwise develop through the trading of mini-options contracts alongside standard options. Further, the Exchange believes that establishing these amendments prior to the commencement of trading of mini-options contracts would lessen investor and marketplace confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the proposed amendment to trading differentials is based upon recently approved rule amendments by other option exchanges. Since mini-options contracts are permitted on multiple-listed classes, other exchanges that have received approval to trade mini-options contracts will have the opportunity to similarly amend their rules to incorporate mini-options contracts into risk mechanisms and to accommodate Qualified Contingent Orders in mini-options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may coincide with the anticipated launch of trading in mini-options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[20] Waiver of the operative delay will allow the Exchange to implement its proposal

[12] *See* Securities Exchange Act Release No. 60584 (September 3, 2009) [sic], 74 FR 45663 (September 3, 2009) (SR–ISE–2009–35).

[13] *See* Securities Exchange Act Release No. 63955 (March 2, 2011) [sic], 76 FR 11533 (March 2, 2011) (SR–ISE–2010–73).

[14] *See supra* note 4.

[15] It should be noted that the proposed language does not permit the combining of mini-options contracts with standard contracts in order to reach the minimum threshold. For example, an order to trade 900 standard contracts and 1000 mini-options contracts would not qualify for treatment as a Qualified Contingent Cross.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

consistent with the commencement of trading in mini-options as scheduled and expected by members and other participants on March 18, 2013. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–26 and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06695 Filed 3–22–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69178; File No. SR–FINRA–2013–018]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to FINRA Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information)

March 19, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information), which governs the release of disciplinary and other information by FINRA to the public. In addition, the proposed rule change would make conforming amendments to certain rules in the FINRA Rule 9000 Series (Code of Procedure) and add a provision to FINRA Rule 9268 (Decision of Hearing Panel or Extended Hearing Panel) regarding the effective date of sanctions.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information) governs the release of disciplinary and other information by FINRA to the public. Among other things, the proposed rule change would amend Rule 8313 to establish general standards for the release of disciplinary information to the public to provide greater information regarding FINRA's disciplinary actions, clarify the scope of information subject to Rule 8313, and eliminate provisions that do not address the release of information by FINRA to the public. In addition, the proposed rule change would make conforming amendments to certain rules in the FINRA Rule 9000 Series (Code of Procedure) and add a provision to FINRA Rule 9268 (Decision of Hearing Panel or Extended Hearing Panel) regarding the effective date of sanctions. The proposed rule change is described in detail below.

A. Disciplinary Complaints and Disciplinary Decisions

Rule 8313(a) currently provides that in response to a request, FINRA shall release any identified disciplinary complaint or disciplinary decision issued by FINRA (or any subsidiary or Committee thereof) to the requesting party. Absent a specific request for an identified complaint or decision, the rule provides publicity thresholds for the release of information with respect

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

to disciplinary complaints and disciplinary decisions to the public.[3]

Under the publicity thresholds for disciplinary complaints in current Rule 8313(b)(1), FINRA shall release to the public information with respect to any disciplinary complaint that contains an allegation of a violation of a ''designated'' statute, rule, or regulation of the SEC, FINRA, or the Municipal Securities Rulemaking Board (''MSRB''), as determined by the FINRA Regulation Board of Directors.[4] In addition, FINRA may release to the public information with respect to any complaint or group of complaints that involves a significant policy or enforcement determination where release of the information is deemed by FINRA's Chief Executive Officer (''CEO'') (or such other senior officer as the CEO may designate) to be in the public interest.

Under the publicity thresholds for disciplinary decisions in current Rule 8313(c)(1), FINRA shall release to the public information with respect to any disciplinary decision that: (1) Imposes a suspension, cancellation, or expulsion of a member; (2) imposes a suspension or revocation of the registration of an associated person; (3) imposes a suspension or bar of a member or associated person from association with all members; (4) imposes monetary sanctions of $10,000 or more upon a member or associated person; or (5) contains an allegation of a violation of a designated rule. As is the case with disciplinary complaints, FINRA may release information with respect to any disciplinary decision or group of decisions that involves a significant policy or enforcement determination where its release is deemed by FINRA's CEO, or his or her designee, to be in the public interest. Rule 8313(c)(1) also currently contains an omnibus provision that permits FINRA to release information on any disciplinary or other decision issued pursuant to the Rule 9000 Series not specifically enumerated, regardless of the sanctions imposed, with redacted names of the parties and other identifying information. Rules 8313(c)(1)(A) and (c)(1)(B) currently set forth redaction standards for the release of information with respect to disciplinary decisions where only certain respondents in a decision on appeal meet one or more of the publicity thresholds, or where an underlying Office of Hearing Officers (''OHO'') decision meets a publicity threshold, but a later National Adjudicatory Council (''NAC'') decision on the matter does not meet a threshold.

In May 2011, FINRA launched its FINRA Disciplinary Actions online database (''FDA'') to provide interested parties with greater access to information regarding FINRA's disciplinary actions.[5] The FDA contains copies of FINRA disciplinary actions (dating back to early 2005) that are eligible for publication under Rule 8313. Interested parties may access disciplinary complaints and disciplinary decisions in the FDA to obtain copies of actions they may be interested in regarding a specific firm or associated person as well as obtaining copies of actions that involve a variety of different areas of interest, including specific rule or statutory violations, products or business lines, or supervisory and compliance practices. Interested parties may search the database by entering search criteria, such as an individual's name, firm name, case number, date range, document type, document text (*e.g.,* such terms as rules citations, product types, sanction, etc.) or CRD number.[6] However, the disciplinary information available for publication in the FDA (or otherwise available for release by FINRA) currently is limited by the publicity thresholds in Rule 8313.

To further increase access to information regarding FINRA's disciplinary actions, the proposed rule change would eliminate the restrictions to publication of the specified actions by eliminating the publicity thresholds in Rules 8313(b)(1) and (c)(1) as well as the provision addressing the release of ''identified'' disciplinary complaints and disciplinary decisions in Rule 8313(a).[7] In their place, the proposed rule change would adopt general standards for the release of disciplinary complaints, disciplinary decisions, and other information to the public.[8] Specifically, proposed Rule 8313(a)(1) would provide that FINRA shall release to the public a copy of, and at FINRA's discretion information with respect to, any disciplinary complaint or disciplinary decision issued by FINRA.[9] Subject to limited exceptions discussed below, FINRA would release such information in unredacted form.

In general, FINRA believes that greater access to information regarding its disciplinary actions provides valuable guidance and information to members, associated persons, other regulators, and investors. Releasing detailed disciplinary information to the public can serve to deter and prevent future misconduct and to improve overall business standards in the securities industry. It also allows investors to consider firms' and representatives' disciplinary histories when considering whether to engage in business with them. In addition, firms may use such information to educate their associated persons as to compliance matters, highlighting potential violations and related sanctions, as well as informing the firms' compliance procedures involving similar business lines, products, or industry practices. Further, any firm or individual facing allegations of rule violations may access existing disciplinary decisions to gain greater insight on related facts and sanctions.

FINRA also believes that the current publicity thresholds in Rule 8313(c) have created an inconsistency in FINRA's release of information given that information that may not be disclosed under the current rule is often publicly available through other sources. For example, the proposed rule change would allow FINRA to make available in the FDA (or otherwise) disciplinary information that is available in BrokerCheck, but is not eligible for publication by FINRA under the current publicity thresholds.[10] Specifically, the disclosure questions in Section 14 of Form U4, among other things, require the reporting of regulatory complaints alleging, and any findings of, a violation of self-regulatory organization rules. As such, BrokerCheck reports may include

[3] Rule 8313 provides for the release of ''information with respect to'' disciplinary complaints and decisions in light of FINRA's practice to issue, in addition to the complaints or decisions themselves, information, for example, in press releases or summaries of complaints and decisions that meet the current publicity thresholds, or are otherwise permitted to be released under the rule.

[4] FINRA has identified such rules in *Notice to Members* 97–42 (July 1997).

[5] The FDA is available at *http://www.finra.org/Industry/Enforcement/DisciplinaryActions/FDAS/.*

[6] The FDA also includes decisions issued by the SEC and federal appellate courts that relate to FINRA disciplinary actions that have been appealed.

[7] Notwithstanding the proposed elimination of the provision in Rule 8313(a) addressing the release of identified complaints and decisions to a requesting party, FINRA will continue to respond to requests for, and provide access to, identified complaints and decisions.

[8] In light of the elimination of the publicity thresholds, the proposed rule change also would delete from Rule 8313 the redaction standards made necessary by the publicity thresholds in current paragraphs (c)(1)(A) and (c)(1)(B).

[9] The proposed rule change would eliminate as unnecessary references to ''groups of'' disciplinary complaints and disciplinary decisions. *See* Rule 8313(b)(1) and (c)(1). FINRA does not view the proposed rule change as distinguishing between the release of individual, versus groups of, disciplinary complaints and disciplinary decisions.

[10] The information about members and registered persons made available through BrokerCheck is derived from the Central Registration Depository (CRD®). Information in the CRD system is obtained through the uniform registration forms (*i.e.,* Forms U4, U5, and U6, and Forms BD, BDW, and BR).

unredacted summary information regarding a FINRA disciplinary action that FINRA is not permitted to release in the monthly notice of Disciplinary and Other FINRA Actions or in the FDA under the current publicity thresholds.

The proposed general standard for disciplinary complaints and disciplinary decisions also would better align FINRA's publication standards with the practices of the SEC and other regulators. The SEC publishes on its Web site copies of enforcement actions, including administrative proceedings and complaints filed in federal court, regardless of the type or nature of sanctions imposed. FINRA believes that to avoid confusion, the availability of disciplinary information generally should not differ among regulators. Interested parties should be able to review comparable disciplinary complaints and decisions irrespective of the forum in which the case is brought or the type or nature of sanctions imposed.

FINRA notes that, in general, copies of and information with respect to disciplinary complaints and disciplinary decisions would be released to the public through the FDA and FINRA's monthly notice of Disciplinary and Other FINRA Actions. If a disciplinary complaint posted in the FDA is dismissed or withdrawn, the order dismissing or withdrawing the complaint would accompany the complaint. With respect to the issuance of press releases in connection with disciplinary complaints, FINRA would retain its current practice of only issuing press releases in those situations where there is a significant policy or investor protection reason to do so.

The proposed rule change also would clarify the scope of Rule 8313 by defining the terms ''disciplinary complaint'' and ''disciplinary decision.'' [11] For the purpose of the rule, the term ''disciplinary complaint'' would mean any complaint issued pursuant to the Rule 9200 Series (Disciplinary Proceedings), and the term ''disciplinary decision'' would mean any decision issued pursuant to the Rule 9000 Series, including decisions issued by the OHO, the NAC, or the FINRA Board (''Board''), orders accepting offers of settlement, and Letters of Acceptance, Waiver and Consent (''AWCs''). The term disciplinary decision would not include decisions issued pursuant to the Rule 9550 Series (Expedited Proceedings), Rule 9600 Series (Procedures for Exemptions), Rule 9700 Series (Procedures on Grievances Concerning the Automated Systems), or Rule 9800 Series (Temporary Cease and Desist Orders), or decisions, notifications, or notices issued pursuant to the Rule 9520 Series (Eligibility Proceedings), which are addressed by separate provisions in proposed Rule 8313.[12] The proposed rule change would clarify that consistent with current practice, minor rule violation plan (''MRVP'') letters issued pursuant to Rule 9216 (Acceptance, Waiver, and Consent; Plan Pursuant to SEA Rule 19d–1(c)(2)) and Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d–1(c)(2)) are not subject to Rule 8313.

B. Temporary Cease and Desist Orders (''TCDOs'')

Rule 8313(c)(1) currently states that FINRA shall release to the public information with respect to any TCDO. The proposed rule change would adopt this provision with minor changes in proposed Rule 8313(a)(2) to provide that FINRA shall release to the public a copy of, and at FINRA's discretion information with respect to, any order or decision issued by FINRA under the Rule 9800 Series, which addresses TCDOs.

C. Statutory Disqualification Decisions

Rule 8313 currently does not specifically address the release of statutory disqualification decisions to the public. Pursuant to the omnibus provision in Rule 8313(c)(1), discussed above, FINRA currently releases information on statutory disqualification decisions issued by the NAC pursuant to the Rule 9520 Series with the names of members and associated persons redacted. Under proposed Rule 8313(a)(2), FINRA would release to the public unredacted copies of, and at FINRA's discretion information with respect to, statutory disqualification decisions, notifications, and notices issued pursuant to the Rule 9520 Series by either the NAC or FINRA's Member Regulation Department (''Member Regulation'') that will be filed with the SEC.[13]

As discussed above in the context of disciplinary complaints and disciplinary decisions, FINRA believes that subject to limited exceptions, information should be released to the public in unredacted form. Under the current publicity rule, FINRA releases information regarding the underlying conduct that led to a statutory disqualification, and the safeguards imposed, including restrictions on permissible activities and heightened supervisory plans; however, FINRA does not disclose the identity of the statutorily disqualified individuals or member firms. The proposed rule change would provide for the release of such identities because FINRA believes that it would provide investors with valuable information about the individuals and firms with whom they conduct business. Further, to the extent that information regarding the underlying conduct that results in an individual or firm being subject to a statutory disqualification decision is reported to the CRD system, identifying information regarding such individuals and firms is available in BrokerCheck.

D. Expedited Proceeding Decisions

Rules 9552 through 9558[14] provide a procedural mechanism for FINRA to address certain types of misconduct (*e.g.,* a failure to pay fees or dues or a failure to meet eligibility or qualification standards) more expeditiously than would be possible using the FINRA disciplinary process. Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series) allows member firms and associated persons to request a hearing regarding the action that often results in a stay of the sanction or limitation. Rule 8313(c)(1) currently states that FINRA may release to the public information with respect to any expedited proceeding decision issued pursuant to the Rule 9550 Series imposing a suspension or cancellation of a member, or a suspension or bar of the association of a person with a member, unless FINRA determines otherwise. Separately, the ''Notice to Membership'' provisions in Rules 9552, 9553, 9554, 9555, 9556, 9558, and 9559 currently

[11] *See* proposed Rule 8313(e).

[12] *See* proposed Rules 8313(a)(2), (a)(3), and (a)(5).

[13] All statutory disqualification decisions issued by the NAC are filed with the SEC. In contrast, depending on the nature of the disqualifying event, Member Regulation may or may not have to file a notice of its approval of an application for relief (referred to as a 19h–1 notice or notification) with the SEC. For example, Member Regulation may approve the association of a person without filing a 19h–1 notice or notification with the SEC when the disqualifying event consists of an injunction that was entered more than 10 years ago. *See also* Exchange Act Rule 19h–1.

[14] *See* Rule 9552 (Failure to Provide Information or Keep Information Current), Rule 9553 (Failure to Pay FINRA Dues, Fees and Other Charges), Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution), Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services), Rule 9556 (Failure to Comply with Temporary and Permanent Cease and Desist Orders), Rule 9557 (Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties), and Rule 9558 (Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Exchange Act).

state that FINRA shall provide notice of any final FINRA action taken under the rules in the next notice of Disciplinary and Other FINRA Actions. The Notice to Membership provision in Rule 9557 requires notice when FINRA imposes a suspension pursuant to the rule, but does not reference final FINRA action because the procedural mechanisms in Rule 9557 differ from the other rules in the expedited proceedings series.

The proposed rule change would consolidate the publication standards for expedited proceeding decisions in proposed Rule 8313(a)(3). Consistent with the current Rule 9550 Series and FINRA practice, the proposed rule would provide that FINRA shall release to the public information with respect to any suspension, cancellation, expulsion, or bar that constitutes final FINRA action imposed pursuant to Rules 9552, 9553, 9554, 9555, 9556, and 9558, and information with respect to any suspension imposed pursuant to Rule 9557. FINRA also shall release a copy of, and information with respect to, any decision issued pursuant to Rule 9559 that constitutes final FINRA action. Accordingly, the proposed rule change would delete the ''Notice to Membership'' provisions in Rules 9552 through 9559. In general, information with respect to expedited proceeding decisions would continue to be published in FINRA's monthly notice of Disciplinary and Other FINRA Actions.

E. Summary Actions

Rule 8313 currently does not specifically address the release of information regarding summary actions taken by FINRA pursuant to Rule 8320 (Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay); however, FINRA generally releases summary information with respect to such actions in its monthly notice of Disciplinary and Other FINRA Actions. To codify FINRA practice, proposed Rule 8313(a)(3) would expressly provide that FINRA shall release to the public information with respect to the summary suspension or expulsion of a member or the summary revocation of the registration of a person associated with a member for a failure to pay fines, other monetary sanctions, or costs pursuant to Rule 8320. FINRA believes that it is in the public interest to provide notice that a member or a registered person is subject to sanctions by FINRA and may not have the authority to conduct business with customers or the public. In general, such information would continue to be published in FINRA's monthly notice of Disciplinary and Other FINRA Actions.

F. Membership and Continuing Membership Application (''MAP'') Appeals

Rule 8313(l) currently provides that FINRA shall release to the public, in the form issued by the NAC, information with respect to any MAP appeal decision issued by the NAC pursuant to NASD Rule 1015 (Review by National Adjudicatory Council). The NAC in its discretion may redact certain information from such decisions prior to their issuance.

The proposed rule change would adopt this provision as proposed Rule 8313(a)(4) with changes to, among other things, reflect FINRA's practice with respect to the release of MAP appeal decisions in redacted form. The proposed rule change also would clarify that the release to the public of MAP appeal decisions issued by the Board pursuant to NASD Rule 1016 (Discretionary Review by FINRA Board) are governed by the publicity rule. Proposed Rule 8313(a)(4) would provide that FINRA shall release to the public a copy of, and at FINRA's discretion information with respect to, any MAP appeal decision issued by FINRA pursuant to NASD Rules 1015 and 1016. Copies of, and information with respect to, such decisions shall be released to the public in redacted form; provided, however, the NAC or the Board, in its discretion, may determine to release such decisions and information in unredacted form.

FINRA believes that continuing the practice of redacting MAP appeal decisions is appropriate given that as part of the MAP process, applicants typically are required to disclose, among other things, proprietary information, including business plans, financial plans, and commercial agreements. In addition, denials of MAP applications often are related to firms' capacity limitations or similar operational concerns. Thus, FINRA believes that, as a general matter, the potential harm to firms in releasing denial decisions in unredacted form would not be outweighed by any investor protection benefit.

G. Permissive Publication of Certain Decisions and Notices

The proposed rule change would add a new provision in proposed Rule 8313(a)(5) that would permit FINRA to release to the public a copy of, and information with respect to, any decision or notice issued pursuant to Rule 6490 (Processing of Company-Related Actions),[15] the Rule 9600 Series (Procedures for Exemptions),[16] the Rule 9700 Series (Procedures on Grievances Concerning the Automated Systems),[17] and any other decision appealable to the SEC under Exchange Act Section 19(d). FINRA is proposing permissive publication for items issued under Rule 6490 and the Rule 9700 Series because FINRA does not publish these decisions or notices on a wholesale basis; however, FINRA may determine that there is public benefit to releasing a specific decision or notice issued under these rules to provide guidance to other firms or to alert the public to an investor protection issue.[18]

With respect to exemption decisions, the proposed rule change would permit, but not require, exemption decisions issued under the Rule 9600 Series to be released to the public because Rule 9610, which governs the application for exemptive relief, authorizes members to request relief from a diverse set of member conduct rules that have differing benefits to publication. Today, FINRA posts to its Web site exemption decisions for several rules listed in Rule 9610, in large part, to provide guidance to members, investors, and other interested parties to assist them in understanding the rationale for the decisions to grant or deny requests for exemptive relief.[19]

The proposed rule change broadly would provide for the release of ''any other decision'' appealable to the SEC under Exchange Act Section 19(d) to avoid the need to make future amendments to Rule 8313 in the event of additional rulemaking that results in FINRA issuing decisions that may be

[15] Under Rule 6490, FINRA's Operations Department reviews and processes documents related to announcements for Exchange Act Rule 10b-17 Actions and Other Company-Related Actions to facilitate the orderly trading and settlement of OTC securities.

[16] The Rule 9600 Series allows a member seeking exemptive relief, as permitted under certain FINRA and NASD rules and MSRB Rule G–37, to file a written application with the appropriate department or staff of FINRA. The proposed rule change would make conforming amendments to Rule 9620, which governs exemption decisions issued under the Rule 9600 Series, to reflect the permissive nature of proposed Rule 8313(a)(5).

[17] The Rule 9700 Series sets forth procedures for redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by FINRA, or its subsidiaries, and approved by the SEC, not otherwise provided for by the FINRA rules.

[18] In general, FINRA is not in the practice of releasing copies of, or information with respect to, decisions or notices addressing company-related actions or grievances concerning the automated systems.

[19] Consistent with current practice under the Rule 9600 Series, FINRA will continue to consider statements included by an applicant to show good cause to treat a decision as confidential in whole or in part.

appealed to the SEC under Exchange Act Section 19(d).

H. Publication of Information Deemed by FINRA's CEO To Be in the Public Interest

As stated above, notwithstanding the existing publicity thresholds, FINRA Rules 8313(b)(1) and (c)(1) currently allow FINRA to release information with respect to any disciplinary complaint or disciplinary decision that involves a significant policy or enforcement determination where the release of such information is deemed by FINRA's CEO to be in the public interest. Consistent with these provisions, proposed Rule 8313(a)(6) would provide that FINRA may release to the public a copy of, and information with respect to, any complaint, decision, order, notification, or notice issued under FINRA rules, where the release of such information is deemed by FINRA's CEO (or such other senior officer as the CEO may designate) to be in the public interest, in such format as he or she finds appropriate. FINRA is proposing to retain the provision providing FINRA's CEO with discretion to release additional information to address instances in which publication is not otherwise permitted under Rule 8313, but the release of information is deemed by the CEO to be in the public interest. For example, this would allow the CEO to release notices issued under the expedited proceedings rules that do not involve a suspension, cancellation, expulsion, or bar, such as notices of limitations imposed under FINRA's financial rules pursuant to Rule 9557.

I. Release Specifications

Rule 8313 currently requires copies of, and information with respect to, disciplinary complaints and disciplinary decisions released to the public to be accompanied by certain disclosure statements regarding their status. FINRA requires these disclosures so that disciplinary complaints and disciplinary decisions released to the public are viewed in an appropriate context and to provide adequate protections to the parties named in the complaint or decision. Rules 8313(a)(1) and (b)(2) currently require that disciplinary complaints and information with respect to disciplinary complaints released to the public be accompanied by the following statement: ''The issuance of a disciplinary complaint represents the initiation of a formal proceeding by FINRA in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.''

The proposed rule change would retain in Rule 8313(b)(1) a modified version of the disclosure statement for copies of, and information with respect to, disciplinary complaints. Proposed Rule 8313(b)(1) would provide that copies of, and information with respect to, any disciplinary complaint released to the public pursuant to Rule 8313(a) shall indicate that a disciplinary complaint represents the initiation of a formal proceeding by FINRA in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. FINRA believes that copies of, and information with respect to, disciplinary complaints released to the public should continue to be accompanied by a disclosure statement that alerts recipients that the alleged violations contained in FINRA's complaint have not resulted in a decision or finding against the respondent.

Similarly, Rules 8313(a)(2) through (a)(4) and (c)(2) currently require copies of, and information with respect to, disciplinary decisions released to the public to be accompanied by disclosure statements. Under the current rule, a disciplinary decision released prior to the expiration of the time period provided under the Rule 9000 Series for appeal or call for review within FINRA or while such an appeal or call for review is pending must be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by FINRA. In addition, a final decision of FINRA that is released prior to the time period provided under the Exchange Act for appeal to the SEC or while such an appeal is pending must be accompanied by a statement that the findings and sanctions of FINRA are subject to review and modification by the SEC. And, a final decision of FINRA that is released after the decision is appealed to the SEC must be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the SEC.

The proposed rule change would consolidate and streamline the disclosure statements for copies of, and information with respect to, disciplinary decisions and would expand the statement to cover other items released to the public pursuant to proposed Rule 8313(a). Proposed Rule 8313(b)(2) would provide that copies of, and information with respect to, any disciplinary decision or other decision, order, notification, or notice released to the public pursuant to Rule 8313(a) prior to the expiration of the time period provided for an appeal or call for review as permitted under FINRA rules or the Exchange Act, or while such an appeal or call for review is pending, shall indicate that the findings and sanctions imposed therein are subject to review and modification by FINRA or the SEC. FINRA believes that accompanying copies of, and information with respect to, disciplinary decisions released to the public with a disclosure statement provides necessary context to a non-final disciplinary action and alerts persons viewing such information as to the status of these actions. In addition, FINRA believes that the proposed consolidation and expansion of the disclosure statements in Rule 8313 serve to facilitate the release of disciplinary information to the public electronically in the FDA because such disclosure will be clearly indicated in the FDA, but will not accompany each complaint or decision.

J. Discretion To Redact Certain Information or Waive Publication

As noted above, FINRA has determined that subject to limited exceptions, disciplinary information should be released to the public in unredacted form. However, FINRA believes it is necessary in releasing information to the public to balance investor protection benefits with the harm that may result if certain confidential customer information or information that raises personal safety or privacy concerns is released to the public. Accordingly, the proposed rule change would add a new provision in proposed Rule 8313(c)(1) that would permit FINRA, notwithstanding the requirements of proposed Rule 8313(a), to redact, on a case-by-case basis, information that contains confidential customer information, including customer identities, or information that raises significant identity theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns. FINRA takes the same approach with respect to the release of information in BrokerCheck.[20] The proposed rule change aims to broaden the types and, on balance, the amount

[20] *See* Rule 8312(d) (FINRA BrokerCheck Disclosure) (FINRA reserves the right to exclude on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns).

of information released by FINRA to the public to establish a principled basis for disclosure that meets FINRA's investor protection objectives, yet fairly addresses privacy interests.

Similarly, the proposed rule change would adopt with minor changes a statement from current Rule 8313(c)(1) that provides FINRA with discretion to waive the requirement to release a disciplinary or other decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. The proposed rule change would expand this provision to give FINRA discretion to waive the requirement to release any item under paragraph (a) of the proposed rule. Accordingly, proposed Rule 8313(c)(2) would provide that notwithstanding paragraph (a) of the proposed rule, FINRA may determine, in its discretion, to waive the requirement to release a copy of, or information with respect to, any disciplinary complaint, disciplinary decision or other decision, order, notification, or notice under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.

FINRA believes it should retain the discretion to waive the requirement to release information under the proposed rule in the event FINRA is presented with truly unique circumstances where the release of information would violate fundamental notions of fairness or work an injustice. FINRA does not believe that decisions should be treated differently than other items that are required to be released under paragraph (a) of the proposed rule.

K. Notification of Appeals of FINRA Decisions

Rule 8313(g) currently requires FINRA to provide notice to the membership and the press that a FINRA disciplinary decision that meets certain publicity thresholds is appealed to the SEC. The notice must be released as soon as possible after the SEC notifies FINRA of such appeal and it must state whether the effectiveness of the Board's decision has been stayed pending the outcome of proceedings before the SEC. The proposed rule change would adopt this provision with minor changes as proposed Rule 8313(d), eliminating the publicity thresholds and the limitation on notification to the membership and the press.

Proposed Rule 8313(d) would state that FINRA shall provide notice to the public if a disciplinary decision of FINRA is appealed to the SEC and the notice shall state whether the effectiveness of the decision has been stayed pending the outcome of proceedings before the SEC. FINRA provides notification of appeals to the SEC, including information regarding whether sanctions imposed have been stayed during the pendency of the appeal, in the monthly notice of Disciplinary and Other FINRA Actions. FINRA also intends to indicate whether a disciplinary decision available in the FDA has been appealed to the SEC so that parties using the FDA are clear as to the status of the disciplinary decision. In addition, FINRA notes that the FDA includes decisions issued by the SEC that relate to FINRA disciplinary actions that have been appealed.

Rule 8313(h) currently requires FINRA to provide notice to the membership in the event an appeal to the courts is filed from an SEC disciplinary decision in a case previously appealed to it from a FINRA decision that meets certain publicity thresholds. The notice must be provided as soon as possible after FINRA receives a formal notice of appeal and must include a statement whether the order of the SEC has been stayed. The proposed rule change would delete Rule 8313(h) because it limits notice to the membership based on the publicity thresholds that would be eliminated under the proposed rule change, and notification of an appeal to the courts from an SEC disciplinary decision is best addressed by the SEC. FINRA notes that the FDA includes decisions issued by federal appellate courts that relate to FINRA disciplinary actions that have been appealed.

Rule 8313(i) currently provides that any order issued by the SEC imposing sanctions or fines on a member that meet certain publicity thresholds must be released to the public through a notice containing the effective date thereof. The order must be released to the public as soon as possible after FINRA receives the SEC's order. The proposed rule change would delete paragraph (i) because it limits notice based on the publicity thresholds that would be eliminated under the proposed rule change, and the release of SEC orders to the public is best addressed by the SEC.

L. Provisions Outside the Scope of Rule 8313

To clarify the scope of Rule 8313, the proposed rule change would eliminate provisions that are outside the purview of the rule, which is intended solely to address the release of disciplinary and other information by FINRA to the public. Rules 8313(d) and (e) currently address when certain disciplinary decisions become effective. Rule 8313(d) states, if a decision issued pursuant to the Rule 9000 Series other than by the NAC is not appealed to or called for review by the NAC, the decision shall become effective on a date set by FINRA but not before the expiration of 45 days after the date of the decision. The proposed rule change would delete Rule 8313(d) because it addresses the effective date of certain disciplinary decisions rather than the release of disciplinary information to the public.

The proposed rule change would move the rule language regarding the effectiveness of sanctions to Rule 9268 (Decision of Hearing Panel or Extended Hearing Panel), which addresses hearing panel decisions, including their content and to whom they are disseminated. Proposed Rule 9268(f) (Effectiveness of Sanctions) would provide that unless otherwise provided in the majority decision issued under Rule 9268(a): (1) A sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of FINRA for purposes of Exchange Act Rule 19d–1(c)(1) shall become effective on a date to be determined by FINRA; and (2) a bar or an expulsion specified in a decision shall become effective immediately upon the decision becoming the final disciplinary action of FINRA for purposes of Exchange Act Rule 19d–1(c)(1).[21]

The proposed rule change would clarify the process for when sanctions imposed in a hearing panel decision become effective in a substantially similar format to the parallel provision for decisions issued by the NAC or the FINRA Board in Rule 9360 (Effectiveness of Sanctions). Although the language in proposed Rule 9268(f) differs slightly from Rule 8313(d), the timing for the effectiveness of sanctions would remain unchanged. When a hearing panel decision imposes a bar or expulsion that sanction becomes effective if the case is not appealed or called for review. A respondent or FINRA's Departments of Enforcement or Market Regulation have [sic] 25 days after service of a decision to appeal a decision issued pursuant to Rule 9268 or Rule 9269 (Default Decisions). The NAC has 45 days to call a case for review; therefore, a bar imposed in a hearing panel decision that is not appealed or called for review takes effect after 45 days from the date the decision is issued. When a hearing

[21] The proposed rule change would make conforming amendments to Rule 9268(b)(6).

panel decision imposes any other sanction (and does not set a date for the sanction to take effect), if there is no appeal or call for review, the sanctions will take effect on a date determined by FINRA.

Rule 8313(e) states that notwithstanding paragraph (d) of the rule, expulsions and bars imposed in AWCs and settlements shall become effective upon approval or acceptance by the NAC and information regarding any sanctions imposed may be released to the public immediately upon such approval or acceptance. The proposed rule change would eliminate paragraph (e) as unnecessary because paragraph (a) of the proposed rule would govern the publication of AWCs and settlements, and AWC and settlement documents address the effective dates for the sanctions imposed pursuant to such decisions.

Rule 8313(f) currently provides that a decision called for review by the Board shall be stayed pending a final determination by the Board. The proposed rule change would delete paragraph (f) because it does not address publication standards and whether a finding is stayed pending a decision by the Board, or otherwise, is governed by the appropriate provision(s) in the Rule 9000 Series.

In addition, the proposed rule change would eliminate Rule 8313(j), which states that cancellations of membership or registration pursuant to the FINRA By-Laws and rules shall be released to the public as soon after the effective date of the cancellation as possible. The proposed rule change would delete paragraph (j) as unnecessary because decisions regarding such sanctions would be released to the public pursuant to paragraph (a) of the proposed rule, and it is standard FINRA practice to release information in a timely and efficient manner.

Finally, the proposed rule change would delete as unnecessary Rule 8313(k), which provides that information released to the public must identify the rules violated, describe the conduct constituting such violation, and may also identify the member with which an individual was associated at the time the violations occurred if such identification is determined by FINRA to be in the public interest. FINRA notes that it is standard practice for this information to be included in disciplinary items released to the public and FINRA intends to continue this practice under the proposed rule.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 120 days following publication of the *Regulatory Notice* announcing Commission approval. The proposed rule change would apply prospectively beginning on the effective date established by FINRA following Commission approval. Once effective, the proposed rule change will govern the release of disciplinary and other information for all new and pending matters.[22]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[23] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed amendments aim to provide clarity and consistency regarding the release by FINRA of disciplinary and other information to the public. To that end, the proposed rule change would establish general standards for the release of disciplinary information to the public to provide greater access to information regarding FINRA's disciplinary actions, clarify the scope of information subject to Rule 8313, and eliminate provisions that do not address the release of information by FINRA to the public. FINRA believes that greater access to information regarding its disciplinary actions provides valuable guidance and information to members, associated persons, other regulators, and the investing public.

FINRA also believes that the current publicity thresholds have created an inconsistency in FINRA's release of information given that information that may not be disclosed under the current rule is often publicly available through other sources. For example, the proposed rule change would allow FINRA to make available in the FDA (or otherwise) disciplinary information that is available in BrokerCheck, but is not eligible for publication by FINRA under the current publicity thresholds, and would better align FINRA's publication standards with the practices of the SEC and other regulators.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA does not believe that the proposed rule change will have a significant negative impact on members and associated persons or impose new costs. Rather, FINRA believes that the proposed rule change may have a positive impact on members, associated persons, other regulators, and investors because greater access to information regarding FINRA's disciplinary actions provides valuable guidance and information to all parties.

Among other things, FINRA is proposing to eliminate the restrictions to publication in the current rule by eliminating the publicity thresholds because releasing detailed disciplinary information to the public can serve to deter and prevent future misconduct and to improve overall business standards in the securities industry. It also allows investors to consider firms' and representatives' disciplinary histories when considering whether to engage in business with them. In addition, firms may use such information to educate their associated persons as to compliance matters, highlighting potential violations and related sanctions and inform their own compliance procedures. Further, any firm or individual facing allegations of rule violations may access existing disciplinary decisions to gain greater insight on related facts and sanctions. Moreover, FINRA does not anticipate that the proposed rule change will negatively impact members, associated persons, or investors because information that may not be disclosed under the current rule is often already publicly available through other sources such as BrokerCheck.

FINRA considered continuing its current practice of redacting identifying information regarding statutorily disqualified individuals and member firms in statutory disqualification decisions released to the public. However, FINRA is proposing to release such information unredacted because it determined that access to information regarding the identity of statutorily disqualified individuals and member firms, in addition to the underlying conduct that led to a statutory disqualification, and the safeguards imposed, including restrictions on permissible activities and heightened supervisory plans, provides investors with valuable information about the individuals and firms with whom they

[22] Offers of settlement and AWCs are entered into with the express agreement that the publication of such items will be pursuant to Rule 8313. Accordingly, publication of any order accepting an offer of settlement or AWC entered into prior to the effective date of the proposed rule change would be governed by the version of the rule in effect as of the date of such offer or AWC.

[23] 15 U.S.C. 78*o*-3(b)(6).

conduct business. Further, to the extent that information regarding the underlying conduct that results in an individual or firm being subject to a statutory disqualification decision is reported to the CRD system, identifying information regarding such individuals and firms is available in BrokerCheck. In contrast, FINRA considered releasing MAP decisions unredacted and determined that the potential harm to firms in releasing such decisions in unredacted form would not be outweighed by any investor protection benefit. In this regard, applicants typically are required to disclose proprietary information, including, among other things, business plans, financial plans, and commercial agreements. Moreover, denials of MAP often are related solely to operational concerns. As such, FINRA is proposing to continue releasing such decisions in redacted form.

An alternative to the proposed rule change would be to maintain the publication standards in the current rule. FINRA believes that the current rule lacks clarity and consistency and does not serve the public interest because members, associated persons, other regulators, and investors would all benefit from greater access to information relating to FINRA's disciplinary actions, and information that is limited for publication under the current rule is often available from other sources.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2013–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2013–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the FINRA's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2013–018, and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06718 Filed 3–22–13; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69174; File No. SR–NYSEMKT–2013–26]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain Rules To Accommodate the Trading of Option Contracts Overlying 10 Shares of Certain Securities

March 19, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 18, 2013, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rules to accommodate the trading of option contracts overlying 10 shares of a security (''mini-options contracts''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 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 Exchange recently adopted a Commentary to Rule 901 which establishes the listing and trading of mini-options contracts (which represent a deliverable of 10 shares of an underlying, as opposed to the deliverable of 100 shares of an underlying for standard options contracts).[4] This filing is to clarify the treatment of mini-options contracts with respect to certain trading rules. Specifically, this proposal seeks to: (a) Permit mini-options to trade in the same minimum increments as standard contracts for the same underlying, (b) include mini-options in calculations for the Risk Limitation Mechanism, and (c) establish the trading of Qualified Contingent Cross Orders in mini-options.

Trading Differentials

Of the five securities on which mini-options are permitted, four of them (SPY, AAPL, GLD and AMZN) participate in the penny pilot. Under the penny pilot, (1) the minimum price variation for AAPL, GLD and AMZN options is $0.01 for all quotations in series that are quoted at less than $3.00 per contract and $0.05 for all quotations in series that are quoted at $3.00 per contract or greater and (2) the minimum price variation for SPY options is $0.01 for all quotations in all series.[5]

This proposed rule change will permit the minimum trading increment for mini-options contracts to be identical to the minimum trading increment applicable to standard options on the same underlying security and is consistent with recently approved proposals of other markets.[6] The Exchange believes having different trading increments for mini-options contracts than those permitted for standard options on the same underlying security would be detrimental to the success of this new product offering and would also lead to investor confusion. The Exchange notes that the Commission approved mini-options contracts on SPY, AAPL, GLD, GOOG and AMZN because of their high price and current volume levels and because of the level of retail investor participation in trading options in these classes. Mini-options are a natural extension to the options overlying these securities and therefore should retain the most important characteristic, *i.e.,* trading increments. The Exchange believes that by reducing the minimum trading increments for mini-options contracts, the proposed rule change will provide market participants with meaningful trading opportunities in this product. Further, quoting and trading in smaller increments will enable market participants to trade mini-options with greater precision as to price. Providing these more refined increments will permit the Exchange's market makers the opportunity to provide better fills (meaning less spread than the current wider minimum increments rules allow) to customers. Therefore, the Exchange proposes to amend its rules to permit the listing and trading of mini-options in the same increment permitted for standard options on the same underlying security. The Exchange notes that it is not requesting penny pricing for all of the five securities eligible for mini-options trading; but rather is seeking to permit matched penny pricing for mini-options contracts on those securities for which standard options already trade in pennies.

With this proposed rule change, although mini-options contracts would be trading in narrower increments, they would not be considered part of the penny pilot.

The Exchange's proposal to quote and trade certain option classes that are outside of the penny pilot in $0.01 increments is not novel. Specifically, the Commission has permitted the International Stock [sic] Exchange, LLC (''ISE'') to set the minimum increment for all Foreign Currency Options traded on the ISE at $0.01 regardless of the price at which the option is quoted.[7] The Commission has also previously approved a proposal by NASDAQ OMX PHLX, Inc. permitting that exchange to also trade its foreign currency options in $0.01 increments.[8]

Further, the Exchange agrees with the statements made by the Commission in approving similar filings of ISE and Chicago Board Options Exchange, Incorporated (''CBOE''). In particular, the Exchange believes that maintaining consistency in trading increments between mini-options contracts and standard options contracts for the same underlying security: (a) Should help prevent investor confusion that could otherwise result if the standard and mini-options were not aligned;[9] (b) should provide additional market benefits (such as attracting additional liquidity providers who already make markets in the underlying symbols which hopefully would result in more efficient pricing via arbitrage);[10] and (c) is consistent with the current operation of member firms' systems (which are programmed to use root symbols and would not be able to assign different minimum price variations to mini-options contracts).[11]

In support of this proposed rule change, the Exchange proposes to amend its Rules 903 and 960NY. As to Rule 960NY, the Exchange proposes to add new Commentary .03 which provides that the minimum trading increment for mini-options contracts shall be determined in accordance with Commentary .15(d) to Rule 903. Proposed Commentary .15(d) to Rule 903 provides that the minimum trading increment for mini-options contracts shall be the same as the minimum trading increment permitted for standard options on the same underlying security.

With regard to the impact of this proposal on system capacity, the Exchange represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with this proposal. The Exchange does not believe that this increased traffic will become unmanageable since mini-options are limited to a fixed number of underlying securities.

Treatment of Mini-Options

Pursuant to Rule 928NY, the Exchange employs a number of mechanisms designed to mitigate risks of ATP Holders and serve as additional safeguards that could help limit potential harm from extreme number of executions. The Exchange believes that, since these mechanisms are intended to prevent repetitive executions, for purposes of calculating the trade counter, mini-options contracts should be calculated as part of the underlying symbol. As a result, the Exchange proposes to amend Rule 928NY to include mini-options contracts in the Risk Limitation Mechanism. Accordingly, ATP Holders will be able to continue to customize their thresholds based upon underlying symbol.

[4] *See* Securities Exchange Act Release No. 69131 (March 13, 2013) (SR–NYSEMKT–2013–23).

[5] *See* Exchange Rule 960NY.

[6] *See* Securities Exchange Act Release No. 69124 (March 12, 2013) (approving SR–CBOE–2013–16 and SR–ISE–2013–08).

[7] *See* Securities Exchange Act Release No. 57019 (December 20, 2007), 72 FR 73937 (December 28, 2007) (SR–ISE–2007–120).

[8] *See* Securities Exchange Act Release No. 56933 (December 7, 2007), 72 FR 71185 (December 14, 2007) (Approving SR–PHLX–2007–70).

[9] *See supra* note 6 at 4–5.

[10] *See supra* note 6 at 5.

[11] *See supra* note 6 at 6.

Certain orders have minimum thresholds assigned by rule. Given the reduced delivery of mini-options contracts, there is a risk that those thresholds could be circumvented by the use of mini-options contracts instead of (or in combination with) standard options. To make clear that such loopholes are not available, the Exchange seeks to establish the standards that apply to mini-options contracts.

Similarly, the Exchange also proposes to amend the definition of Qualified Contingent Cross Order to accommodate the reduced deliverables of mini-options contracts. When Qualified Contingent Cross Orders were originally proposed, they had a size requirement of only 500 standard contracts.[12] However, in gaining ultimate approval the minimum size was increased to the current level of 1000 standard contracts representing 100,000 shares.[13] The reduced deliverable of mini-options contracts potentially threatens that standard in a manner that was never intended and not discussed in the adoption of mini-options contracts.[14] As such, to maintain the current threshold, the Exchange proposes that orders for mini-options must be of 10,000 contracts or more to qualify as a Qualified Contingent Cross Order.[15] Without such a change, market participants could trade Qualified Contingent Cross Orders for the underlying share equivalent of merely 100 standard contracts.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[16] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[17] in particular, because it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that investors and market participants would benefit from the current rule proposal because it (a) assures that standard options and mini-options on the same underlying security will trade in similar increments and therefore provide market participants meaningful trading opportunities and enable [sic] to trade mini-options contracts with greater precision as to price; (b) permit OTP [sic] Holders to continue to customize their thresholds based upon underlying symbol by including mini-options in the Risk Limitation Mechanism; and (c) allow market participants to execute Qualified Contingent Cross Orders in mini-options contracts. The Exchange believes that these proposed rule changes will avoid investor confusion that could otherwise develop through the trading of mini-options contracts alongside standard options. Further, the Exchange believes that establishing these amendments prior to the commencement of trading of mini-options contracts would lessen investor and marketplace confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the proposed amendment to trading differentials is based upon recently approved rule amendments by other option exchanges. Since mini-options contracts are permitted on multiple-listed classes, other exchanges that have received approval to trade mini-options contracts will have the opportunity to similarly amend their rules to incorporate mini-options into risk mechanisms and to accommodate Qualified Contingent Orders in mini-options contracts.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may coincide with the anticipated launch of trading in mini-options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[20] Waiver of the operative delay will allow the Exchange to implement its proposal consistent with the commencement of trading in mini-options as scheduled and expected by members and other participants on March 18, 2013. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File

[12] *See* Securities Exchange Act Release No. 60584 (September 3, 2009) [sic], 74 FR 45663 (September 3, 2009) (SR–ISE–2009–35).

[13] *See* Securities Exchange Act Release No. 63955 (March 2, 2011) [sic], 76 FR 11533 (March 2, 2011) (SR–ISE–2010–73).

[14] *See supra* note 4.

[15] It should be noted that the proposed language does not permit the combining of mini-options contracts with standard contracts in order to reach the minimum threshold. For example, an order to trade 900 standard contracts and 1000 mini-options contracts would not qualify for treatment as a Qualified Contingent Cross.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Number SR–NYSEMKT–2013–26 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–26. 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–NYSEMKT–2013–26 and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06715 Filed 3–22–13; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69152; File No. SR–NASDAQ–2013–047]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit the Minimum Price Variation for Mini Options To Be the Same as Permitted for Standard Options on the Same Security

March 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 14, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the rules of the NASDAQ Options Market (''NOM'') in Chapter IV (Securities Traded on NOM), Supplementary Material .08 to Section 6 (Series of Options Contracts Open for Trading), and Chapter VI (Trading Systems), Section 5 (Minimum Increments) to permit the minimum price variation for Mini Options contracts that deliver 10 shares to be the same as permitted for standard options that deliver 100 shares on the same security.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to change the rules of NOM in Chapter IV, Supplementary Material .08 to Section 6, and Chapter VI, Section 5 to permit the minimum price variation for Mini Options contracts that deliver 10 shares to be the same as permitted for standard options that deliver 100 shares on the same security.

This filing is based on a recent proposal of Chicago Board Options Exchange, Inc. (''CBOE''), with virtually identical rule text in CBOE Rules 6.42 and 5.5.[3]

The Exchange recently amended its rules to allow for the listing of Mini Options that deliver 10 physical shares on SPDR S&P 500 (''SPY''), Apple, Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG'') and Amazon.com Inc. (''AMZN'').[4] Mini Options trading is expected to commence in March 2013. Prior to the commencement of trading Mini Options, the Exchange proposes to establish and permit the minimum price variation for Mini Option contracts to be the same as permitted for standard options on the same security. In addition to giving market participants clarity as to the minimum pricing increments for Mini Options, the filing would harmonize penny pricing between Mini Options and standard options on the same security.

Of the five securities on which Mini Options are permitted, four of them (SPY, AAPL, GLD and AMZN) participate in the Penny Pilot Program.[5] Under the Penny Pilot Program:

• The minimum price variation for AAPL, GLD and AMZN options is $0.01 for all quotations in series that are quoted at less than $3 per contract and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69124 (March 12, 2013) (SR–CBOE–2013–016; SR–ISE–2013–08) (approval order).

[4] *See* Securities Exchange Act Release No. 68720 (January 24, 2013), 78 FR 6382 (January 30, 2013) (SR–NASDAQ–2013–011) (notice of filing and immediate effectiveness of proposed rule change establishing Mini Options on NOM).

[5] The Penny Pilot was established in March 2008 and was last extended in December 2012. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008)(SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); and 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR–NASDAQ–2012–143) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2013).

$0.05 for all quotations in series that are quoted at $3 per contract or greater; and

- The minimum price variation for SPY options is $0.01 for all quotations in all series.[6]

In the lead up to the launch of Mini Options trading on an industry-wide basis, firms with customer bases of potential product users have indicated a preference that premium pricing for Mini Options match what is currently permitted for standard options that deliver 100 physical shares on the same securities. The Exchange understands that firms' systems are configured using the ''root symbol'' of an underlying security and cannot differentiate, for purposes of minimum variation pricing, between contracts on the same security. Mini Options will be loaded into firms' systems using the same ''root symbol'' that is used for standard options on the same security. As a result, it is believed that existing systems will not be able to assign different minimum pricing variations to different contracts on the same security. As a result, firms have indicated their preference that there be matched pricing between Mini Options and standard options on the same security because their systems, which are programmed using ''root symbols,'' would not be able to assign different minimum pricing variations to Mini Options and standard options on the same security.

Because Mini Options are a separate class from standard options on the same security, Mini Options would have to qualify separately for entry into the Penny Pilot Program. This, however, is not possible by product launch (or possibly ever) for a number of reasons. First, there is a six calendar month trading volume criteria for entry into the Penny Pilot Program, which Mini Options cannot satisfy prior to launch. Second, even if Mini Options met the trading volume criteria, replacement classes are only added to the Penny Pilot Program on the second trading day following January 1 and July 1 in a given year. Finally, there is a price test for entry into the Penny Pilot Program which excludes ''high premium'' classes, which are defined as classes priced at $200 per share or higher at the time of selection. As of the date of this filing, three of the five securities (AAPL, AMZN and GOOG) eligible for Mini Options would be excluded as ''high premium'' classes, even though two of those securities (AAPL and AMZN) are in the Penny Pilot Program for standard options. The Exchange notes that GOOG is not in the Penny Pilot Program.[7]

The Exchange, therefore, is proposing to establish a pricing regime for Mini Options separate from the Penny Pilot Program that permits the minimum price variation for Mini Option contracts to be the same as permitted for standard options on the same security, which would encompass penny pricing for Mini Option contracts on securities that participate in the Penny Pilot Program.[8]

As to the Penny Pilot Program, the Exchange believes that there are several good reasons to allow penny pricing for Mini Options on securities that currently participate in the Penny Pilot Program, without requiring Mini Options to separately qualify for the Penny Pilot Program. First, the Penny Pilot Program applies to the most actively-traded, multiply-listed option classes. Likewise, the five securities which may underlie Mini Options were chosen because of the significant liquidity in standard options on the same security. The Exchange also believes that the marketplace and investors will be expecting the minimum price variation for contracts on the same security to be the same. Second, one of the primary goals of the Penny Pilot Program is to narrow the bid-ask spreads of exchange-traded options to reduce the cost of entering and exiting positions. This same goal can similarly be accomplished by permitting penny pricing for Mini Option contracts on securities that already participate in the Penny Pilot Program. Finally, the Exchange believes that penny pricing for Mini Options is desirable for a product that is geared toward retail investors. Mini Options are on high priced securities and are meant to be an investment tool with more affordable and realistic prices for the average retail investor. Penny pricing for Mini Options on securities that are currently in the Penny Pilot Program would benefit the anticipated users of Mini Options by providing more price points. The Exchange notes that it is not requesting penny pricing for all of the five securities eligible for Mini Options trading; but rather is seeking to permit matched penny pricing for Mini Options on those securities for which standard options already trade in pennies.

To effect the current proposed rule changes, the Exchange proposes to add new language in Chapter IV, Supplementary Material .08 to Section 6, and in Chapter VI, Section 5. As to Chapter VI, Section 5, the Exchange proposes adding new subsection (a)(4) that has an internal cross reference to new proposed Chapter IV, Supplementary Material .08(d) to Section 6 as the provision that sets forth the minimum price variation for bids and offers for Mini Options. As to Supplementary Material .08 to Section 6, the Exchange proposes adding new subsection (d), which would provide as follows:

> The minimum price variation for bids and offers for Mini Options shall be the same as permitted for standard options on the same security. For example, if a security participates in the Penny Pilot Program, Mini Options on the same underlying security may be quoted in the same minimum increments, e.g., $0.01 for all quotations in series that are quoted at less than $3 per contract and $0.05 for all quotations in series that are quoted at $3 per contract or greater, $0.01 for all SPY option series, and Mini Options do not separately need to qualify for the Penny Pilot Program.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with this proposal. The Exchange does not believe that this increased traffic will become unmanageable since Mini Options are limited to a fixed number of underlying securities.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[9] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative

[6] Chapter VI, Section 5(a)(3).

[7] The minimum price variation for standard options on GOOG is $0.05 for all quotations in series that are quoted at less than $3 per contract and $0.10 for all quotations in series that are quoted at $3 per contract or greater. *See* Chapter VI, Section 5(a).

[8] As noted in the Exchange's original Mini Option filing, Mini Options are limited to five securities and any expansion of the program would require that a subsequent proposed rule change be submitted to the Commission. The current proposal is limited to the five securities originally approved to underlie Mini Options. The Exchange anticipates that a similar minimum pricing variation regime would be included in any rule change to expand the Mini Option program. *See* Securities Exchange Act Release No. 68720 (January 24, 2013), 78 FR 6382 (January 30, 2013) (SR–NASDAQ–2013–011) (notice of filing and immediate effectiveness of proposed rule change establishing Mini Options on NOM).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that investors and other market participants would benefit from the current rule proposal because it would clarify and establish the minimum price variation for Mini Options prior to the commencement of trading. The Exchange believes that the marketplace and investors will be expecting the minimum price variation for contracts on the same security to be the same. As a result, the Exchange believes that this change would lessen investor and marketplace confusion because Mini Options and standard options on the same security would have the same minimum price variation.

While price protection between Mini Options and standard options on the same security is not required, the Exchange believes that consistency between Mini Options and standard options as to the minimum price variation is desirable and is designed to promote just and equitable principles of trade. Matching the minimum price variation between Mini Options and standard options on the same security would help to eliminate any unnecessary arbitrage opportunities that could result from having contracts on the same underlying security traded in different minimum price increments. Similarly, matched minimum pricing would hopefully generate enhanced competition among liquidity providers. The Exchange believes that matched pricing for Mini Options and standard options on the same security would attract additional liquidity providers who would make markets in Mini Options and standard options on the same security. In addition to the possibility of more liquidity providers, the Exchange believes that the ability to quote Mini Options and standard options on the same security in the same minimum increments would hopefully result in more efficient pricing via arbitrage and possible price improvement in both contracts on the same security. The Exchange also believes that allowing penny pricing for Mini Options on securities that currently participate in the Penny Pilot Program (without Mini Options having to qualify separately for entry into the Penny Pilot Program) will benefit the marketplace and investors because penny pricing in Mini Options may also accomplish one of the primary goals of the Penny Pilot Program, which is to narrow the bid-ask spreads of exchange-traded options to reduce the cost of entering and exiting positions. Finally, the proposed rule would be beneficial from a logistical perspective since firms' existing systems are configured using the ''root symbol'' of an underlying security and would not be able to assign different minimum pricing variations to Mini Options and standard options on the same security.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, since Mini Options are permitted on multiply-listed classes, other exchanges that have received approval to trade Mini Options will have the opportunity to similarly establish the minimum price variation for Mini Options prior to the anticipated launch on or about March 18, 2013. The Exchange also believes that the proposed rule change will enhance competition by allowing products on the same security to be priced in the same minimum price increments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may coincide with the anticipated launch of trading in Mini Options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] Waiver of the operative delay will allow the Exchange to implement its proposal consistent with the commencement of trading in Mini Options as scheduled and expected by members and other participants on March 18, 2013. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–047. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NASDAQ–2013–047 and should be submitted on or before April 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06731 Filed 3–22–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69175; File No. SR–ISE–2013–17]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Market Maker Quoting Requirements

March 19, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 2013, 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, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to make changes to market maker quoting requirements. The text of the proposed rule change is available on the Exchange's Web site *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 804 regarding market maker quoting requirements to: (1) Eliminate Competitive Market Maker (''CMM'') pre-opening obligations; (2) change the CMM quoting requirements to be based on a percentage of time; and (3) specify compliance standards for market maker quoting obligations. All of the proposed changes are consistent with the requirements of other options exchanges. In this respect, the Exchange believes that the current quotation requirements act as a competitive disadvantage that limits its ability to attract liquidity providers to the ISE. Moreover, applying quotation standards that are substantially similar to other options exchanges will remove a significant compliance burden on members who provide liquidity across multiple options exchanges.

Background

There have been a number of recent rule filings from other options exchanges related to market maker quotation requirements that have brought the rules of most other options exchanges substantially in line: The Chicago Board Options Exchange amended its rules relating to continuous electronic quoting requirements in July 2012;[3] the NASDAQ Options Market (''NOM'') eliminated its market maker pre-opening obligations in August 2012;[4] and NASDAQ OMX PHLX (''Phlx'') amended its rules to specify that compliance with market maker continuous quoting rules would be determined on a monthly basis.[5] In each of these filings, the exchanges explained how the proposed changes were substantially similar to the requirements of other options exchanges and represented that applying a differing quoting standard placed the exchanges at a competitive disadvantage. ISE now seeks to make similar changes to its rules so that they are substantially similar to other options exchanges.

Current Quotation Requirements

Pursuant to ISE Rule 804(e)(1), Primary Market Makers (''PMMs'') must maintain continuous quotations in all of the series of the options classes to which they are appointed. CMMs do not have a minimum number of options classes for which they must enter quotations. Pursuant to ISE Rule 804(e)(2)(ii), a CMM may initiate quoting in options classes to which it is appointed intraday, but only up to the number of appointed options classes for which it participated in the opening rotation on that day. Whenever a CMM enters a quote in an options class to which it is appointed, it must maintain continuous quotations for that series and at least 60% of the series of the options class listed on the Exchange until the close of trading that day. Preferenced CMMs must maintain continuous quotations for 90% of the series. Rule 804 does not define the meaning of ''continuous'' nor specify any compliance standards associated with the quoting requirements.

CMM Pre-Opening Obligation

The Exchange proposes to eliminate the requirement that CMMs quote before the opening in a minimum number of options classes to put them on par with market makers on other options

[3] Exchange Act Release No. 67410 (July 11, 2012), 77 FR 42040 (July 17, 2012) (SR–CBOE–2012–064) (the ''CBOE Release''). This rule change was effective upon filing pursuant to Section 19(b)(3)(A) of the Act.

[4] Exchange Act Release No. 67722 (August 23, 2012), 77 FR 52375 (August 29, 2012) (SR–NASDAQ–2012–095) (the ''NOM Release''). This rule change was effective upon filing pursuant to Section 19(b)(3)(A) of the Act.

[5] Exchange Act Release No. 67700 (August 21, 2012), 77 FR 51835 (August 27, 2012) (the ''Phlx Release''). This rule change was effective upon filing pursuant to Section 19(b)(3)(A) of the Act.

exchanges that do not have pre-market quoting obligations.[6] As explained above, ISE Rule 804(e)(2)(ii) currently requires CMMs to participate in the opening in at least half of the classes in which it enters quotations on a daily basis. The Exchange proposes to eliminate this requirement so that CMMs are not restricted in the number of options classes they quote during regular trading hours on this basis. As a result, CMMs will not have an obligation to quote any options classes prior to the opening, just as other options exchanges (*e.g.,* Phlx and NOM) do not impose a pre-opening quoting obligation on their electronic market makers.

Exchange market makers have indicated that the Exchange's requirement to participate in the opening for a minimum number of securities is a deterrent to providing liquidity on the ISE. Such market makers have indicated that, unlike other options exchanges such as Phlx and NOM, the current ISE rule restricts the number of option classes in which they enter quotations during regular market hours. Thus, the proposed rule change will level the playing field with respect to pre-opening obligations while encouraging greater liquidity on the ISE during regular trading hours.

Moreover, the Exchange notes that under the current structure of the rule, options classes currently may not have CMM participation in the opening process and that in such cases the PMM provides liquidity when necessary. Accordingly, the proposal will have no impact on the functioning of the ISE's opening process, but will serve to encourage greater liquidity during regular trading hours by allowing CMMs to quote additional options classes. The Exchange further believes that eliminating pre-opening obligations would be pro-competitive in that it will attract more market makers to the Exchange, thereby increasing the amount of liquidity on the ISE.

Calculation of CMM Continuous Quotation Requirements

As noted above, currently under ISE Rule 804(e)(2)(iii), once a CMM chooses to enter quotations in an options class, it is required to quote 60% of the series of the options class (90% for preferenced CMMs) until the end of the trading day. The Exchange proposes to modify this requirement to be 60% *of the time an options class is open for trading on the Exchange* (90% of the time for preferenced market makers). Currently, some options exchanges, such as NYSE Amex and NYSE Arca, apply a 60% minimum quoting requirement as a percentage of time rather than as a percentage of the series of a class.[7] Under the proposal, the Exchange will calculate the percentage of time a market maker quotes by dividing the number of minutes a market maker entered quotes in series of an options class (the numerator) by the total minutes all series of the options class were open for trading on the Exchange (denominator).[8]

The Exchange believes that imposing minimum CMM quoting requirements based on a percentage of series or as a percentage of time achieves the same result in terms of the amount of liquidity being provided by a market maker, but that measuring market maker participation in terms of a percentage time is a more reasonable and fair way of evaluating whether market makers are providing appropriate levels of liquidity to the market. For example, when measured as a percentage of series, a market maker that continuously quoted 80% of the series of an options class for an entire day, except for a 5 minute period where it quoted only 58% of the series, may be deemed in violation of the current minimum quoting requirement, even though such market maker provided more liquidity to the market than a CMM that continuously quoted the minimum 60% of the series for the entire day.[9] Accordingly, the Exchange believes that measuring the minimum quoting requirements in terms of a percentage of time, in the same manner as NYSE Amex and NYSE Arca are doing currently, will more fairly achieve the objective of the minimum quoting requirements.

Quotation Compliance Standards

Rule 804 does not currently contain any standards by which compliance with market maker continuous quotation requirements are measured. Specifically, Rule 804 does not provide any guidance on how market makers satisfy their continuous quotation requirements, nor the method by which the Exchange reviews whether a market maker has met its quoting obligations. In contrast, Phlx and CBOE rules specify that market makers must quote 90% of the time to meet their continuous quotation requirements.[10] Many exchanges also have established a time period of one month to determine whether a market maker has met its quoting obligation, stating that compliance with the continuous quoting obligations will be determined collectively across all options classes on a monthly basis.[11] These exchanges' rules also explicitly state that periods where market makers fail to maintain continuous quotes due to technical problems are not considered when determining whether market makers satisfied their quoting obligations.[12] The Exchange proposes to adopt similar provisions under ISE Rule 804.

Specifically, the Exchange proposes to state in Supplementary Material to Rule 804 that PMMs shall be deemed to have provided continuous quotes pursuant to Rule 804(e)(1) if they provide two-sided quotes for 90% of the time that the Exchange is open for trading.[13] The Exchange further proposes to state that compliance with the PMM and CMM quoting requirements will be applied to all options classes quoted collectively on a daily basis and will be determined on a monthly basis.[14] Further, the Exchange proposes to specify that if a technical failure or limitation of a system of the Exchange prevents a

[6] *See* NOM Release, *supra* note 4; and Phlx Rule 1014(b)(ii)(D)(1) (continuous quoting requirements do not include a requirement to enter quotes before the opening).

[7] NYSE Amex Rule 925.1NY(c); and NYSE Arca Rule 6.37B(c).

[8] For example, if a market maker quotes an options class that has 150 series all of which opened at 9:30 a.m. the denominator will be 150 × 390 minutes, or 58,500 minutes. The minimum CMM quoting requirement would therefore be 35,100 minutes (60% of 58,500 minutes).

[9] If an options class has 100 options series, a market maker that quotes 60% of the series continuously for an entire trading day provides liquidity for 60 series × 390 minutes, which equals 23,400 minutes. A market maker that provides liquidity for 80 series for 385 minutes and 58 series for 5 minutes provides liquidity for a total of 31,090 minutes.

[10] Phlx Rule 1014(b)(ii)(D); CBOE Rule 1.1(ccc) (as amended by CBOE Release, *supra* note 3).

[11] Phlx Release, *supra* note 5; NYSE Amex Rule 925.1NY and NYSE Arca Rule 6.37B.

[12] *Id.* Market makers will be required to promptly notify the Exchange of any technical problems that prevent them from maintaining continuous quotes. In normal circumstances, such notification should be made on the same trading day.

[13] This provision would apply only to PMMs and not to CMMs, as CMMs would no longer have an obligation to continuously quote a minimum number of series under the proposal. To calculate whether a PMM has maintained quotations for at least 90% of the time, the Exchange will divide the total number of minutes a PMM maintained quotations in options series of a class (the numerator) by the total minutes all series of the options class were open for trading on the Exchange (the denominator).

[14] Compliance with market maker quoting obligations will be determined on a monthly basis. However, the ability of the Exchange to determine compliance on a monthly basis does not: (1) Relieve market makers from their obligation to meet daily quoting requirements in Rule 804; and (2) prohibit the Exchange from bringing disciplinary action against a market maker for failure to meet its daily quoting requirements set forth in Rule 804. The Exchange provides daily reports to market makers to enable them to monitor their compliance with quoting requirements. The Exchange will continue to provide such daily reports and to monitor market maker compliance on a daily basis.

market maker from maintaining, or prevents a market maker from communicating to the Exchange, timely and accurate quotes, the duration of such failure will not be considered in determining whether the market maker has satisfied its quoting obligations. Additionally the proposed text states that the Exchange may consider other exceptions to the continuous quoting obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances. Finally, the Exchange proposes to specify that the CMM continuous quoting requirements do not include adjusted options series or long-term options.[15] All of these proposed changes are consistent with the rules of other options exchanges.[16]

The proposal assures that compliance standards for two-sided quoting will be the same on the ISE as on other options exchanges. The Exchange believes these standards are appropriate, and that applying consistent standards across options exchanges lessens compliance burdens on members and reduces the potential for regulatory arbitrage. Specifically, specifying that PMMs satisfy their quoting obligations if they quote at least 90% of the time will provide clarity and allow PMMs to better monitor whether they are in compliance with their continuous quoting obligations.[17] Moreover, the Exchange believes that applying the quoting requirements for market makers collectively across all options classes and measuring such compliance over a monthly basis is a fair and more efficient way for the Exchange and market participants to evaluate compliance with market maker continuous quoting requirements.[18]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 [19] (the ''Act'') in general, and furthers the objectives of Section 6(b)(5) of the Act [20] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. All of the proposed changes are consistent with standards currently in place at other options exchanges. As such, the proposed change conform ISE market maker obligations to the requirements of competing markets, which will promote the application of consistent trading practices across markets that provide market makers with similar benefits. In this respect, the Exchange notes that CBOE, Phlx and NYSE Amex all have market structures that allocate trades to market makers in a manner similar to the ISE.[21] However, the Exchange also notes that the same market maker obligations currently are being applied on competitive exchanges to options classes traded in a price-time market structure (such as Arca). While these different markets and market structures may provide slightly different benefits to market makers, the Exchange does not believe these differences are sufficient to out-weigh the significant existing competitive burden applying more stringent quotation requirements places on the Exchange.

Specifically, with respect to the proposal to eliminate the requirement that CMMs quote before the opening in a minimum number of options classes, the Exchange believes that the proposal removes a requirement that is unnecessary, as evidenced by the fact that it does not exist on other competitive markets. The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can, and do, send order flow and/or provide liquidity to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. With this proposal, ISE market makers will be relieved of a requirement that limits their ability to provide liquidity during regular market hours and places a burden upon them that does not exist on other competitive markets with similar market structures. The Exchange believes that eliminating pre-opening quoting obligations will attract more CMMs to the Exchange, thereby increasing competition and liquidity on the ISE.

With respect to the proposal to base the CMMs minimum quotation requirements on a percentage of time rather than as a percentage of series, the Exchange believes that that measuring market maker participation in terms of a percentage of time is a more reasonable and fair way of evaluating whether market makers are providing appropriate levels of liquidity to the market. Moreover, the Exchange believes that measuring the minimum quoting requirements in terms of a percentage of time, as NYSE Amex and NYSE Arca are doing currently, will provide a better measure of the level of liquidity being provided by market makers.

Finally, with respect to compliance standards, the Exchange believes that adopting the proposed standards will enhance compliance efforts by market makers and the Exchange, and are consistent with the requirements currently in place on other exchanges. The proposal ensures that compliance standards for continuous quoting will be the same on the Exchange as on other options exchanges, and the proposal to exclude adjusted series and long-term options from the CMM continuous quoting requirements assures that the quotation requirements are being applied similarly across exchanges,

[15] Adjusted options series are series wherein, as a result of a corporate action by the issuer of the underlying security, one options contract in the series represents the delivery of other than 100 shares of underlying stock or exchange-traded fund shares. Long-term options are series with a time to expiration of nine (9) months or greater for options on equities and exchange-traded funds, and options with a time to expiration of twelve (12) months or greater for index options. CMMs may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a CMM has met the obligation contained in paragraph (e)(2)(iii). Thus, such series are not included in the denominator nor are any quotes entered in such series included in the numerator when the Exchange calculates the percentage of time a market maker has quoted an options class. *See supra* note 8 and accompanying text. This exclusion is limited to CMM quoting requirements. The PMM quoting requirements include all series of an appointed options class, including adjusted series and long-term options. A CMM that chooses to quote adjusted series and/or long-term options must meet all of the quoting obligations applicable to CMMs generally, and may be preferenced in such series and receive enhanced allocations pursuant to ISE Rule 713, Supplementary Material .03, only if it complies with the heightened 90% quoting requirement contained in Rule 804(e)(2)(iii).

[16] With respect to compliance standards, see CBOE Rule 1.1(ccc); NYSE Arca Rule 6.37B; NYSE Amex Rule 925.1NY; and Phlx Rule 1014(d)(4). With respect to excluding adjusted series and long term options from the CMM quoting obligation, see CBOE Rule 8.7(d)(ii)(B) (requiring market makers to maintain continuous electronic quotes in 60% of the non-adjusted options series that have a time to expiration of less than nine months); NYSE Arca Rule 6.37B, Commentary .01; NYSE Amex Rule 9.25.1NY, Commentary .01; and Phlx Rule 1014(d)(4).

[17] *See supra* note 14.

[18] On the basis of the daily reports, the Exchange will continue to inform market makers if they are failing to achieve their quoting requirements. Moreover, on the basis of daily monitoring activity, the Exchange can determine whether market makers violated any other Exchange rules such as, for example, Rule 400 regarding just and equitable principles of trade. Such daily monitoring will allow the Exchange to investigate unusual activity and to take appropriate regulatory action.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *See, e.g.,* CBOE Rule 6.45A and NYSE Amex Rule 964NY.

such as the CBOE, Phlx, NYSE Amex and NYSE Arca.[22]

While under the proposal the quoting requirements are changing, the Exchange does not believe that these changes reduce the overall obligations applicable to market makers. In this respect, the Exchange notes that such market makers are subject to many obligations, including the obligation to maintain a fair and orderly market in their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity. In addition to this and other requirements applicable to market maker quotations under Rules 803 and 804, PMMs continue to have an obligation to conduct the opening and enter continuous quotations in all of the series of their appointed options classes and to do so within maximum spread requirements. CMMs have an obligation to maintain continuous quotes for at least 60% of the time the options class is open for trading on the Exchange (as opposed to 60% of the series), and to do so within maximum spread requirements. Preferenced market makers will continue to have a heighted quotation requirement, as they are required to maintain continuous quotes for at least 90% of the time the options class is open for trading on the Exchange (as opposed to 90% of the series) and to do so within maximum spread requirements. Additionally, CMMs will continue to be obligated to enter quotes whenever, in the judgment of an Exchange official, it is necessary to do so in the interest of fair and orderly markets.[23] Accordingly, the benefits the proposed rule change confers upon market makers are offset by the continued responsibilities to provide significant liquidity to the market to the benefit of market participants.

For the foregoing reasons, the Exchange believes that the balance between the benefits provided to market makers and the obligations imposed upon market makers by the proposed rule change is appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the current quotation requirements act as a competitive disadvantage that limits the ISE's ability to attract liquidity providers. The proposal is comparable to current rules at competing options exchanges related to market-maker continuous quoting obligations and will ensure fair competition among the options exchange that provide market makers with similar benefits. Accordingly, the Exchange believes that the proposal will enable the Exchange to attract additional CMMs, thereby increasing competition and liquidity on the ISE.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[24] of the Act and Rule 19b–4(f)(6)[25] thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2013–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal 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–2013–17 and should be submitted on or before April 15, 2013.

[22] *See supra* note 16. In this respect, the Exchange notes that NYSE Arca and NYSE Amex exclude adjusted series and long-term options from the quoting requirements for all market makers, including those markets' equivalent of the ISE's PMMs. For quote mitigation purposes, Arca only disseminates quotes in active options series. NYSE Arca Rule 6.86, Commentary .03, and NYSE Amex Rule 970.1NY. The ISE, however, has not implemented a similar approach to quote mitigation. Rather, the ISE disseminates quotations in all options series listed on the exchange, and pursuant to ISE Rule 804(e)(1) the ISE requires PMMs to maintain continuous quotations in all listed series of their appointed options classes, including adjusted series and long-term options. Thus, the Exchange does not believe that it is necessary to require CMMs to quote such series, and that it is appropriate to exclude such options series from the CMM quoting requirements contained in ISE Rule 804(e)(ii) in the interest of applying consistent standards across exchanges for non-specialist market makers, such as CBOE and Phlx, as well as NYSE Arca and NYSE Amex. *See supra* note 16.

[23] ISE Rule 804(e)((2)(iv).

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06716 Filed 3–22–13; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8254]

Additional Designation of Three North Korean Individuals Pursuant to Executive Order 13382

AGENCY: Department of State.

ACTION: Designation of Pak To-Chun, Chu Kyu-Chang, and O Kuk-Ryol Pursuant to E.O. 13382.

SUMMARY: Pursuant to the authority in section 1(ii) of Executive Order 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'', the State Department, in consultation with the Secretary of the Treasury and the Attorney General, has determined that Pak To-Chun, Chu Kyu-Chang, and O Kuk-Ryol have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern.

DATES: The designation by the Under Secretary of State for Arms Control and International Security of the individuals identified in this notice pursuant to Executive Order 13382 is effective on March 11, 2013.

FOR FURTHER INFORMATION CONTACT: Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–5193.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 30, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

Information on the additional designees is as follows:

PAK TO–CHUN

A.K.A.: Pak To'-Ch'un
A.K.A.: Pak Do Chun
D.O.B.: March 9, 1944; P.O.B.
P.O.B.: Nangim County, Chagang Province, DPRK

CHU KYU–CHANG

A.K.A.: Chu Kyu-Ch'ang
A.K.A.: Ju Kyu-Chang
D.O.B.: November 25, 1928
P.O.B.: Hamju County, South Hamgyong Province, DPRK

O KUK–RYOL

A.K.A.: O Ku'k-ryo'l
D.O.B.: 7 January 1930
P.O.B.: Onso'ng County, North Hamgyo'ng Province, DPRK

Dated: March 11, 2013.

Rose Gottemoeller,

Under Secretary for Arms Control and International Security Department of State, Acting.

[FR Doc. 2013–06752 Filed 3–22–13; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 8251]

Preparations for the International Telecommunication Union World Telecommunication Development Conference (ITU WTDC 2014)

SUMMARY: This notice announces meetings of the Department of State's International Telecommunication Advisory Committee (ITAC) to review the activities of its *ad hoc* group for preparations for the ITU World Telecommunication Development Conference (WTDC 2014), as well as preparations for other, related meetings at the ITU.

The ITAC will meet on April 17, 2013 at 2PM EDT to review the work already performed in the ITAC–D *ad hoc* and the plans for preparation for related ITU meetings for the rest of this year. This meeting of the ITAC will be held at the Department of State, followed by additional meetings of the ITAC–D *ad hoc* of the ITAC on April 30, 2013 at 1300 Eye Street NW., Washington, DC fourth floor West Tower. Subsequent meetings of the ITAC–D and other *ad hocs* will be scheduled later.

Details on these ITAC–D *ad hoc* meetings for preparations for WTDC14 will be announced on the Department of State's email list, *ITAC–D@lmlist.state.gov.* Meetings of other *ad hocs* will be initially announced on the list: *ITAC@lmlist.state.gov.* Use of these lists is limited to meeting announcements and confirmations, distribution of agendas and other meeting documents such as Contributions.

People desiring further information on these preparatory meetings, including those wishing to request reasonable accommodation to attend the meeting and those who wish to participate in the ITAC or ITAC–D lists, should contact the Secretariat at *both minardje@state.gov* and *jminard@artelinc.com.*

Attendance at these meetings is open to the public as seating capacity allows.

[26] 17 CFR 200.30–3(a)(12).

The public will have an opportunity to provide comments at these meetings. A conference bridge will be provided to those people outside the Washington Metro area who request it from the secretariat.

Dated: March 15, 2013.

Doreen McGirr,

Foreign Affairs Officer, International Communications & Information Policy, U.S. Department of State .

[FR Doc. 2013–06755 Filed 3–22–13; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 8252]

Defense Trade Advisory Group; Notice of Open Meeting

SUMMARY: The Defense Trade Advisory Group (DTAG) will meet in open session from 1:00 p.m. until 5 p.m. on Thursday, May 9, 2013 at 1777 F Street NW., Washington, DC Entry and registration will begin at 12:30 p.m. The membership of this advisory committee consists of private sector defense trade representatives, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on policies, regulations, and technical issues affecting defense trade. The purpose of the meeting will be to discuss current defense trade issues and topics for further study.

The following agenda topics will be discussed: review of the current definitions of technical data, as well as the control language applied in each regulation, resulting in harmonized definitions and controls in the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR); review of cloud computing, its various implementation arrangements, and a report on the implications for regulators and possible guidance that might be promulgated for use by exporters consistent with regulatory controls; and review of the current definitions of fundamental research, resulting in a harmonized definition that can be used in both the ITAR and the EAR.

Members of the public may attend this open session and will be permitted to participate in the discussion in accordance with the Chair's instructions. Members of the public may, if they wish, submit a brief statement to the committee in writing.

As seating is limited to 125 persons, those wishing to attend the meeting must notify the DTAG Alternate Designated Federal Officer (DFO) by COB Friday, May 3, 2013. Members of the public requesting reasonable accommodation must also notify the DTAG Alternate DFO by that date. If notified after this date, the Department will be unable to accommodate requests due to requirements at the meeting location.

Each non-member observer or DTAG member that wishes to attend this plenary session should provide: his/her name and identifying data such as driver's license number, U.S. Government ID, or U.S. Military ID, to the DTAG Alternate DFO, Patricia Slygh, via email at *SlyghPC@state.gov.* One of the following forms of valid photo identification will be required for admission to the meeting: U.S. driver's license, passport, U.S. Government ID or other valid photo ID.

For additional information, contact Patricia Slygh, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 663–2830; FAX (202) 261–8199; or email *SlyghPC@state.gov.*

Dated: March 15, 2013.

Patricia C. Slygh,

Alternate Designated Federal Officer, Defense Trade Advisory Group, Department of State.

[FR Doc. 2013–06749 Filed 3–22–13; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 8253]

Industry Advisory Panel; Notice of Open Meeting

The Industry Advisory Group, formerly the Industry Advisory Panel, of the Bureau of Overseas Buildings Operations will meet on Friday, April 19, 2013 from 10:00 a.m. until 12:00 p.m. Eastern Daylight Time. The meeting is open to the public and will be held in the Loy Henderson Conference Room of the U.S. Department of State, located at 2201 C Street NW., (entrance on 23rd Street) Washington, DC. For logistical and security reasons, the public must enter and exit the building using only the 23rd Street entrance.

In line with OBO's renewed commitment to Design Excellence, the committee's charter has been amended to better serve the needs of the Bureau. The panel of nine has grown to a group of 35 professionals. These professionals will advise the Bureau on areas of research and development, acquisition and sales, planning, program development, design, engineering, construction, historic preservation, sustainability, natural hazards, emergency operations, security, operations, and maintenance. It is anticipated that the Group will meet once annually in a session that will be open to the public.

Entry to the building is controlled; to obtain pre-clearance, a member of the public planning to attend should provide, by April 12, his or her name, professional affiliation, date of birth, citizenship, and a valid government-issued ID number (i.e., U.S. government ID, U.S. military ID, passport, or drivers license) via email to: *IAGR@state.gov.* Requests for reasonable accommodation should be sent to the same email address by April 12. Requests made after that date will be considered, but may not be able to be fulfilled.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database.

Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

Please contact Christy Foushee at *FousheeCT@state.gov* or (703) 875–4131 with any questions.

Dated: March 15, 2013.

Jurg Hochuli,

Acting Director, U.S. Department of State, Bureau of Overseas Buildings Operations.

[FR Doc. 2013–06750 Filed 3–22–13; 8:45 am]

BILLING CODE 4710–02–P

DEPARTMENT OF STATE

[Public Notice 8255]

Request for Nominations for the General Advisory Committee and the Scientific Advisory Subcommittee to the United States Section to the Inter-American Tropical Tuna Commission

SUMMARY: The Department of State is seeking applications and nominations for the renewal of the General Advisory Committee to the Inter-American Tropical Tuna Commission (IATTC) as well as to a Scientific Advisory Subcommittee of the General Advisory Committee. The purpose of the General Advisory Committee and the Scientific Advisory Subcommittee is to provide public input and advice to the United States Section to the IATTC in the

formulation of U.S. policy and positions at meetings of the IATTC and its subsidiary bodies. The Scientific Advisory Subcommittee shall also function as the National Scientific Advisory Committee (NATSAC) provided for in the Agreement on the International Dolphin Conservation Program (AIDCP). The United States Section to the IATTC is composed of the Commissioners to the IATTC, appointed by the President, and the Deputy Assistant Secretary of State for Oceans and Fisheries or his or her designated representative. Authority to establish the General Advisory Committee and Scientific Advisory Subcommittee is provided under the Tuna Conventions Act of 1950, as amended by the International Dolphin Conservation Program Act (IDCPA) of 1997.

DATES: Nominations must be submitted on or before April 1, 2013.

ADDRESSES: Nominations should be submitted to David Balton, Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, c/o Office of Marine Conservation, Room 2758, Department of State, Washington, DC 20520–7818; or by fax to 202–736–7350.

FOR FURTHER INFORMATION CONTACT: David Hogan, Office of Marine Conservation, Department of State: 202–647–2335.

SUPPLEMENTARY INFORMATION:

General Advisory Committee

The Tuna Conventions Act (16 U.S.C. 951 et seq.), as amended by the IDCPA (Pub. L. 105–42), provides that the Secretary of State, in consultation with the U.S. Commissioners to the IATTC, shall appoint a General Advisory Committee (the Committee) to the U.S. Section to the IATTC (U.S. Section). The Committee shall be composed of not less than 5 nor more than 15 persons, with balanced representation from the various groups participating in the fisheries included under the IATTC Convention, and from non-governmental conservation organizations. Members of the Committee shall be invited to attend all non-executive meetings of the U.S. Section, and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations adopted by the Commission. Members of the Committee may attend meetings of the IATTC and the AIDCP as members of the U.S. delegation or otherwise in accordance with the rules of those bodies governing such participation. Participation as a member of the U.S. delegation shall be subject to such conditions as may be placed on the size or composition of the delegation.

Scientific Advisory Subcommittee

The Act, as amended, also provides that the Secretary of State, in consultation with the U.S. Commissioners to the IATTC, shall appoint a Scientific Advisory Subcommittee (the Subcommittee) of the General Advisory Committee. The Subcommittee shall be composed of not less than 5 and not more than 15 qualified scientists with balanced representation from the public and private sectors, including non-governmental conservation organizations. The Subcommittee shall advise the Committee and the U.S. Section on matters including: the conservation of ecosystems; the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and the long-term conservation and management of stocks of living marine resources in the eastern Pacific Ocean.

In addition, at the request of the Committee, the U.S. Commissioners or the Secretary of State, the Subcommittee shall perform such functions and provide such assistance as may be required by formal agreements entered into by the United States for the eastern Pacific tuna fishery, including the AIDCP. The functions may include: the review of data from the International Dolphin Conservation Program (IDCP), including data received from the IATTC staff; recommendations on research needs and the coordination and facilitation of such research; recommendations on scientific reviews and assessments required under the IDCP; recommendations with respect to measures to assure the regular and timely full exchange of data among the Parties to the AIDCP and each nation's NATSAC (or its equivalent); and consulting with other experts as needed.

The Subcommittee shall be invited to attend all non-executive meetings of the U.S. Section and the General Advisory Committee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the Commission. Members of the Subcommittee may attend meetings of the IATTC and the AIDCP as members of the U.S. delegation or otherwise in accordance with the rules of those bodies governing such participation. Participation as a member of the U.S. delegation shall be subject to such limits as may be placed on the size of the delegation.

National Scientific Advisory Committee

The Scientific Advisory Subcommittee shall also function as the NATSAC established pursuant to Article IX of the AIDCP. In this regard, the Subcommittee shall perform the functions of the NATSAC as specified in Annex VI of the AIDCP including, but not limited to: receiving and reviewing relevant data, including data provided to the National Marine Fisheries Service (NMFS) by the IATTC Staff; advising and recommending to the U.S. Government measures and actions that should be undertaken to conserve and manage stocks of living marine resources in the AIDCP Area; making recommendations to the U.S. Government regarding research needs related to the eastern Pacific Ocean tuna purse seine fishery; promoting the regular and timely full exchange of data among the Parties on a variety of matters related to the implementation of the AIDCP; and consulting with other experts as necessary in order to achieve the objectives of the Agreement.

General Provisions

Each appointed member of the Committee and the Subcommittee/NATSAC shall be appointed for a term of 3 years and may be reappointed.

Logistical and administrative support for the operation of the Committee and the Subcommittee will be provided by the Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, and by the Department of Commerce, National Marine Fisheries Service. Members shall receive no compensation for their service on either the Committee or the Subcommittee/NATSAC, nor will members be compensated for travel or other expenses associated with their participation.

Procedures for Submitting Applications/Nominations

Applications/nominations for the General Advisory Committee and the Scientific Advisory Subcommittee/NATSAC should be submitted to the Department of State (See **ADDRESSES**). Such applications/nominations should include the following information:

(1) Full name/address/phone/fax and email of applicant/nominee;

(2) Whether applying/nominating for the General Advisory Committee or the Scientific Advisory Committee/NATSAC (applicants may specify both);

(3) Applicant/nominee's organization or professional affiliation serving as the basis for the application/nomination;

(4) Background statement describing the applicant/nominee's qualifications and experience, especially as related to the tuna purse seine fishery in the eastern Pacific Ocean or other factors relevant to the implementation of the Convention Establishing the IATTC or the Agreement on the International Dolphin Conservation Program;

(5) A written statement from the applicant/nominee of intent to participate actively and in good faith in the meetings and activities of the General Advisory Committee and/or the Scientific Advisory Subcommittee/NATSAC.

Applicants/nominees who submitted material in response to the **Federal Register** Notice published by the Department of State on December 19, 2008 (73 FR 77865) or prior, should resubmit their applications pursuant to this notice.

David A. Balton,

Deputy Assistant Secretary for Oceans and Fisheries.

[FR Doc. 2013–06757 Filed 3–22–13; 8:45 am]

BILLING CODE 4710–09–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection, Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed Collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Mark Winter, Tennessee Valley Authority, 1101 Market Street (MP–3C), Chattanooga, Tennessee 37402–2801; (423) 751–6004.

Comments should be sent to the Agency Clearance Officer no later than May 24, 2013.

SUPPLEMENTARY INFORMATION:

Type of Request: Reauthorization.

Title of Information Collection: Section 26a Permit Application.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, state or local governments, farms, businesses, or other for-profit Federal agencies or employees, non-profit institutions, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 4000.

Estimated Total Annual Burden Hours: 8000.

Estimated Average Burden Hours per Response: 2.0.

Need For and Use of Information: TVA Land Management activities and Section 26a of the Tennessee Valley Authority Act of 1933, as amended, require TVA to collect information relevant to projects that will impact TVA land and land rights and review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information is collected via paper forms and/or electronic submissions and is used to assess the impact of the proposed project on TVA land or land rights and statutory TVA programs to determine if the project can be approved. Rules for implementation of TVA's Section 26a responsibilities are published in 18 CFR part 1304.

Michael T. Tallent,

Director, Enterprise Information Security & Policy.

[FR Doc. 2013–06710 Filed 3–22–13; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2013–0017]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget's (OMB) approval of the following new information collections:

49 U.S.C. Section 5337—State of Good Repair Program

49 U.S.C. Section 5339—Bus and Bus Facilities Program

The information collected is necessary to determine eligibility of applicants and ensure the proper and timely expenditure of federal funds within the scope of each program. The **Federal Register** notice with a 60-day comment period soliciting comments was published on December 12, 2012 (Citation 77 FR 74050). No comments were received from that notice.

DATES: Comments must be submitted before April 24, 2013. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: 49 U.S.C. Section 5337—State of Good Repair Program.

Abstract: 49 U.S.C. 5337, the State of Good Repair Grants Program, is a new program authorized by Moving Ahead for Progress in the 21st Century (MAP–21). The State of Good Repair Grants Program replaces the SAFETEA–LU Fixed Guideway Modernization Program. This program authorizes the Secretary of Transportation to make grants to designated recipients to replace and rehabilitate high intensity fixed guideway systems and high intensity motorbus systems. Eligible recipients include state and local government authorities in urbanized areas with high intensity fixed guideway systems and/or high intensity motorbus systems operating for at least seven years. Projects are funded at 80 percent federal with a 20 percent local match requirement by statute. FTA will apportion funds to designated recipients. The designated recipients will then allocate funds as appropriate to recipients that are public entities in the urbanized areas. FTA can make grants to direct recipients after sub-allocation of funds. Recipients apply for grants electronically, and FTA collects milestone and financial status reports from designated recipients on a quarterly basis. The information submitted ensures FTA's compliance with applicable federal laws.

Title: 49 U.S.C. Section 5339—Bus and Bus Facilities Program.

Abstract: 49 U.S.C. 5339—Bus and Bus Facilities Formula Program, is a new program authorized by Moving Ahead for Progress in the 21st Century (MAP–21). This program authorizes the Secretary of Transportation to make grants to designated recipients and states to replace, rehabilitate, and purchase buses and related equipment as well as construct bus-related facilities. Eligible sub-recipients include public agencies or private nonprofit organizations engaged in public

transportation, including those providing services open to a segment of the general public, as defined by age, disability, or low income. Projects are funded at 80 percent federal with a 20 percent local match requirement by statute. Recipients apply for grants electronically and FTA collects milestone and financial status reports from designated recipients and states on a quarterly basis. The information submitted ensures FTA's compliance with applicable federal laws.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; 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, including the use of automated collection techniques or other forms of information technology.

Issued on: March 18, 2013.

Matthew M. Crouch,

Deputy Administrator for Administration.

[FR Doc. 2013–06728 Filed 3–22–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35707]

MCM Rail Services LLC—Petition for Retroactive Exemption—In Sparrows Point, Md.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of commencement of proceeding and request for additional information.

SUMMARY: By decision served March 20, 2013, the Board instituted a proceeding and requested additional information regarding a petition for an operation exemption submitted by MCM Rail Services LLC (MCM) regarding 12 miles of rail line in Sparrows Point, Md. (the Line).

DATES: MCM's supplemental information is due by April 19, 2013. MCM also must notify the shippers on the Line of the proposed transaction by providing them with a copy of the complete petition on the same date that it files the supplemental information with the Board.

ADDRESSES: An original and 10 copies of all pleadings, referring to Docket No. FD 35707, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Megan E. Harmon, Schnader Harrison Segal & Lewis LLP, 120 Fifth Avenue, Suite 2700, Pittsburgh, PA 15222.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn, (202) 245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By petition filed December 20, 2012, MCM seeks an exemption pursuant to 49 U.S.C. 10502 and 49 CFR 1121.1 from the prior review and approval requirements of 49 U.S.C. 10901 to operate over the Line. Under 49 U.S.C. 10502, the Board is opening a proceeding and requesting that MCM supplement its petition by submitting additional information sufficient for the Board to meet its 10502 obligations.

The Line, formerly known as the Patapsco & Back Rivers Railroad, and currently named the Baltimore Industrial Railway, is located at 1430 Sparrows Point Boulevard, Sparrows Point, Baltimore County, Md. MCM began operating over the Line in September 2012, following the sale of assets from the bankruptcy proceeding of R.G. Steel Railroad Holdings, LLC and other steel operations at Sparrows Point.

Additional information is contained in the Board's decision, which is available on our Web site, *www.stb.dot.gov.* Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: March 20, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–06761 Filed 3–22–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Actions Taken Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury Department.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing on OFAC's list of Specially Designated Nationals and Blocked Persons (''SDN List'') the names of one entity and three individuals, whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.'' The designations by the Director of OFAC, pursuant to Executive Order 13382, were effective on March 7, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the

Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On March 7, 2013, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated three individuals whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

1. KO, Ch'o'l-Chae, Dalian, China; nationality Korea, North; Deputy Representative, KOMID (individual) [NPWMD].

2. YO'N, Cho'ng-Nam, Dalian, China; nationality Korea, North; Chief Representative, KOMID (individual) [NPWMD].

3. MUN, Cho'ng-Ch'o'l, Korea, North; nationality Korea, North; Tanchon Commercial Bank Representative (individual) [NPWMD].

Dated: March 7, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–06766 Filed 3–22–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Actions Taken Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury Department.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing on OFAC's list of Specially Designated Nationals and Blocked Persons (''SDN List'') the names of one entity and one individual, whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.'' The designations by the Director of OFAC, pursuant to Executive Order 13382, were effective on March 11, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On March 11, 2013, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated one entity and one individual whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

1. FOREIGN TRADE BANK OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (a.k.a. NORTH KOREA'S FOREIGN TRADE BANK), FTB Building, Jungsong-dong, Central District, Pyongyang, Korea, North; SWIFT/BIC FTBD KP PY [NPWMD].

2. PAEK, Se-Bong (a.k.a. PAEK, Se Pong); DOB 21 Mar 1938; Chairman, Second Economic Committee (individual) [NPWMD].

Dated: March 11, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–06762 Filed 3–22–13; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 78 Monday,

No. 57 March 25, 2013

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Northwest Atlantic Ocean Distinct Population Segment of the Loggerhead Sea Turtle (*Caretta caretta*); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2012–0103; 4500030114]

RIN 1018–AY71

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Northwest Atlantic Ocean Distinct Population Segment of the Loggerhead Sea Turtle (Caretta caretta)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate specific areas in the terrestrial environment as critical habitat for the Northwest Atlantic Ocean Distinct Population Segment of the loggerhead sea turtle (*Caretta caretta*) under the Endangered Species Act (Act). The proposed critical habitat is located in coastal counties in North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi. The intended effect of this regulation is to assist with the conservation of the loggerhead sea turtle's habitat under the Act.

DATES: We will accept comments received or postmarked on or before May 24, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **ADDRESSES** by May 9, 2013.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter Docket No. FWS–R4–ES–2012–0103, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2012–0103; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

The coordinates or plot points or both from which the maps are generated are included in the supporting record for this critical habitat designation and are available at *http://www.fws.gov/northflorida, http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0103, and at the North Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dawn P. Jennings, Deputy Field Supervisor, U.S. Fish and Wildlife Service, North Florida Ecological Services Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; telephone 904–731–3336. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act (Act), critical habitat must be designated for any endangered or threatened species, to the maximum extent prudent and determinable. Designations of critical habitat can only be completed through rulemaking. This is a proposed rule by the U.S. Fish and Wildlife Service (USFWS) to designate specific areas in the terrestrial environment as critical habitat for the Northwest Atlantic Ocean Distinct Population Segment (DPS) of the loggerhead sea turtle. The National Marine Fisheries Service (NMFS) is reviewing specific areas in the marine environment as potential critical habitat for the DPS and, consistent with their distinct authority with respect to such areas, may propose to designate such areas in a separate rulemaking. A critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, may continue to be the subject of conservation actions implemented under section 7(a)(1) of the Act, and the species in those areas are subject to the regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat.

The purpose of this rule. We are proposing to designate specific areas in the terrestrial environment as critical habitat for the Northwest Atlantic Ocean DPS of the loggerhead sea turtle.

The basis for our action. Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude a particular area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Description of Proposed Critical Habitat

- In total, 1,189.9 kilometers (km) (739.3 miles) of loggerhead sea turtle nesting beaches are being proposed for designation as critical habitat in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi. These beaches account for 48 percent of an estimated 2,464 km (1,531 miles) of coastal beach shoreline, and account for approximately 84 percent of the documented nesting (numbers of nests) within these six States. The proposed critical habitat is located in Brunswick, Carteret, New Hanover, Onslow, and Pender Counties, North Carolina; Beaufort, Charleston, Colleton, and Georgetown Counties, South Carolina; Camden, Chatham, Liberty, and McIntosh Counties, Georgia; Bay, Brevard, Broward, Charlotte, Collier, Duval, Escambia, Flagler, Franklin Gulf, Indian River, Lee, Manatee, Martin, Monroe, Palm Beach, Sarasota, St. Johns, St. Lucie, and Volusia Counties, Florida; Baldwin County, Alabama; and Jackson County, Mississippi.
- The proposed critical habitat has been identified by the recovery unit in which they are located. Recovery units are management subunits of a listed entity that are geographically or otherwise identifiable and essential to

the recovery of the listed entity. Within the United States, four recovery units have been identified for the Northwest Atlantic population of the loggerhead sea turtle. The four recovery units for which we propose to designate terrestrial critical habitat are the Northern Recovery Unit, Peninsular Florida Recovery Unit, Dry Tortugas Recovery Unit, and Northern Gulf of Mexico Recovery Unit.

• For the Northern Recovery Unit, we propose to designate 393.7 km (244.7 miles) of Atlantic Ocean shoreline in North Carolina, South Carolina, and Georgia, encompassing approximately 86 percent of the documented nesting (numbers of nests) within the recovery unit. For the Peninsular Florida Recovery Unit, we propose to designate 364.9 km (226.7 miles) of Atlantic Ocean shoreline and 198.8 km (123.5 miles) of Gulf of Mexico shoreline totaling 563.7 km (350.2 miles) of shoreline in Florida, encompassing approximately 87 percent of the documented nesting (numbers of nests) within the recovery unit. For the Dry Tortugas Recovery Unit, we propose to designate 14.5 km (9.0 miles) of Gulf of Mexico shoreline in Florida, encompassing 100 percent of the nesting (numbers of nests) where loggerhead nesting is known to occur within the recovery unit. For the Northern Gulf of Mexico Recovery Unit, we propose to designate 218.0 km (135.5 miles) of Gulf of Mexico shoreline in Mississippi, Alabama, and the Florida Panhandle, encompassing approximately 75 percent of the documented nesting (numbers of nests) within the recovery unit. We do not propose to designate any critical habitat in Virginia, Louisiana, and Texas because of the very low number of nests (less than 10 annually in each State from 2002 to 2011) known to be laid in these States.

• The proposed designation includes occupied critical habitat that contains the physical and biological features essential to the conservation of the species in the terrestrial environment. No unoccupied habitat is being proposed as critical habitat.

• We are exempting the following Department of Defense installations from critical habitat designation because their Integrated Natural Resources Management Plans (INRMPs) incorporate measures that provide a benefit for the conservation of the loggerhead sea turtle: Marine Corps Base Camp Lejeune (Onslow Beach), Cape Canaveral Air Force Station, Patrick Air Force Base, and Eglin Air Force Base (Cape San Blas).

• Under section 4(b)(2) of the Act, we are considering excluding from critical habitat designation areas in St. Johns, Volusia, and Indian River Counties, Florida, that are covered under habitat conservation plans (HCP), because the HCPs incorporate measures that provide a benefit for the conservation of the loggerhead sea turtle.

• We are not considering for exclusion any additional areas from critical habitat based on economic, national security, or other relevant impacts at this time. However, we are seeking comments on economic, national security, and other relevant impacts, and may decide to exclude additional areas from the final rule based on information received during the public comment period.

• Nesting loggerhead turtles, their nests, eggs, and hatchlings, as well as any of their nesting habitat not designated as critical habitat, are still protected under the Act via section 7 where they may be the subject of conservation actions and regulatory protection ensuring Federal agency actions do not jeopardize their continued existence and section 9 that prohibits the taking of any individual of a species, including taking caused by actions that affect its habitat.

We are preparing an economic analysis of the proposed designations of terrestrial critical habitat. In order to consider economic impacts, we are preparing an economic analysis of the proposed critical habitat designation. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek additional public review and comment.

We will seek peer review during public comment. As part of the public notice, we are seeking comments from independent specialists to ensure that our proposal to designate critical habitat is based on scientifically sound data and analyses. We have invited these peer reviewers to comment on our specific assumptions and conclusions in this critical habitat proposal. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons whether it would or would not be prudent to designate habitat as ''critical habitat'' under section 4 of the Act, including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of loggerhead sea turtle terrestrial habitat,

(b) Which areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why,

(c) Special management considerations or protection that may be needed for the nesting beach habitat in critical habitat areas we are proposing, including managing for the potential effects of climate change, and

(d) Which areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the loggerhead sea turtle and proposed terrestrial critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any of the exemptions we are considering, under section 4(a)(3)(B) of the Act, of land on Department of Defense property at Marine Corps Base Camp Lejeune (Onslow Beach), Cape Canaveral Air Force Station, Patrick Air Force Base, and Eglin Air Force Base (Cape San Blas) are or are not appropriate, and why.

(7) Whether any of the areas we are considering for exclusion under section 4(b)(2) of the Act in St. Johns, Volusia, and Indian River Counties, Florida, because they are covered by an HCP that incorporates measures that provide a benefit for the conservation of the loggerhead sea turtle, are or are not appropriate, and why. The St. Johns County, Florida, Habitat Conservation Plan (''A Plan for the Protection of Sea Turtles and Anastasia Island Beach Mice on the Beaches of St. Johns County, Florida'') is available at *http://www.co.st-johns.fl.us/HCP/*

HabitatConservation.aspx, the Volusia County, Florida, Habitat Conservation Plan (''A Plan for the Protection of Sea Turtles on the Beaches of Volusia County, Florida'') is available at *http://www.volusia.org/core/fileparse.php/4145/urlt/VolusiaHCPDec2007small2.pdf,* and the Indian River County, Florida, Habitat Conservation Plan (''Habitat Conservation Plan for the Protection of Sea Turtles on the Eroding Beaches of Indian River County, Florida'') is available at *http://www.ecological-associates.com/IRC-Final-HCP-July-2003.pdf.*

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, North Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

The loggerhead sea turtle was originally listed worldwide under the Act as a threatened species on July 28, 1978 (43 FR 32800). No critical habitat was designated for the loggerhead at that time. Pursuant to a joint memorandum of understanding, USFWS has jurisdiction over sea turtles in the terrestrial environment and NMFS has jurisdiction over sea turtles in the marine environment. On July 16, 2007, USFWS and NMFS (collectively the Services) received a petition to list the North Pacific populations of the loggerhead sea turtle as an endangered species under the Act. NMFS published a notice in the **Federal Register** on November 16, 2007 (72 FR 64585), concluding that the petition presented substantial scientific information indicating that the petitioned action may be warranted. On November 15, 2007, we received a petition to list the Western North Atlantic populations of the loggerhead sea turtle as an endangered species under the Act. NMFS published a notice in the **Federal Register** on March 5, 2008 (73 FR 11849), concluding that the petition presented substantial scientific information indicating that the petitioned action may be warranted.

On March 12, 2009, the petitioners (Center for Biological Diversity (CBD), Turtle Island Restoration Network, and Oceana) sent a 60-day notice of intent to sue to USFWS and NMFS for failure to make 12-month findings on the petitions by the statutory deadlines (July 16, 2008, for the North Pacific petition and November 16, 2008, for the Northwest Atlantic petition). On May 28, 2009, the petitioners filed a Complaint for Declaratory and Injunctive Relief to compel the Services to complete the 12-month findings. On October 8, 2009, the petitioners and the Services reached a settlement in which the Services agreed to submit to the **Federal Register** a 12-month finding on the two petitions on or before February 19, 2010. On February 16, 2010, the United States District Court for the Northern District of California modified the February 19, 2010, deadline to March 8, 2010.

On March 16, 2010 (75 FR 12598), the Services published in the **Federal Register** combined 12-month findings on the petitions to list the North Pacific populations and the Northwest Atlantic populations of the loggerhead sea turtle as endangered DPSs, along with a proposed rule to designate nine loggerhead sea turtle DPSs worldwide and to list two of the DPSs as threatened species and seven as endangered species.

On March 22, 2011 (76 FR 15932), the Services published in the **Federal Register** a notice announcing a 6-month extension of the deadline for a final listing decision to address substantial disagreement on the interpretation of data related to the status and trends for the Northwest Atlantic Ocean DPS of the loggerhead sea turtle and its relevance to the assessment of risk of extinction.

On September 22, 2011 (76 FR 58868), the Services jointly published a final rule revising the loggerhead's listing from a single worldwide threatened species to nine DPSs listed as either endangered or threatened species (50 CFR 17.11(h)). At that time, we lacked the comprehensive data and information necessary to identify and describe physical and biological features of the terrestrial and marine habitats of the loggerhead and found critical habitat to be ''not determinable.'' However, we stated that we would later propose to designate critical habitat for the two DPSs (Northwest Atlantic Ocean and North Pacific Ocean) in which loggerheads occur within the United States' jurisdiction. USFWS has jurisdiction over sea turtles on the land, and loggerheads come on land only to nest; therefore, the only terrestrial habitat they use is for nesting. Since no loggerhead nesting occurs within U.S. jurisdiction for the North Pacific Ocean DPS, no critical habitat is being proposed for that DPS in the terrestrial environment. Because critical habitat can only be designated in areas under U.S. jurisdiction (50 CFR 424.12(h)) and because loggerhead sea turtle nesting in the United States occurs only within the Northwest Atlantic Ocean DPS, we are only proposing to designate specific areas in the terrestrial environment as critical habitat for this one DPS. The petitioners filed a notice of intent to sue on October 11, 2012, and a complaint for declaratory and injunctive relief on January 8, 2013, to both USFWS and NMFS for failure to designate critical habitat.

Background

It is our intent to discuss only those topics directly relevant to the designation of terrestrial critical habitat for the loggerhead sea turtle in this proposed rule. For more information on the taxonomy, biology, and ecology of the loggerhead sea turtle, refer to the final listing rule published in the **Federal Register** on September 22, 2011 (76 FR 58868), and the Recovery Plan for the Northwest Atlantic Population of the Loggerhead Sea Turtle (*Caretta caretta*) finalized on December 31, 2008 (NMFS and USFWS 2008, entire), which are available from the North Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Species Description

The loggerhead sea turtle belongs to the family Cheloniidae along with all other sea turtle species except the leatherback (*Dermochelys coriacea*). The genus *Caretta* is monotypic (one representative in the group). The loggerhead sea turtle is characterized by a large head with blunt jaws. The carapace (shell) of adult and juvenile loggerheads is reddish-brown. Dorsal (top) and lateral (side) head scales and dorsal scales of the flippers are also reddish-brown, but with light to medium yellow margins. Mean straight carapace length (SCL) of nesting females

in the southeastern United States, the location where the vast majority of loggerheads nest in the United States, is approximately 92 centimeters (cm) (36 inches (in)); corresponding weight is approximately 116 kilograms (kg) (256 pounds (lb)) (Ehrhart and Yoder 1978, p. 29). Hatchlings vary from light to dark brown to dark gray dorsally and lack the reddish-brown coloration of adults and juveniles. Flippers are dark gray to brown above with distinct white margins. At emergence, hatchlings average 45 millimeters (mm) (1.8 in) SCL and weigh approximately 20 grams (g) (0.7 ounces (oz)) (Dodd 1988, pp. 50, 52).

Life History and Habitat

Loggerheads are long-lived, slow-growing animals that use multiple habitats across entire ocean basins throughout their life history. This complex life history encompasses terrestrial, nearshore, and open ocean habitats. The three basic ecosystems in which loggerheads live are the following:

1. Terrestrial zone (supralittoral [area above the spring high tide line that is regularly splashed, but not submerged by ocean water])—the nesting beach where both oviposition (egg laying) and embryonic development and hatching occur.

2. Neritic zone—the nearshore marine environment (from the surface to the sea floor) where water depths do not exceed 200 meters (m) (656 feet (ft)). The neritic zone generally includes the continental shelf (the sea bed surrounding a continent), but in areas where the continental shelf is very narrow or nonexistent, the neritic zone conventionally extends from the shore to areas where water depths reach 200 m (656 ft).

3. Oceanic zone—the vast open ocean environment (from the surface to the sea floor) where water depths are greater than 200 m (656 ft).

The loggerhead occurs throughout the temperate and tropical regions of the Atlantic, Pacific, and Indian Oceans (Dodd 1988, p. 16). However, the majority of loggerhead nesting is at the western rims of the Atlantic and Indian Oceans. The most recent reviews show that only two loggerhead nesting aggregations have greater than 10,000 females nesting per year: Peninsular Florida, United States, and Masirah Island, Oman (Baldwin *et al.* 2003, p. 219; Ehrhart *et al.* 2003, p. 169; Kamezaki *et al.* 2003, pp. 213–214; Limpus and Limpus, 2003, p. 200; Margaritoulis *et al.* 2003, p. 177). Thus, loggerhead nesting within the Peninsular Florida Recovery Unit of the Northwest Atlantic Ocean DPS is significant for the conservation of loggerheads worldwide. From a global perspective, this U.S. nesting aggregation is of paramount importance to the survival of the species as is the population that nests on islands in the Arabian Sea off Oman. The loggerhead nesting aggregations in Oman and the United States account for the majority of nesting worldwide.

Nesting aggregations with 1,000 to 9,999 females nesting annually include Georgia through North Carolina (United States), Quintana Roo and Yucatan (Mexico), Brazil, Cape Verde Islands (Cape Verde), Western Australia (Australia), and Japan. Smaller nesting aggregations with 100 to 999 nesting females annually occur in the Northern Gulf of Mexico (United States), Dry Tortugas (United States), Cay Sal Bank (The Bahamas), Tongaland (South Africa), Mozambique, Arabian Sea Coast (Oman), Halaniyat Islands (Oman), Cyprus, Peloponnesus (Greece), Zakynthos (Greece), Crete (Greece), Turkey, and Queensland (Australia) (NMFS and USFWS 2008, p. I–3).

In the Northwest Atlantic, the majority of loggerhead nesting is concentrated along the coast of the United States from North Carolina through Mississippi, although a small amount of nesting also occurs regularly in Virginia, Louisiana, Texas, and the U.S. Virgin Islands. Additional nesting beaches are found along the eastern Mexico coast, particularly the eastern Yucatan Peninsula coast; in The Bahamas; in Cuba; and along the coasts of Central America, Colombia, Venezuela, and some of the eastern Caribbean Islands (Addison and Morford 1996, pp. 32–35; Addison 1997, entire; Ehrhart *et al.* 2003, p. 160). As post-hatchlings, Northwest Atlantic loggerheads use the North Atlantic Gyre and enter Northeast Atlantic waters (Carr 1987, pp. 111–118). They are also found in the Mediterranean Sea (Carreras *et al.* 2006, p. 1274; Eckert *et al.* 2008, pp. 305–306). In these areas, they overlap with other loggerheads originating from the Northeast Atlantic and the Mediterranean Sea (Laurent *et al.* 1993, p. 1234; Bolten *et al.* 1998, pp. 3–5; Laurent *et al.* 1998, pp. 1535–1537; LaCasella *et al.* 2005, entire; Carreras *et al.* 2006, p. 1274; Monzón-Argüello *et al.* 2006, entire; Revelles *et al.* 2007, pp. 268–269; Eckert *et al.* 2008, pp. 305–306; Monzón-Argüello *et al.* 2010, p. 1878).

Sea turtles spend the majority of their lives in the ocean. However, they are intimately tied to the land where they must lay their nests. Loggerheads nest on ocean beaches and occasionally on estuarine shorelines. Sea turtle eggs require a high-humidity substrate that allows for sufficient gas exchange and temperatures conducive to egg development (Miller 1997, pp. 67–68; Miller *et al.* 2003, pp. 129–130). Loggerhead nests incubate for variable periods of time depending on sand temperatures (Mrosovsky and Yntema 1980, p. 272). Hatchlings emerge from their nests en masse almost exclusively at night (Hendrickson 1958, pp. 513–514; Mrosovsky 1968, entire; Witherington *et al.* 1990, pp. 1166–1167; Moran *et al.* 1999, p. 260), although secondary emergences from nests may occur on subsequent nights (Carr and Ogren 1960, p. 23; Witherington 1986, p. 36; Ernest and Martin 1993, pp.10–11; Houghton and Hays 2001, p. 134). Hatchlings then use a progression of seafinding orientation cues to guide their movement from the nest to the marine environments where they spend their early years (Lohmann and Lohmann 2003, entire).

In the Northwest Atlantic, the nesting season extends from about late April through early September with nesting occurring primarily at night. Clutch frequency for loggerheads has been reported as 3 to 5.5 nests per female per season (Murphy and Hopkins 1984, p. 10; Frazer and Richardson 1985, p. 248; Hawkes *et al.* 2005, pp. 68, 70; Scott 2006, pp. 51, 70; Tucker 2008, pers. comm.; L. Ehrhart, University of Central Florida, unpublished data). Nests are laid at intervals of approximately 12 to 15 days (Caldwell 1962, pp. 294–295; Dodd 1988, p. 36). Mean clutch size varies from about 100 to 126 eggs (Dodd 1988, p. 40). Egg incubation duration varies depending on time of year and latitude but typically ranges from about 42 to 75 days (Dodd and Mackinnon 2006, pp. 7, 19; Witherington 2006, pers. comm.; Dodd and Mackinnon 2007, pp. 7, 17; Dodd and Mackinnon 2008, pp. 7, 17; Dodd and Mackinnon 2009, p. 14; Dodd and Mackinnon 2010, p. 15; Dodd 2011, p. 15). Remigration intervals (number of years between successive nesting migrations) typically range from 2.5 to 3.7 years (Richardson *et al.* 1978, pp. 40–42; Bjorndal *et al.* 1983, pp. 68–70; L. Ehrhart, University of Central Florida, unpublished data). Age at sexual maturity is believed to be about 32 to 35 years (NMFS and USFWS 2008, pp. I–18, V–13).

Immediately after hatchlings emerge from the nest, they begin a period of frenzied activity. During this active period, hatchlings move from their nest to the surf, swim and are swept through the surf zone, and continue swimming away from land for approximately 20 to 30 hours (Carr and Ogren 1960, pp. 23–

24; Carr 1962, pp. 364–365; Carr 1982, p. 22; Wyneken and Salmon 1992, p. 482; Witherington 1995, p. 154). Hatchlings swimming from land rely on an approximately 5-day store of energy and nutrients within their retained yolk sac (Kraemer and Bennett 1981, pp. 407–409). Orientation cues used by hatchlings as they crawl, swim through the surf, and migrate offshore are discussed in detail by Lohmann and Lohmann (2003, entire) and include visual cues on the beach, wave orientation in the nearshore, and later magnetic field orientation as they proceed further toward open water.

Post-hatchling sea turtles are young turtles that have matured to the point beyond the period of frenzied swimming (Wyneken and Salmon 1992, p. 478). Post-hatchling loggerheads are largely inactive, exhibit infrequent low-energy swimming, and have begun to feed, no longer relying on their retained yolk (Witherington 2002, p. 850). As post-hatchlings, loggerheads are pelagic (spend time more at the surface than sea bottom) and are best known from neritic waters along the continental shelf. They often inhabit areas where surface waters converge to form downwellings, which are associated with linear accumulations of floating material like *Sargassum* (Witherington 2002, p. 844). This neritic post-hatchling stage is weeks or months long and may be a transition to the oceanic stage that loggerheads enter as they grow and are carried by ocean currents (Witherington 2002, p. 850; Bolten 2003, p. 65). Bolten (2003, p. 65) notes that the post-hatchling transition stage occurs in the neritic environment, and ends when the small turtles enter the oceanic zone.

The oceanic juvenile stage begins when loggerheads first enter the oceanic zone (Bolten 2003, p. 66). Juvenile loggerheads originating from nesting beaches in the Northwest Atlantic appear to use oceanic developmental habitats and move with the predominant ocean gyres for several years before returning to their neritic foraging and nesting habitats (Musick and Limpus 1997, pp. 140–142; Bolten 2003, p. 66). The presence of *Sargassum* is also important for the oceanic juvenile life stage, as it offers a concentrated, protected foraging area, with facilitated dispersal by the associated oceanic currents. Turtles in this stage use active and passive movements relative to oceanic currents and winds, with 75 percent of their time spent in the top 5 m (16 ft) of the water column (Archie Carr Center for Sea Turtle Research, unpublished data, as cited in NMFS and USFWS 2008, p. I–24).

The actual duration of the oceanic juvenile stage varies, with the size of loggerheads leaving the oceanic zone varying widely (Bjorndal *et al.* 2000, pp. 270–271). In the Atlantic, Bjorndal and colleagues (Bjorndal *et al.* 2000, p. 270; Bjorndal *et al.* 2003, p. 1246) estimated the duration of the oceanic juvenile stage to be between 7 and 11.5 years, with juveniles recruiting to neritic habitats in the western Atlantic over a size range of 46–64 cm (18–25 in) CCL (Bolten *et al.* 1993, p. 50; Turtle Expert Working Group 2009, p. 2). However, Snover (2002, p. 66) suggests a much longer oceanic juvenile stage duration for Northwest Atlantic loggerheads with a range of 9–24 years and a mean of 14.8 years over similar size classes.

The neritic juvenile stage begins when loggerheads exit the oceanic zone and enter the neritic zone (Bolten 2003, p. 66). After migrating to the neritic zone, juvenile loggerheads continue maturing until they reach adulthood. Some juveniles may periodically move between neritic and oceanic zones (Witzell 2002, p. 267; Bolten 2003, p. 66; Morreale and Standora 2005, p. 874; Mansfield 2006, p. 124; McClellan and Read 2007, pp. 592–593; Eckert *et al.* 2008, p. 306).

The neritic zone also provides important foraging habitat, internesting (between nest-laying events) habitat, breeding habitat, overwintering habitat, and migratory habitat for adult loggerheads. Some adults may also periodically move between neritic and oceanic zones (Harrison and Bjorndal 2006, pp. 220–221). See Schroeder *et al.* (2003, pp. 119–122) for a review of the neritic adult life stage for the Atlantic Ocean.

The duration of the adult stage can be estimated for females from tag return data at nesting beaches. For the Northwest Atlantic nesting assemblages, data from Little Cumberland Island, Georgia, show reproductive longevity, and hence duration of the adult female stage, as long as 25 years (Dahlen *et al.* 2000, p. 62). This is likely an underestimate of the average reproductive life span given tag loss and incomplete surveys of nesting beaches at night. Comparable data for adult males do not exist.

In both oceanic and neritic zones, loggerheads are primarily carnivorous, although they do consume some plant matter as well (see Bjorndal 1997, pp. 202–204, and Dodd 1988, pp. 60–66, for reviews). Loggerheads feed on a wide variety of food items with ontogenetic (developmental) and regional differences in diet. Loggerhead diets have been described from just a few coastal regions, and little information is available about differences or similarities in diet at various life stages.

Recovery Units

Five recovery units (management subunits of a listed entity that are geographically or otherwise identifiable and essential to the recovery of the listed entity) have been identified for the Northwest Atlantic population of the loggerhead sea turtle (NMFS and USFWS 2008, pp. II–2–II–6). Four of these recovery units represent nesting assemblages in the southeastern United States and were delineated based on genetic differences and a combination of geographic distribution of nesting densities, geographic separation, and geopolitical boundaries. The fifth recovery unit includes all other nesting assemblages within the Northwest Atlantic.

The five recovery units for Northwest Atlantic loggerheads are:

Northern Recovery Unit: The Northern Recovery Unit is defined as loggerheads originating from nesting beaches from southern Virginia (the northern extent of the U.S. nesting range) south through the Florida-Georgia border.

Peninsular Florida Recovery Unit: The Peninsular Florida Recovery Unit is defined as loggerheads originating from nesting beaches from the Florida-Georgia border south through Pinellas County on the west coast of Florida, excluding the islands west of Key West, Florida.

Dry Tortugas Recovery Unit: The Dry Tortugas Recovery Unit is defined as loggerheads originating from nesting beaches throughout the islands located west of Key West, Florida, because these islands are geographically separated from other recovery units.

Northern Gulf of Mexico Recovery Unit: The Northern Gulf of Mexico Recovery Unit is defined as loggerheads originating from nesting beaches from Franklin County on the northwest Gulf coast of Florida through Texas (the western extent of the U.S. nesting range).

Greater Caribbean Recovery Unit: The Greater Caribbean Recovery Unit is composed of loggerheads originating from all other nesting assemblages within the Greater Caribbean (Mexico through French Guiana, The Bahamas, Lesser Antilles, and Greater Antilles).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in

accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with USFWS or NMFS, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) such designation of critical habitat would not be beneficial to the species.

On September 22, 2011 (76 FR 58868), the Services jointly published a final rule revising the loggerhead's listing from a single worldwide threatened species to nine DPSs listed as either endangered or threatened species. While we did not publish a prudency determination, we did find that critical habitat was not determinable and stated that we would propose to designate critical habitat for the two DPSs (Northwest Atlantic Ocean DPS and North Pacific Ocean DPS) in which loggerheads occur within the United States' jurisdiction in a future rulemaking.

There is currently no identified imminent threat of take attributed to collection or vandalism of nesting beaches within the Northwest Atlantic Ocean DPS, and identification and mapping of specific areas in the terrestrial environment as critical habitat is not expected to create or increase any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, a prudent finding is warranted if there are any benefits to a critical habitat designation. Here, the potential benefits of designation include: (1) Focusing conservation activities on the most essential features and areas; (2) providing educational benefits to State or county governments or private entities; and (3) preventing people from causing inadvertent harm to the species and beaches with active nesting. In short, because we have determined that the designation of critical habitat is not likely to increase the degree of threat to the species and may provide some benefit, we find that designation of terrestrial critical habitat is prudent for the Northwest Atlantic Ocean DPS.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the species is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act allows the Services an additional year to publish a critical habitat designation (section 4(b)(6)(C)(ii)).

When the Services jointly published a final rule revising the loggerhead's listing from a single worldwide threatened species to nine DPSs, we lacked the comprehensive data and information necessary to identify and describe physical and biological features of the terrestrial and marine habitats of the loggerhead. Thus, we found designation of critical habitat to be ''not determinable.'' Accordingly, USFWS has reviewed the available information pertaining to the biological needs of the species and habitat characteristics where the loggerheads in the Northwest Atlantic Ocean DPS nest on U.S. beaches. This and other information represent the best scientific data available and have led us to conclude that the designation of terrestrial critical habitat is determinable for the Northwest Atlantic Ocean DPS.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can

designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. Pursuant to our regulations, we designate critical habitat in areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)).

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, may continue to be the subject of: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features (PBFs) that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographic, and ecological distributions of a species.

We derive the specific physical or biological features essential for the loggerhead sea turtle from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the final listing rule published in the **Federal Register** on September 22, 2011 (76 FR 58868), and the Recovery Plan for the Northwest Atlantic Population of the Loggerhead Sea Turtle (*Caretta caretta*) (NMFS and USFWS 2008, entire).

Shaffer and Stein (2000, pp. 307–314) identify a methodology for conserving imperiled species known as the ''three Rs'': Representation, resiliency, and redundancy. Representation, or preserving some of everything, means conserving not just a species but its associated habitats. Resiliency and redundancy ensure there is enough of a species so it can survive into the future. Resiliency means ensuring that the habitat is adequate for a species and its representative components. Redundancy ensures an adequate number of sites and individuals. This methodology has been widely accepted as a reasonable conservation strategy (Tear *et al.* 2005, p. 841). In applying this strategy to terrestrial critical habitat for loggerheads, we have determined that it is important to conserve: (1) Beaches that have the highest nesting densities (representation); (2) beaches that have a good geographic spatial distribution to ensure protection of genetic diversity (resiliency and redundancy); (3) beaches that collectively provide a good representation of total nesting (representation); and (4) beaches adjacent to the high density nesting beaches that can serve as expansion areas and provide sufficient habitat to accommodate and provide a rescue effect for nesting females whose primary nesting beach has been lost (resiliency and redundancy). Therefore, we have determined that the following physical or biological features are essential for the loggerhead sea turtle:

Physical or Biological Feature 1—Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

The production of the next generation of loggerhead sea turtles results from a synergism of the effects of the ecological conditions in the foraging area on the energetics of the female and of the beach environmental conditions on development of the embryos. To be successful, reproduction must occur when environmental conditions support adult activity (e.g., sufficient quality and quantity of food in the foraging area, suitable beach structure for digging, nearby internesting habitat) (Georges *et al.* 1993, p. 2). The environmental conditions of the nesting beach must favor embryonic development and survival (i.e., modest temperature fluctuation, low salinity, high humidity, well drained, well aerated) (Mortimer 1982, p. 49; Mortimer 1990, pp. 809, 811). Additionally, the hatchlings must emerge to onshore and offshore conditions that enhance their chances of survival (e.g., less than 100 percent depredation, appropriate offshore

currents for dispersal) (Georges *et al.* 1993, p. 2).

Terrestrial nesting habitat is the supralittoral zone of the beach where oviposition (egg laying), embryonic development, and hatching occur. Loggerheads nest on ocean beaches and occasionally on estuarine shorelines with suitable sand. For a beach to serve as nesting habitat, a nesting turtle must be able to access it. However, anthropogenic structures (e.g., groins, jetties, breakwaters), as well as natural features (e.g., offshore sand bars), can act as barriers or deterrents to adult females attempting to access a beach. Adult females approaching the nesting beach may encounter these structures and either crawl around them, abort nesting for that night, or move to another section of beach to nest. Nests are typically laid between the high tide line and the dune front (Routa 1968, p. 293; Witherington 1986, pp. 16, 27; Hailman and Elowson 1992, p. 5).

Wood and Bjorndal (2000, entire) evaluated four environmental factors (slope, temperature, moisture, and salinity) and found that slope had the greatest influence on loggerhead nest-site selection on a beach in Florida. Loggerheads appear to prefer relatively narrow, steeply sloped, coarse-grained beaches, although nearshore contours may also play a role in nesting beach site selection (Provancha and Ehrhart 1987, p. 42).

Nest sites typically have steeper slopes than other sites on the beach, and steeper slopes usually indicate an area of the beach with a higher elevation (Wood and Bjorndal 2000, p. 126). Wood and Bjorndal (2000, p. 126) speculated that a higher slope could be a signal to turtles that they have reached an elevation where there is an increased probability of hatching success of nests. This is related to the nests being laid high enough on the beach to be less susceptible to repeated and prolonged tidal inundation and erosion. Nests laid at lower beach elevations are subject to a greater risk of repeated and prolonged tidal inundation and erosion, which can cause mortality of incubating egg clutches (Foley *et al.* 2006, pp. 38–39). Regardless, loggerheads will use a variety of different nesting substrates and beach slopes for nesting. They will also scatter their nests over the beach, likely to ensure that at least some nest sites will be successful as ''placement of nests close to the sea increases the likelihood of inundation and egg loss to erosion whereas placement of nests farther inland increases the likelihood of desiccation, hatchling misorientation, and predation on nesting females, eggs, and hatchlings'' (Wood and Bjorndal 2000).

Loggerhead sea turtles spread their reproductive effort both temporally and spatially. Spatial clumping occurs because loggerheads concentrate their nesting to a few primary locations that are augmented by lower density, satellite sites. In addition, a few isolated, low-density sites are known (Miller *et al.* 2003, p. 126). Loggerheads show a high degree of nesting site fidelity (Miller *et al.* 2003, p. 127). Once an adult female has returned to the region where it hatched and selected a nesting beach, she will tend to renest in relatively close proximity (0–5 km (0–3 miles)) during successive nesting attempts within the same and subsequent nesting seasons, although a small percentage of turtles will utilize more distant nesting sites in the general area (Miller *et al.* 2003, pp. 127–128). Thus, a high-density nesting beach is the product of site fidelity and nesting success. A high-density nesting beach produces a large number of hatchlings that are recruited to the population resulting in a relatively higher number of females that will return to nest on those same beaches.

Sea turtles must have ''deep, clean, relatively loose sand above the high-tide level'' for successful nest construction (Hendrickson 1982, p. 54). Sand is classified as material predominately composed of carbonate, quartz, or similar material with a particle size distribution ranging between 0.062 mm and 4.76 mm (0.002 in and 0.187 in) (Wentworth and ASTM classification systems). Sea turtle eggs require a high-humidity substrate that allows for sufficient gas exchange for development (Mortimer 1990, p. 811; Miller 1997, pp. 67–68; Miller *et al.* 2003, pp. 129–130). Ackerman (1980, p. 575) found that the rate of growth and mortality of sea turtle embryos is related to respiratory gas exchange with embryonic growth slowing and mortality increasing in environments where gas exchange is reduced below naturally occurring levels.

Moisture conditions in the nest influence incubation period, hatching success, and hatchling size (McGehee 1990, pp. 254–257; Mortimer 1990, p. 811; Carthy *et al.* 2003, pp. 147–149). Laboratory experiments have shown that hatching success can be affected by unusually wet or dry hydric conditions (McGehee 1990, pp. 254–255). Proper moisture conditions are necessary for maximum hatching success (McGehee 1990, p. 251). In addition, water availability is known to influence the incubation environment of the embryos of turtles with flexible-shelled eggs by affecting nitrogen excretion (Packard *et al.* 1984, pp. 198–201), mobilization of calcium (Packard and Packard 1986, p. 404), mobilization of yolk nutrients (Packard *et al.* 1985, p. 571), and energy reserves in the yolk at hatching (Packard *et al.* 1988, p. 122).

Loggerhead nests incubate for variable periods of time depending on sand temperatures (Mrosovsky and Yntema 1980, p. 272). The length of the incubation period (commonly measured from the time of egg deposition to hatchling emergence) is inversely related to nest temperature, such that between 26.0 °C and 32.0 °C (78.8 °F and 89.6 °F), a change of 1 °C (33.8 °F) adds or subtracts approximately 5 days (Mrosovsky 1980, p. 531). The warmer the sand surrounding the egg chamber, the faster the embryos develop (Mrosovsky and Yntema 1980, p. 272).

Sand temperatures prevailing during the middle third of the incubation period also determine the gender of hatchling sea turtles (Mrosovsky and Yntema 1980, p. 276; Yntema and Mrosovsky 1982, pp. 1014–1015). The pivotal temperature (i.e., the incubation temperature that produces equal numbers of males and females) in loggerheads is approximately 29.0 °C (84.2 °F) (Limpus *et al.* 1983, p. 3; Mrosovsky 1988, pp. 664–666; Marcovaldi *et al.* 1997, pp. 758–759). Incubation temperatures near the upper end of the tolerable range produce only female hatchlings while incubation temperatures near the lower end of the tolerable range produce only male hatchlings.

Loggerhead hatchlings pip (break through the egg shell) and escape from their eggs over a 1- to 3-day interval and move upward and out of the nest over a 2- to 4-day interval (Christens 1990, p. 400). The time from pipping to emergence ranges from 4 to 7 days with an average of 4.1 days (Godfrey and Mrosovsky 1997, p. 583). Hatchlings emerge from their nests en masse almost exclusively at night, likely using decreasing sand temperature as a cue (Hendrickson 1958, pp. 513–514; Mrosovsky 1968, entire; Witherington *et al.* 1990, pp. 1166–1167; Moran *et al.* 1999, p. 260). After an initial emergence, there may be secondary emergences on subsequent nights (Carr and Ogren 1960, p. 23; Witherington 1986, p. 36; Ernest and Martin 1993, pp. 10–11; Houghton and Hays 2001, p. 134).

Hatchlings use a progression of seafinding orientation cues to guide their movement from the nest to the marine environments (Lohmann and Lohmann 2003, entire). Hatchlings first use light cues to find the ocean. On

natural beaches without artificial lighting, ambient light from the open sky creates a relatively bright horizon compared to the dark silhouette of the dune and vegetation landward of the nest. This contrast guides the hatchlings to the ocean (Daniel and Smith 1947, pp. 414–415; Limpus 1971, p. 387; Salmon *et al.* 1992, pp. 72–75; Witherington and Martin 1996, pp. 5–12; Witherington 1997, pp. 311–319). After reaching the surf, hatchlings swim and are swept through the surf zone, after which wave orientation occurs in the nearshore area and later magnetic field orientation as they proceed further toward open water (Lohmann and Lohmann 2003, entire).

Both nesting and hatchling sea turtles are adversely affected by the presence of artificial lighting on or near the beach (Witherington and Martin 1996, pp. 2–5, 12–13). Artificial lighting deters adult female loggerheads from emerging from the ocean to nest, and loggerheads emerging onto a beach abort nesting attempts at a greater frequency in lighted areas (Witherington 1992, pp. 34–37). Because adult females rely on visual brightness cues to find their way back to the ocean after nesting, those turtles that nest on artificially lighted beaches may become disoriented by artificial lighting and have difficulty finding their way back to the ocean (Witherington 1992, p. 38). Hatchling sea turtles have a robust seafinding behavior guided by visual cues (Mrosovsky and Carr 1967, pp. 228–230; Mrosovsky and Shettleworth 1968, pp. 214–218; Dickerson and Nelson 1989, entire; Witherington and Bjorndal 1991, pp. 146–148; Salmon *et al.* 1992, pp. 72–75; Witherington and Martin 1996, pp. 6–12; Lohmann *et al.* 1997, pp. 110–116; Lohmann and Lohmann 2003, pp. 45–47). Hatchlings unable to find the ocean, or delayed in reaching it, due to the presence of artificial beachfront lighting are likely to incur high mortality from dehydration, exhaustion, or predation (Carr and Ogren 1960, pp. 33–46; Ehrhart and Witherington 1987, pp. 97–98; Witherington and Martin 1996, pp. 12–13).

For loggerheads, it is important to conserve: (1) Beaches that have the highest nesting densities (by State or region within a State); (2) beaches that have a good geographic spatial distribution to ensure protection of genetic diversity; (3) beaches that collectively provide a good representation of total nesting; and (4) beaches adjacent to the high-density nesting beaches that can serve as expansion areas. Since loggerheads nest on dynamic ocean beaches that may be significantly degraded or lost through natural processes (e.g., erosion) or upland development (e.g., armoring, lighting), the designation of occupied beaches adjacent to the highest density nesting beaches as critical habitat will help ensure the availability of nesting habitat if the primary high-density nesting beaches are temporarily or permanently lost.

Therefore, based on the information above, we identify extra-tidal or dry sandy beaches from the mean high water (MHW) (see definition at *http://tidesandcurrents.noaa.gov/datum_options.html*) line to the toe of the secondary dune that are capable of supporting a high density of nests or serving as an expansion area for beaches with a high density of nests and that are well distributed within each State or region within a State and representative of total nesting to be a physical or biological feature for the species.

Physical or Biological Feature 2—*Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species*

Sea turtle nesting habitat is part of the highly dynamic and continually shifting coastal system, which includes oceanfront beaches, barrier islands, and inlets. These geologically dynamic coastal regions are controlled by natural coastal processes or activities that mimic these natural processes, including littoral or longshore drift (the process by which sediments move along the shoreline), onshore and offshore sand transport (natural erosion or accretion cycle), and tides and storm surge. The integrity of the habitat components depends upon daily tidal events; these processes are associated with the formation and movement of barrier islands, inlets, and other coastal landforms throughout the landscape.

There has been considerable loss or degradation of such habitats by humans from development, armoring, sand placement, and other activities to prevent or forestall erosion or inundation from shifting shorelines, as well as coastal storms and sea level rise resulting from climate change. Coastal dynamic processes are anticipated to accelerate due to sea level rise and an increase in frequency and intensity of coastal storms as a result of climate change.

Since sea turtles evolved in this dynamic system, they are dependent upon these ever-changing features for their continued survival and recovery. Sea turtles require nesting beaches where natural coastal processes or activities that mimic these natural processes will be able to continue well into the future to allow the formation of suitable beaches for nesting.

These physical processes benefit sea turtles by maintaining the nesting beaches through repeated cycles of destruction, alteration, and recovery of the beach and adjacent dune habitats. Coastal processes happen over a wide range of spatial and temporal scales. Wind, waves, tides, storms, and stream discharge are important driving forces in the coastal zone (Dingler 2005, p. 163). Thus, it is important that, where it can be allowed, the natural processes be maintained or any projects that address erosion or shoreline protection contain measures to reduce negative effects or are temporary in nature.

Therefore, based on the information above, we identify natural coastal processes or activities that mimic these natural processes to be a physical or biological feature for this species. It is important that loggerhead nesting beaches are allowed to respond naturally to coastal dynamic processes of erosion and accretion or mimic these processes.

Primary Constituent Elements for the Northwest Atlantic Ocean DPS of the Loggerhead Sea Turtle

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the loggerhead sea turtle in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider primary constituent elements to be those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the terrestrial primary constituent elements specific to the Northwest Atlantic Ocean DPS of the loggerhead sea turtle are:

(1) Primary Constituent Element 1—*Suitable nesting beach habitat that has (a) relatively unimpeded nearshore access from the ocean to the beach for nesting females and from the beach to the ocean for both post-nesting females and hatchlings and (b) is located above mean high water to avoid being inundated frequently by high tides.*

(2) Primary Constituent Element 2—*Sand that (a) allows for suitable nest construction, (b) is suitable for facilitating gas diffusion conducive to embryo development, and (c) is able to develop and maintain temperatures and*

a moisture content conducive to embryo development.

(3) Primary Constituent Element 3—*Suitable nesting beach habitat with sufficient darkness to ensure nesting turtles are not deterred from emerging onto the beach and hatchlings and post-nesting females orient to the sea.*

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features essential to the conservation of the species which may require special management considerations or protection. We have determined not only that special management considerations or protection may be required, but that they are required within critical habitat areas to address these threats to the essential features of loggerhead sea turtle terrestrial habitat.

For loggerhead sea turtle terrestrial habitat, we have grouped the primary threats that may impact the habitat, thus necessitating special management or protection, into 12 categories:

(1) Recreational beach use (beach cleaning, human presence (e.g., dog beach, special events, piers, and recreational beach equipment));

(2) Beach driving (essential and nonessential off-road vehicles, all-terrain vehicles, and recreational access and use);

(3) Predation (depredation of eggs and hatchlings by native and nonnative predators);

(4) Beach sand placement activities (beach nourishment, beach restoration, inlet sand bypassing, dredge material disposal, dune construction, emergency sand placement after natural disaster, berm construction, and dune and berm planting);

(5) In-water and shoreline alterations (artificial in-water and shoreline stabilization measures (e.g., in-water erosion control structures, such as groins, breakwaters, jetties), inlet relocation, inlet dredging, nearshore dredging, and dredging and deepening channels);

(6) Coastal development (residential and commercial development and associated activities including beach armoring (e.g., sea walls, geotextile tubes, rock revetments, sandbags, emergency temporary armoring); and activities associated with construction, repair, and maintenance of upland structures, stormwater outfalls, and piers);

(7) Artificial lighting (direct and indirect lighting, skyglow, and bonfires);

(8) Beach erosion (erosion due to aperiodic, short-term weather-related erosion events, such as atmospheric fronts, northeasters, tropical storms, and hurricanes);

(9) Climate change (includes sea level rise);

(10) Habitat obstructions (tree stumps, fallen trees, and other debris on the beach; nearshore sand bars; and ponding along beachfront seaward of dry beach);

(11) Human-caused disasters and response to natural and human-caused disasters (oil spills, oil spill response including beach cleaning and berm construction, and debris cleanup after natural disasters); and

(12) Military testing and training activities (troop presence, pyrotechnics and nighttime lighting, vehicles and amphibious watercraft usage on the beach, helicopter drops and extractions, live fire exercises, and placement and removal of objects on the beach).

Recreational Beach Use

Beach cleaning: There is increasing demand in the southeastern United States, especially in Florida, for beach communities to carry out beach cleaning operations to improve the appearance of beaches for visitors and residents. Beach cleaning occurs on private beaches and on some municipal or county beaches that are used for nesting by loggerhead sea turtles. Beach cleaning activities effectively remove ''seaweed, fish, glass, syringes, plastic, cans, cigarettes, shells, stone, wood, and virtually any unwanted debris'' (H. Barber and Sons 2012, entire). This can include wrack material (organic material that is washed up onto the beach by surf, tides, and wind), the removal of which reduces the natural sand-trapping abilities of beaches and contributes to their destabilization. As beach cleaning vehicles and equipment move over the sand, sand is displaced downward, lowering the substrate. Although the amount of sand lost due to single sweeping actions may be small, it adds up considerably over a period of years (Neal *et al.* 2007, p. 219). In addition, since the beach cleaning vehicles and equipment also inhibit plant growth and open the area to wind erosion, the beach and dunes may become unstable. Beach cleaning ''can result in abnormally broad unvegetated zones that are inhospitable to dune formation or plant colonization, thereby enhancing the likelihood of erosion'' (Defeo *et al.* 2009, p. 4). This is also a concern because dunes and vegetation play an important role in minimizing the impacts of artificial beachfront lighting, which causes disorientation of sea turtle hatchlings and nesting turtles, by creating a barrier that prevents residential and commercial business lighting from being visible on the beach.

Beach cleaning occurs in a few locations in South Carolina and Alabama, but the most extensive beach cleaning activities occur in Florida, particularly southern Florida. However, a Florida Department of Environmental Protection permit, which includes conditions to protect sea turtles, is required. These permit conditions restrict the timing and nature of beach cleaning to ensure these activities avoid or minimize the potential for impacts to sea turtles and their nesting habitat.

Human presence: Human presence on the beach at night during the nesting season can reduce the quality of nesting habitat by deterring or disturbing nesting turtles and causing them to avoid otherwise suitable habitat. In addition, human foot traffic can make a beach less suitable for nesting and hatchling emergence by increasing sand compaction and creating obstacles to hatchlings attempting to reach the ocean (Hosier *et al.* 1981, p. 160).

Some beach communities, local governments, and State and Federal lands have management plans or agreements that include addressing human disturbance to minimize impacts to nesting and hatchling loggerhead sea turtles. Other beach communities and Federal, State, and local governments have best addressed human disturbance and presence on the beach with generally successful ''Share the Beach'' educational campaigns. The educational message in the campaigns focuses on beach user behavior when encountering a turtle on the beach—enjoy the experience but do not disturb the turtle.

Recreational beach equipment: The use and storage of lounge chairs, cabanas, umbrellas, catamarans, and other types of recreational equipment on the beach at night can also make otherwise suitable nesting habitat unsuitable by hampering or deterring nesting by adult females and trapping or impeding hatchlings during their nest-to-sea migration. The documentation of nonnesting emergences (also referred to as false crawls) at these obstacles is becoming increasingly common as more recreational beach equipment is left on the beach at night. Sobel (2002, p. 311) describes nesting turtles being deterred by wooden lounge chairs that prevented access to the upper beach.

Some beach communities, local governments, and State and Federal lands have management plans, agreements, or ordinances that address recreational equipment on the beach to minimize impacts to nesting and

hatchling loggerhead sea turtles. Other beach communities and Federal, State, and local governments address recreational beach equipment with generally successful ''Leave No Trace'' and ''Share the Beach'' educational campaigns. The educational message in the campaigns focuses on removing recreational equipment from the nesting beach each night during the nesting season.

Beach Driving

Beach driving has been found to reduce the quality of loggerhead nesting habitat in several ways. In the southeastern United States, vehicle ruts on the beach have been found to prevent or impede hatchlings from reaching the ocean following emergence from the nest (Hosier *et al.* 1981, p. 160; Cox *et al.* 1994, p. 27; Hughes and Caine 1994, p. 237). Sand compaction by vehicles has been found to hinder nest construction and hatchling emergence from nests (Mann 1977, p. 96). Vehicle lights and vehicle movement on the beach after dark results in reduced habitat suitability, which can deter females from nesting and disorient hatchlings. If driving occurs at night, sea turtles could be run over and injured. Additionally, vehicle traffic on nesting beaches contributes to erosion, especially during high tides or on narrow beaches where driving is concentrated on the high beach and foredune.

Beach driving is prohibited on the majority of nesting beaches in the southeastern United States by law, regulation, management plan, or agreement. However, some vehicular driving is still allowed on private, local, State, and Federal beaches for recreation, commercial, or beach and natural resource management activities. In 1985, the Florida Legislature severely restricted vehicular driving on Florida's beaches, except for cleanup, repair, or public safety. Five counties were exempted from the legislation and are allowed to continue vehicular access on coastal beaches due to the availability of less than 50 percent of its peak user demand for off-beach parking. The counties affected by this exception are Volusia, St. Johns, Gulf, Nassau, and Flagler Counties, as well as limited vehicular access on Walton County beaches for boat launching. Volusia and St. Johns Counties, Florida, developed HCPs that minimize and mitigate the impacts of County-regulated driving and USFWS issued incidental take permits under section 10(a)(1)(B) of the Act. Gulf County has submitted an HCP to the Service in conjunction with an application for a section 10(a)(1)(B) permit that minimizes and mitigates the impacts of County-regulated driving on the beach.

Predation

Predation of sea turtle eggs and hatchlings by native and nonnative species occurs on almost all nesting beaches. Predation by a variety of predators can considerably decrease sea turtle nest hatching success. The most common predators in the southeastern United States are ghost crabs (*Ocypode quadrata*), raccoons (*Procyon lotor*), feral hogs (*Sus scrofa*), foxes (*Urocyon cinereoargenteus* and *Vulpes vulpes*), coyotes (*Canis latrans*), armadillos (*Dasypus novemcinctus*), and fire ants (*Solenopsis invicta*) (Stancyk 1982, p. 145; Dodd 1988, p. 48). In the absence of nest protection programs in a number of locations throughout the southeastern United States, raccoons may depredate up to 96 percent of all nests deposited on a beach (Davis and Whiting 1977, p. 20; Stancyk *et al.* 1980, p. 290; Talbert *et al.* 1980, p. 712; Hopkins and Murphy 1981, p. 67; Schroeder 1981, p. 35; Labisky *et al.* 1986, pp. 14–15). In addition, nesting turtles harassed by predators (e.g., coyotes, red foxes) on the beach may abort nesting attempts (Hope 2012, pers. comm.). Thus, the presence of predators can affect the suitability of nesting habitat.

The most longstanding beach management program in the southeastern United States has been to reduce the destruction of nests by natural and introduced predators. Most major nesting beaches in the southeastern United States employ some type of lethal (trapping, hunting) or nonlethal (screen, cage) control of mammalian predators to reduce nest loss. Overall, nest protection activities have substantially reduced loggerhead nest depredations, although the magnitude of the reduction has not been quantified.

Beach Sand Placement Activities

Substantial amounts of sand are deposited along Gulf of Mexico and Atlantic Ocean beaches to protect coastal properties in anticipation of preventing erosion and what otherwise would be considered natural processes of overwash and island migration. Constructed beaches tend to differ from natural beaches in several important ways for sea turtles. They are typically wider, flatter, and more compact, and the sediments are moister than those on natural beaches (Nelson *et al.* 1987, p. 51; Ackerman *et al.* 1991, p. 22; Ernest and Martin 1999, pp. 8–9). On severely eroded sections of beach, where little or no suitable nesting habitat previously existed, sand placement can result in increased nesting (Ernest and Martin 1999, p. 37). The placement of sand on a beach with reduced dry foredune habitat may increase sea turtle nesting habitat if the placed sand is highly compatible (i.e., grain size, shape, color, etc.) with naturally occurring beach sediments in the area, and compaction and escarpment remediation measures are incorporated into the project. In addition, a nourished beach that is designed and constructed to mimic a natural beach system may benefit sea turtles more than an eroding beach it replaces. However, beach sand placement projects conducted under the USFWS's Statewide Programmatic Biological Opinion for the U.S. Army Corps of Engineers planning and regulatory sand placement activities (including post-disaster sand placement activities) in Florida and other individual biological opinions throughout the loggerhead's nesting range include required terms and conditions that minimize incidental take of turtles.

There are, however, a few important ephemeral impacts associated with beach sand placement activities. In most cases, a significantly larger proportion of turtles emerging on engineered beaches abandon their nesting attempts than turtles emerging on natural or prenourished beaches, even though more nesting habitat is available (Trindell *et al.* 1998, p. 82; Ernest and Martin 1999, pp. 47–49; Herren 1999, p. 44), with nesting success approximately 10 to 34 percent lower on nourished beaches than on control beaches during the first year post-nourishment. This reduction in nesting success is most pronounced during the first year following project construction and is most likely the result of changes in physical beach characteristics (beach profile, sediment grain size, beach compaction, frequency and extent of escarpments) associated with the nourishment project (Ernest and Martin 1999, p. 48). During the first postconstruction year, the time required for turtles to excavate an egg chamber on untilled, hard-packed sands increases significantly relative to natural beach conditions. Also during the first postconstruction year, nests on nourished beaches are deposited significantly more seaward of the toe of the dune than nests on natural beaches. More nests are washed out on the wide, flat beaches of the nourished treatments than on the narrower steeply sloped natural beaches. This phenomenon may persist through the second postconstruction year and result from

the placement of nests near the seaward edge of the beach berm where dramatic profile changes, caused by erosion and scarping, occur as the beach equilibrates to a more natural contour.

In-Water and Shoreline Alterations

Many navigable mainland or barrier island tidal inlets along the Atlantic and Gulf of Mexico coasts are stabilized with jetties or groins. Jetties are built perpendicular to the shoreline and extend through the entire nearshore zone and past the breaker zone to prevent or decrease sand deposition in the channel (Kaufman and Pilkey 1979, pp. 193–195). Groins are also shore-perpendicular structures that are designed to trap sand that would otherwise be transported by longshore currents and can cause downdrift erosion (Kaufman and Pilkey 1979, pp. 193–195).

These in-water structures have profound effects on adjacent beaches (Kaufman and Pilkey 1979, p. 194). Jetties and groins placed to stabilize a beach or inlet prevent normal sand transport, resulting in accretion of sand on updrift beaches and acceleration of beach erosion downdrift of the structures (Komar 1983, pp. 203–204; Pilkey *et al.* 1984, p. 44). Witherington *et al.* (2005, p. 356) found a significant negative relationship between loggerhead nesting density and distance from the nearest of 17 ocean inlets on the Atlantic coast of Florida. The effect of inlets in lowering nesting density was observed both updrift and downdrift of the inlets, leading researchers to propose that beach instability from both erosion and accretion may discourage loggerhead nesting.

Following construction, the presence of groins and jetties may interfere with nesting turtle access to the beach, result in a change in beach profile and width (downdrift erosion, loss of sandy berms, and escarpment formation), trap hatchlings, and concentrate predatory fishes, resulting in higher probabilities of hatchling predation. In addition to decreasing nesting habitat suitability, construction or repair of groins and jetties during the nesting season may result in the destruction of nests, disturbance of females attempting to nest, and disorientation of emerging hatchlings from project lighting.

However, groins and jetties constructed in appropriate high erosion areas, or to offset the effects of shoreline armoring, may reestablish a beach where none currently exists, stabilize the beach in rapidly eroding areas and reduce the potential for escarpment formation, reduce destruction of nests from erosion, and reduce the need for future sand placement events by extending the interval between sand placement events. USFWS includes terms and conditions in its biological opinions for groin and jetty construction projects to eliminate or reduce impacts to nesting and hatchling sea turtles, sea turtle nests, and sea turtle nesting habitat.

Coastal Development

Coastal development not only causes the loss and degradation of suitable nesting habitat, but can result in the disruption of powerful coastal processes accelerating erosion and interrupting the natural shoreline migration. This may in turn cause the need to protect upland structures and infrastructure by armoring, which causes changes in, additional loss of, or impact to the remaining sea turtle habitat.

In the southeastern United States, numerous armoring or erosion control structures (e.g., bulkheads, seawalls, soil retaining walls, rock revetments, sandbags, geotextile tubes) that create barriers to nesting have been constructed to protect upland residential and commercial development. Armoring is any rigid structure placed parallel to the shoreline on the upper beach to prevent both landward retreat of the shoreline and inundation or loss of upland property by flooding and wave action (Kraus and McDougal 1996, p. 692). Although armoring structures may provide short-term protection to beachfront property, they do little to promote or maintain sandy beaches used by loggerhead sea turtles for nesting. These structures influence natural shoreline processes and the physical beach environment, but the effects are not well understood. However, it is clear that armoring structures prevent long-term recovery of the beach and dune system (i.e., building of the back beach) by physically prohibiting dune formation from wave uprush and wind-blown sand. The proportion of coastline that is armored is approximately 3 percent (9 km (5.6 miles)) in North Carolina (Godfrey 2009, pers. comm.), 12 percent (29 km (18.0 miles)) in South Carolina (Griffin 2009, pers. comm.), 9 percent (14 km (8.7 miles)) in Georgia (Dodd 2009, pers. comm.), 18 percent (239 km (148.4 miles)) in Florida (Schroeder and Mosier 2000, p. 291), 6 percent (7.5 km (4.7 miles)) in Alabama (Morton and Peterson 2005, entire), and 0 percent along the Mississippi barrier islands (Morton and Peterson 2005, entire).

In addition to coastal armoring, there are a variety of other coastal construction activities that may affect sea turtles and their nesting habitat. These include construction, repair, and maintenance of upland structures and dune crossovers; installation of utility cables; installation and repair of public infrastructure (such as coastal highways and emergency evacuation routes); and construction equipment and lighting associated with any of these activities. Many of these activities alter nesting habitat, as well as directly harm adults, nests, and hatchlings. Most direct construction-related impacts can be avoided by requiring that nonemergency activities be performed outside of the nesting and hatching season. However, indirect effects can also result from the postconstruction presence of structures on the beach. The presence of these structures may cause adult females to return to the ocean without nesting, deposit their nests lower on the beach where they are more susceptible to frequent and prolonged tidal inundation, or select less suitable nesting sites.

Coastal development also contributes to habitat degradation by increasing light pollution. Both nesting and hatchling sea turtles are adversely affected by the presence of artificial lighting on or near the beach (Witherington and Martin 1996, pp. 2–5). See the threat category for *Artificial lighting* below for additional information.

Stormwater and other water source runoff from coastal development, including beachfront parking lots, building rooftops, roads, decks, and draining swimming pools adjacent to the beach, is frequently discharged directly onto Northwest Atlantic beaches and dunes either by sheet flow, through stormwater collection system outfalls, or through small diameter pipes. These outfalls create localized erosion channels, prevent natural dune establishment, and wash out sea turtle nests (Florida Fish and Wildlife Conservation Commission, unpublished data).

Artificial Lighting

Experimental studies have shown that artificial lighting deters adult female turtles from emerging from the ocean to nest (Witherington 1992, pp. 36–38). Witherington (1986, p. 71) also found that loggerheads aborted nesting attempts at a greater frequency in lighted areas. In addition, because adult females rely on visual brightness cues to find their way back to the ocean after nesting, those turtles that nest on lighted beaches may become disoriented by artificial lighting and have difficulty finding their way back to the ocean. Although loggerhead turtles prefer dark beaches for nesting, many do nest in

lighted areas. In doing so, they place the lives of their offspring at risk as artificial lighting can impair the ability of hatchlings to properly orient to the ocean once they leave their nests (Witherington and Martin 1996, pp. 7–13). Hatchlings, unable to find the ocean or delayed in reaching it, are likely to incur high mortality from dehydration, exhaustion, or predation (Carr and Ogren 1960, p. 23; Ehrhart and Witherington 1987, pp. 66–67; Witherington and Martin 1996, p. 11).

Based on hatchling orientation index surveys at nests located at 23 representative beaches in six counties around Florida in 1993 and 1994, Witherington *et al.* (1996, entire) found that, by county, approximately 10 to 30 percent of nests showed evidence of hatchlings disoriented by lighting. From this survey and from measures of hatchling production (Florida Fish and Wildlife Conservation Commission, unpublished data), the actual number of hatchlings disoriented by lighting in Florida is likely in the hundreds of thousands per year. Mortality of disoriented hatchlings is likely very high (NMFS and USFWS 2008, p. I–43).

Efforts are underway to reduce light pollution on sea turtle nesting beaches. In the southeastern United States, the effects of light pollution on sea turtles are most extensive in Florida due to dense coastal development. Enforcement of mandatory lighting ordinances in Florida and other States has increased. In addition, the Florida Fish and Wildlife Conservation Commission, working in close coordination with USFWS, has developed a sea turtle lighting certification program that involves conducting workshops to educate all interested parties about the effects of lighting on sea turtles, the best lighting options to use near sea turtle nesting beaches, and the wide variety of light fixtures and bulbs available to manage lighting on their properties without negatively impacting sea turtles. In addition, sand placement projects typically include dune construction and these created dunes help minimize the effects of landward artificial lighting by blocking some of the light and creating a dark silhouette for nesting and hatchling turtle crawling to the ocean.

Beach Erosion

Natural beach erosion events may influence the quality of nesting habitat. Short-term erosion events (e.g., atmospheric fronts, northeasters, tropical storms, and hurricanes) are common phenomena throughout the Northwest Atlantic loggerhead nesting range and may vary considerably from year to year. Although these erosion events may affect loggerhead hatchling production, the results are generally localized and they rarely result in whole-scale losses over multiple nesting seasons. The negative effects of hurricanes on low-lying and developed shorelines used for nesting by loggerheads may be longer-lasting and a greater threat overall.

Hurricanes and other storm events can result in the direct loss of sea turtle nests, either by erosion or washing away of the nests by wave action and inundation or ''drowning'' of the eggs or preemergent hatchlings within the nest, or indirectly affect sea turtles by causing the loss of nesting habitat. Depending on their frequency, storms can affect sea turtles on either a short-term basis (nests lost for one season and temporary loss of nesting habitat) or a long-term basis (habitat unable to recover due to frequent storm events). The manner in which hurricanes affect sea turtle nesting also depends on their characteristics (winds, storm surge, rainfall), the time of year (within or outside of the nesting season), and where the northeast edge of the hurricane crosses land.

Climate change studies have indicated a trend toward increasing hurricane intensity (Emanuel 2005, p. 686; Webster *et al.* 2005, p. 1846; Karl *et al.* 2009, p. 114). When combined with the effects of sea level rise (see the threat category for *Climate change* below for additional information), there may be increased cumulative impacts from future storms.

USFWS acknowledges that we cannot fully address the threat of natural beach erosion facing loggerheads. However, we can determine how we respond to beach erosion events working with the States, local governments, and Federal agencies such as the Federal Emergency Management Agency (FEMA) and the U.S. Army Corps of Engineers. Emergency beach sand placement activities conducted under the USFWS's Statewide Programmatic Biological Opinion for the U.S. Army Corps of Engineers planning and regulatory sand placement activities include requirements for post-disaster sand placement activities in Florida. In addition, USFWS and FEMA have two programmatic consultations for post-disaster response in Florida that cover replacement of pre-existing facilities and berm construction. These consultations have enabled a faster response to complete shore protection activities and protect sea turtle nesting.

Climate Change

Climate change has the potential to impact loggerhead sea turtles in the Northwest Atlantic. The decline in loggerhead nesting in Florida from 1998 to 2007, as well as the recent increase, appears to be tied to climatic conditions (Van Houtan and Halley 2011, p. 3). Global sea level during the 20th century rose at an estimated rate of about 1.7 millimeters (mm) (0.7 in) per year or an estimated 17 cm (6.7 in) over the entire 100-year period, a rate that is an order of magnitude greater than that seen during the several millennia that followed the end of the last ice age (Bindoff *et al.* 2007, p. 409). Global sea level is projected to rise in the 21st century at an even greater rate. In the southeastern United States, the U.S. Global Change Research Program stated that sea level is likely to increase on average up to 0.61 m (2 ft) or more by the end of the 21st century (Karl *et al.* 2009, p. 114). Although rapid changes in sea level are predicted, estimated timeframes and resulting water levels vary due to the uncertainty about global temperature projections and the rate of ice sheets melting and slipping into the ocean (Bindoff *et al.* 2007, pp. 409, 421).

Potential impacts of climate change to Northwest Atlantic loggerheads include beach erosion from rising sea levels, repeated inundation of nests, skewed hatchling sex ratios from rising incubation temperatures, and abrupt disruption of ocean currents used for natural dispersal during the complex life cycle (Fish *et al.* 2005, pp. 489–490; Fish *et al.* 2008, p. 336; Hawkes *et al.* 2009, pp. 139–141; Poloczanska *et al.* 2009, pp. 164–175). Along developed coastlines, and especially in areas where shoreline protection structures have been constructed to limit shoreline movement, rising sea levels will cause severe effects on loggerhead nesting habitat and nesting females and their eggs. The loss of habitat as a result of climate change could be accelerated due to a combination of other environmental and oceanographic changes such as an increase in the intensity of storms and/or changes in prevailing currents, both of which could lead to increased beach loss via erosion (Kennedy *et al.* 2002, pp. 7, 14, 23, 40; Meehl *et al.* 2007, pp. 783, 788). Thus, climate change impacts could have profound long-term impacts on loggerhead nesting populations in the Northwest Atlantic Ocean, but it is not possible to project the impacts at this point in time.

USFWS acknowledges that we cannot fully address the significant, long-term threat of climate change to loggerhead sea turtles. However, we can determine

how we respond to the threat of climate change by providing protection to the known nesting sites of the turtle. We can also identify measures to protect nesting habitat from the actions (e.g., coastal armoring, sand placement) undertaken to respond to climate change that may potentially impact the Northwest Atlantic Ocean loggerhead DPS.

Habitat Obstructions

Both natural and anthropogenic features (e.g., offshore sand bars, ponding along the beachfront) can act as barriers or deterrents to adult females attempting to access a beach. In addition, hatchlings often must navigate through a variety of obstacles before reaching the ocean. These include natural (e.g., tree stumps, fallen trees) and human-made debris. Debris on the beach may interfere with a hatchling's progress toward the ocean. Research has shown that travel times of hatchlings from the nest to the water may be extended when traversing areas of heavy foot traffic or vehicular ruts (Hosier *et al.* 1981); the same is true of debris on the beach. Hatchlings may be upended and spend both time and energy in righting themselves. Some beach debris may have the potential to trap hatchlings and prevent them from successfully reaching the ocean. In addition, debris over the tops of nests may impede or prevent hatchling emergence.

Human-Caused Disasters and Response to Natural and Human-Caused Disasters

Oil spills threaten loggerhead sea turtles in the Northwest Atlantic. Oil spills in the vicinity of nesting beaches just prior to or during the nesting season place nesting females, incubating egg clutches, and hatchlings at significant risk from direct exposure to contaminants (Fritts and McGehee 1982, p. 38; Lutcavage *et al.* 1997, p. 395; Witherington 1999, p. 5), as well as negative impacts on nesting habitat. Annually about 1 percent of all sea turtle strandings along the U.S. east coast have been associated with oil, but higher rates of 3 to 6 percent have been observed in South Florida and Texas (Rabalais and Rabalais 1980, p. 126; Plotkin and Amos 1990, p. 742; Teas 1994, p. 9). Oil cleanup activities can also be harmful. Earth-moving equipment can dissuade females from nesting and destroy nests, containment booms can entrap hatchlings, and lighting from nighttime activities can misdirect turtles (Witherington 1999, p. 5).

Deepwater Horizon (Mississippi Canyon 252) Oil Spill: The Deepwater Horizon (Mississippi Canyon 252) oil spill, which started April 20, 2010, discharged oil into the Gulf of Mexico through July 15, 2010. According to government estimates, between 379 and 757 million liters (100 and 200 million gallons) of oil were released into the Gulf of Mexico during this time. The U.S. Coast Guard estimates that more than 189 million liters (50 million gallons) of oil have been removed from the Gulf, or roughly a quarter of the spill amount. Additional impacts to natural resources may be attributed to the 7 million liters (1.84 million gallons) of dispersant that were applied to the spill. The U.S. Coast Guard, the States, and Responsible Parties that formed the Unified Area Command (with advice from Federal and State natural resource agencies) initiated protective measures and cleanup efforts by preparing contingency plans to deal with petroleum and other hazardous chemical spills for each State's coastline. These plans identified sensitive habitats, including all federally listed species' habitats, which received a higher priority for response actions and allowed for immediate habitat protective measures coinciding with cleanup activities.

Throughout the Deepwater Horizon oil spill response, the U.S. Coast Guard was responsible for and continues to oversee implementation and documentation of avoidance and minimization measures to protect trust resources, including sea turtles. Though containment of the well was completed in September 2010, other countermeasures, cleanup, and waste disposal are continuing and, therefore, a detailed analysis of the success of the avoidance and minimization measures has not been conducted. In addition, Natural Resource Damage Assessment studies regarding potential effects to fish and wildlife resources are currently being conducted along the northern Gulf of Mexico coast.

It is not yet clear what the immediate and long-term impacts of the Deepwater Horizon oil well blowout and uncontrolled release has had, and will have, on loggerhead sea turtles in the Gulf of Mexico.

Military Mission, Testing, and Training Activities

Troop presence: The presence of soldiers and other personnel on the beach, particularly at night during nesting and hatching season, could result in harm or death to individual nesting turtles or hatchlings, as well as deter females from nesting. Training exercises require concentration and often involve inherently dangerous activities. A nesting sea turtle or emerging hatchling could be overlooked and injured or killed by training activities on the beach. Training activities also may require the use of pyrotechnics and lighting, and both nesting and hatchling sea turtles are adversely affected by the presence of artificial lighting on or near the beach (Witherington and Martin 1996, pp. 2–5). See the threat category for *Artificial lighting* above for additional information.

Vehicles: The use of vehicles for amphibious assault training, troop transport, helicopter landing drops and extraction, search and rescue, and unmanned aerial vehicle use all have the potential to injure or kill nesting females and emerging hatchlings. In addition, heavy vehicles have the potential to compact sand that may affect the ability of hatchlings to climb out of nests or create ruts that entrap hatchlings after emergence. See the threat category for *Beach driving* above for additional information.

Live fire exercises: Live fire exercises are inherently dangerous, and spent ammunition could injure or kill sea turtles and hatchlings, particularly at night. A nesting sea turtle or emerging hatchling could approach the beach area during an exercise and be harmed or killed.

Placement or removal of objects on the beach: Digging into the sand to place or remove objects (e.g., mine placement and extraction) could result in direct mortality of developing embryos in nests within the training area for those nests that are missed during daily nesting surveys and thus not marked for avoidance. The exact number of these missed nests is not known. However, in two separate monitoring programs on the east coast of Florida where hand digging was performed to confirm the presence of nests and thus reduce the chance of missing nests through misinterpretation, trained observers still missed about 6 to 8 percent of the nests because of natural elements (Martin 1992, p. 3; Ernest and Martin 1993, pp. 23–24). This must be considered a conservative number, because missed nests are not always accounted for. In another study, Schroeder (1994, p. 133) found that, even under the best of conditions, about 7 percent of nests can be misidentified as false crawls by highly experienced sea turtle nest surveyors. Signs of hatchling emergence are very easily obliterated by the same elements that interfere with detection of nests.

USFWS consults with the Department of Defense under section 7 of the Act on their Integrated Natural Resources

Management Plans, military mission, testing, and training activities that may affect nesting and hatchling sea turtles, sea turtle nests, and sea turtle nesting habitat. Efforts to minimize the effects of these activities including natural resource management have focused on adjusting the activity timing to minimize encounters with loggerheads and adjusting locations of activities to reduce overlap with sea turtle habitats.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—is necessary to ensure the conservation of the species. Here, we are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing in 2011 (50 CFR 17.11(h)). We are not currently proposing to designate any areas outside the geographical area occupied by the species because occupied areas are sufficient for the conservation of the species.

Although the loggerhead sea turtle occurs throughout the temperate and tropical regions of the Atlantic, Pacific, and Indian Oceans (Dodd 1988, p. 16), under our regulations, critical habitat can only be designated in areas under U.S. jurisdiction (50 CFR 424.12(h)). Because loggerhead sea turtle nesting in the United States only occurs within the Northwest Atlantic Ocean DPS, we have defined the terrestrial portion of the geographical area occupied for the loggerhead sea turtle as those U.S. areas in the Northwest Atlantic Ocean DPS where nesting has been documented for the most part annually for the 10-year period from 2002 to 2011 as this time period represents the most consistent and standardized nest count surveys (Florida Fish and Wildlife Conservation Commission 2012, entire; Georgia Department of Natural Resources 2012, entire; Gulf Islands National Seashore 2012a, entire; Gulf Islands National Seashore 2012b, entire; North Carolina Wildlife Resources Commission 2012, entire; Share the Beach 2012, entire; South Carolina Department of Natural Resources (SCDNR) 2012, entire).

As described in the Background section above, five recovery units have been identified for the Northwest Atlantic population of the loggerhead sea turtle (NMFS and USFWS 2008, pp. II–2–II–6). Four of these recovery units represent nesting assemblages in the southeastern United States and were delineated based on genetic differences and a combination of geographic distribution of nesting densities, geographic separation, and geopolitical boundaries. The fifth recovery unit (Greater Caribbean Recovery Unit) includes all nesting assemblages within the Greater Caribbean, which includes Puerto Rico and the U.S. Virgin Islands. No loggerhead sea turtle nesting has ever been documented in Puerto Rico (Diez 2012, pers. comm.). Only two loggerhead sea turtles have been documented as nesting in the U.S. Virgin Islands, both on Buck Island Reef National Monument off the north coast of St. Croix (Pollock *et al.* 2009, entire) where nesting has been documented since 2003. Therefore, although some loggerhead sea turtle nesting has been documented on beaches under U.S. jurisdiction within the Greater Caribbean Recovery Unit, we do not propose to designate any critical habitat there due to the very low number of nests laid there. The four recovery units for which we propose to designate terrestrial critical habitat are the Northern Recovery Unit, Peninsular Florida Recovery Unit, Dry Tortugas Recovery Unit, and Northern Gulf of Mexico Recovery Unit.

All terrestrial units proposed for designation as critical habitat are currently occupied by the loggerhead sea turtle and contain the physical and biological features, occur within the species' geographical range, and contain one or more of the PCEs sufficient to support the terrestrial life-history processes of the species.

The selected primary beaches have the highest nesting densities within each of the four recovery units, have a good geographic spatial distribution that will help ensure the protection of genetic diversity, and collectively provide a good representation of total nesting. The selected beaches adjacent to the primary high-density nesting beaches currently support loggerhead nesting and can serve as expansion areas should the high-density nesting beaches be significantly degraded or temporarily or permanently lost through natural processes or upland development. Thus, the amount and distribution of critical habitat being proposed for designation for terrestrial habitat will conserve recovery units of the Northwest Atlantic Ocean DPS of the loggerhead sea turtle by:

(1) Maintaining their existing nesting distribution;

(2) Allowing for movement between beach areas depending on habitat availability (response to changing nature of coastal beach habitat) and supporting genetic interchange;

(3) Allowing for an increase in the size of each recovery unit to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished; and

(4) Maintaining their ability to withstand local or unit level environmental fluctuations or catastrophes.

We used the following process to select specific areas in the terrestrial environment as critical habitat units for the Northwest Atlantic Ocean DPS of the loggerhead sea turtle that contain the PBFs and PCEs. For each recovery unit, we looked at nesting densities by State or regions within a State (PBF #1) to ensure a good spatial distribution of critical habitat. This approach was relatively straightforward for the Northern Recovery Unit and the Northern Gulf of Mexico Recovery Unit, and for the Dry Tortugas Recovery Unit where we propose to designate all islands west of Key West where loggerhead nesting has been documented as terrestrial critical habitat based on the unit's small size. However, the approach used for the Peninsular Florida Recovery Unit was more complex. The methodology used for identifying critical habitat was developed with the assistance of five State agency technical consultants with sea turtle expertise in North Carolina, South Carolina, Georgia, and Florida. The methodology is described by recovery unit below.

Northern Recovery Unit

For the Northern Recovery Unit, we used loggerhead nest counts from 2006–2011 to calculate mean nesting density for each beach. We defined beach segments as islands or mainland beaches separated by creeks, inlets, or sounds. However, in some cases, for long contiguous stretches of habitat with no natural features, we used political boundaries to delineate beaches (e.g., Myrtle Beach).

We divided beach nesting densities into four equal groups by State and selected beaches that were within the top 25 percent (highest nesting densities) for designation as critical habitat. These high nesting density beaches along with the beaches adjacent to them as described below encompassed the majority of nesting within the recovery unit. The reason we determined high-density nesting beaches within each State, rather than

the entire Northern Recovery Unit, was that doing so allowed for the inclusion of beaches near the northern extent of the range (North Carolina) that would otherwise be considered low density when compared with beaches further south (Georgia and South Carolina), ensuring a good spatial distribution. Although some loggerhead sea turtle nesting regularly occurs in Virginia, we do not propose to designate any critical habitat there due to the very low number of nests (less than 10 annually from 2002 to 2011) laid in the State.

We also identified adjacent beaches for each of the high-density nesting beaches based on current knowledge about nest site fidelity. Loggerheads are known to exhibit high site fidelity to individual nesting beaches. In a study in Georgia, 55 percent (12 of 22) of nesting females tracked during the internesting period used a single island for nesting, while 40 percent (9 of 22) used two islands (Scott 2006, p. 51). Protecting beaches adjacent to high-density nesting beaches should provide sufficient habitat to accommodate and provide a rescue effect for nesting females whose primary nesting beach has been lost. Although these areas currently support nesting, they will facilitate recovery by providing additional nesting habitat for population expansion. Therefore, in the Northern Recovery Unit, we selected one island to the north and one island to the south, where appropriate, of each of the high-density nesting beaches identified for inclusion as critical habitat. Islands were selected because nesting occurs on the islands and not the mainland beaches.

We identified 39 units in the Northern Recovery Unit for designation as terrestrial critical habitat for the loggerhead sea turtle. However, we have exempted one of the identified units (Marine Corps Base Camp Lejeune (Onslow Beach)) from critical habitat designation under section 4(a)(3) of the Act (see Exemptions section below). The remaining 38 units encompass 393.7 km (244.7 miles) of Atlantic Ocean shoreline: 8 units occur in North Carolina, 22 in South Carolina, and 8 in Georgia. These 38 areas encompass approximately 86 percent of the documented nesting (numbers of nests) within the recovery unit.

Peninsular Florida Recovery Unit

For the Peninsular Florida Recovery Unit, we took a similar approach to the one used for the Northern Recovery Unit. However, we used recent information on loggerhead genetics within the recovery unit (Shamblin *et al.* 2011, entire) to break the unit into smaller regions for the purpose of assessing beach nesting densities (analogous to assessing nesting densities by State for the Northern Recovery Unit).

Within the southeastern United States, Shamblin *et al.* (2011, p. 585) supported recognition of a minimum of six distinct units based solely on genetics. Four of these genetic units occur fully or partially within the Peninsular Florida Recovery Unit: (1) Northern, (2) central eastern Florida, (3) southern Florida (southeastern and southwestern), and (4) central western Florida. We used these four regions identified by Shamblin *et al.* (2011, p. 585) for our assessment, but split southern Florida into southeastern and southwestern regions based on additional genetic analyses (Shamblin 2012, pers. comm.). We included the Florida Keys in Monroe County from Key West and east in the southeastern region because, even though the sample sizes for loggerhead genetics on these islands are too small to make any definitive determinations, they do indicate that loggerheads nesting in this area are least likely to group out with those in the southwestern region (Shamblin 2012, pers. comm.).

Therefore, we split the Peninsular Florida Recovery Unit into the following five regions for an assessment of nesting densities based on recovery unit boundaries (NMFS and USFWS 2008, pp. II–2–II–6) and recent genetic analyses (Shamblin *et al.* 2011, p. 585; Shamblin 2012, pers. comm.):

(1) Northern Florida—Florida-Georgia border to Ponce Inlet;

(2) Central Eastern Florida—Ponce Inlet to Fort Pierce Inlet;

(3) Southeastern Florida—Fort Pierce Inlet to Key West in Monroe County;

(4) Central Western Florida—Pinellas County to San Carlos Bay off Lee County; and

(5) Southwestern Florida—San Carlos Bay off Lee County to Sandy Key in northwest Monroe County.

The next step for the Peninsular Florida Recovery Unit was to delineate beaches within these five regions. For the Florida Atlantic Coast from the Florida-Georgia border through central eastern Monroe County, and for the Florida Gulf Coast from the Pinellas County-Pasco County border through northwestern Monroe County, we first defined beach segments as islands or mainland beaches separated by inlets, cuts, rivers, creeks, bays, sounds, passes, and channels. Note that, for the Miami Beaches area, we did not use the Haulover Cut to delineate beaches north and south of this water feature. The reason for this is that the permit holder survey area for the Miami Beaches occurs both north and south of the Haulover Cut, and the nesting data could not readily be separated. In this situation, the nesting density analysis included data that covered the entire survey area from the south end of Golden Beach to Government Cut.

After breaking out beach segments using inlets and other water features, we determined that the identified beach segments were overly large in some areas for an accurate assessment of nesting densities. Calculating nesting densities for overly large areas could result in some high-density nesting beaches not being identified because they would be averaged in with adjacent lower density nesting beaches. To address this issue, we next used information available on turtle nest site fidelity to further separate beach segments. Nest site fidelity varies among females, with some females laying multiple nests on a relatively small section of beach and some laying their nests over a much larger section of beach. Schroeder *et al.* (2003, p. 119) compiled reported information on mean distances between the nest sites of individual loggerheads, with the reported averages of females nesting on the Florida Atlantic coast varying from 3.0 to 17.48 km (1.9 to 10.9 miles). In Southwest Florida, Tucker (2010, p. 51) reported a mean nest site fidelity of 28.1 km (17.5 miles) for all nests, but 16.9 km (10.5 miles) if the first nests were omitted to account for each turtle's navigational correction. Based on this information, we decided to use distances of approximately 20.0 km (12.4 miles) to further separate out beach segments. We used this 20.0-km (12.4-mile) target in concert with sea turtle permit holder nesting survey area boundaries to delineate beaches for the nesting density analysis.

For the Florida Keys in Monroe County, we grouped the islands from Key West and east where loggerhead nesting has been documented into three separate segments: (1) Upper segment consisting of Lower Matecumbe Key and Long Key; (2) Middle segment consisting of Little Crawl Key, Fat Deer Key, Key Colony Beach (formerly called Shelter Key), and Vaca Key; and (3) Lower segment consisting of Bahia Honda Key, Big Pine Key, and Key West. Note that Sandy Key in northwestern Monroe County was grouped with the Southwestern Florida Region.

Once we defined the beaches by region within the Peninsular Florida Recovery Unit, we used the same approach described above for the Northern Recovery Unit. We divided beach nesting densities into four equal

groups by region and selected beaches that were within the top 25 percent (highest nesting densities) for designation as critical habitat. These high density nesting beaches along with the beaches adjacent to them as described below encompassed the majority of nesting within the recovery unit. The reason we determined high-density nesting beaches within each region (rather than the entire Peninsular Florida Recovery Unit) was to ensure the inclusion of beaches that would otherwise be considered low density when compared with beaches along the southeastern Florida coast and thus ensure a good spatial distribution of critical habitat units within the recovery unit.

We also identified adjacent areas for each of the high-density nesting beaches based on current knowledge about nest site fidelity. Protecting beaches adjacent to high-density nesting beaches should provide sufficient habitat to accommodate and provide a rescue effect for nesting females whose primary nesting beach has been lost. To identify adjacent beaches, we again used information available on turtle nest site fidelity. Therefore, for the Peninsular Florida Recovery Unit, we selected adjacent beaches approximately 20.0 km (12.4 miles) to the north and 20.0 km (12.4 miles) to the south, where appropriate, of each of the high-density nesting beaches identified for inclusion as critical habitat. The selected adjacent beaches were based on permit holder survey area boundaries with one or more permit holder survey areas being included depending on the length of the survey areas. Within these adjacent areas for each of the high-density nesting beaches, we did not include segments that were highly urbanized, highly erosional, or prone to repeated flooding.

Although no beaches in the Florida Keys east of Key West were selected using the above process, we decided to include beaches on two Keys to ensure good spatial distribution of loggerhead nesting in the southern portion of the range for this recovery unit. The Keys (Long Key and Bahia Honda Key) we are proposing to designate as terrestrial critical habitat address this need for good spatial distribution of nesting. In addition, these beaches are unique from the other beaches we are proposing to designate in that they are limestone islands with narrow, low-energy beaches (beaches where waves are not powerful); they have carbonate sands; and they are relatively close to the major offshore currents that are known to facilitate the dispersal of post-hatchling loggerheads.

We identified 37 units in the Peninsular Florida Recovery Unit for designation as terrestrial critical habitat for the loggerhead sea turtle. However, we have exempted two of the identified units (Cape Canaveral Air Force Station and Patrick Air Force Base) from critical habitat designation under section 4(a)(3) of the Act (see Exemptions section below). The remaining 35 units encompass 364.9 km (226.7 miles) of Atlantic Ocean shoreline and 198.8 km (123.5 miles) of Gulf of Mexico shoreline totaling 563.7 km (350.2 miles) of shoreline in this recovery unit: 18 units occur along the Atlantic Ocean coast, and 17 units occur along the Gulf of Mexico coast. These 35 units encompass approximately 87 percent of the documented nesting (numbers of nests) within the recovery unit.

Dry Tortugas Recovery Unit

For the Dry Tortugas Recovery Unit, we propose to designate all islands west of Key West, Florida, where loggerhead nesting has been documented, as terrestrial critical habitat due to the extremely small size of this recovery unit. We identified four units in the Dry Tortugas Recovery Unit for designation as terrestrial critical habitat for the loggerhead sea turtle. These four units encompass 14.5 km (9.0 miles) of Gulf of Mexico shoreline. These four units encompass 100 percent of the nesting (numbers of nests) where loggerhead nesting is known to occur within the recovery unit.

Northern Gulf of Mexico Recovery Unit

For the Northern Gulf of Mexico Recovery Unit, we used loggerhead nest counts from 2006–2011 to calculate mean nesting density for each beach. We defined beach segments as islands or mainland beaches separated by cuts, bays, sounds, or passes. Note that we did not use Crooked Island Sound, St. Andrews Bay Entrance Channel, and Destin Pass to delineate beaches west and east of these water features. The reason for this is that the permit holder survey areas for these three locations occur both west and east of the water feature, and the nesting data could not readily be separated. In these situations, the nesting density analysis included data that covered the entire survey areas on both sides of the water feature.

After breaking out beach segments using cuts and other water features, we determined that the identified beach segments were overly large in some areas for an accurate assessment of nesting densities. Calculating nesting densities for overly large areas could result in some high-density nesting beaches not being identified because they would be averaged in with adjacent lower density nesting beaches. To address this issue, we used political boundaries and information available on turtle nest site fidelity to further separate beach segments. Although some preliminary information on nest site fidelity is available for the Northern Gulf of Mexico Recovery Unit, it was not sufficient to determine average distances between nest sites within a season for nesting females in this recovery unit. Therefore, as described in the Peninsular Florida Recovery Unit section above, we decided to use distances of approximately 20.0 km (12.4 miles) to further separate out beach segments based on available information on nest site fidelity. We used this 20.0-km (12.4-mile) target in concert with sea turtle permit holder nesting survey area boundaries to delineate beaches for the nesting density analysis.

Once we defined the beaches by State within the Northern Gulf of Mexico Recovery Unit, we used a similar approach as the one described above for the Northern Recovery Unit. For Mississippi, nesting data are not collected regularly or in a standardized manner. Prior to 2006, the National Park Service annually conducted aerial sea turtle nesting surveys once a week during the nesting season on the Mississippi District of Gulf Islands National Seashore. Aerial surveys were conducted over Cat, West Ship, East Ship, Horn, and Petit Bois Islands. All nests sighted during aerial surveys appeared to be loggerhead nests. The total number of nests for a season ranged from 0 to approximately 15, although aerial survey methods and frequency may have missed nests. Although regular surveys have not been conducted since 2005, loggerhead nesting was documented in 2010 and 2011 during the Deepwater Horizon event response efforts. Horn and Petit Bois Islands have had the most nests; the other islands have had occasional nests. For Alabama and the Florida Panhandle, we divided beach nesting densities into four equal groups by State and selected beaches that were within the top 25 percent (highest nesting densities) for designation as critical habitat. These high density nesting beaches along with the beaches adjacent to them as described below encompassed the majority of nesting within the recovery unit. The reason we determined high-density nesting beaches within each State (rather than the entire Northern Gulf of Mexico Recovery Unit) was that it allowed consideration for the inclusion of

beaches near the western extent of the range that would otherwise be considered low density when compared with beaches in Alabama and the Florida Panhandle, thus ensuring a good spatial distribution. While nesting in Mississippi may be considered low density compared to Alabama and the Florida Panhandle, the nesting numbers were much higher than those in Louisiana and Texas. Thus, although some loggerhead sea turtle nesting likely regularly occurs in Louisiana and Texas, we do not propose to designate any critical habitat there due to the very low number of nests (less than 10 annually in each State from 2002 to 2011) known to be laid in these States.

We also identified adjacent areas for each of the high-density nesting beaches in Alabama and the Florida Panhandle based on current knowledge about nest site fidelity. Protecting beaches adjacent to high-density nesting beaches should provide sufficient habitat to accommodate and provide a rescue effect for nesting females whose primary nesting beach has been lost. To identify adjacent beaches, we again used information available on turtle nest site fidelity. Although some preliminary information on nest site fidelity is available for the Northern Gulf of Mexico Recovery Unit, it was not sufficient to determine average distances between nest sites within a season for nesting females in this recovery unit. Therefore, we used available information on nest site fidelity for the Peninsular Florida Recovery Unit and selected adjacent beaches approximately 20.0 km (12.4 miles) to the west and 20.0 km (12.4 miles) to the east, where appropriate, of each of the high-density nesting beaches identified for inclusion as critical habitat. The selected adjacent beaches were based on permit holder survey area boundaries with one or more permit holder survey areas being included depending on the length of the survey areas. Within these adjacent areas for each of the high-density nesting beaches, we did not include segments that were highly urbanized, highly erosional, or prone to repeated flooding.

We identified 14 units in the Northern Gulf of Mexico Recovery Unit for designation as terrestrial critical habitat for the loggerhead sea turtle. However, we have exempted one of the identified units (Eglin Air Force Base (Cape San Blas)) from critical habitat designation under section 4(a)(3) of the Act (see Exemptions section below). The remaining 13 units encompass 218.0 km (135.5 miles) of Gulf of Mexico shoreline: 2 units occur in Mississippi, 3 in Alabama, and 8 in the Florida Panhandle. These 13 units encompass approximately 75 percent of the documented nesting (numbers of nests) within the recovery unit. The percentage of nesting is based on data from the Florida Panhandle and Alabama only.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the loggerhead sea turtle. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0103, on our Internet site *http://www.fws.gov/northflorida,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

In order to translate the selection process above to the areas on the ground, we used the following methodology to identify the mapped boundaries of critical habitat for the Northwest Atlantic Ocean loggerhead DPS:

(1) Each unit was digitally mapped in Google Earth imagery using the unit boundary descriptions.

(2) Where feasible, natural or artificial features (inlets, channels, creeks, bays and sounds), political boundaries (County or City), or map-depicted land ownership (Federal, State, or local) were used as unit boundaries.

(3) Where features to be used as boundaries were highly dynamic, such as inlets, boundaries were distinguished using records of the sea turtle nesting in that area.

(4) Where natural, artificial, or political features, or land ownership could not be used for unit boundaries, boundaries were delineated by geographic means (latitude and longitude, decimal degree points).

(5) Data layers defining map units were created using Google Earth imagery, then refined using Bing imagery. Unit descriptions were then mapped using North America Lambert Conformal Conic coordinates.

Proposed Critical Habitat Designation

We are proposing 1,189.9 km (739.3 miles) in 90 units in the terrestrial environment as critical habitat for the loggerhead sea turtle. Under section 4(a)(3) of the Act, we have exempted four additional units that were identified for inclusion as critical habitat (see Exemptions section below). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat in the terrestrial environment for the Northwest Atlantic Ocean DPS of the loggerhead sea turtle. The 90 areas we propose as critical habitat and the approximate shoreline length and Federal, State, and private and other (counties and municipalities) ownership of each proposed critical habitat unit are shown in Table 1.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE LOGGERHEAD SEA TURTLE BY RECOVERY UNIT

[Beach length estimates reflect the linear distance along the nesting beach shoreline within critical habitat unit boundaries. All units are occupied]

Critical habitat unit	Length of unit in kilometers (miles)	Federal	State	Private and other (counties and municipalities)
Northern Recovery Unit				
North Carolina				
LOGG–T–NC–01: Bogue Banks, Carteret County	38.9 (24.2)	0 (0)	4.6 (2.9)	34.3 (21.3)
LOGG–T–NC–02: Bear Island, Onslow County	6.6 (4.1)	0 (0)	6.6 (4.1)	0 (0)
LOGG–T–NC–03: Topsail Island, Onslow and Pender Counties	35.0 (21.8)	0 (0)	0 (0)	35.0 (21.8)
LOGG–T–NC–04: Lea-Hutaff Island, Pender County	6.1 (3.8)	0 (0)	0.5 (0.3)	5.6 (3.5)
LOGG–T–NC–05: Pleasure Island, New Hanover County	18.6 (11.5)	0 (0)	6.8 (4.2)	11.8 (7.3)
LOGG–T–NC–06: Bald Head Island, Brunswick County	15.1 (9.4)	0 (0)	5.8 (3.6)	9.3 (5.8)
LOGG–T–NC–07: Oak Island, Brunswick County	20.9 (13.0)	0 (0)	0 (0)	20.9 (13.0)
LOGG–T–NC–08: Holden Beach, Brunswick County	13.4 (8.3)	0 (0)	0 (0)	13.4 (8.3)
North Carolina State Totals	154.6 (96.1)	0 (0)	24.3 (15.1)	130.3 (81.0)
South Carolina				
LOGG–T–SC–01: North Island, Georgetown County	13.2 (8.2)	0 (0)	13.2 (8.2)	0 (0)
LOGG–T–SC–02: Sand Island, Georgetown County	4.7 (2.9)	0 (0)	4.7 (2.9)	0 (0)
LOGG–T–SC–03: South Island, Georgetown County	6.7 (4.2)	0 (0)	6.7 (4.2)	0 (0)
LOGG–T–SC–04: Cedar Island, Georgetown County	4.1 (2.5)	0 (0)	4.1 (2.5)	0 (0)
LOGG–T–SC–05: Murphy Island, Charleston County	8.0 (5.0)	0 (0)	8.0 (5.0)	0 (0)
LOGG–T–SC–06: Cape Island, Charleston County	8.3 (5.1)	8.3 (5.1)	0 (0)	0 (0)
LOGG–T–SC–07: Lighthouse Island, Charleston County	5.3 (3.3)	5.3 (3.3)	0 (0)	0 (0)
LOGG–T–SC–08: Raccoon Key, Charleston County	4.8 (3.0)	4.8 (3.0)	0 (0)	0 (0)
LOGG–T–SC–09: Folly Island, Charleston County	11.2 (7.0)	0 (0)	0 (0)	11.2 (7.0)
LOGG–T–SC–10: Kiawah Island, Charleston County	17.0 (10.6)	0 (0)	0 (0)	17.0 (10.6)
LOGG–T–SC–11: Seabrook Island, Charleston County	5.8 (3.6)	0 (0)	0 (0)	5.8 (3.6)
LOGG–T–SC–12: Botany Bay Island and Botany Bay Plantation, Charleston County	6.6 (4.1)	0 (0)	4.0 (2.5)	2.6 (1.6)
LOGG–T–SC–13: Interlude Beach, Charleston County	0.9 (0.6)	0 (0)	0.9 (0.6)	0 (0)
LOGG–T–SC–14: Edingsville Beach, Charleston County	2.7 (1.7)	0 (0)	0 (0)	2.7 (1.7)
LOGG–T–SC–15: Edisto Beach State Park, Colleton County	2.2 (1.4)	0 (0)	2.2 (1.4)	0 (0)
LOGG–T–SC–16: Edisto Beach, Colleton County	6.8 (4.2)	0 (0)	0 (0)	6.8 (4.2)
LOGG–T–SC–17: Pine Island, Colleton County	1.2 (0.7)	0 (0)	1.2 (0.7)	0 (0)
LOGG–T–SC–18: Otter Island, Colleton County	4.1 (2.5)	0 (0)	4.1 (2.5)	0 (0)
LOGG–T–SC–19: Harbor Island, Beaufort County	2.9 (1.8)	0 (0)	0 (0)	2.9 (1.8)
LOGG–T–SC–20: Little Capers Island, Beaufort County	4.6 (2.9)	0 (0)	0 (0)	4.6 (2.9)
LOGG–T–SC–21: St. Phillips Island, Beaufort County	2.3 (1.4)	0 (0)	0 (0)	2.3 (1.4)
LOGG–T–SC–22: Bay Point Island, Beaufort County	4.3 (2.7)	0 (0)	0 (0)	4.3 (2.7)
South Carolina State Totals	127.7 (79.3)	18.4 (11.4)	48.9 (30.4)	60.4 (37.5)
Georgia				
LOGG–T–GA–01: Little Tybee Island, Chatham County	8.6 (5.3)	0 (0)	8.6 (5.3)	0 (0)
LOGG–T–GA–02: Wassaw Island, Chatham County	10.1 (6.3)	9.8 (6.1)	0 (0)	0.3 (0.2)
LOGG–T–GA–03: Ossabaw Island, Chatham County	17.1 (10.6)	0 (0)	17.1 (10.6)	0 (0)
LOGG–T–GA–04: St. Catherines Island, Liberty County	18.4 (11.5)	0 (0)	0 (0)	18.4 (11.5)
LOGG–T–GA–05: Blackbeard Island, McIntosh County	13.5 (8.4)	13.5 (8.4)	0 (0)	0 (0)
LOGG–T–GA–06: Sapelo Island, McIntosh County	9.3 (5.8)	0 (0)	9.3 (5.8)	0 (0)
LOGG–T–GA–07: Little Cumberland Island, Camden County	4.9 (3.0)	0 (0)	0 (0)	4.9 (3.0)
LOGG–T–GA–08: Cumberland Island, Camden County	29.7 (18.4)	25.2 (15.7)	0 (0)	4.5 (2.8)
Georgia State Totals	111.5 (69.3)	48.4 (30.1)	34.9 (21.7)	28.1 (17.5)
Northern Recovery Unit Totals	393.7 (244.7)	66.8 (41.5)	109.2 (67.9)	217.7 (135.3)
Peninsular Florida Recovery Unit				
Florida				
LOGG–T–FL–01: South Duval County Beaches–Old Ponte Vedra, Duval and St. Johns Counties	25.2 (15.6)	0 (0)	0 (0)	25.2 (15.6)
LOGG–T–FL–02: Guana Tolomato Matanzas NERR–St. Augustine Inlet, St. Johns County	24.1 (15.0)	0 (0)	7.2 (4.4)	17.0 (10.6)
LOGG–T–FL–03: St. Augustine Inlet–Matanzas Inlet, St. Johns County	22.4 (14.0)	1.4 (0.9)	5.6 (3.5)	15.4 (9.6)
LOGG–T–FL–04: River to Sea Preserve at Marineland–North Peninsula State Park, Flagler and Volusia Counties	31.8 (19.8)	0 (0)	6.1 (3.8)	25.7 (16.0)
LOGG–T–FL–05: Ormond-by-the-Sea–Granada Blvd, Volusia County	11.1 (6.9)	0 (0)	0 (0)	11.1 (6.9)

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE LOGGERHEAD SEA TURTLE BY RECOVERY UNIT—Continued

[Beach length estimates reflect the linear distance along the nesting beach shoreline within critical habitat unit boundaries. All units are occupied]

Critical habitat unit	Length of unit in kilometers (miles)	Federal	State	Private and other (counties and municipalities)
LOGG–T–FL–06: Canaveral National Seashore North, Volusia County	18.2 (11.3)	18.2 (11.3)	0 (0)	0 (0)
LOGG–T–FL–07: Canaveral National Seashore South–Merritt Island National Wildlife Refuge (NWR)-Kennedy Space, Brevard County	28.4 (17.6)	28.4 (17.6)	0 (0)	0 (0)
LOGG–T–FL–08: Central Brevard Beaches, Brevard County	19.5 (12.1)	0 (0)	0 (0)	19.5 (12.1)
LOGG–T–FL–09: South Brevard Beaches, Brevard County	20.8 (12.9)	4.2 (2.6)	1.5 (1.0)	15.0 (9.3)
LOGG–T–FL–10: Sebastian Inlet–Indian River Shores, Indian River County	21.4 (13.3)	0.9 (0.6)	3.2 (2.0)	17.4 (10.8)
LOGG–T–FL–11: Fort Pierce Inlet–St. Lucie Inlet, St. Lucie and Martin Counties	35.2 (21.9)	0 (0)	0 (0)	35.2 (21.9)
LOGG–T–FL–12: St. Lucie Inlet–Jupiter Inlet, Martin and Palm Beach Counties	24.9 (15.5)	4.8 (3.0)	3.7 (2.3)	16.4 (10.2)
LOGG–T–FL–13: Jupiter Inlet–Lake Worth Inlet, Palm Beach County	18.8 (11.7)	0 (0)	2.5 (1.5)	16.3 (10.1)
LOGG–T–FL–14: Lake Worth Inlet–Boynton Inlet, Palm Beach County	24.3 (15.1)	0 (0)	0 (0)	24.3 (15.1)
LOGG–T–FL–15: Boynton Inlet–Boca Raton Inlet, Palm Beach County	22.6 (14.1)	0 (0)	0 (0)	22.6 (14.1)
LOGG–T–FL–16: Boca Raton Inlet–Hillsboro Inlet, Palm Beach and Broward Counties	8.3 (5.2)	0 (0)	0 (0)	8.3 (5.2)
LOGG–T–FL–17: Long Key, Monroe County	4.2 (2.6)	0 (0)	4.2 (2.6)	0 (0)
LOGG–T–FL–18: Bahia Honda Key, Monroe County	3.7 (2.3)	0 (0)	3.7 (2.3)	0 (0)
LOGG–T–FL–19: Longboat Key, Manatee and Sarasota Counties	16.0 (9.9)	0 (0)	0 (0)	16.0 (9.9)
LOGG–T–FL–20: Siesta and Casey Keys, Sarasota County	20.8 (13.0)	0 (0)	0 (0)	20.8 (13.0)
LOGG–T–FL–21: Venice Beaches and Manasota Key, Sarasota and Charlotte Counties	26.0 (16.1)	0 (0)	1.9 (1.2)	24.1 (15.0)
LOGG–T–FL–22: Knight, Don Pedro, and Little Gasparilla Islands, Charlotte County	10.8 (6.7)	0 (0)	1.9 (1.2)	8.9 (5.5)
LOGG–T–FL–23: Gasparilla Island, Charlotte and Lee Counties	11.2 (6.9)	0 (0)	1.5 (1.0)	9.6 (6.0)
LOGG–T–FL–24: Cayo Costa, Lee County	13.5 (8.4)	0 (0)	13.2 (8.2)	0.3 (0.2)
LOGG–T–FL–25: Captiva Island, Lee County	7.6 (4.7)	0 (0)	0 (0)	7.6 (4.7)
LOGG–T–FL–26: Sanibel Island West, Lee County	12.2 (7.6)	0 (0)	0 (0)	12.2 (7.6)
LOGG–T–FL–27: Little Hickory Island, Lee and Collier Counties	8.7 (5.4)	0 (0)	0 (0)	8.7 (5.4)
LOGG–T–FL–28: Wiggins Pass–Clam Pass, Collier County	7.7 (4.8)	0 (0)	2.0 (1.2)	5.7 (3.6)
LOGG–T–FL–29: Clam Pass—Doctors Pass, Collier County	4.9 (3.0)	0 (0)	0 (0)	4.9 (3.0)
LOGG–T–FL–30: Keewaydin Island and Sea Oat Island, Collier County	13.1 (8.1)	0 (0)	12.4 (7.7)	0.7 (0.5)
LOGG–T–FL–31: Cape Romano, Collier County	9.2 (5.7)	0 (0)	7.2 (4.5)	2.0 (1.2)
LOGG–T–FL–32: Ten Thousand Islands North, Collier County	7.8 (4.9)	2.9 (1.8)	4.9 (3.1)	0 (0)
LOGG–T–FL–33: Highland Beach, Monroe County	7.2 (4.5)	7.2 (4.5)	0 (0)	0 (0)
LOGG–T–FL–34: Graveyard Creek– Shark Point, Monroe County	0.9 (0.6)	0.9 (0.6)	0 (0)	0 (0)
LOGG–T–FL–35: Cape Sable, Monroe County	21.3 (13.2)	21.3 (13.2)	0 (0)	0 (0)
Florida State Totals	563.7 (350.2)	90.3 (56.1)	82.6 (51.3)	390.9 (242.9)
Peninsular Florida Recovery Unit Totals	563.7 (350.2)	90.3 (56.1)	82.6 (51.3)	390.9 (242.9)
Dry Tortugas Recovery Unit				
Florida				
LOGG–T–FL–36: Dry Tortugas, Monroe County	6.3 (3.9)	6.3 (3.9)	0 (0)	0 (0)
LOGG–T–FL–37: Marquesas Keys, Monroe County	5.6 (3.5)	5.6 (3.5)	0 (0)	0 (0)
LOGG–T–FL–38: Boca Grande Key, Monroe County	1.3 (0.8)	1.3 (0.8)	0 (0)	0 (0)
LOGG–T–FL–39: Woman Key, Monroe County	1.3 (0.8)	1.3 (0.8)	0 (0)	0 (0)
Florida State Totals	14.5 (9.0)	14.5 (9.0)	0 (0)	0 (0)
Dry Tortugas Recovery Unit Totals	14.5 (9.0)	14.5 (9.0)	0 (0)	0 (0)
Northern Gulf of Mexico Recovery Unit				
Mississippi				
LOGG–T–MS–01: Horn Island, Jackson County	18.6 (11.5)	17.7 (11.0)	0 (0)	0.8 (0.5)
LOGG–T–MS–02: Petit Bois Island, Jackson County	9.8 (6.1)	9.8 (6.1)	0 (0)	0 (0)
Mississippi State Totals	28.4 (17.6)	27.5 (17.1)	0 (0)	0.8 (0.5)
Alabama				
LOGG–T–AL–01: Mobile Bay–Little Lagoon Pass, Baldwin County	28.0 (17.4)	5.4 (3.4)	3.1 (1.9)	19.5 (12.1)
LOGG–T–AL–02: Gulf State Park–Perdido Pass, Baldwin County	10.7 (6.7)	0 (0)	3.5 (2.2)	7.3 (4.5)
LOGG–T–AL–03: Perdido Pass–Florida-Alabama line, Baldwin County	3.3 (2.0)	0 (0)	1.7 (1.0)	1.6 (1.0)

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE LOGGERHEAD SEA TURTLE BY RECOVERY UNIT—Continued

[Beach length estimates reflect the linear distance along the nesting beach shoreline within critical habitat unit boundaries. All units are occupied]

Critical habitat unit	Length of unit in kilometers (miles)	Federal	State	Private and other (counties and municipalities)
Alabama State Totals	42.0 (26.1)	5.4 (3.4)	8.2 (5.1)	28.3 (17.6)
Florida				
LOGG–T–FL–40: Perdido Key, Escambia County	20.2 (12.6)	11.0 (6.8)	2.5 (1.6)	6.7 (4.2)
LOGG–T–FL–41: Mexico Beach and St. Joe Beach, Bay and Gulf Counties	18.7 (11.7)	0 (0)	0 (0)	18.7 (11.7)
LOGG–T–FL–42: St. Joseph Peninsula, Gulf County	23.5 (14.6)	0 (0)	15.5 (9.7)	8.0 (4.9)
LOGG–T–FL–43: Cape San Blas, Gulf County	11.0 (6.8)	0 (0)	0.1 (0.1)	10.8 (6.7)
LOGG–T–FL–44: St. Vincent Island, Franklin County	15.1 (9.4)	15.1 (9.4)	0 (0)	0 (0)
LOGG–T–FL–45: Little St. George Island, Franklin County	15.4 (9.6)	0 (0)	15.4 (9.6)	0 (0)
LOGG–T–FL–46: St. George Island, Franklin County:	30.7 (19.1)	0 (0)	14.0 (8.7)	16.7 (10.4)
LOGG–T–FL–47: Dog Island, Franklin County	13.1 (8.1)	0 (0)	0 (0)	13.1 (8.1)
Florida State Totals	147.7 (91.8)	26.1 (16.2)	47.5 (29.5)	74.0 (46.0)
Northern Gulf of Mexico Recovery Unit Totals	218.0 (135.5)	59.0 (36.7)	55.8 (34.7)	103.2 (64.2)

Note: Linear distances may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the loggerhead sea turtle, below.

Northern Recovery Unit

North Carolina

LOGG–T–NC–01—Bogue Banks, Carteret County: This unit consists of 38.9 km (24.2 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway and Bogue Sound. The unit extends from Beaufort Inlet to Bogue Inlet. The unit includes lands from the MHW line landward to the toe of the secondary dune or developed structures. Land in this unit is in State and private ownership (see Table 1). The State portion is Fort Macon State Park, which is managed by the North Carolina Division of Parks and Recreation. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–NC–02) that has high-density nesting by loggerhead sea turtles in North Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, beach driving, predation, beach sand placement activities, in-water and shoreline alterations, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–NC–02—Bear Island, Onslow County: This unit consists of 6.6 km (4.1 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway and salt marsh. The unit extends from Bogue Inlet to Bear Inlet. The unit includes lands from the MHW line landward to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). The island is managed by the North Carolina Division of Parks and Recreation as Hammocks Beach State Park. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in North Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water and shoreline alterations, climate change, beach erosion, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–NC–03—Topsail Island, Onslow and Pender Counties: This unit consists of 35.0 km (21.8 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Chadwick Bay, Alligator Bay, Goose Bay, Rogers Bay, Everett Bay, Spicer Bay, Waters Bay, Stump Sound, Banks Channel, and salt marsh. The unit extends from New River Inlet to New Topsail Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). The local municipality portion is the North Topsail Beach Park, which is managed by the Town of North Topsail Beach. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in North Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, beach driving, predation, beach sand placement activities, in-water and shoreline alterations, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–NC–04—Lea-Hutaff Island, Pender County: This unit consists of 6.1 km (3.8 miles) of island shoreline along the Atlantic Ocean. Following the closure of Old Topsail Inlet in 1998, two islands, Lea Island and Hutaff Island, joined to form what is now a single island referred to as Lea-Hutaff Island. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Topsail Sound, Eddy Sound, Long Point Channel, Green Channel, and salt marsh. The unit extends from New Topsail Inlet to Rich Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State and private ownership (see Table 1). The State portion is part of the

Lea Island State Natural Area, which includes most of the original Lea Island, and is owned by the North Carolina Division of Parks and Recreation and managed by Audubon North Carolina. The remainder of the original Lea Island is privately owned. The original Hutaff Island is entirely privately owned. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–NC–03) that has high-density nesting by loggerhead sea turtles in North Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, in-water and shoreline alterations, climate change, beach erosion, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–NC–05—Pleasure Island, New Hanover County: This unit consists of 18.6 km (11.5 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Cape Fear River, Upper Midnight Channel Range, Lower Midnight Channel Range, Reaves Point Channel Range, Horseshoe Shoal Channel Range, Snow Marsh Channel Range, and The Basin (bay). The unit extends from Carolina Beach Inlet to 33.91433 N, 77.94408 W (historic location of Corncake Inlet). The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State, private, and other ownership (see Table 1). The State portion is Fort Fisher State Recreation Area, which is managed by the North Carolina Division of Parks and Recreation. The local municipality portion includes half of Freeman Park Recreation Area, which is managed by the Town of Carolina Beach. The County portion includes the other half of Freeman Park Recreation Area, which is also managed by the Town of Carolina Beach under an interlocal agreement with New Hanover County. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–NC–06) that has high-density nesting by loggerhead sea turtles in North Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, beach driving, predation, beach sand placement activities, in-water and shoreline alterations, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–NC–06—Bald Head Island, Brunswick County: This unit consists of 15.1 km (9.4 miles) of island shoreline along the Atlantic Ocean. The island is part of the Smith Island Complex, which is a barrier spit that includes Bald Head, Middle, and Bluff Islands. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Cape Fear River, Battery Island Channel, Lower Swash Channel Range, Buzzard Bay, Smith Island Range, Southport Channel, and salt marsh. The unit extends from 33.91433 N, 77.94408 W (historic location of Corncake Inlet) to the mouth of the Cape Fear River. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State and private and other ownership (see Table 1). The State portion is Bald Head State Natural Area. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in North Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water and shoreline alterations, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–NC–07—Oak Island, Brunswick County: This unit consists of 20.9 km (13.0 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Cape Fear River, Eastern Channel, and salt marsh. The unit extends from the mouth of the Cape Fear River to Lockwoods Folly Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in North Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water and shoreline alterations, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–NC–08—Holden Beach, Brunswick County: This unit consists of 13.4 km (8.3 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Elizabeth River, Montgomery Slough, Boone Channel, and salt marsh. The unit extends from Lockwoods Folly Inlet to Shallotte Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–NC–07) that has high-density nesting by loggerhead sea turtles in North Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water and shoreline alterations, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

South Carolina

LOGG–T–SC–01—North Island, Georgetown County: This unit consists of 13.2 km (8.2 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Winyah Bay, Mud Bay, Oyster Bay, and salt marsh. The unit extends from North Inlet to Winyah Bay. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). It is part of the Tom Yawkey Wildlife Center Heritage Preserve, which is managed by the South Carolina Department of Natural Resources. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–SC–02) that has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational

use, predation, beach erosion, climate change, artificial lighting, habitat obstructions, human-caused disasters, and response to disasters. The Tom Yawkey Wildlife Center has a management plan that includes procedures for the implementation of sea turtle nesting surveys, nest marking, feral hog removal, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (Dozier 2006, pp. 31, 64–65).

LOGG–T–SC–02—Sand Island, Georgetown County: This unit consists of 4.7 km (2.9 miles) of island shoreline along the Atlantic Ocean and Winyah Bay. The island is separated from the mainland by the Atlantic Intracoastal Waterway and salt marsh. The unit extends from Winyah Bay to 33.17534 N, 79.19206 W (northern boundary of an unnamed inlet separating Sand Island and South Island). The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). It is part of the Tom Yawkey Wildlife Center Heritage Preserve, which is managed by the South Carolina Department of Natural Resources. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of predation, in-water and shoreline alterations, beach erosion, climate change, artificial lighting, human-caused disasters, and response to disasters. The Tom Yawkey Wildlife Center has a management plan that includes procedures for the implementation of sea turtle nesting surveys, nest marking, feral hog removal, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (Dozier 2006, pp. 31, 64–65).

LOGG–T–SC–03—South Island, Georgetown County: This unit consists of 6.7 km (4.2 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, North Santee Bay, and salt marsh. The unit extends from 33.17242 N, 79.19366 W (southern boundary of an unnamed inlet separating Sand Island and South Island) to North Santee Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). It is part of the Tom Yawkey Wildlife Center Heritage Preserve, which is managed by the South Carolina Department of Natural Resources. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, in-water and shoreline alterations, beach erosion, climate change, artificial lighting, human-caused disasters, and response to disasters. The Tom Yawkey Wildlife Center has a management plan that includes procedures for the implementation of sea turtle nesting surveys, nest marking, feral hog removal, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (Dozier 2006, pp. 31, 64–65).

LOGG–T–SC–04—Cedar Island, Georgetown County: This unit consists of 4.1 km (2.5 miles) of island shoreline along the Atlantic Ocean and North Santee Inlet. The island is separated from the mainland by the Atlantic Intracoastal Waterway and salt marsh. The unit extends from North Santee Inlet to South Santee Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). It is part of the Santee Coastal Reserve Wildlife Management Area, which is managed by the South Carolina Department of Natural Resources. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–SC–03) that has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach erosion, climate change, habitat obstructions, human-caused disasters, and response to disasters. The Santee Coastal Reserve Wildlife Management Area has a draft management plan that includes recommendations to reduce sea turtle nest depredation by raccoons (South Carolina Department of Natural Resources 2002, p. 21), but there is currently no other management for protection of loggerhead sea turtle nests.

LOGG–T–SC–05—Murphy Island, Charleston County: This unit consists of 8.0 km (5.0 miles) of island shoreline along the Atlantic Ocean and South Santee Inlet. The island is separated from the mainland by the Atlantic Intracoastal Waterway and inland marsh. The unit extends from South Santee Inlet to 33.08335 N, 79.34285 W. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). It is part of the Santee Coastal Reserve Wildlife Management Area, which is managed by the South Carolina Department of Natural Resources. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–SC–06) that has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach erosion, climate change, habitat obstructions, human-caused disasters, and response to disasters. The Santee Coastal Reserve Wildlife Management Area has a draft management plan that includes recommendations to reduce sea turtle nest depredation by raccoons (South Carolina Department of Natural Resources 2002, p. 21), but there is currently no other management for protection of loggerhead sea turtle nests.

LOGG–T–SC–06—Cape Island, Charleston County: This unit consists of 8.3 km (5.1 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Cape Romain Harbor, coastal islands, and salt marsh. The unit extends from Cape Romain Inlet to 33.00988 N, 79.36529 W (northern boundary of an unnamed inlet between Cape Island and Lighthouse Island). The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal ownership (see Table 1). It is the northernmost island in the Cape Romain National Wildlife Refuge (NWR), which is managed by USFWS. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in South Carolina. It is the highest nesting density beach in the Northern Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of predation, in-water and shoreline alterations, beach erosion, climate change, human-caused disasters, and response to disasters. Cape Romain NWR has a Comprehensive Conservation Plan that

includes working with partners on the implementation of sea turtle nesting surveys, nest marking, minimizing human disturbance, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2010a, pp. 45–46).

LOGG–T–SC–07—Lighthouse Island, Charleston County: This unit consists of 5.3 km (3.3 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, a network of coastal islands, and salt marsh. The unit extends from 33.01306 N, 79.36659 W (southern boundary of an unnamed inlet between Cape Island and Lighthouse Island) to Key Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal ownership (see Table 1). It is part of the Cape Romain NWR, which is managed by USFWS. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of predation, in-water and shoreline alterations, beach erosion, climate change, human-caused disasters, and response to disasters. Cape Romain NWR has a Comprehensive Conservation Plan that includes working with partners on the implementation of sea turtle nesting surveys, nest marking, minimizing human disturbance, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2010a, pp. 45–46).

LOGG–T–SC–08—Raccoon Key, Charleston County: This unit consists of 4.8 km (3.0 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, a network of coastal islands, and salt marsh. The unit extends from Raccoon Creek Inlet to Five Fathom Creek Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal ownership (see Table 1). It is part of the Cape Romain NWR, which is managed by USFWS. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–SC–07) that has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of predation, in-water and shoreline alterations, beach erosion, climate change, human-caused disasters, and response to disasters. Cape Romain NWR has a Comprehensive Conservation Plan that includes working with partners on the implementation of sea turtle nesting surveys, nest marking, minimizing human disturbance, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2010a, pp. 45–46).

LOGG–T–SC–09—Folly Island, Charleston County: This unit consists of 11.2 km (7.0 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Folly River, a network of coastal islands, and salt marsh. The unit extends from Lighthouse Inlet to Folly River Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State, and private and other ownership (see Table 1). The Lighthouse Inlet Heritage Preserve, is owned by the County, with a 10 percent undivided interest from the South Carolina Department of Natural Resource. The Folly Beach County Park is owned by the County. Both are managed by the Charleston County Park and Recreation Commission. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–SC–10) that has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBF in this unit may require special management considerations or protections to ameliorate the threats of recreational use, beach sand placement activities, in-water and shoreline alterations, coastal development, beach erosion, climate change, artificial lighting, human-caused disasters, and response to disasters. The City of Folly Beach has a beach management plan that includes measures to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (City of Folly Beach 1991, pp. 32–35). These measures apply to both the private and other lands within this critical habitat unit.

LOGG–T–SC–10—Kiawah Island, Charleston County: This unit consists of 17.0 km (10.6 miles) of island shoreline along the Atlantic Ocean and Stono Inlet. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Wadmalaw Island, Johns Island, Kiawah River, and salt marsh. The unit extends from Stono Inlet to Captain Sam's Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). The County portion includes Kiawah Beachwalker Park and Isle of Palms County Park, which are managed by the Charleston County Park and Recreation Commission. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, beach erosion, climate change, human-caused disasters, and response to disasters. The Town of Kiawah Island has a Local Comprehensive Beach Management Plan that describes actions, such as nest monitoring, education, pet and vehicular restrictions, and a lighting ordinance, taken by the Town to minimize impacts to nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (Town of Kiawah Island 2006, pp. 4–11–4–13). These measures apply to both the private and other lands within this critical habitat unit although the degree of implementation is uncertain.

LOGG–T–SC–11—Seabrook Island, Charleston County: This unit consists of 5.8 km (3.6 miles) of island shoreline along the Atlantic Ocean and North Edisto Inlet. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Wadmalaw Island, Johns Island, and salt marsh. The unit extends from Captain Sam's Inlet to North Edisto Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from adjacent units (LOGG–T–SC–10 and LOGG–T–SC–12) that have high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water and shoreline alterations, coastal development, beach erosion, climate change, artificial lighting, human-caused disasters, and response to disasters. The Town of Seabrook Island has a beach management plan that includes the implementation of sea turtle nesting

surveys, nest marking, and actions to minimize human disturbance impacts to nesting and hatchling loggerhead sea turtles (Town Council of Seabrook 1991, p. 15). These measures apply to the private lands within this critical habitat unit although the degree of implementation is uncertain.

LOGG–T–SC–12—Botany Bay Island and Botany Bay Plantation, Charleston County: This unit consists of 6.6 km (4.1 miles) of island shoreline along the Atlantic Ocean and North Edisto Inlet. It includes the shoreline of Botany Bay Island and Botany Bay Plantation, which is located on the north end of Edisto Island. Botany Bay Island and Botany Bay Plantation were originally separated by South Creek Inlet. However, due to beach accretion on the south end of Botany Bay Island, it is now continuous with Botany Bay Plantation. This unit is separated from the mainland by the Atlantic Intracoastal Waterway, Ocella Creek, Townsend River, South Creek Inlet, a network of coastal islands, and salt marsh. The unit extends from North Edisto Inlet to 32.53710 N, 80.24614 W (northern boundary of an unnamed inlet separating Botany Bay Plantation and Interlude Beach). The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State and private and other ownership (see Table 1). The Botany Bay Island portion is privately owned; however, the owner has placed a conservation easement on the property with The Nature Conservancy. The State portion is part of the Botany Bay Plantation Wildlife Management Area Heritage Preserve, which is managed by the South Carolina Department of Natural Resources.

This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of predation, beach erosion, climate change, habitat obstructions, human-caused disasters, and response to disasters. The Botany Bay Plantation Wildlife Management Area Heritage Preserve has a management plan that includes the implementation of sea turtle nesting surveys, nest marking, actions to minimize human disturbance, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (South Carolina Department of Natural Resources 2009, p. 12).

LOGG–T–SC–13—Interlude Beach, Charleston County: This unit consists of 0.9 km (0.6 mile) of island shoreline along the Atlantic Ocean. This unit includes a section of Edisto Island, which is separated from the mainland by the Atlantic Intracoastal Waterway, a network of coastal islands, and salt marsh. The unit extends from 32.53636 N, 80.24647 W (southern boundary of an unnamed inlet separating Interlude Beach and Botany Bay Plantation) to Frampton Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). It is part of the Botany Bay Plantation Wildlife Management Area Heritage Preserve, which is managed by the South Carolina Department of Natural Resources. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from adjacent units (LOGG–T–SC–12 and LOGG–T–SC–14) that have high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of predation, beach erosion, climate change, human-caused disasters, and response to disasters. The Botany Bay Plantation Wildlife Management Area Heritage Preserve has a management plan that includes the implementation of sea turtle nesting surveys, nest marking, actions to minimize human disturbance, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (South Carolina Department of Natural Resources 2009, p. 12).

LOGG–T–SC–14—Edingsville Beach, Charleston County: This unit consists of 2.7 km (1.7 miles) of island shoreline along the Atlantic Ocean. This unit includes a section of Edisto Island, which is separated from the mainland by the Atlantic Intracoastal Waterway, a network of coastal islands, and salt marsh. The unit extends from Frampton Inlet to Jeremy Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of predation, beach erosion, climate change, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–SC–15—Edisto Beach State Park, Colleton County: This unit consists of 2.2 km (1.4 miles) of island shoreline along the Atlantic Ocean. This unit includes a section of Edisto Island, which is separated from the mainland by the Atlantic Intracoastal Waterway, a network of coastal islands, and salt marsh. The unit extends from Jeremy Inlet to 32.50307 N, 80.29625 W (State Park boundary separating Edisto Beach State Park and the Town of Edisto Beach). The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). It is managed by the South Carolina Department of Parks, Recreation, and Tourism as the Edisto Beach State Park. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach erosion, climate change, artificial lighting, human-caused disasters, and response to disasters. The Edisto Beach State Park has a General Management Plan that includes the implementation of sea turtle nesting surveys, nest marking, and education intended to minimize impacts to nesting and hatchling loggerhead sea turtles (Edisto Beach State Park 2010, pp. 17–18, 21–22).

LOGG–T–SC–16—Edisto Beach, Colleton County: This unit consists of 6.8 km (4.2 miles) of island shoreline along the Atlantic Ocean and South Edisto River. This unit includes a section of Edisto Island, which is separated from the mainland by the Atlantic Intracoastal Waterway, Big Bay Creek, a network of coastal islands, and salt marsh. The unit extends from 32.50307 N, 80.29625 W (State Park boundary separating Edisto Beach State Park and the Town of Edisto Beach) to South Edisto Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. The unit occurs within the town limits of Edisto Beach. Land in this unit is in private and other ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–SC–16) that has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management

considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water and shoreline alterations, beach erosion, climate change, artificial lighting, human-caused disasters, and response to disasters. The Town of Edisto Beach has a Local Comprehensive Beach Management Plan that includes the implementation of sea turtle nesting surveys, nest marking, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (Town of Edisto Beach 2011, p. 25). These measures apply to the private lands within this critical habitat unit although the degree of implementation is uncertain.

LOGG–T–SC–17—Pine Island, Colleton County: This unit consists of 1.2 km (0.7 mile) of island shoreline along the South Edisto Inlet. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Fish Creek, a network of coastal islands, and salt marsh. The unit extends from South Edisto River to 32.49266 N, 80.36846 W (northern boundary of an unnamed inlet to Fish Creek). The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). It is managed by the South Carolina Department of Natural Resources as part of the Ashepoo-Combahee-Edisto (ACE) Basin National Estuarine Research Reserve (NERR). This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–SC–18) that has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach erosion, climate change, habitat obstructions, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–SC–18—Otter Island, Colleton County: This unit consists of 4.1 km (2.5 miles) of island shoreline along the Atlantic Ocean and Saint Helena Sound. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Ashepoo River, a network of coastal islands, and salt marsh. The unit extends from Fish Creek Inlet to Saint Helena Sound. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). It is part of the St. Helena Sound Heritage Preserve and the ACE Basin Estuarine Research Reserve, which are managed by the South Carolina Department of Natural Resources. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of predation, beach erosion, climate change, habitat obstructions, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–SC–19—Harbor Island, Beaufort County: This unit consists of 2.9 km (1.8 miles) of island shoreline along the Atlantic Ocean and Saint Helena Sound. The island is separated from the mainland by the Atlantic Intracoastal Waterway, a network of coastal islands, and salt marsh. The unit extends from Harbor Inlet to Johnson Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–SC–18) that has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach erosion, climate change, artificial lighting, habitat obstructions, human-caused disasters, and response to disasters. Beaufort County has a Comprehensive Beach Management Plan that includes the implementation of sea turtle nesting surveys, nest marking, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (Beaufort County Planning Board 2010, p. 5–19). These measures apply to the private lands within this critical habitat unit.

LOGG–T–SC–20—Little Capers Island, Beaufort County: This unit consists of 4.6 km (2.9 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, a network of coastal islands, and salt marsh. The unit extends from ''Pritchards Inlet'' (there is some uncertainty about the true name of this water feature) located at 32.29009 N, 80.54459 W to Trenchards Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–SC–21) that has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach erosion, climate change, artificial lighting, habitat obstructions, human-caused disasters, and response to disasters. Beaufort County has a Comprehensive Beach Management Plan that includes the implementation of sea turtle nesting surveys, nest marking, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (Beaufort County Planning Board 2010, p. 5–19). These measures apply to the private lands within this critical habitat unit.

LOGG–T–SC–21—St. Phillips Island, Beaufort County: This unit consists of 2.3 km (1.4 miles) of island shoreline along the Atlantic Ocean and Trenchards Inlet. The island is separated from the mainland by the Atlantic Intracoastal Waterway, a network of coastal islands, and salt marsh. The unit extends from Trenchards Inlet to Morse Island Creek Inlet East. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). Although privately owned, the island is protected in perpetuity by a conservation easement with The Nature Conservancy. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of predation, beach erosion, climate change, habitat obstructions, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–SC–22—Bay Point Island, Beaufort County: This unit consists of 4.3 km (2.7 miles) of island shoreline along the Atlantic Ocean and Port Royal Sound. The island is separated from the mainland by the Atlantic Intracoastal Waterway, a network of coastal islands,

and salt marsh. The unit extends from Morse Island Creek Inlet East along the Atlantic Ocean shoreline to Morse Island Creek Inlet West along the Port Royal Sound shoreline. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–SC–21) that has high-density nesting by loggerhead sea turtles in South Carolina. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of predation, beach driving, beach erosion, climate change, habitat obstructions, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

Georgia

LOGG–T–GA–01—Little Tybee Island, Chatham County: This unit consists of 8.6 km (5.3 miles) of island shoreline along the Atlantic Ocean. Little Tybee Island is not a specific island, rather it is a complex of several small, low-lying islands, including Myrtle and Williamson Islands, that are separated by tidal flows, creeks, or sloughs. The island complex is separated from the mainland by the Atlantic Intracoastal Waterway, Tybee Creek, Bull River, a network of coastal islands, and salt marsh. The unit extends from Tybee Creek Inlet to Wassaw Sound. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). The island is owned by the Georgia Department of Natural Resources and managed by The Nature Conservancy as the Little Tybee Island Natural Heritage Preserve. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–GA–02) that has high-density nesting by loggerhead sea turtles in Georgia. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, in-water and shoreline alterations, beach erosion, climate change, human-caused disasters, and response to disasters. The Georgia Department of Natural Resources signed a Memorandum of Agreement with the U.S. Fish and Wildlife Service, National Park Service, St. Catherines Island Foundation, Jekyll Island Authority, City of Tybee Island, Glynn County, Little Cumberland Island Homeowners Association, and Little St. Simons Island, Ltd. mandating that land owned by the State adhere to actions listed in the Management Plan for the Protection of Nesting Loggerhead Sea Turtles and their Habitat in Georgia. This includes working with partners on the implementation of sea turtle nesting surveys, nest marking and protection, education, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (Georgia Department of Natural Resources 1994, pp. 6–9).

LOGG–T–GA–02—Wassaw Island, Chatham County: This unit consists of 10.1 km (6.3 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Romerly Marshes, Odingsell River, and a network of coastal islands. The unit extends from Wassaw Sound to Ossabaw Sound. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal and private ownership (see Table 1). The majority of the island is managed by USFWS as the Wassaw NWR. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in Georgia. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach erosion, climate change, habitat obstructions, human-caused disasters, and response to disasters.

Wassaw NWR is part of the Savannah Coastal Refuges Complex, which has a draft Comprehensive Conservation Plan that includes working with partners on the implementation of sea turtle nesting surveys, nest marking, education, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2010b, pp. 37, 104). USFWS signed a Memorandum of Agreement with the Georgia Department of Natural Resources, National Park Service, St. Catherines Island Foundation, Jekyll Island Authority, City of Tybee Island, Glynn County, Little Cumberland Island Homeowners Association, and Little St. Simons Island, Ltd. mandating that land owned by the Refuge adhere to actions listed in the Management Plan for the Protection of Nesting Loggerhead Sea Turtles and their Habitat in Georgia. This includes working with partners on the implementation of sea turtle nesting surveys, nest marking and protection, education, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (Georgia Department of Natural Resources 1994, pp. 6–9).

LOGG–T–GA–03—Ossabaw Island, Chatham County: This unit consists of 17.1 km (10.6 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Bear River, a network of coastal islands, and extensive salt marshes. Ossabaw Island is divided into four contiguous sections of beach: Bradley (North), North Middle, South Middle, and South beaches. The unit extends from Ogeechee River to St. Catherines Sound. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). The island is managed by the Georgia Department of Natural Resources. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in Georgia. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach erosion, climate change, human-caused disasters, and response to disasters.

A Comprehensive Management Plan for Ossabaw Island includes actions to minimize human disturbance and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (Georgia Department of Natural Resources 2001, pp. 37, 40, 43). The Georgia Department of Natural Resources signed a Memorandum of Agreement with the U.S. Fish and Wildlife Service, National Park Service, St. Catherines Island Foundation, Jekyll Island Authority, City of Tybee Island, Glynn County, Little Cumberland Island Homeowners Association, and Little St. Simons Island, Ltd. mandating that land owned by the State adhere to actions listed in the Management Plan for the Protection of Nesting Loggerhead Sea Turtles and their Habitat in Georgia. This includes working with partners on the implementation of sea turtle nesting surveys, nest marking and protection, education, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (Georgia Department of Natural Resources 1994, pp. 6–9).

LOGG–T–GA–04—St. Catherines Island, Liberty County: This unit consists of 18.4 km (11.5 miles) of island shoreline along the Atlantic

Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, North Newport River, South Newport River, a network of coastal islands, and extensive salt marshes. The unit extends from St. Catherines Sound to Sapelo Sound. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from adjacent units (LOGG–T–GA–03 and LOGG–T–GA–05) that have high-density nesting by loggerhead sea turtles in Georgia. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, habitat obstructions, beach erosion, climate change, human-caused disasters, and response to disasters. The St. Catherines Island Foundation signed a Memorandum of Agreement with the Georgia Department of Natural Resources, U.S. Fish and Wildlife Service, National Park Service, Jekyll Island Authority, City of Tybee Island, Glynn County, Little Cumberland Island Homeowners Association, and Little St. Simons Island, Ltd. mandating that land owned by the Foundation adhere to actions listed in the Management Plan for the Protection of Nesting Loggerhead Sea Turtles and their Habitat in Georgia. This includes working with partners on the implementation of sea turtle nesting surveys, nest marking and protection, education, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (Georgia Department of Natural Resources 1994, pp. 6–9).

LOGG–T–GA–05—Blackbeard Island, McIntosh County: This unit consists of 13.5 km (8.4 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Blackbeard Creek, Mud River, a network of coastal islands, and extensive salt marshes. The unit extends from Sapelo Sound to Cabretta Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal ownership (see Table 1). The island is managed by USFWS as the Blackbeard Island NWR. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in Georgia. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, habitat obstructions, beach erosion, climate change, human-caused disasters, and response to disasters. Blackbeard Island NWR is part of the Savannah Coastal Refuges Complex, which has a draft Comprehensive Conservation Plan that includes working with partners on the implementation of sea turtle nesting surveys, nest marking, education, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2010b, pp. 125, 136).

USFWS signed a Memorandum of Agreement with the Georgia Department of Natural Resources, National Park Service, St. Catherines Island Foundation, Jekyll Island Authority, City of Tybee Island, Glynn County, Little Cumberland Island Homeowners Association, and Little St. Simons Island, Ltd. mandating that land owned by the Refuge adhere to actions listed in the Management Plan for the Protection of Nesting Loggerhead Sea Turtles and their Habitat in Georgia. This includes working with partners on the implementation of sea turtle nesting surveys, nest marking and protection, education, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (Georgia Department of Natural Resources 1994, pp. 6–9).

LOGG–T–GA–06—Sapelo Island, McIntosh County: This unit consists of 9.3 km (5.8 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Doboy Sound, Mud Creek, Teakettle Creek, a network of coastal islands, and extensive salt marshes. Sapelo Island is divided into two contiguous sections of beach: Nannygoat and Cabretta beaches. The unit extends from Cabretta Inlet to Doboy Sound. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). The island is managed by the Georgia Department of Natural Resources. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–GA–05) that has high-density nesting by loggerhead sea turtles in Georgia. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, poaching, beach driving, predation, beach erosion, climate change, human-caused disasters, and response to disasters.

A Comprehensive Management Plan for Sapelo Island includes actions to minimize human disturbance and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (Georgia Department of Natural Resources 1998, pp. 5, 36, 55). The Georgia Department of Natural Resources signed a Memorandum of Agreement with the U.S. Fish and Wildlife Service, National Park Service, St. Catherines Island Foundation, Jekyll Island Authority, City of Tybee Island, Glynn County, Little Cumberland Island Homeowners Association, and Little St. Simons Island, Ltd. mandating that land owned by the State adhere to actions listed in the Management Plan for the Protection of Nesting Loggerhead Sea Turtles and their Habitat in Georgia. This includes working with partners on the implementation of sea turtle nesting surveys, nest marking and protection, education, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (Georgia Department of Natural Resources 1994, pp. 6–9).

LOGG–T–GA–07—Little Cumberland Island, Camden County: This unit consists of 4.9 km (3.0 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Cumberland River, and salt marsh. The unit extends from St. Andrew Sound to Christmas Creek. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private ownership (see Table 1). Although Little Cumberland Island is privately owned, it lies within the boundaries of Cumberland Island National Seashore and is recognized as a Special Use Zone where private property owners have entered into an agreement with the National Park Service. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–GA–08) that has high-density nesting by loggerhead sea turtles in Georgia. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, beach driving, predation, beach erosion, climate change, human-caused disasters, and response to disasters.

The Little Cumberland Island Homeowners Association signed a Memorandum of Agreement with the Georgia Department of Natural Resources, U.S. Fish and Wildlife Service, National Park Service, St. Catherines Island Foundation, Jekyll

Island Authority, City of Tybee Island, Glynn County, and Little St. Simons Island, Ltd. mandating that land owned by the Association adhere to actions listed in the Management Plan for the Protection of Nesting Loggerhead Sea Turtles and their Habitat in Georgia. This includes working with partners on the implementation of sea turtle nesting surveys, nest marking and protection, education, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (Georgia Department of Natural Resources 1994, pp. 6–9).

LOGG–T–GA–08—Cumberland Island, Camden County: This unit consists of 29.7 km (18.4 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Cumberland River, Cumberland Sound, Brickhill River, a network of coastal islands, and extensive salt marsh. The unit extends from Christmas Creek to St. Marys River. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal and private ownership (see Table 1). The Federal portion is part of Cumberland Island National Seashore, which is managed by the National Park Service. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in Georgia. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, beach driving, predation, beach erosion, climate change, human-caused disasters, and response to disasters.

Cumberland Island National Seashore has a General Management Plan that includes predator removal and dune preservation intended to minimize impacts to nesting and hatchling loggerhead sea turtles (National Park Service 1984, pp. 22–23). The National Park Service signed a Memorandum of Agreement with the Georgia Department of Natural Resources, U.S. Fish and Wildlife Service, St. Catherines Island Foundation, Jekyll Island Authority, City of Tybee Island, Glynn County, and Little St. Simons Island, Ltd. mandating that land owned by the Cumberland Island National Seashore adhere to actions listed in the Management Plan for the Protection of Nesting Loggerhead Sea Turtles and their Habitat in Georgia. This includes working with partners on the implementation of sea turtle nesting surveys, nest marking and protection, education, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (Georgia Department of Natural Resources 1994, pp. 6–9).

Peninsular Florida Recovery Unit

Northern Florida Region

LOGG–T–FL–01—South Duval County Beaches-Old Ponte Vedra, Duval and St. Johns Counties: This unit consists of 25.2 km (15.6 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Pablo Creek, and Lake Ponte Vedra. The unit extends from the south boundary of Kathryn Abbey Hanna Park in Duval County to the north boundary of the Guana Tolomato Matanzas National Estuarine Research Reserve in St. Johns County. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–FL–02) that has high-density nesting by loggerhead sea turtles in the Northern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, beach driving, predation, beach sand placement activities, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters.

St. Johns County has an HCP titled ''A Plan for the Protection of Sea Turtles and Anastasia Island Beach Mice on the Beaches of St. Johns County, Florida'' that includes sea turtle monitoring, nest protection from vehicles on the beach, a beach lighting management plan, beach horseback riding registration and education, and reestablishment of a dune at Porpoise Point (St. Johns County Planning Division 2003, p. 32). These measures apply to the private lands within this critical habitat unit and are intended to minimize and mitigate impacts to nesting and hatchling loggerhead sea turtles as a result of the County-authorized beach driving.

LOGG–T–FL–02—Guana Tolomato Matanzas National Estuarine Research Reserve-St. Augustine Inlet, St. Johns County: This unit consists of 24.1 km (15.0 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway. The unit extends from the north boundary of the Guana Tolomato Matanzas NERR to St. Augustine Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State, private, and other ownership (see Table 1). The State portion is part of the Guana Tolomato Matanzas NERR, which is managed by the Florida Department of Environmental Protection (FDEP) Coastal and Aquatic Managed Areas. The County portion is Vilano Oceanfront Park, which is managed by the St. Johns County Recreation and Parks Department. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Northern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, beach driving, predation, beach sand placement activities, in-water and shoreline alterations, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters.

The Guana Tolomato Matanzas National Estuarine Research Reserve has a management plan that includes the implementation of nesting surveys, nest marking, education, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (FDEP 2009a, pp. 81, 162). St. Johns County has an HCP titled ''A Plan for the Protection of Sea Turtles and Anastasia Island Beach Mice on the Beaches of St. Johns County, Florida'' that covers the remainder of the unit. The HCP includes sea turtle monitoring, nest protection from vehicles on the beach, a beach lighting management plan, beach horseback riding registration and education, and reestablishment of a dune at Porpoise Point (St. Johns County Planning Division 2003, p. 32). These measures apply to both the private and other lands within this critical habitat unit and are intended to minimize and mitigate impacts to nesting and hatchling loggerhead sea turtles as a result of the County-authorized beach driving.

LOGG–T–FL–03—St. Augustine Inlet-Matanzas Inlet, St. Johns County: This unit consists of 22.4 km (14.0 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Matanzas River, which is part of the Atlantic Intracoastal Waterway. The unit extends from St. Augustine Inlet to Matanzas Inlet. The unit includes lands from the MHW line

to the toe of the secondary dune or developed structures. Land in this unit is in Federal, State, and private ownership (see Table 1). The Federal portion is Fort Matanzas National Monument, which is managed by the National Park Service. The State portion is Anastasia State Park, which is managed by FDEP. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from adjacent units (LOGG–T–FL–02 and LOGG–T–FL–04) that have high-density nesting by loggerhead sea turtles in the Northern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, beach driving, predation, beach sand placement activities, in-water and shoreline alterations, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters.

St. Johns County has an HCP titled ''A Plan for the Protection of Sea Turtles and Anastasia Island Beach Mice on the Beaches of St. Johns County, Florida'' that includes sea turtle monitoring, nest protection from vehicles on the beach, a beach lighting management plan, beach horseback riding registration and education, and reestablishment of the dune at Porpoise Point (St. Johns County Planning Division 2003, p. 32). These measures apply to the private lands within this critical habitat unit and are intended to minimize and mitigate impacts to nesting and hatchling loggerhead sea turtles as a result of the County-authorized beach driving. The Anastasia State Park Unit Management Plan addresses the species in the State portion of the unit. The Unit Management Plan includes procedures for the implementation of sea turtle nesting surveys, nest marking, removal of nonnative species (feral cats, feral hogs, and nine-banded armadillos) when encountered and native species (raccoons) when excessive depredation is documented, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2004a, pp. 5, 17–19). Fort Matanzas National Monument has a General Management Plan that includes exotic organism removal if necessary and possible, which may protect nesting and hatchling loggerhead sea turtles (National Park Service 1982a, p. 27). This Management Plan is being revised.

LOGG–T–FL–04—River to Sea Preserve at Marineland-North Peninsula State Park, Flagler and Volusia Counties: This unit consists of 31.8 km (19.8 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Matanzas River, which is part of the Atlantic Intracoastal Waterway, and Smith Creek. The unit extends from the north boundary of the River to Sea Preserve at Marineland to the south boundary of North Peninsula State Park. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State, private, and other ownership (see Table 1). The State portion is North Peninsula State Park, which is managed by FDEP. The County portion includes the River to Sea Preserve at Marineland and Varn Park, which are managed by the Flagler County Parks and Recreation Department. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Northern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, beach driving, predation, beach sand placement activities, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters.

The North Peninsula State Park Unit Management Plan addresses the species in the State portion of the unit. The Unit Management Plan includes procedures for the implementation of sea turtle nesting surveys, nest marking, removal of nonnative species (feral cats, feral hogs, and nine-banded armadillos) when encountered, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2006a, pp. 15–16). Volusia County has an HCP titled ''A Plan for the Protection of Sea Turtles on the Beaches of Volusia County, Florida'' that includes sea turtle nest monitoring, nest protection from vehicles on the beach, the operation of a rehabilitation center, public education, dune restoration, artificial light management, and a washback watchers program (Volusia County Environmental Management 2008, pp. 164–170). Although no public beach driving occurs within the North Peninsula State Park in northern Volusia County, the HCP addresses potential incidental take of loggerhead sea turtles by county emergency vehicles. These measures apply to the private lands within this critical habitat unit and are intended to minimize and mitigate impacts to nesting and hatchling loggerhead sea turtles as a result of the County-authorized beach driving.

LOGG–T–FL–05—Ormond-by-the-Sea–Granada Blvd., Volusia County: This unit consists of 11.1 km (6.9 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway. The unit extends from the south boundary of North Peninsula State Park to Granada Boulevard in Ormond Beach. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Northern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, beach driving, predation, beach sand placement activities, coastal development, climate change, beach erosion, coastal development, artificial lighting, human-caused disasters, and response to disasters.

Volusia County has an HCP titled ''A Plan for the Protection for Sea Turtles on the Beaches of Volusia County, Florida'' that includes sea turtle nest monitoring, nest protection from vehicles on the beach, the operation of a rehabilitation center, public education, dune restoration, artificial light management, and a washback watchers program (Volusia County Environmental Management 2008, pp. 164–170). These measures apply to the private lands within this critical habitat unit and are intended to minimize and mitigate impacts to nesting and hatchling loggerhead sea turtles as a result of the County-authorized beach driving.

Central Eastern Florida Region

LOGG–T–FL–06—Canaveral National Seashore North, Volusia County: This unit consists of 18.2 km (11.3 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Mosquito Lagoon, and a network of coastal islands. The unit extends from the north boundary of Canaveral National Seashore to the Volusia-Brevard County line. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit

is in Federal ownership (see Table 1). It is part of the Canaveral National Seashore, which is managed by the National Park Service. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–FL–07) that has high-density nesting by loggerhead sea turtles in the Central Eastern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, climate change, beach erosion, human-caused disasters, and response to disasters. Canaveral National Seashore has a General Management Plan that includes beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (National Park Service 1982b, p. 52).

LOGG–T–FL–07—Canaveral National Seashore South-Merritt Island NWR-Kennedy Space Center, Brevard County: This unit consists of 28.4 km (17.6 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Mosquito Lagoon, Indian River Lagoon, Merritt Island, and scattered coastal islands. The unit extends from the Volusia-Brevard County line to the south boundary of Merritt Island NWR-Kennedy Space Center (Merritt Island NWR was established in 1963 as an overlay of the National Aeronautics and Space Administration's (NASA) John F. Kennedy Space Center). The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal ownership (see Table 1). The northern portion is part of the Canaveral National Seashore in Brevard County, which is managed by the National Park Service. The southern portion is part of Merritt Island NWR-Kennedy Space Center, which is managed by USFWS. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Central Eastern Florida Region of the Peninsular Florida Recovery Unit. (Note: Although the mean nesting densities in this unit were not in the top 25 percent of nesting for the Central Eastern Florida Region, the unit was included because of the still high nesting density that occurs here and to ensure a good spatial distribution of nesting within this region.)

This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of predation, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. Canaveral National Seashore has a General Management Plan that includes beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (National Park Service 1982b, p. 52). Merritt Island NWR has a Comprehensive Conservation Plan that includes working with partners on the implementation of sea turtle nesting surveys, nest marking, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2008a, pp. 82, 93–94).

LOGG–T–FL–08—Central Brevard Beaches, Brevard County: This unit consists of 19.5 km (12.1 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Indian River Lagoon, Banana River, and Merritt Island. The unit extends from the south boundary of Patrick Air Force Base to the north boundary of Archie Carr NWR. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). The County portion includes Paradise Beach North, Spessard Holland North Beach Park, Spessard Holland South Beach Park, and Ocean Ridge Sanctuary, which are managed by the Brevard County Parks and Recreation Department. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Central Eastern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, coastal development, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–FL–09—South Brevard Beaches, Brevard County: This unit consists of 20.8 km (12.9 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Indian River Lagoon, and scattered coastal islands. The unit extends from the north boundary of Archie Carr NWR to Sebastian Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal, State, private, and other ownership (see Table 1). The Federal portion is part of Archie Carr NWR, which is managed by USFWS. The State portion is part of Sebastian Inlet State Park, which is managed by FDEP. The Brevard County portion includes Sea Oats Park, Coconut Point Park, Ponce Landing and Coconut Point Sanctuary, Twin Shores Park, Hog Point Sanctuary, Apollo Eleven Park, Martine Hammock Sanctuary, Judith Resnick Memorial Park, Barrier Island Ecosystem Center, and Louis Bonsteel III Memorial Park, which are managed by the Brevard County Parks and Recreation Department. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Central Eastern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters.

Archie Carr NWR has a Comprehensive Conservation Plan that includes working with partners on the implementation of sea turtle nesting surveys, nest marking, minimizing human disturbance, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2008b, pp. 74–76). Sebastian Inlet State Park has a Unit Management Plan that includes procedures for the implementation of sea turtle nesting surveys, nest marking, nonnative species removal when encountered (feral cats, feral hogs, and nine-banded armadillos), problem native species removal (raccoons), and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2008a, pp. 39–41).

LOGG–T–FL–10—Sebastian Inlet-Indian River Shores, Indian River County: This unit consists of 21.4 km (13.3 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Indian River Lagoon, Indian River Narrows, a network of coastal islands, and salt marsh. The unit extends from Sebastian Inlet to the Indian River Shores southern city limits. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal, State, private, and other ownership (see Table 1). The Federal

portion is part of Archie Carr NWR, which is managed by USFWS. The State portion is part of Sebastian Inlet State Park, which is managed by the Florida Department of Environmental Protection. The County portion includes Treasure Shores Park, Golden Sands Park, and Captain Forster Hammock Preserve, which are managed by the Indian River County Public Works Division. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–FL–09) that has high-density nesting by loggerhead sea turtles in the Central Eastern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters.

The Archie Carr NWR has a Comprehensive Conservation Plan that includes working with partners on the implementation of sea turtle nesting surveys, nest marking, minimizing human disturbance, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2008b, pp. 74–76). The Sebastian Inlet State Park has a Unit Management Plan that includes procedures for the implementation of sea turtle nesting surveys, nest marking, removal of nonnative species (feral cats, feral hogs, and nine-banded armadillos) when encountered and problem native species (raccoons), and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2008a, pp. 39–41). Indian River County has an HCP titled ''Habitat Conservation Plan for the Protection of Sea Turtles on the Eroding Beaches of Indian River County, Florida'' that covers the beaches outside of the State Park and Refuge, and includes sea turtle nest monitoring, nest protection from armoring construction, artificial light management, education, land management, and predator control (Indian River County Public Works Department 2003, pp. 105–108, 113–117, 123–126). These measures apply to both the private and other lands within this proposed critical habitat unit and are intended to minimize and mitigate impacts to nesting and hatchling loggerhead sea turtles as a result of the County-authorized emergency beach armoring.

Southeastern Florida Region

LOGG–T–FL–11—Fort Pierce Inlet-St. Lucie Inlet, St. Lucie and Martin Counties: This unit consists of 35.2 km (21.9 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway and the Indian River Lagoon. The unit extends from Fort Pierce Inlet to St. Lucie Inlet. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). The St. Lucie County portion includes Blind Creek Natural Area and John Brooks Park, which are managed by the St. Lucie County Environmental Resources Department. The St. Lucie County portion also includes Fredrick Douglas Memorial Park, Ocean Bay, Blind Creek Beach, and Dollman Tract, which are managed by the St. Lucie Parks, Recreation, and Facility Department. The Martin County portion includes Glasscock Beach Park, Sea Turtle Park, Jensen Beach Park, Muscara, Bob Graham Beach Park, Curtis Beach Park, Beachwalk Pasley, Bryn Mawr Beach, Virginia Forrest Beach Park, Tiger Shores Beach, Stuart Beach Park and Addition, Santa Lucea, Olsen Property, Clifton S. Perry Beach, House of Refuge Park, Chastain Beach Park, and Bathtub Beach Park, which are managed by the Martin County Parks and Recreation Department.

This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Southeastern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water and shoreline alterations, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. John Brooks Park has a management plan that includes protection of nests and nonnative species removal to minimize impacts to nesting and hatchling loggerhead sea turtles (St. Lucie County Environmental Resources Department 2008, p. 29). Blind Creek Natural Area has a draft management plan that includes nonnative plant (*Casuarina equisetifolia* (Australian pine)) removal to minimize impacts to nesting and hatchling loggerhead sea turtles (St. Lucie County Environmental Resources Department 2011, p. 26).

LOGG–T–FL–12—St. Lucie Inlet-Jupiter Inlet, Martin and Palm Beach Counties: This unit consists of 24.9 km (15.5 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Great Pocket, Peck Lake, Hobe Sound, South Jupiter Narrows, Jupiter Sound, and a network of coastal islands. The unit extends from St. Lucie Inlet to Jupiter Inlet. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal, State, private, and other ownership (see Table 1). The Federal portion is Hobe Sound NWR, which is managed by USFWS. The State portion is St. Lucie Inlet Preserve State Park, which is managed by FDEP. The County portion is Coral Cove Park, which is managed by the Palm Beach County Parks and Recreation Department. A portion of the private lands includes Blowing Rocks Preserve, which is owned and managed by The Nature Conservancy. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Southeastern Florida Region of the Peninsular Florida Recovery Unit.

This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water shoreline alterations, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. Hobe Sound NWR has a Comprehensive Conservation Plan that includes working with partners on the implementation of sea turtle nesting surveys, nest marking, education, nonnative species removal, and minimizing human disturbance intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2006, pp. 81–86). St. Lucie Inlet Preserve State Park has a Unit Management Plan that includes maintaining a long-term data set of sea turtle nests, removal of nonnative species (feral cats) when encountered and problem native species (raccoons), and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2002a, pp. 20–21).

LOGG–T–FL–13—Jupiter Inlet-Lake Worth Inlet, Palm Beach County: This unit consists of 18.8 km (11.7 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Lake Worth Creek, Lake Worth, Munyon Island, Little Munyon

Island, Singer Island, and Peanut Island. The unit extends from Jupiter Inlet to Lake Worth Inlet. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State, private, and other ownership (see Table 1). The State portion is John D. MacArthur Beach State Park, which is managed by FDEP. The County portion includes Jupiter Beach Park, Carlin Park, Radnor, Juno Dunes Natural Area, and Loggerhead Park, which are managed by the Palm Beach County Parks and Recreation Department. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Southeastern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach placement activities, in-water and shoreline alterations, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. John D. MacArthur Beach State Park has a Unit Management Plan that includes procedures for the implementation of sea turtle nesting surveys, nest marking, artificial lighting management, problem species removal, education, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2005a, pp. 20–21).

LOGG–T–FL–14—Lake Worth Inlet-Boynton Inlet, Palm Beach County: This unit consists of 24.3 km (15.1 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Lake Worth, and scattered coastal islands. The unit extends from Lake Worth Inlet to Boynton Inlet. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Southeastern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water and shoreline alterations, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–FL–15—Boynton Inlet-Boca Raton Inlet, Palm Beach County: This unit consists of 22.6 km (14.1 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Lake Rogers, Lake Wyman, and Lake Boca Raton. The unit extends from Boynton Inlet to Boca Raton Inlet. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). The County portion is Ocean Ridge Hammock Park, which is managed by the Palm Beach County Parks and Recreation Department. The municipality portion includes Spanish River Park, Red Reef Park, and South Beach Park, which are managed by the City of Boca Raton. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from adjacent units (LOGG–T–FL–14 and LOGG–T–FL–16) that have high-density nesting by loggerhead sea turtles in the Southeastern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water shoreline alterations, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–FL–16—Boca Raton Inlet-Hillsboro Inlet, Palm Beach and Broward Counties: This unit consists of 8.3 km (5.2 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway and the Hillsboro River. The unit extends from Boca Raton Inlet to Hillsboro Inlet. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). The County portion is South Inlet Park, which is managed by the Palm Beach County Parks and Recreation Department. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Southeastern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water and shoreline alterations, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–FL–17—Long Key, Monroe County: This unit consists of 4.2 km (2.6 miles) of island shoreline along the Atlantic Ocean. The island is bordered on the east by the Atlantic Ocean, on the west by Florida Bay, and on the north and south by natural channels between Keys (Fiesta Key to the north and Conch Key to the south). This unit extends from the natural channel between Fiesta Key and Long Key to the natural channel between Long Key and Conch Key. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). The island is managed by FDEP as Long Key State Park. This unit was occupied at the time of listing and is currently occupied. This unit was included to ensure conservation of the unique nesting habitat in the Florida Keys. Nesting beaches in the Florida Keys are unique from the other beaches in the Peninsular Florida Recovery Unit in that they are limestone islands with narrow, low-energy beaches (beaches where waves are not powerful); they have carbonate sands; and they are relatively close to the major offshore currents that facilitate the dispersal of post-hatchling loggerheads. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, sand beach placement activities, climate change, beach erosion, human-caused disasters, and response to disasters. Long Key State Park has a Unit Management Plan that includes procedures for the implementation of sea turtle nesting surveys, nest marking, problem species removal, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2004b, pp. 18–19).

LOGG–T–FL–18—Bahia Honda Key, Monroe County: This unit consists of 3.7 km (2.3 miles) of island shoreline along the Atlantic Ocean. The island is bordered on the east by the Atlantic Ocean, on the west by Florida Bay, and on the north and south by natural channels between Keys (Ohio Key to the

north and Spanish Harbor Key to the south). This unit extends from the natural channel between Ohio Key and Bahia Honda Key to the natural channel between Bahia Honda Key and Spanish Harbor Key. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). The island is managed by FDEP as Bahia Honda State Park. This unit was occupied at the time of listing and is currently occupied. This unit was included to ensure conservation of the unique nesting habitat in this Florida Keys. Nesting beaches in the Florida Keys are unique from the other beaches in the Peninsular Florida Recovery Unit in that they are limestone islands with narrow, low-energy beaches; they have carbonate sands; and they are relatively close to the major offshore currents that are known to facilitate the dispersal of post-hatchling loggerheads. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, climate change, beach erosion, human-caused disasters, and response to disasters. Bahia Honda State Park has a Unit Management Plan that includes procedures for the implementation of sea turtle nesting surveys and nest marking intended to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2003a, pp. 18–20).

Central Western Florida Region

LOGG–T–FL–19—Longboat Key, Manatee and Sarasota Counties: This unit consists of 16.0 km (9.9 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by Sarasota Pass. The unit extends from Longboat Pass to New Pass. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–FL–20) that has high-density nesting by loggerhead sea turtles in the Central Western Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water shoreline alterations, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–FL–20—Siesta and Casey Keys, Sarasota County: This unit consists of 20.8 km (13.0 miles) of island shoreline along the Gulf of Mexico. It includes the shoreline of Siesta Key and Casey Key, which were originally two separate islands divided by Midnight Pass. When Midnight Pass was closed in 1983, the two islands were combined into a single island. The island is separated from the mainland by the Intracoastal Waterway, Roberts Bay, Little Sarasota Bay, Dryman Bay, Blackburn Bay, and scattered coastal islands. The unit extends from Big Sarasota Pass to Venice Inlet. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). The County portion includes Turtle Beach County Park and Palmer Point County Park, which are managed by the Sarasota County Parks and Recreation Department. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Central Western Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–FL–21—Venice Beaches and Manasota Key, Sarasota and Charlotte Counties: This unit consists of 26.0 km (16.1 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by the Intracoastal Waterway, Roberts Bay, Red Lake, Lemon Bay, and scattered coastal islands. The unit extends from Venice Inlet to Stump Pass. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State, private, and other ownership (see Table 1). The State portion is Stump Pass Beach State Park, which is managed by FDEP. The Sarasota County portion includes Service Club Park, Brohard Beach, Paw Beach, Caspersen Beach County Park, and Blind Pass Park, which are managed by the Sarasota County Parks and Recreation Department. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Central Western Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water shoreline alterations, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. Stump Pass Beach State Park has a Unit Management Plan that includes procedures for the implementation of sea turtle nesting surveys, nest marking, education, problem species (raccoons) removal, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2003b, pp. 4–5).

LOGG–T–FL–22—Knight, Don Pedro, and Little Gasparilla Islands, Charlotte County: This unit consists of 10.8 km (6.7 miles) of island shoreline along the Gulf of Mexico. It includes the shoreline of Knight Island, Don Pedro Island, and Little Gasparilla Island, which were originally three separate islands divided by passes. When the passes closed during the 1960s, the three islands were combined into a single island. The island is separated from the mainland by the Intracoastal Waterway, Lemon Bay, Placida Harbor, and scattered keys and islands. The unit extends from Stump Pass to Gasparilla Pass. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State and private ownership (see Table 1). The State portion is Don Pedro Island State Park, which is managed by FDEP. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Central Western Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water and shoreline alterations, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. Don Pedro Island State Park has a Unit Management Plan that includes procedures for the implementation of nesting surveys, nest marking, education, problem species removal, and beach management to protect nesting and hatchling loggerhead sea turtles from

anthropogenic disturbances (FDEP 2001a, pp. 16–20).

LOGG–T–FL–23—Gasparilla Island, Charlotte and Lee Counties: This unit consists of 11.2 km (6.9 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by the Intracoastal Waterway, Gasparilla Sound, Charlotte Harbor, Turtle Bay, Bull Bay, and a network of keys. The unit extends from Gasparilla Pass to Boca Grande Pass. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State and private ownership (see Table 1). The State portion is Gasparilla Island State Park, which is managed by FDEP. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Central Western Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. Gasparilla Island State Park has a Unit Management Plan that includes procedures for the implementation of nesting surveys, nest marking, terrestrial predator control, education, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2002b, p. 4).

LOGG–T–FL–24—Cayo Costa, Lee County: This unit consists of 13.5 km (8.4 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by the Intracoastal Waterway, Pine Island Sound, Matlacha Pass, Pelican Bay, Primo Bay, Pine Island, Little Pine Island, and numerous smaller keys and islands. The unit extends from Boca Grande Pass to Captiva Pass. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State and private ownership (see Table 1). The State portion is Cayo Costa State Park, which is managed by FDEP. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–FL–23) that has high-density nesting by loggerhead sea turtles in the Central Western Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, in-water and shoreline alterations, climate change, beach erosion, human-caused disasters, and response to disasters. Cayo Costa State Park has a Unit Management Plan that includes procedures for the implementation of nesting surveys, nest marking, terrestrial predator control, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2005b, pp. 14, 30).

LOGG–T–FL–25—Captiva Island, Lee County: This unit consists of 7.6 km (4.7 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by the Intracoastal Waterway, Pine Island Sound, Matlacha Pass, San Carlos Bay, Pine Island, and scattered keys and islands. The unit extends from Redfish Pass to Blind Pass. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–FL–26) that has high-density nesting by loggerhead sea turtles in the Central Western Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water shoreline alterations, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–FL–26—Sanibel Island West, Lee County: This unit consists of 12.2 km (7.6 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by the Intracoastal Waterway, San Carlos Bay, Pine Island Sound, Matlacha Pass, Pine Island, and numerous keys and islands. The unit extends from Blind Pass to Tarpon Bay Road. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). The municipality portion includes Silver Key and Bowman's Beach Regional Park, which are managed by the City of Sanibel Natural Resources Department. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Central Western Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

Southwestern Florida Region

LOGG–T–FL–27—Little Hickory Island, Lee and Collier Counties: This unit consists of 8.7 km (5.4 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by Estero Bay, Hogue Channel, Fish Trap Bay, Little Hickory Bay, Big Hickory Island, and extensive mangroves and mangrove islands. The unit extends from Big Hickory Pass to Wiggins Pass. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private and other ownership (see Table 1). The Collier County portion is Barefoot Beach County Preserve Park, which is managed by the Collier County Parks and Recreation Department. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–FL–26) that has high-density nesting by loggerhead sea turtles in the Southwestern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water shoreline alterations, coastal development, climate change, beach erosion, artificial lighting, habitat obstructions, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–FL–28—Wiggins Pass-Clam Pass, Collier County: This unit consists of 7.7 km (4.8 miles) of mainland shoreline along the Gulf of Mexico. This section of the mainland is bounded on the west by Vanderbilt Channel, Vanderbilt Lagoon, Inner Clam Bay, and extensive mangrove vegetative shorelines. The unit extends from Wiggins Pass to Clam Pass. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State, private, and other ownership

(see Table 1). The State portion is Delnor–Wiggins Pass State Park, which is managed by FDEP. The County portion is Vanderbilt Beach County Park, which is managed by the Collier County Parks and Recreation Department. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–FL–30) that has high-density nesting by loggerhead sea turtles in the Southwestern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water and shoreline alterations, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. Delnor–Wiggins Pass State Park has a Unit Management Plan that includes procedures for the implementation of nesting surveys, nest marking, terrestrial predator control, education, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2009b, pp. 16–23).

LOGG–T–FL–29—Clam Pass-Doctors Pass, Collier County: This unit consists of 4.9 km (3.0 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by Moorings Bay, Outer Doctors Bay, Inner Doctors Bay, Venetian Bay, and Outer Clam Bay. The unit extends from Clam Pass to Doctors Pass. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–FL–30) that has high-density nesting by loggerhead sea turtles in the Southwestern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–FL–30—Keewaydin Island and Sea Oat Island, Collier County: This unit consists of 13.1 km (8.1 miles) of island shoreline along the Gulf of Mexico. These islands are separated from the mainland by Dollar Bay, Bartell Bay, Periwinkle Bay, Rookery Bay, Hall Bay, Nature Conservancy Bay, Johnson Bay, Shell Bay, Sand Hill Bay, Hall Bay, Little Marco Pass, and a network of mangroves, coastal islands, and salt marsh. The unit extends from Gordon Pass to Big Marco Pass. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State and private ownership (see Table 1). The State and part of the private ownership (National Audubon Society) portions are part of the Rookery Bay National Estuarine Research Reserve (NERR), which is managed by FDEP's Office of Coastal and Aquatic Managed Areas. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Southwestern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, in-water and shoreline alterations, beach sand placement activities, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. Rookery Bay NERR has a management plan that includes working with partners for the implementation of nesting surveys, nest marking, terrestrial predator control, education, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2012a, pp. 62–77, 223, 269).

LOGG–T–FL–31—Cape Romano, Collier County: This unit consists of 9.2 km (5.7 miles) of island shoreline along the Gulf of Mexico and Gullivan Bay. Cape Romano is a coastal island complex within the Rookery Bay National Estuarine Research Reserve (NERR) and is located off the southwest coast of Florida in Collier County. Loggerhead sea turtle nesting has been regularly monitored and documented within this island complex. This island complex is separated from the mainland by Caxambas Bay, Grassy Bay, Barfield Bay, Goodland Bay, Gullivan Bay, and a network of other keys and islands. From north to south, the islands and keys included in this unit are: Kice Island, Big Morgan Island, Morgan Keys, Carr Island, and Cape Romano Island. Kice Island is in State ownership and is part of Rookery Bay NERR. It has 3.9 km (2.4 miles) of shoreline. Big Morgan Island is in State ownership (as part of Rookery Bay NERR) and other ownership. It has 1.4 km (0.9 miles) of shoreline. Morgan Key is in State ownership (as part of Rookery Bay NERR) and other ownership. It has 0.7 km (0.4 miles) of shoreline. Carr Island is in State ownership and is part of Rookery Bay NERR. It has 0.3 km (0.2 miles) of shoreline. Cape Romano is in State ownership (as part of Rookery Bay NERR) and other ownership. It has 2.9 km (1.8 miles) of shoreline. The unit extends from Caxambas Pass to Gullivan Bay. This unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State and other ownership (see Table 1). The State portion is part of the Rookery Bay NERR, which is owned by the State of Florida and managed by FDEP's Office of Coastal and Aquatic Managed Areas.

This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Southwestern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, climate change, beach erosion, human-caused disasters, and response to disasters. Rookery Bay NERR has a management plan that includes working with partners for the implementation of nesting surveys, nest marking, terrestrial predator control, education, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2012a, pp. 62–77, 223, 269).

LOGG–T–FL–32—Ten Thousand Islands North, Collier County: This unit consists of 7.8 km (4.9 miles) of island shoreline along the Gulf of Mexico. The Ten Thousand Islands are a chain of islands and mangrove islets off the southwest coast of Florida in Collier and Monroe Counties. This unit includes nine keys where loggerhead sea turtle nesting has been documented within the northern part of the Ten Thousand Islands in Collier County in both the Ten Thousand Islands NWR and the Rookery Bay National Estuarine Research Reserve (NERR). These keys are separated from the mainland by Sugar Bay, Palm Bay, Blackwater Bay, Buttonwood Bay, Pumpkin Bay, Santina Bay, and a network of keys and islands. From west to east and north to south, these nine keys are: Coon Key, Brush Island, B Key, Turtle Key, Gullivan Key, White Horse Key, Hog Key, Panther Key, and Round Key.

Coon Key is part of Ten Thousand Islands NWR and has 0.4 km (0.2 mile) of shoreline. Brush Island is in State

ownership and is part of Rookery Bay NERR. It has 0.6 km (0.4 mile) of shoreline. B Key (25.89055 N, 81.59641 W) is in Federal and State ownership and is part of both Ten Thousand Islands NWR and Rookery Bay NERR. It has 0.5 km (0.3 mile) of shoreline. Turtle Key is in State ownership and is part of Rookery Bay NERR. It has 0.5 km (0.3 mile) of shoreline. Gullivan Key is in State ownership and is part of Rookery Bay NERR. It has 1.1 km (0.7 mile) of shoreline. White Horse Key is in State ownership and is part of Rookery Bay NERR. It has 1.6 km (1.0 mile) of shoreline. Hog Key is in Federal and State ownership and is part of both Ten Thousand Islands NWR and Rookery Bay NERR. It has 0.9 km (0.6 mile) of shoreline. Panther Key is in Federal ownership and is part of Ten Thousand Islands NWR. It has 2.0 km (1.3 miles) of shoreline. Round Key is in Federal ownership and is part Ten Thousand Islands NWR. It has 0.3 km (0.2 mile) of shoreline.

The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal and State ownership (see Table 1). The Ten Thousand Islands NWR portion is managed by USFWS. The Rookery Bay NERR portion is managed by FDEP's Office of Coastal and Aquatic Managed Areas. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–FL–31) that has high-density nesting by loggerhead sea turtles in the Southwestern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, climate change, beach erosion, human-caused disasters, and response to disasters. Rookery Bay NERR has a management plan that includes working with partners for the implementation of nesting surveys, nest marking, terrestrial predator control, education, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2012a, pp. 62–77, 223, 269). Thousand Islands NWR has a Comprehensive Conservation Plan that includes implementation of nesting surveys, nest marking, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2001, pp. 12, 20–22).

LOGG–T–FL–33—Highland Beach, Monroe County: This unit consists of 7.2 km (4.5 miles) of island (Key McLaughlin) shoreline along the Gulf of Mexico. The island is separated from the mainland by Rogers River Bay, Big Bay, Big Lostmans Bay, extensive salt marsh, and a network of keys and islands. The unit extends from First Bay to Rogers River Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal ownership (see Table 1). It is part of the Everglades National Park, which is managed by the National Park Service. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–FL–34) that has high-density nesting by loggerhead sea turtles in the Southwestern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, climate change, beach erosion, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–FL–34—Graveyard Creek–Shark Point, Monroe County: This unit consists of 0.9 km (0.6 mile) of mainland shoreline along the Gulf of Mexico. The unit extends from Shark Point (25.38796 N, 81.14933 W) to Graveyard Creek Inlet. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal ownership (see Table 1). It is part of the Everglades National Park, which is managed by the National Park Service. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Southwestern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, climate change, beach erosion, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–FL–35—Cape Sable, Monroe County: This unit consists of 21.3 km (13.2 miles) of mainland shoreline along the Gulf of Mexico. The unit extends from the north boundary of Cape Sable at 25.25924 N, 81.16687 W to the south boundary of Cape Sable at 25.12470 N, 81.06681 W. Land in this unit is in Federal ownership (see Table 1). It is part of the Everglades National Park, which is managed by the National Park Service. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Southwestern Florida Region of the Peninsular Florida Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, climate change, beach erosion, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

Dry Tortugas Recovery Unit

LOGG–T–FL–36—Dry Tortugas, Monroe County: This unit consists of 6.3 km (3.9 miles) of shoreline along the Gulf of Mexico. The Dry Tortugas are a small group of seven islands located at the end of the Florida Keys about 108 km (67 miles) west of Key West. This unit includes six islands where loggerhead sea turtle nesting has been documented within the Dry Tortugas. From west to east, these six islands are: Loggerhead Key, Garden Key, Bush Key, Long Key, Hospital Key, and East Key. Loggerhead Key is the largest island in the chain and has 2.4 km (1.5 miles) of beach. Garden Key, the second largest island in the chain, is 4.0 km (2.5 miles) east of Loggerhead Key and has 0.8 km (0.5 mile) of beach. Bush Key is located 0.1 km (0.1 mile) east of Garden Key and has 2.0 km (1.3 mile) of beach; Bush Key is occasionally connected to Garden Key by a sand bar. Long Key is located 0.1 km (0.1 mile) south of the eastern end of Bush Key and has 0.3 km (0.2 mile) of beach; Long Key is occasionally connected to Bush Key by a sand bar. Hospital Key is located 2.5 km (1.6 miles) northeast of Garden Key and Bush Key and has 0.2 km (0.1 mile) of beach. East Key is located 0.6 km (0.3 miles) east of Middle Key (Middle Key is not included in the unit) and has 0.6 km (0.3 mile) of beach.

The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal ownership (see Table 1). It is part of the Dry Tortugas National Park, which is managed by the National Park Service. This unit was occupied at the time of listing and is currently occupied. This unit was included because of the extremely small size of the Dry Tortugas Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require

special management considerations or protections to ameliorate the threats of recreational use, predation, climate change, beach erosion, habitat obstructions, human-caused disasters, and response to disasters. Dry Tortugas National Park has a General Management Plan that includes special protection zones intended to manage the beach to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (National Park Service 2000, p. 38).

LOGG–T–FL–37—Marquesas Keys, Monroe County: This unit consists of 5.6 km (3.5 miles) of shoreline along the Gulf of Mexico. The Marquesas Keys are a small group of eight islands located at the end of the Florida Keys about 29.3 km (18.2 miles) west of Key West. This unit includes four islands where loggerhead sea turtle nesting has been documented within the Marquesas Keys: Marquesas Key, Unnamed Key 1, Unnamed Key 2, and Unnamed Key 3. Marquesas Key is the largest key in the northeastern region of the island group and has 3.8 km (2.4 miles) of shoreline. Unnamed Keys 1, 2, and 3 are at the far westernmost side of the island group. Unnamed Key 1 is the northernmost key of the three and has 0.4 km (0.2 mile) of shoreline. Unnamed Key 2 is just south of Unnamed Key 1 and has 1.0 km (0.6 mile) of shoreline. Unnamed Key 3 is southwest of Unnamed Key 2 and has 0.5 km (0.3 mile) of shoreline.

The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal ownership (see Table 1). The Marquesas Keys are part of the Key West NWR, which is managed by USFWS. This unit was occupied at the time of listing and is currently occupied. This unit was included because of the extremely small size of the Dry Tortugas Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, climate change, beach erosion, human-caused disasters, and response to disasters. Key West NWR is included within the Lower Florida Keys National Wildlife Refuges Comprehensive Conservation Plan, which includes implementation of nesting surveys, nest marking, debris removal, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2009, pp. 67–68).

LOGG–T–FL–38—Boca Grande Key, Monroe County: This unit consists of 1.3 km (0.8 mile) of island shoreline along the Gulf of Mexico. Boca Grande Key is one of the outlying islands of the Florida Keys and is located about 18.9 km (11.7 miles) west of Key West. The unit extends from 24.53767 N, 82.00763 W (at the northern end of the key) to 24.52757 N, 82.00581 W (at the southern end of the key). The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal ownership (see Table 1). It is part of the Key West NWR, which is managed by USFWS. This unit was occupied at the time of listing and is currently occupied. This unit was included because of the extremely small size of the Dry Tortugas Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, climate change, beach erosion, human-caused disasters, and response to disasters. Key West NWR is included within the Lower Florida Keys National Wildlife Refuges Comprehensive Conservation Plan, which includes implementation of nesting surveys, nest marking, debris removal, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2009, pp. 67–68).

LOGG–T–FL–39—Woman Key, Monroe County: This unit consists of 1.3 km (0.8 mile) of island shoreline along the Gulf of Mexico. Woman Key is one of the outlying islands of the Florida Keys and is located about 15.9 km (9.9 miles) west of Key West. The unit extends from 24.52452 N, 81.97893 W (at the western end of the key) to 24.52385 N, 81.96680 W (at the eastern end of the key). The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal ownership (see Table 1). It is part of the Key West NWR, which is managed by USFWS. This unit was occupied at the time of listing and is currently occupied. This unit was included because of the extremely small size of the Dry Tortugas Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, climate change, beach erosion, human-caused disasters, and response to disasters. Key West NWR is included within the Lower Florida Keys National Wildlife Refuges Comprehensive Conservation Plan, which includes implementation of nesting surveys, nest marking, debris removal, and predator removal intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2009, pp. 67–68).

Northern Gulf of Mexico Recovery Unit

Mississippi

LOGG–T–MS–01—Horn Island, Jackson County: This unit consists of 18.6 km (11.5 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by the Gulf Intracoastal Waterway, Mississippi Sound, Pascagoula Bay, and scattered coastal islands. The unit extends from Dog Keys Pass to the easternmost point of the ocean facing island shore. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal and private ownership (see Table 1). The Federal portion is part of the Gulf Islands National Seashore, Mississippi District, which is managed by the National Park Service. This unit was occupied at the time of listing and is currently occupied. Nesting was confirmed by weekly aerial surveys prior to 2006. Although regular surveys have not been conducted since 2005, loggerhead nesting was documented in 2010 and 2011 during the Deepwater Horizon event response efforts. This unit was included because Horn Island has been documented as one of two islands in Mississippi with the greatest number of nests.

This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, climate change, beach erosion, human-caused disasters, and response to disasters. The existing Gulf Islands National Seashore General Management Plan includes controlling nonnative species to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (National Park Service 1978, p. 46). The management plan is being revised and a draft is under review. The draft Gulf Islands National Seashore General Management Plan includes management efforts that would emphasize sea turtle nest monitoring and closure areas around nests intended to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (National Park Service 2011, p. 85).

LOGG–T–MS–02—Petit Bois Island, Jackson County: This unit consists of 9.8 km (6.1 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by the Gulf Intracoastal Waterway, Mississippi Sound, Point Aux Chenes Bay, scattered coastal islands, and salt marsh. The unit extends from Horn Island Pass to Petit Bois Pass. The unit includes lands from

the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal ownership (see Table 1). Petit Bois Island is part of the Gulf Islands National Seashore, Mississippi District, which is managed by the National Park Service. This unit was occupied at the time of listing and is currently occupied. Nesting was confirmed by weekly aerial surveys prior to 2006. Although regular surveys have not been conducted since 2005, loggerhead nesting was documented in 2010 and 2011 during Deepwater Horizon event response efforts. This unit was included because Petit Bois Island has been documented as one of two islands in Mississippi with the greatest number of nests.

This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, climate change, beach erosion, human-caused disasters, and response to disasters. The existing Gulf Islands National Seashore General Management Plan includes controlling nonnative species to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (National Park Service 1978, p. 46). The management plan is being revised, and a draft is under review. The draft Gulf Islands National Seashore General Management Plan includes management efforts that would emphasize sea turtle nest monitoring and closure areas around nests intended to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (National Park Service 2011, p. 85).

Alabama

LOGG–T–AL–01—Mobile Bay-Little Lagoon Pass, Baldwin County: This unit consists of 28.0 km (17.4 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by the Gulf Intracoastal Waterway, Bon Secour Bay, and Little Lagoon. The unit extends from Mobile Bay Inlet to Little Lagoon Pass. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal, State, and private ownership (see Table 1). The Federal portion includes part of the Bon Secour NWR and four Bureau of Land Management (BLM) parcels, which are managed by USFWS. The State portion includes Fort Morgan State Park, which is managed by USFWS. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in Alabama. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. Bon Secour NWR has a Comprehensive Conservation Plan that includes working with partners for the implementation of nesting surveys, nest marking, education, minimizing human disturbance, predator removal, and other conservation efforts intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2005, pp. 54–55).

LOGG–T–AL–02—Gulf State Park-Perdido Pass, Baldwin County: This unit consists of 10.7 km (6.7 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by the Gulf Intracoastal Coastal Waterway, Shelby Lakes, Little Lake, Portage Creek, Wolf Bay, Bay La Launch, Cotton Bayou, and Terry Cove. The unit extends from the west boundary of Gulf State Park to Perdido Pass. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State and private ownership (see Table 1). The State portion is part of Gulf State Park, which is managed by the Alabama State Parks. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in Alabama. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, in-water and shoreline alterations, coastal development, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

LOGG–T–AL–03—Perdido Pass-Florida-Alabama line, Baldwin County: This unit consists of 3.3 km (2.0 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by the Gulf Intracoastal Waterway, Old River, Bayou St. John, Terry Cover, Amica Bay, and coastal islands. The unit extends from Perdido Pass to the Alabama-Florida border. This area is referred to as Alabama Point. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State and private ownership (see Table 1). The State portion is part of Gulf State Park, which is managed by the Alabama State Parks. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–AL–02) that has high-density nesting by loggerhead sea turtles in Alabama. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, in-water and shoreline alterations, beach sand placement activities, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

Florida

LOGG–T–FL–40—Perdido Key, Escambia County: This unit consists of 20.2 km (12.6 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by the Gulf Intracoastal Waterway, Old River, Perdido Bay, Big Lagoon, and coastal islands. The unit extends from the Alabama-Florida border to Pensacola Pass. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal, State, and private ownership (see Table 1). The Federal portion is part of Gulf Islands National Seashore, Florida District, which is managed by the National Park Service. The State portion is Perdido Key State Park, which is managed by FDEP. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–AL–02) that has high-density nesting by loggerhead sea turtles in the Alabama portion of the Northern Gulf of Mexico Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, beach sand placement activities, in-water and shoreline alterations, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters.

The existing Gulf Islands National Seashore General Management Plan includes controlling nonnative species to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (National Park Service 1978, p. 46). The management plan is being revised, and a draft is under review. The draft Gulf Islands National Seashore General Management Plan includes management efforts that would emphasize sea turtle nest monitoring and closure areas

around nests intended to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (National Park Service 2011, p. 77). Perdido Key State Park has a Unit Management Plan that includes procedures for the implementation of nesting surveys, nest marking, terrestrial predator control, debris removal, artificial light reduction in adjacent developed areas, education, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2006b, p. 5).

LOGG–T–FL–41—Mexico Beach and St. Joe Beach, Bay and Gulf Counties: This unit consists of 18.7 km (11.7 miles) of mainland shoreline along the Gulf of Mexico. The unit extends from the eastern boundary of Tyndall Air Force Base to Gulf County Canal in St. Joseph Bay. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private ownership (see Table 1). This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–FL–42) that has high-density nesting by loggerhead sea turtles in the Florida portion of the Northern Gulf of Mexico Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, in-water and shoreline alterations, beach sand placement activities, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this unit.

LOGG–T–FL–42—St. Joseph Peninsula, Gulf County: This unit consists of 23.5 km (14.6 miles) of a spit shoreline along the Gulf of Mexico. The spit is separated from the mainland by St. Joseph Bay. The unit extends from St. Joseph Bay to the west boundary of Eglin Air Force Base. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State and private ownership (see Table 1). The State portion includes T.H. Stone Memorial St. Joseph Peninsula State Park and part of the St. Joseph Bay Aquatic Preserve, which are managed by FDEP. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Florida portion of the Northern Gulf of Mexico Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, beach sand placement activities, beach driving, predation, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters.

T.H. Stone Memorial St. Joseph Peninsula State Park has a Unit Management Plan that includes procedures for the implementation of nesting surveys, nest marking, terrestrial predator control, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2001b, pp. 4–5, 18). The St. Joseph Bay Aquatic Preserve Management Plan includes working with partners on the implementation of nesting surveys, nest marking, education, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2008b, pp. 50–51, 77). Gulf County has a draft HCP that could include sea turtle nest monitoring, nest protection from vehicles on the beach, public education, artificial light management, land acquisition, beach horseback riding ordinance enforcement, and predator control. These measures apply to the private lands within this critical habitat unit and are intended to minimize and mitigate impacts to nesting and hatchling loggerhead sea turtles as a result of the County-authorized beach driving (Gulf County Board of County Commissioners 2004, pp. 5–6–5–10).

LOGG–T–FL–43—Cape San Blas, Gulf County: This unit consists of 11.0 km (6.8 miles) of mainland and spit shoreline along the Gulf of Mexico. The unit extends from the east boundary of Eglin Air Force Base to Indian Pass. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State, private, and other ownership (see Table 1). The State portion is part of St. Joseph Bay State Buffer Preserve, which is managed by FDEP. The County portion is Salinas Park, which is managed by Gulf County. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from adjacent units (LOGG–T–FL–42 and LOGG–T–FL–44) that have high-density nesting by loggerhead sea turtles in the Florida portion of the Northern Gulf of Mexico Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, beach driving, predation, coastal development, climate change, beach erosion, artificial lighting, habitat obstructions, human-caused disasters, and response to disasters. The draft St. Joseph Bay State Buffer Preserve Management Plan includes predator control (FDEP 2012b, p. 33).

LOGG–T–FL–44—St. Vincent Island, Franklin County: This unit consists of 15.1 km (9.4 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by St. Vincent Sound. The unit extends from Indian Pass to West Pass. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in Federal ownership (see Table 1). This unit is managed by USFWS as the St. Vincent NWR. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Florida portion of the Northern Gulf of Mexico Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. St. Vincent NWR has a draft Comprehensive Conservation Plan that includes the implementation of nesting surveys, nest marking, education, minimizing human disturbance, predator removal, and other conservation efforts intended to minimize impacts to nesting and hatchling loggerhead sea turtles (USFWS 2012, pp. 64–65).

LOGG–T–FL–45—Little St. George Island, Franklin County: This unit consists of 15.4 km (9.6 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by Apalachicola Bay and St. Vincent Sound. The unit extends from West Pass to Bob Sikes Cut. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State ownership (see Table 1). This unit is managed by FDEP as the Apalachicola NERR. This unit was occupied at the time of listing and is currently occupied. This unit has high-density nesting by loggerhead sea turtles in the Florida portion of the Northern Gulf of Mexico Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. The existing Apalachicola NERR Management Plan includes

working with partners on the implementation of nesting surveys and controlling nonnative species to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 1998, pp. 78, 126, 161). The management plan is being revised, and a draft is under review. The draft management plan includes working with partners on the implementation of nesting surveys, nest marking, predator removal, education, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2011, pp. 48–49, 73–76).

LOGG–T–FL–46—St. George Island, Franklin County: This unit consists of 30.7 km (19.1 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by the Intracoastal Waterway, Apalachicola Bay, and East Bay. The unit extends from Bob Sikes Cut to East Pass. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in State and private ownership (see Table 1). The State portion is Dr. Julian G. Bruce St. George Island State Park, which is managed by FDEP. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–FL–45) that has high-density nesting by loggerhead sea turtles in the Florida portion of the Northern Gulf of Mexico Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, predation, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. The Dr. Julian G. Bruce St. George Island State Park has a Unit Management Plan that includes procedures for the implementation of nesting surveys, nest marking, terrestrial predator control, debris removal, artificial light reduction in adjacent developed areas, education, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (FDEP 2003c, pp. 16–18).

LOGG–T–FL–47—Dog Island, Franklin County: This unit consists of 13.1 km (8.1 miles) of island shoreline along the Gulf of Mexico. The island is separated from the mainland by St. George Sound. The unit extends from East Pass to St. George Sound. The unit includes lands from the MHW line to the toe of the secondary dune or developed structures. Land in this unit is in private conservation ownership (The Nature Conservancy) (see Table 1). The unit includes the Jeff Lewis Wilderness Preserve, which is owned and managed by The Nature Conservancy. This unit was occupied at the time of listing and is currently occupied. This unit supports expansion of nesting from an adjacent unit (LOGG–T–FL–45) that has high-density nesting by loggerhead sea turtles in the Florida portion of the Northern Gulf of Mexico Recovery Unit. This unit contains all of the PBFs and PCEs. The PBFs in this unit may require special management considerations or protections to ameliorate the threats of recreational use, beach driving, predation, climate change, beach erosion, artificial lighting, human-caused disasters, and response to disasters. At this time, we are not aware of any management plans that address this species in this area.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including USFWS, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with USFWS on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from USFWS under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action;

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;

(3) Are economically and technologically feasible; and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently

designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the loggerhead sea turtle. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the loggerhead sea turtle. These activities include, but are not limited to:

(1) Actions that would significantly alter beach sand characteristics. Such activities could include, but are not limited to, beach sand placement and beach driving. These activities may lead to changes to the nest incubation environment by altering gas exchange, moisture content, temperature, and hardness of the nesting substrate to levels that eliminate or reduce the suitability of habitat necessary for successful reproduction of the loggerhead sea turtle. However, beach sand placement projects conducted under the FWS's Statewide Programmatic Biological Opinion for the U.S. Army Corps of Engineers planning and regulatory sand placement activities (including post-disaster sand placement activities) in Florida and other individual biological opinions throughout the loggerhead's nesting range include required terms and conditions that minimize incidental take of turtles and, if incorporated, the sand placement projects are not expected to result in adverse modification of critical habitat.

(2) Actions that would significantly decrease adult female access to nesting habitat or hinder hatchling sea turtles emerging from the nest from reaching the ocean. Such activities could include, but are not limited to, coastal residential and commercial development, beach armoring, groin construction, and construction of other erosion control devices. These structures could act as barriers or deterrents to adult females attempting to access a beach to levels that eliminate or reduce the suitability of habitat necessary for successful reproduction of the loggerhead sea turtle.

(3) Actions that would significantly alter natural lighting levels. Such activities could include, but are not limited to, lighting of coastal residential and commercial structures, street lighting, bridge lighting, and other development or road infrastructure. These activities could increase the levels of artificial lighting visible from the beach and act as a deterrent to adult females attempting to access a beach or disorient hatchlings emerging from the nest and crawling to the ocean. Increased levels may eliminate or reduce the suitability of habitat necessary for successful reproduction of the loggerhead sea turtle.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for the loggerhead sea turtle to determine if they are exempt under section 4(a)(3) of the Act. The following areas are Department of Defense lands with completed, USFWS-approved INRMPs within the proposed critical habitat designation.

Approved INRMPs

Marine Corps Base Camp Lejeune (Onslow Beach), NC, 12.4 km (7.7 Miles)

Marine Corps Base Camp Lejeune is the Marine Corps' largest amphibious training base and is home to 47,000 marines and sailors, the largest single concentration of marines in the world. The mission of Camp Lejeune is to train and maintain combat-ready units for expeditionary deployment anywhere in the world. Onslow Beach, one of two stretches of beach on the base, is used to support amphibious operations. Operations at the beach range from daily exercises by 2nd Amphibious Assault Battalion and Joint Armed Services training to periodic, large-scale training such as the quarterly Capability Exercises, which include explosives on the beach, inland artillery fire, and three Landing Craft Air Cushioned and 10 to 12 Amphibious Assault Vehicle landings (Marine Corps Base Camp Lejeune 2006, p. 1–10 and Appendix E).

Camp Lejeune encompasses an estimated 57,870 hectares (143,000 acres), including the onshore, nearshore, and surf areas in and adjacent to the Atlantic Ocean and the New River, in Onslow County, North Carolina. Onslow Beach consists of 12.4 km (7.7 miles) of island shoreline along the Atlantic Ocean. The island on which Onslow Beach is located is separated from the mainland by the Atlantic Intracoastal Waterway, Banks Channel, Salliers Bay, Wards Channel, and salt marsh. The boundaries of the island are from Browns Inlet to New River Inlet. Onslow Beach, which has been monitored for sea turtle nesting since 1979, has high-density nesting by loggerhead sea turtles in North Carolina.

The Marine Corps Base Camp Lejeune INRMP is a planning document that guides the management and conservation of natural resources under the installation's control. The INRMP was prepared to assist installation staff and users in managing natural resources more effectively so as to ensure that installation lands remain available and in good condition to support the installation's military mission. Camp Lejeune published its first INRMP in 2001 to guide resources management on the installation for the years 2002–2006. A revised INRMP was prepared in 2006 for the years 2007–2011. The existing INRMP will remain in use until its next revision, which the installation is preparing to initiate.

The 2006 INRMP includes the implementation of sea turtle nesting surveys, nest marking, and beach management to protect nesting and hatchling loggerhead sea turtles from anthropogenic disturbances (Marine Corps Base Camp Lejeune 2006, pp. 4–14–4–15). The INRMP identifies the goal of contributing to the recovery of the loggerhead sea turtle through development of ecosystem management-based strategies. The INRMP identifies the following management and protective measures to achieve this goal:

(1) Conduct nightly or morning ground sea turtle nest surveys on Onslow Beach during the nesting season;

(2) Conduct aerial surveys for sea turtle nests on Brown's Island and North Onslow Beach;

(3) Protect sea turtle nest sites with cages and restrictive signage;

(4) Move sea turtle nests that are in the amphibious training beach;

(5) Impose driving restrictions on Onslow Beach during the sea turtle nesting season, including restrictions to protect sensitive habitat south of Onslow South Tower;

(6) Rake ruts in front of sea turtle nests;

(7) Reduce sources of artificial lighting on Onslow Beach; and

(8) Monitor recreational or training impacts to Onslow Beach during the sea turtle nesting season.

In a letter dated October 25, 2012, Marine Corps Base Camp Lejeune provided information detailing its commitments to conduct additional activities that will benefit loggerhead sea turtles on Onslow Beach and Brown's Island. The commitments listed above will continue and will be added to the base's next INRMP. In addition, the following activities will be conducted and added to the next INRMP:

(1) Control sea turtle nest predators by implementing trapping to ensure that the annual rate of mammalian predator rate is 10 percent or lower; and

(2) Manage lighting by ensuring that all fixtures and bulbs conform to the guidelines in the technical report titled ''Understanding, Assessing, and Resolving Light Pollution Problems on Sea Turtle Nesting Beaches'' (Witherington and Martin 1996, pp. 20–27). Marine Corps Base Camp Lejeune will conduct a sea turtle lighting survey and submit a plan to retrofit any lights visible from the nesting beach. The plan will be reviewed and approved by USFWS prior to installation or replacement of lights.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Marine Corps Base Camp Lejeune INRMP and that conservation efforts identified in the INRMP will provide a benefit to the loggerhead sea turtle. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including 12.4 km (7.7 miles) of habitat in this proposed critical habitat designation because of this exemption.

Cape Canaveral Air Force Station, Brevard County, FL, 21.0 km (13.0 Miles)

Cape Canaveral Air Force Station is part of the 45th Space Wing, a unit of Air Force Space Command, whose mission is to assure access to the high frontier and to support global operations. The 45th Space Wing currently operates a number of rockets and missiles, including the Delta IV and Atlas V, and provides support for the Department of Defense, NASA, and commercial manned and unmanned space programs.

Cape Canaveral Air Force Station is situated on the Canaveral Peninsula along the Atlantic Coast in Brevard County, Florida, and occupies 6,394 hectares (15,800 acres). The installation's beach consists of 21.0 km (13.0 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, the Barge Channel, Banana River, Indian River Lagoon, Merritt Island, and Harrison Island. The boundaries of the installation are from the south boundary of Merritt Island NWR–Kennedy Space Center (Merritt Island NWR was established in 1963 as an overlay of NASA's John F. Kennedy Space Center) to Port Canaveral. Cape Canaveral Air Force Station is adjacent to a critical habitat unit (LOGG–T–FL–07) that has high-density nesting by loggerhead sea turtles in the Central Eastern Florida Region of the Peninsular Florida Recovery Unit.

Cape Canaveral Air Force Station (CCAFS) is covered by the 45th Space Wing 2008 INRMP, a planning document that guides the management and conservation of natural resources under the Space Wing's control. The INRMP was prepared to manage natural resources in compliance with relevant statutes, executive orders, Presidential memoranda, regulations, and Air Force-specific requirements. The INRMP integrates the 45th Space Wing's natural resources management program with ongoing mission activities for sustainability while conserving and protecting natural resources. The 45th Space Wing is committed to a proactive, interdisciplinary management strategy focused on an ecosystem-based approach to natural resources management. This strategy includes the Air Force objective of sustaining and restoring natural resources to uphold operational capabilities while complying with Federal, State, and local standards that protect and conserve wildlife, habitat, and the surrounding watershed.

The 2008 INRMP includes the implementation of sea turtle nesting surveys, nest marking, predator control, and exterior lighting management to conserve loggerhead sea turtles and their habitat (45th Space Wing 2008, pp. 64–71 and Tab A). The INRMP identifies the need to develop and implement programs to protect and conserve federally listed threatened and endangered plants and wildlife, including the loggerhead sea turtle. The INRMP identifies the following management and protective measures to achieve this goal:

(1) Monitor sea turtle nesting activities;

(2) Manage lighting (i.e., use of sea turtle friendly low pressure sodium and amber light-emitting diode (LED) shielded lighting in compliance with the Endangered Species Act for facilities that require illumination); and

(3) Control sea turtle nest predators.

In a letter dated October 10, 2012, the 45th Space Wing provided information detailing its commitments to conduct activities that benefit loggerheads on the beaches of Cape Canaveral Air Force Station and Patrick Air Force Base. These commitments will be added to their next INRMP and include:

(1) Monitor sea turtle nesting activities by participating in the Statewide Nesting Beach Survey and Index Nesting Beach Survey programs and conducting hatchling productivity assessments;

(2) Control sea turtle nest predators by implementing trapping at the first sign of tracks on the beach at PAFB; controlling raccoons, coyotes, and feral hogs within 0.8 km (0.5 mile) of the beach at CCAFS; and installing predator-proof trash receptacles if needed; and

(3) Manage lighting by ensuring that all fixtures and bulbs follow the Space Wing Instruction (SWI) 32–7001, which has been reviewed and approved by USFWS, prior to installation or replacement. Any lights that do not follow the SWI 32–7001 require a USFWS-approved Light Management Plan.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the 45th Space Wing INRMP and that conservation efforts identified in the INRMP will provide a benefit to the loggerhead sea turtle. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including 21.0 km (13.0 miles) of habitat in this proposed critical habitat designation because of this exemption.

Patrick Air Force Base, Brevard County, FL, 6.6 km (4.1 Miles)

Patrick Air Force Base is also part of the 45th Space Wing (see discussion for Cape Canaveral above) and is presently the home of Headquarters, 45th Space Wing. Patrick Air Force Base is located on a barrier island on the central east coast of Florida in Brevard County and covers 810 hectares (2,002 acres) of developed land and some coastal dune and estuarine habitat. The installation's beach consists of 6.6 km (4.1 miles) of island shoreline along the Atlantic Ocean. The island is separated from the mainland by the Atlantic Intracoastal Waterway, Indian River Lagoon, Banana River, and Merritt Island. The boundaries of the installation are from the south boundary of the city of Cocoa Beach (28.2720 N, 80.6055 W) to the north boundary of the town of Satellite Beach (28.2127 N, 80.5973 W). Patrick Air Force Base has high-density nesting by loggerhead sea turtles in the Central Eastern Florida Region of the Peninsular Florida Recovery Unit.

Like Cape Canaveral Air Force Station, Patrick Air Force Base is governed by the 45th Space Wing 2008 INRMP. As with Cape Canaveral Air Force Station, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the 45th Space Wing INRMP and that conservation efforts identified in the INRMP will provide a benefit to the loggerhead sea turtle. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including 6.6 km (4.1 miles) of habitat in this proposed critical habitat designation because of this exemption.

Eglin Air Force Base (Cape San Blas), Gulf County, FL, 4.8 km (3.0 Miles)

Eglin Air Force Base is the largest forested military reservation in the United States and supports a multitude of military testing and training operations, as well as many diverse species and habitats. Eglin's missions include the 7th Special Forces Group (Airborne) beddown, Amphibious Ready Group/Marine Expeditionary Unit, Stand-off Precision Guided Missile, and Massive Ordnance Air Blast.

Eglin Air Force Base, also known as the Eglin Military Complex, is located in Santa Rosa, Okaloosa, Walton, and Gulf Counties in Northwest Florida and the Gulf of Mexico and occupies 261,428 hectares (464,000 acres). The Eglin Military Complex includes the mainland Reservation located in Santa Rosa, Okaloosa, and Walton Counties, as well as a small parcel (389 hectares (962 acres)) on Cape San Blas in Gulf County, Florida. Eglin's Cape San Blas parcel consists of 4.8 km (3.0 miles) of spit shoreline along the Gulf of Mexico. The spit is separated from the mainland by St. Joseph Bay. The boundaries of Eglin's Cape San Blas parcel are from 29.67680 N 85.36351 W to 29.67608 N 85.33394 W. Eglin's Cape San Blas parcel also contains U.S. Federal Reserve property, but the entire parcel is under Eglin's management. Eglin's Cape San Blas parcel has high-density nesting by loggerhead sea turtles in the Florida portion of the Northern Gulf of Mexico Recovery Unit.

The 2012 Eglin Air Force Base INRMP is a planning document that guides the management and conservation of natural resources under the installation's control. It provides interdisciplinary strategic guidance for the management of natural resources in support of the military mission within the land and water ranges of the Eglin Military Complex. The Eglin Air Force Base INRMP integrates and prioritizes wildlife, fire, and forest management activities to protect and effectively manage the Complex's aquatic and terrestrial environments, and ensure ''no net loss'' in the operational capability of these resources to support Eglin test and training missions.

The 2012 INRMP has a revised sea turtle chapter that includes the implementation of sea turtle nesting surveys, nest marking, predator control, and exterior lighting management to conserve loggerhead sea turtles and their habitat (Eglin Air Force Base 2012, pp. 8–7–8–16). The INRMP identifies the need to develop and implement programs to protect and conserve federally listed endangered and threatened plants and wildlife, including the loggerhead sea turtle. The INRMP identifies the following management and protective measures to achieve this goal:

(1) Monitor sea turtle nesting activities;

(2) Manage lighting (i.e., using sea turtle friendly, low-pressure sodium lighting at all test sites, turning off lights not necessary for safety, lowering lights, or properly shielding lights);

(3) Implement dune protection as needed; and

(4) Control sea turtle nest predators by implementing trapping either as soon as a nest is found to have been depredated or if deemed necessary by biologists.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Eglin Air Force Base INRMP and that conservation efforts identified in the INRMP will provide a benefit to the loggerhead sea turtle. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including 4.8 km (3.0 miles) of habitat in this proposed critical habitat designation because of this exemption.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make

revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species. We will consider whether to exclude from critical habitat designation areas in St. Johns, Volusia, and Indian River Counties, Florida, that are covered under habitat conservation plans that include the loggerhead sea turtle as a covered species.

Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation.

The proposed critical habitat areas include Federal, State, private, and other (local government) lands, where shoreline protection activities (e.g., sand placement, coastal armoring, groin installation) and recreational activities may occur and may be affected by the designation. In addition, activities, such as bridge and highway construction and beachfront lighting projects, on lands adjacent to proposed critical habitat areas may be affected. Other land uses that may be affected will be identified as we develop the draft economic analysis for the proposed designation.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the North Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). During the development of a final designation, we will consider economic impacts based on information in our economic analysis, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. As discussed above, we have exempted from the proposed designation of critical habitat under section 4(a)(3) of the Act those Department of Defense lands with completed INRMPs determined to provide a benefit to the loggerhead sea turtle but where a national security impact may exist. We have not identified any other lands owned or managed by the Department of Defense within the lands proposed for critical habitat designation. Accordingly, we are not proposing to exclude any lands based on national security impacts under section 4(b)(2) of the Act in this proposed critical habitat rule.

Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

We are considering for exclusion from critical habitat areas (all or portions of LOGG–T–FL–01, LOGG–T–FL–02, LOGG–T–FL–03, LOGG–T–FL–04, LOGG–T–FL–05, and LOGG–T–FL–10) in St. Johns, Volusia, and Indian River Counties, Florida, that are covered under an HCP, because the HCPs incorporate measures that provide a benefit for the conservation of the loggerhead sea turtle. We are not considering any additional exclusions at this time from the proposed designation under section 4(b)(2) of the Act based on partnerships, management, or protection afforded by cooperative management efforts. In this proposed rule, we are seeking input from the public as to whether or not the Secretary should exercise his discretion to exclude the HCP areas or other such areas under management that benefit the loggerhead sea turtle from the final critical habitat designation. (Please see the **Information Requested** section of this proposed rule for instructions on how to submit comments.)

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **ADDRESSES** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant

rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine if potential economic impacts on these small entities are significant, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, USFWS may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, USFWS may also certify.

The USFWS's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by this designation, and, therefore, USFWS may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of USFWS to assess to the extent practicable these potential impacts if sufficient data are available, whether or not this analysis is believed by USFWS to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the Executive Order regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the necessary analysis, whether or not this analysis is strictly required by the RFA. While this regulation does not directly regulate these entities, in our draft economic analysis we will conduct a brief evaluation of the potential number of third parties participating in consultations on an annual basis in order to ensure a more complete examination of the incremental effects of this proposed rule in the context of the RFA.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will only directly regulate Federal agencies, which are not by definition small business entities. And as such, we certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Natural gas and oil activities in State and Federal waters occur offshore of the States of Alabama, Mississippi, and Florida in the Gulf of Mexico (GOM) where critical habitat is proposed for the species. Potential direct and indirect affects to proposed critical habitat could result from associated oil and gas activities, including but not limited to pipeline installation and maintenance, coastal based facilities, boat vessel

traffic, and spills. USFWS and the Bureau of Ocean Energy and Management (BOEM) have a long history of intra-agency coordination and consultation under the Act on offshore outer continental shelf (OCS) oil and gas since the 1970s. Consultation occurs on the Five-year Multi-lease Sale Program and then on each individual lease sale in the Program as they occur. As a result, regulations and other measures are in place to minimize impacts of natural gas and oil exploration, development, production, and abandonment in the GOM OCS. The regulations and measures are generally not considered a substantial cost compared with overall project costs and are already being implemented by oil and gas companies.

The most recent consultation completed was for the GOM OCS 2007–2012 Program and Supplemental Lease Sales 2009–2012 and the initial coordination on the proposed 2012–2017 Programs. Individual lease sales consultations have been completed for the 2007–2012 and 2009–2012 Programs. Most of the eastern GOM, including the Straits of Florida (Alabama and Florida), remains under a Congressionally mandated moratorium and is not proposed for new leasing in either the 2007–2012 or 2012–2017 Programs. BOEM will move forward with an environmental analysis for potential seismic studies in the Mid- and South Atlantic planning areas (Florida Atlantic coast, Georgia, South Carolina, and North Carolina), but no lease sales will be scheduled in the Atlantic until at least mid-2017.

The States of Mississippi and Alabama have oil and gas programs in their respective State waters. USFWS only conducts consultation in accordance with the Act on oil and gas activities within State waters where there is a Federal nexus (discharge, wetland impacts, or navigation permits).

No other activities associated with energy supply, distribution, or use are anticipated within the proposed critical habitat. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments. A portion of the lands being proposed for critical habitat designation are owned by State, County, or local municipalities. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. Due to current public knowledge of the species protections and the prohibition against take of the species both within and outside of the proposed areas we do not anticipate that property values will be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and

coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi. The designation of critical habitat in areas currently occupied by the loggerhead sea turtle may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested parties to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands that were occupied by the loggerhead sea turtle at the time of listing that contain the features essential for conservation of the species. Therefore, we are not proposing to designate critical habitat for the loggerhead sea turtle on tribal lands.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the North Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the North Florida Ecological Services Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), revise the entry for ''Sea turtle, loggerhead, Northwest Atlantic Ocean'' under ''Reptiles'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
REPTILES							
*	*	*	*	*	*		*
Sea turtle, loggerhead, Northwest Atlantic Ocean.	*Caretta caretta*	Northwest Atlantic Ocean Basin.	Northwest Atlantic Ocean north of the equator, south of 60° N. Lat., and west of 40° W. Long.	T	794	17.95(c)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95, amend paragraph (c) by adding an entry for ''Loggerhead Sea Turtle, Northwest Atlantic Ocean (*Caretta caretta*),'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) *Reptiles.*

* * * * *

Loggerhead Sea Turtle, Northwest Atlantic Ocean (*Caretta caretta*)

(1) Critical habitat units are depicted for the following areas on the maps below:

(i) North Carolina—Brunswick, Carteret, New Hanover, Onslow, and Pender Counties;

(ii) South Carolina—Beaufort, Charleston, Colleton, and Georgetown Counties;

(iii) Georgia—Camden, Chatham, Liberty, and McIntosh Counties;

(iv) Florida—Bay, Brevard, Broward, Charlotte, Collier, Duval, Escambia, Flagler, Franklin, Gulf, Indian River, Lee, Manatee, Martin, Monroe, Palm Beach, Sarasota, St. Johns, St. Lucie, and Volusia Counties;

(v) Alabama—Baldwin County; and

(vi) Mississippi—Jackson County.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Northwest Atlantic Ocean distinct population segment of the loggerhead sea turtle are the extra-tidal or dry sandy beaches from the mean high-water line to the toe of the secondary dune, which are capable of supporting a high density of nests or serving as an expansion area for beaches with a high density of nests and that are well distributed within each State, or region within a State, and representative of total nesting, consisting of three components:

(i) Primary Constituent Element 1—Suitable nesting beach habitat that (A) Has relatively unimpeded nearshore access from the ocean to the beach for nesting females and from the beach to the ocean for both postnesting females and hatchlings and (B) Is located above mean high water to avoid being inundated frequently by high tides.

(ii) Primary Constituent Element 2—Sand that (A) Allows for suitable nest construction, (B) Is suitable for facilitating gas diffusion conducive to embryo development, and (C) Is able to develop and maintain temperatures and a moisture content conducive to embryo development.

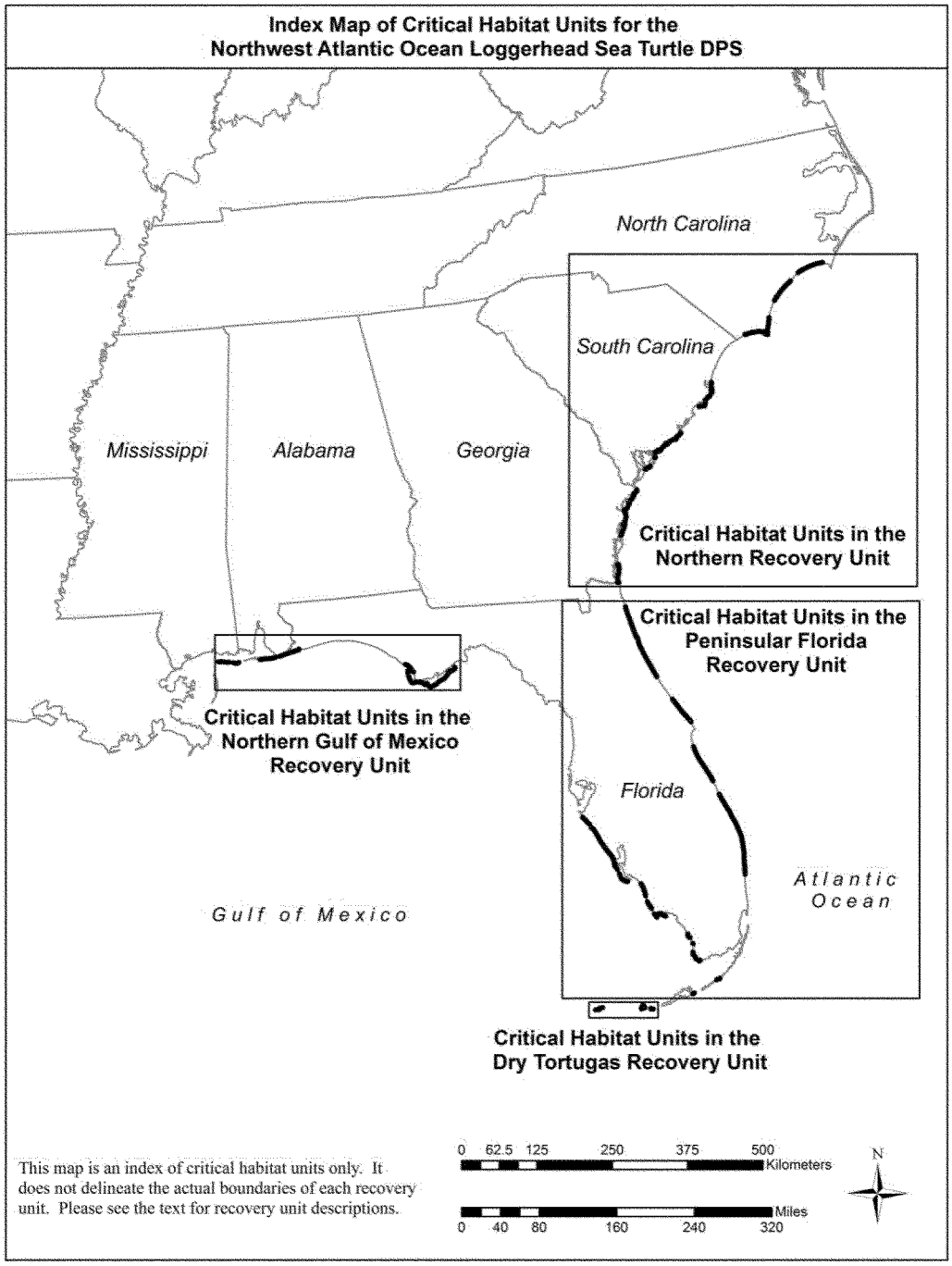
(iii) Primary Constituent Element 3—Suitable nesting beach habitat with sufficient darkness to ensure that nesting turtles are not deterred from emerging onto the beach and hatchlings and postnesting females orient to the sea.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [INSERT DATE 30 DAYS AFTER PUBLICATION DATE FOR THE FINAL RULE].

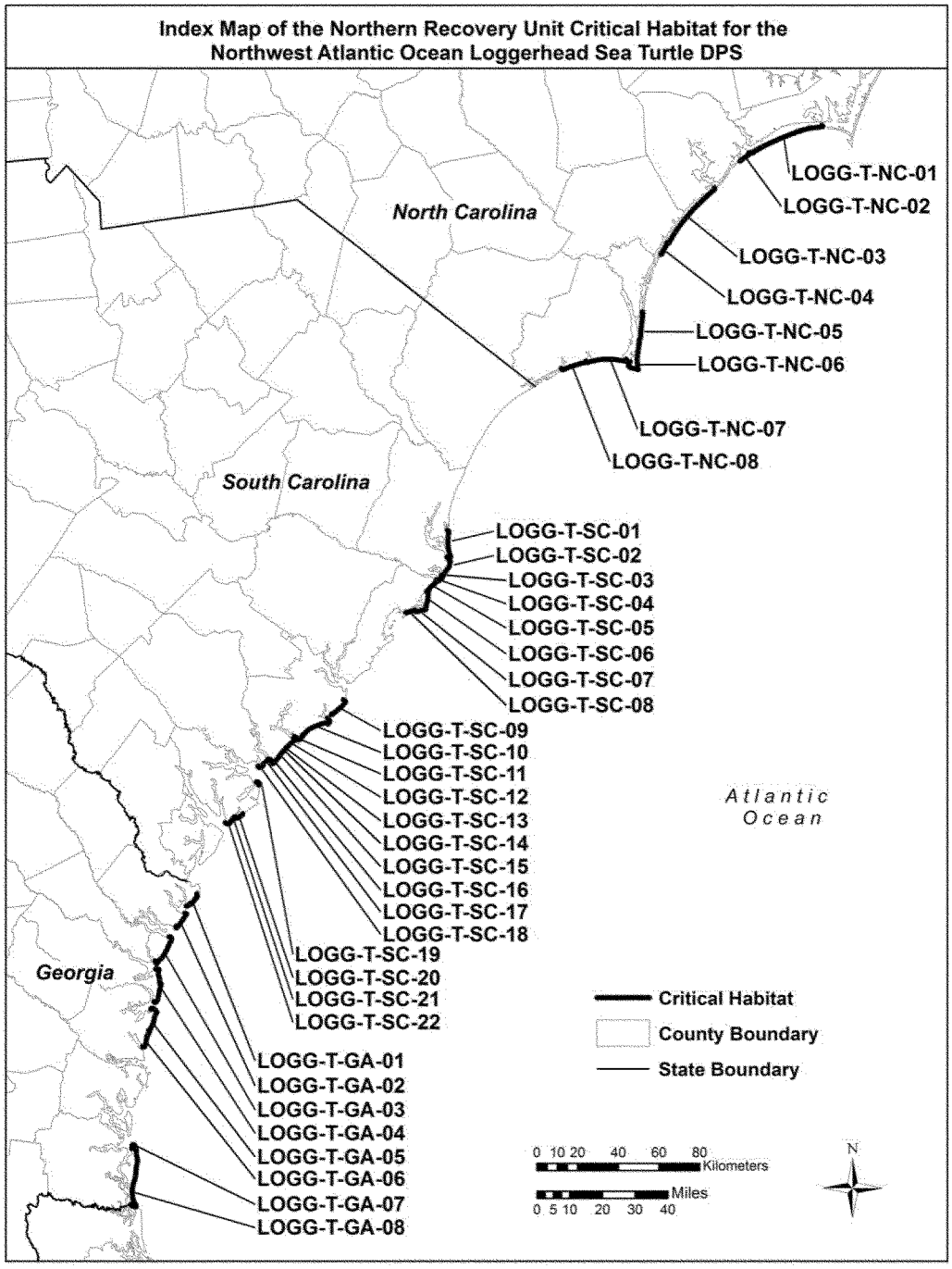
(4) *Critical habitat map units.* Data layers defining map units were created using Google Earth imagery, then refined using Bing imagery. Unit descriptions were then mapped using North America Lambert Conformal Conic coordinates. The maps in this entry, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site (*http://www.fws.gov/northflorida*), *http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0103, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the USFWS regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index Map follows:

BILLING CODE 4310–22–P



(6) Index Map of Critical Habitat Units in the Northern Recovery Unit:



(7) Units:

(i) LOGG–T–NC–01—Boque Banks, Carteret County, North Carolina.

(ii) LOGG–T–NC–02—Bear Island, Onslow County, North Carolina.

(iii) LOGG–T–NC–03—Topsail Island, Onslow and Pender Counties, North Carolina.

(iv) LOGG–T–NC–04—Lea-Hutaff Island, Pender County, North Carolina.

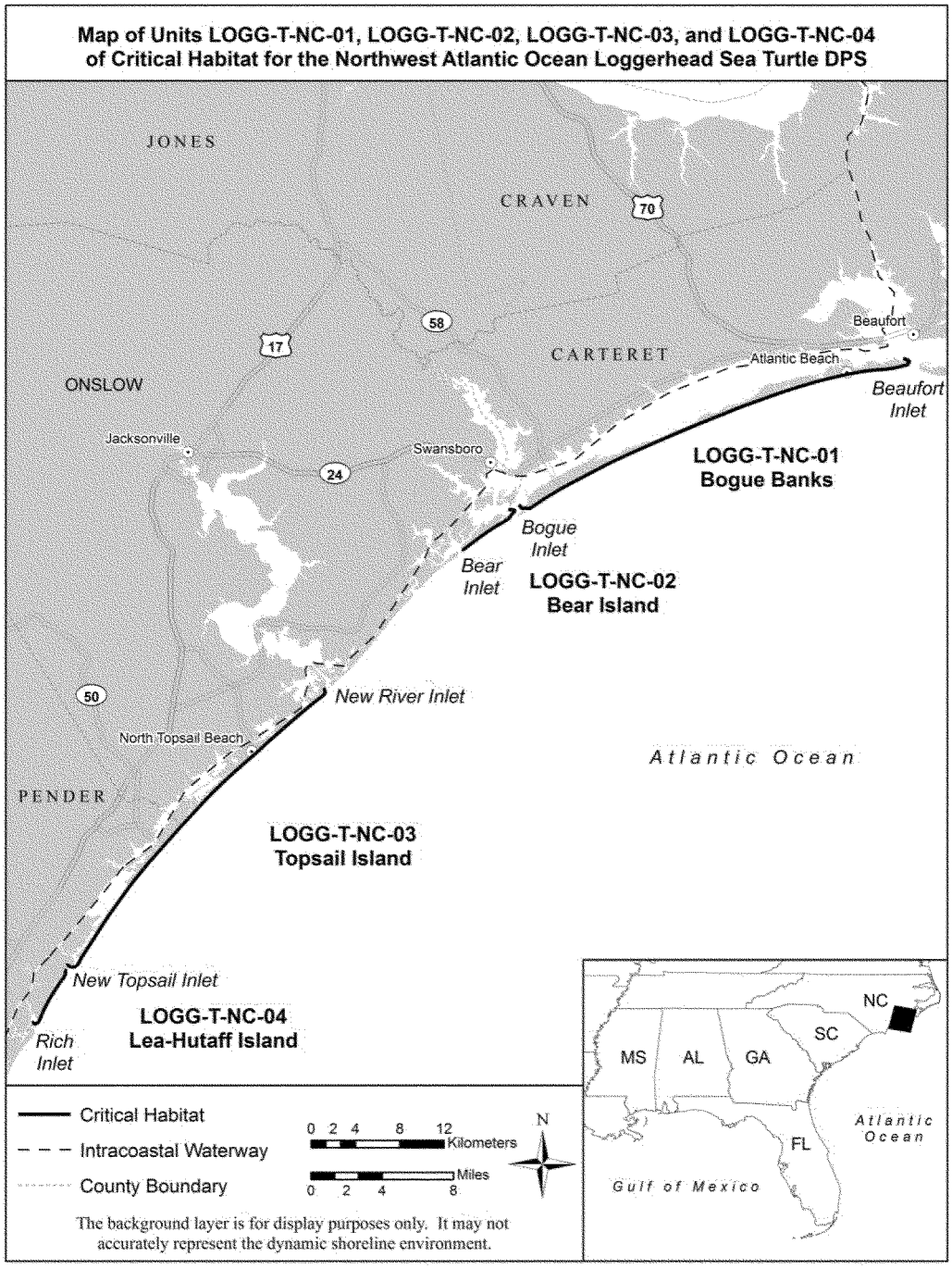
(A) (1) LOGG–T–NC–01—Boque Banks: This unit consists of 38.9 km (24.2 miles) of island shoreline along the Atlantic Ocean and extends from Beaufort Inlet to Bogue Inlet.

(2) LOGG–T–NC–02—Bear Island: This unit consists of 6.6 km (4.1 miles) of island shoreline along the Atlantic Ocean and extends from Bogue Inlet to Bear Inlet.

(3) LOGG–T–NC–03—Topsail Island: This unit consists of 35.0 km (21.8 miles) of island shoreline along the Atlantic Ocean and extends from New River Inlet to New Topsail Inlet.

(4) LOGG–T–NC–04—Lea-Hutaff Island: This unit consists of 6.1 km (3.8 miles) of island shoreline along the Atlantic Ocean and extends from New Topsail Inlet to Rich Inlet.

(B) *Note:* Map of Units LOGG–T–NC–01, LOGG–T–NC–02, LOGG–T–NC–03, and LOGG–T–NC–04: North Carolina Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle: Boque Banks, Bear Island, Topsail Island, and Lea-Hutaff Island, follows:



(8) Units:

(i) LOGG–T–NC–05—Pleasure Island, New Hanover County, North Carolina.

(ii) LOGG–T–NC–06—Bald Head Island, Brunswick County, North Carolina.

(iii) LOGG–T–NC–07—Oak Island, Brunswick County, North Carolina.

(iv) LOGG–T–NC–08—Holden Beach, Brunswick County, North Carolina.

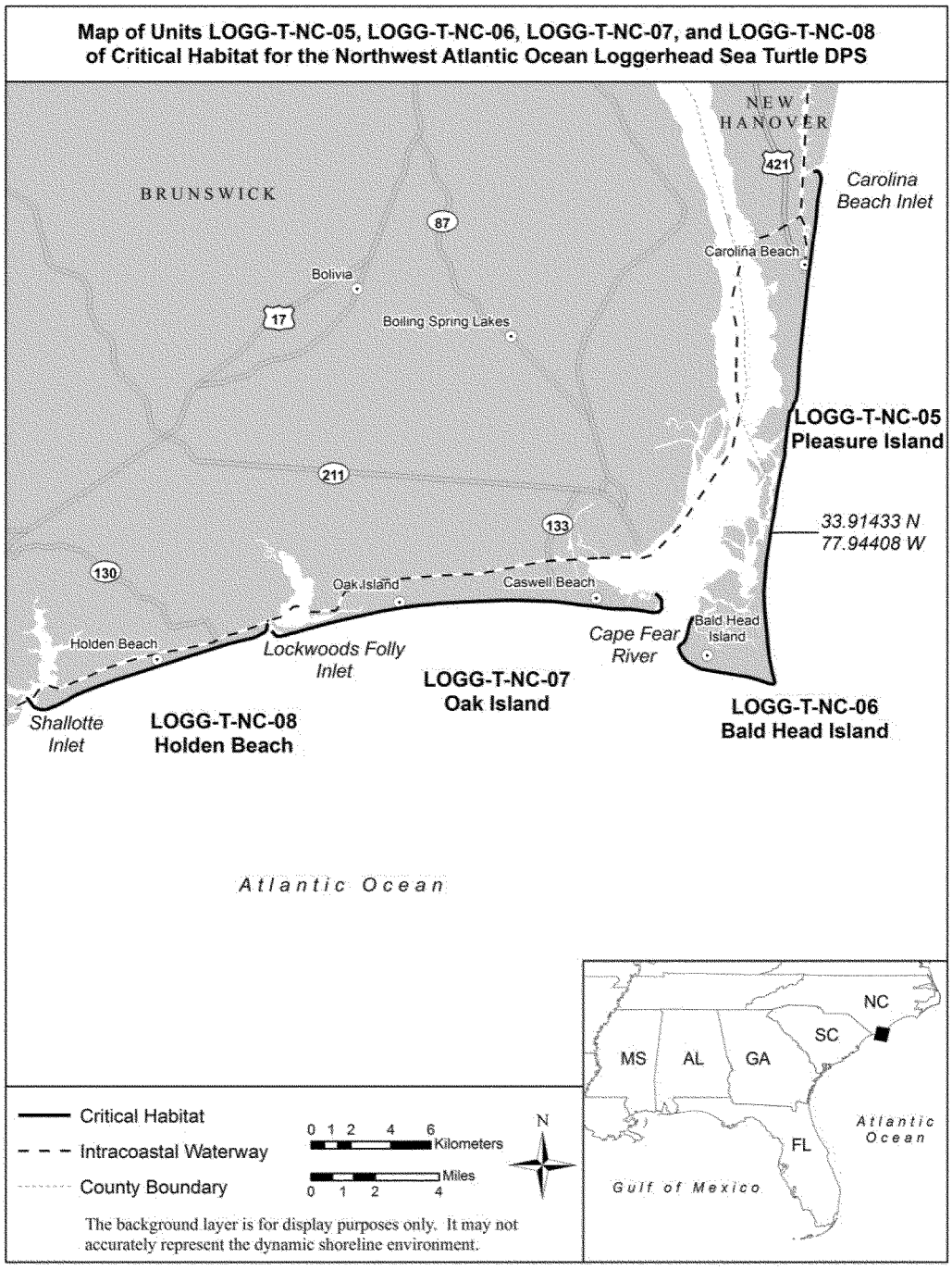
(A) (1) LOGG–T–NC–05—Pleasure Island: This unit consists of 18.6 km (11.5 miles) of island shoreline along the Atlantic Ocean and extends from Carolina Beach Inlet to 33.91433 N, 77.94408 W (historic location of Corncake Inlet).

(2) LOGG–T–NC–06—Bald Head Island: This unit consists of 15.1 km (9.4 miles) of island shoreline along the Atlantic Ocean and extends from 33.91433 N, –77.94408 W (historic location of Corncake Inlet) to the mouth of the Cape Fear River.

(3) LOGG–T–NC–07—Oak Island: This unit consists of 20.9 km (13.0 miles) of island shoreline along the Atlantic Ocean and extends from the mouth of the Cape Fear River to Lockwoods Folly Inlet.

(4) LOGG–T–NC–08—Holden Beach: This unit consists of 13.4 km (8.3 miles) of island shoreline along the Atlantic Ocean and extends from Lockwoods Folly Inlet to Shallotte Inlet.

(B) *Note:* Map of Units LOGG–T–NC–05, LOGG–T–NC–06, LOGG–T–NC–07, and LOGG–T–NC–08: North Carolina Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(9) Units:

(i) LOGG–T–SC–01—North Island, Georgetown County, South Carolina.

(ii) LOGG–T–SC–02—Sand Island, Georgetown County, South Carolina.

(iii) LOGG–T–SC–03—South Island, Georgetown County, South Carolina.

(iv) LOGG–T–SC–04—Cedar Island, Georgetown County, South Carolina.

(v) LOGG–T–SC–05—Murphy Island, Charleston County, South Carolina.

(A) (1) LOGG–T–SC–01—North Island: This unit consists of 13.2 km (8.2 miles) of island shoreline along the Atlantic Ocean and extends from North Inlet to Winyah Bay.

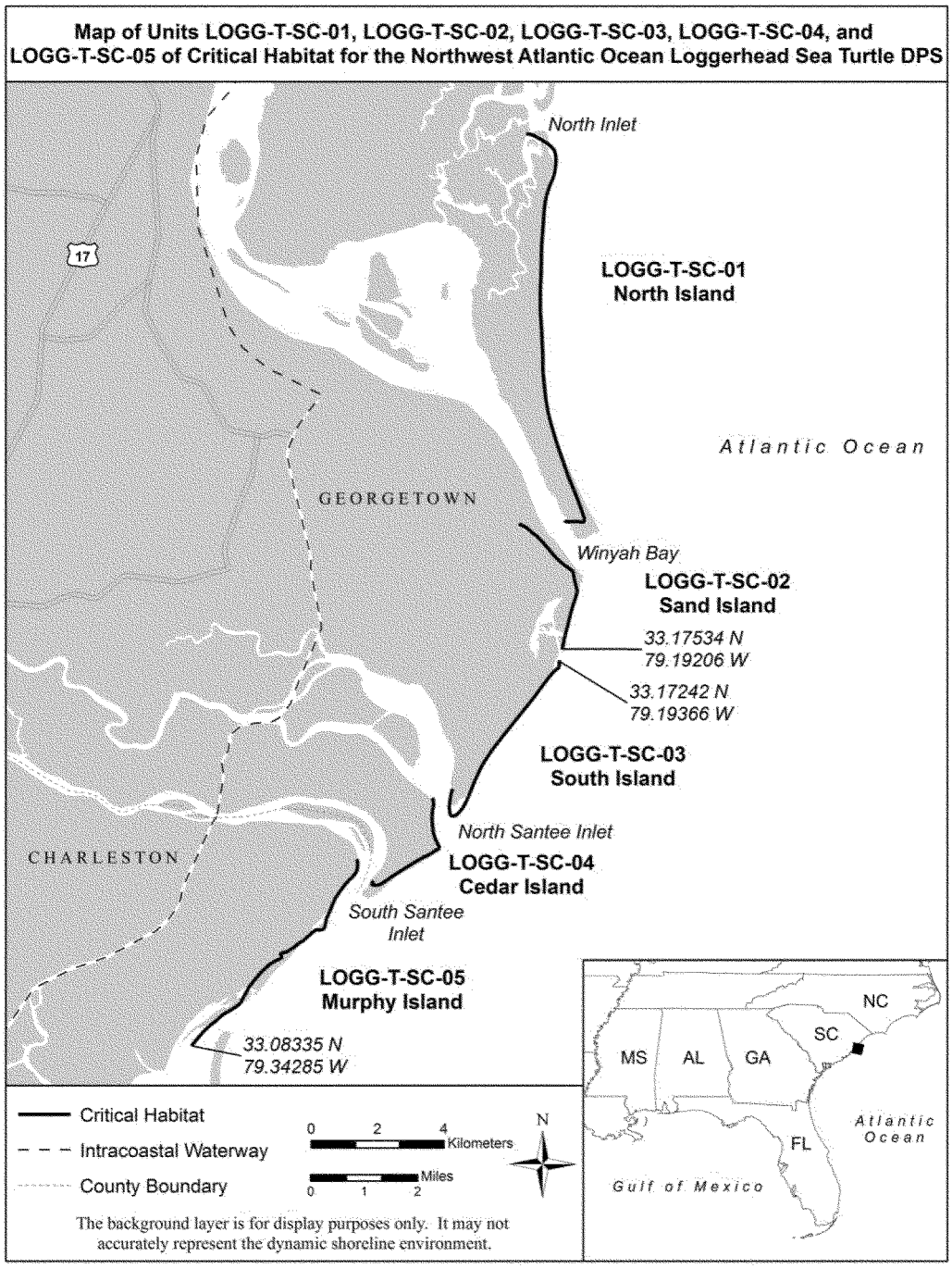
(2) LOGG–T–SC–02—Sand Island: This unit consists of 4.7 km (2.9 miles) of island shoreline along the Atlantic Ocean and Winyah Bay and extends from Winyah Bay to 33.17534 N, 79.19206 W (northern boundary of an unnamed inlet separating Sand Island and South Island).

(3) LOGG–T–SC–03—South Island: This unit consists of 6.7 km (4.2 miles) of island shoreline along the Atlantic Ocean and extends from 33.17242 N, 79.19366 W (southern boundary of an unnamed inlet separating Sand Island and South Island) to North Santee Inlet.

(4) LOGG–T–SC–04—Cedar Island: This unit consists of 4.1 km (2.5 miles) of island shoreline along the Atlantic Ocean and North Santee Inlet and extends from North Santee Inlet to South Santee Inlet.

(5) LOGG–T–SC–05—Murphy Island: This unit consists of 8.0 km (5.0 miles) of island shoreline along the Atlantic Ocean and South Santee Inlet and extends from South Santee Inlet to 33.08335 N, 79.34285 W.

(B) *Note:* Map of Units LOGG–T–SC–01, LOGG–T–SC–02, LOGG–T–SC–03, LOGG–T–SC–04, and LOGG–T–SC–05: South Carolina Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(10) Units:

(i) LOGG–T–SC–06—Cape Island, Charleston County, South Carolina.

(ii) LOGG–T–SC–07—Lighthouse Island, Charleston County, South Carolina.

(iii) LOGG–T–SC–08—Raccoon Key, Charleston County, South Carolina.

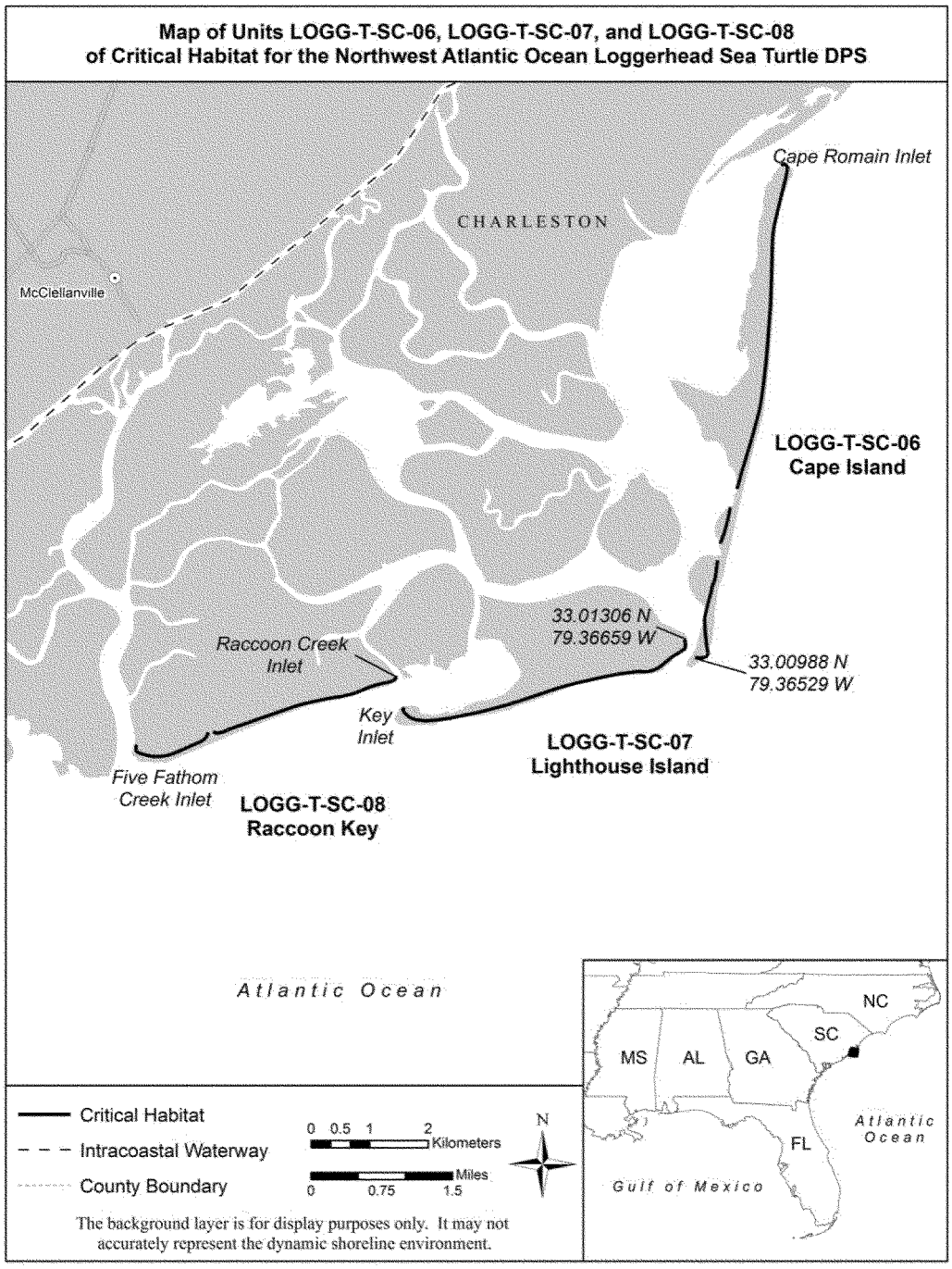
(A) (1) LOGG–T–SC–06—Cape Island: This unit consists of 8.3 km (5.1 miles) of island shoreline along the Atlantic Ocean and extends from Cape Romain Inlet to 33.00988 N, 79.36529 W (northern boundary of an unnamed inlet between Cape Island and Lighthouse Island).

(2) LOGG–T–SC–07—Lighthouse Island: This unit consists of 5.3 km (3.3 miles) of island shoreline along the Atlantic Ocean and extends from 33.01306 N, 79.36659 W (southern boundary of an unnamed inlet between Cape Island and Lighthouse Island) to Key Inlet.

(3) LOGG–T–SC–08—Raccoon Key: This unit consists of 4.8 km (3.0 miles) of island shoreline along the Atlantic Ocean and extends from Raccoon Creek Inlet to Five Fathom Creek Inlet.

(B) *Note:* Map of Units LOGG–T–SC–06, LOGG–T–SC–07, and LOGG–T–SC–08: South Carolina Terrestrial Critical

Habitat Units for the Loggerhead Sea Turtle follows:



(11) Units:

(i) LOGG–T–SC–09—Folly Island, Charleston County, South Carolina.

(ii) LOGG–T–SC–10—Kiawah Island, Charleston County, South Carolina.

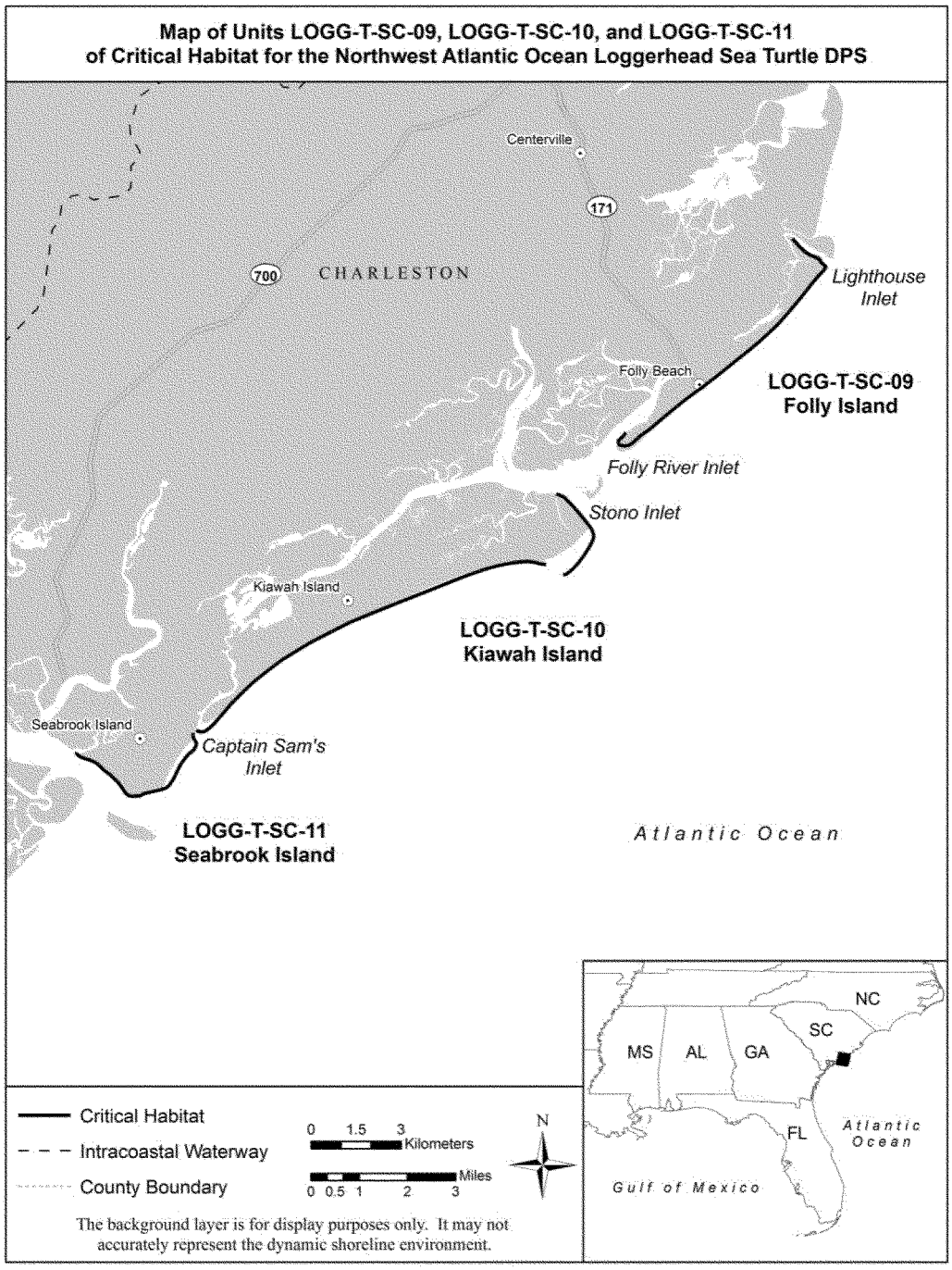
(iii) LOGG–T–SC–11—Seabrook Island, Charleston County, South Carolina.

(A) (1) LOGG–T–SC–09—Folly Island: This unit consists of 11.2 km (7.0 miles) of island shoreline along the Atlantic Ocean and extends from Lighthouse Inlet to Folly River Inlet.

(2) LOGG–T–SC–10—Kiawah Island: This unit consists of 17.0 km (10.6 miles) of island shoreline along the Atlantic Ocean and Stono Inlet and extends from Stono Inlet to Captain Sam's Inlet.

(3) LOGG–T–SC–11—Seabrook Island: This unit consists of 5.8 km (3.6 miles) of island shoreline along the Atlantic Ocean and North Edisto Inlet and extends from Captain Sam's Inlet to North Edisto Inlet.

(B) *Note:* Map of Units LOGG–T–SC–09, LOGG–T–SC–10, and LOGG–T–SC–11: South Carolina Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(12) Units:

(i) LOGG–T–SC–12—Botany Bay Island and Botany Bay Plantation, Charleston County, South Carolina.

(ii) LOGG–T–SC–13—Interlude Beach, Charleston County, South Carolina.

(iii) LOGG–T–SC–14—Edingsville Beach, Charleston County, South Carolina.

(iv) LOGG–T–SC–15—Edisto Beach State Park, Colleton County, South Carolina.

(v) LOGG–T–SC–16—Edisto Beach, Colleton County, South Carolina.

(A) (1) LOGG–T–SC–12—Botany Bay Island and Botany Bay Plantation: This unit consists of 6.6 km (4.1 miles) of island shoreline along the Atlantic Ocean and North Edisto Inlet and extends from North Edisto Inlet to 32.53710 N, 80.24614 W (northern boundary of an unnamed inlet separating Botany Bay Plantation and Interlude Beach).

(2) LOGG–T–SC–13—Interlude Beach: This unit consists of 0.9 km (0.6 mile) of island shoreline along the Atlantic Ocean and extends from 32.53636 N, 80.24647 W (southern boundary of an unnamed inlet separating Interlude Beach and Botany Bay Plantation) to Frampton Inlet.

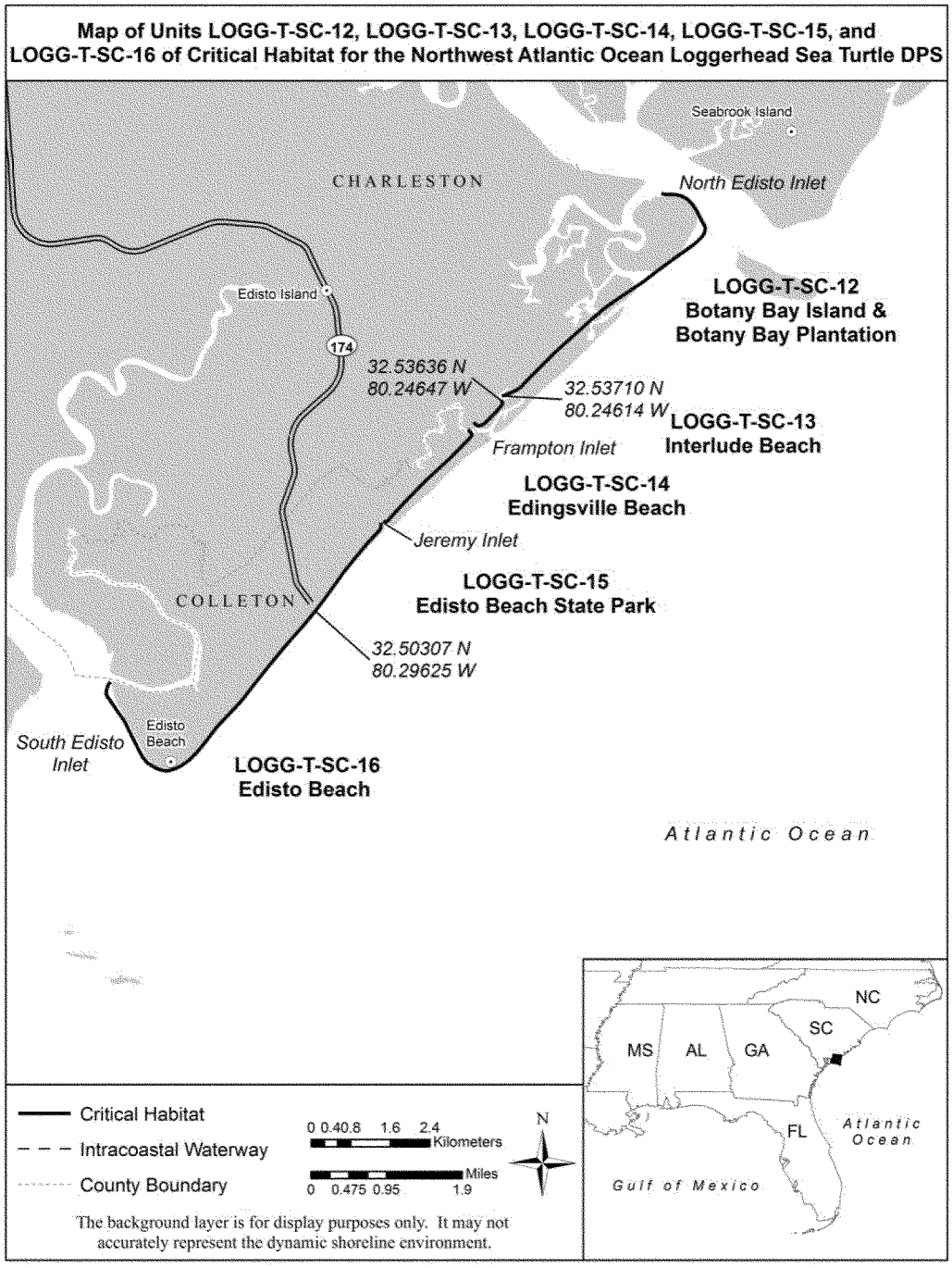
(3) LOGG–T–SC–14—Edingsville Beach: This unit consists of 2.7 km (1.7 miles) of island shoreline along the Atlantic Ocean and extends from Frampton Inlet to Jeremy Inlet.

(4) LOGG–T–SC–15—Edisto Beach State Park: This unit consists of 2.2 km (1.4 miles) of island shoreline along the Atlantic Ocean and extends from Jeremy Inlet to 32.50307 N, 80.29625 W (State Park boundary separating Edisto Beach

State Park and the Town of Edisto Beach).

(5) LOGG–T–SC–16—Edisto Beach: This unit consists of 6.8 km (4.2 miles) of island shoreline along the Atlantic Ocean and South Edisto River and extends from 32.50307 N, 80.29625 W (State Park boundary separating Edisto Beach State Park and the Town of Edisto Beach) to South Edisto Inlet.

(B) *Note:* Map of Units LOGG–T–SC–12, LOGG–T–SC–13, LOGG–T–SC–14, LOGG–T–SC–15, and LOGG–T–SC–16: South Carolina Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(13) Units:

(i) LOGG–T–SC–17—Pine Island, Colleton County, South Carolina.

(ii) LOGG–T–SC–18—Otter Island, Colleton County, South Carolina.

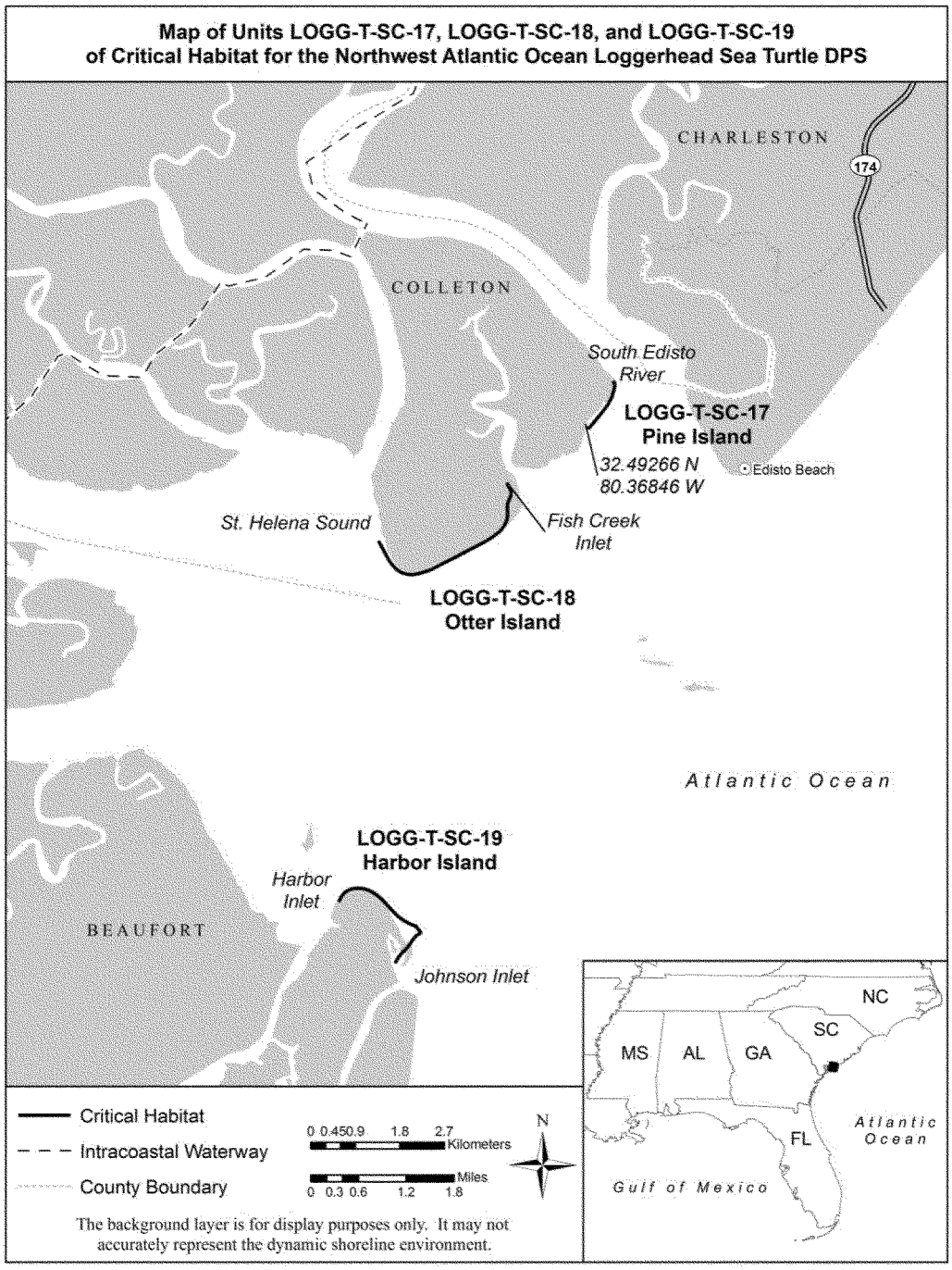
(iii) LOGG–T–SC–19—Harbor Island, Beaufort County, South Carolina.

(A) (1) LOGG–T–SC–17—Pine Island: This unit consists of 1.2 km (0.7 mile) of island shoreline along the South Edisto Inlet and extends from South Edisto River to 32.49266 N, 80.36846 W (northern boundary of an unnamed inlet to Fish Creek).

(2) LOGG–T–SC–18—Otter Island: This unit consists of 4.1 km (2.5 miles) of island shoreline along the Atlantic Ocean and Saint Helena Sound and extends from Fish Creek Inlet to Saint Helena Sound.

(3) LOGG–T–SC–19—Harbor Island: This unit consists of 2.9 km (1.8 miles) of island shoreline along the Atlantic Ocean and Saint Helena Sound and extends from Harbor Inlet to Johnson Inlet.

(B) *Note:* Map of Units LOGG–T–SC–17, LOGG–T–SC–18, and LOGG–T–SC–19: South Carolina Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(14) Units:

(i) LOGG–T–SC–20—Little Capers Island, Beaufort County, South Carolina.

(ii) LOGG–T–SC–21—St. Phillips Island, Beaufort County, South Carolina.

(iii) LOGG–T–SC–22—Bay Point Island, Beaufort County, South Carolina.

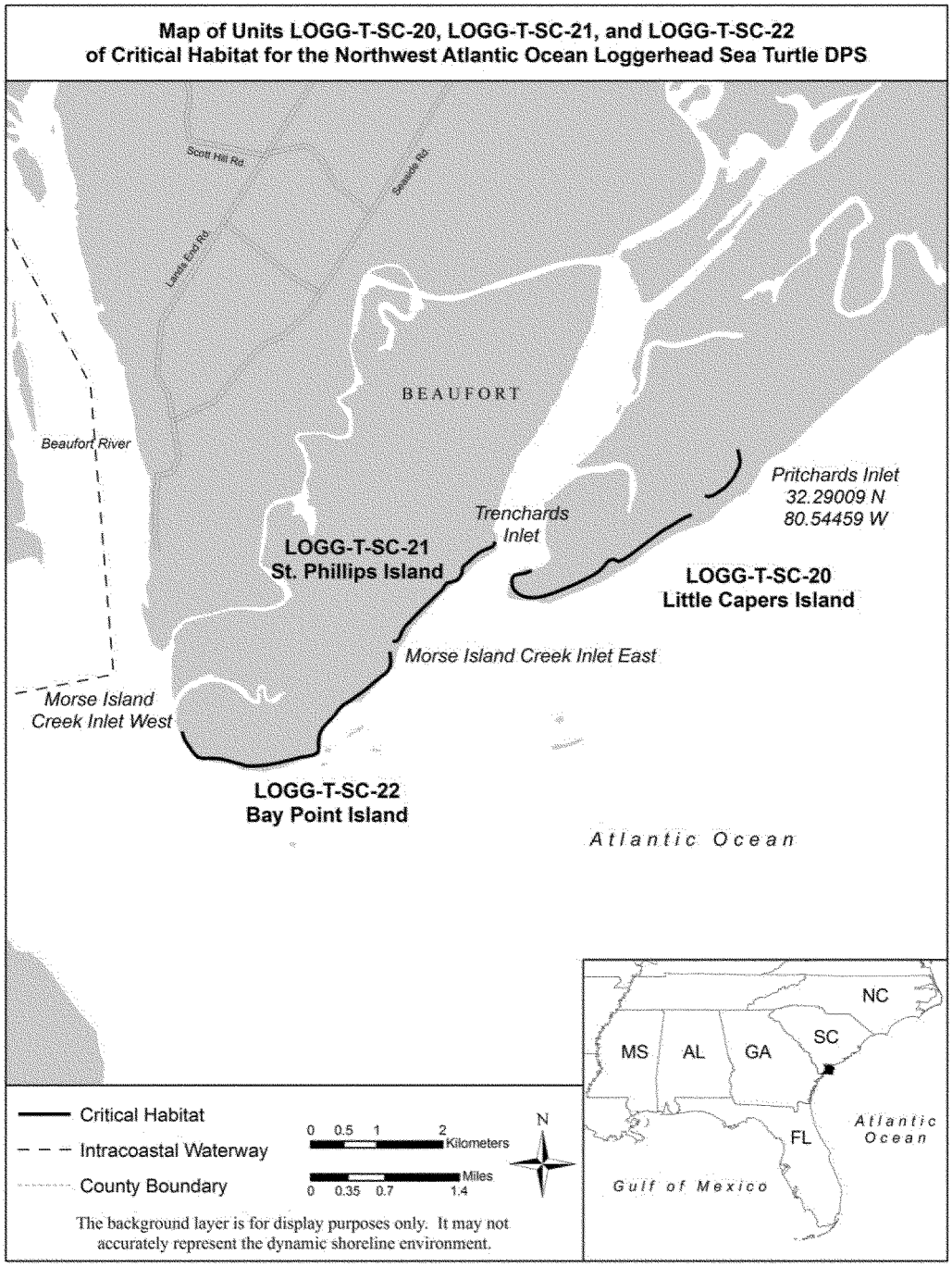
(A) (1) LOGG–T–SC–20—Little Capers Island: This unit consists of 4.6 km (2.9 miles) of island shoreline along the Atlantic Ocean and extends from ''Pritchards Inlet'' (there is some uncertainty about the true name of this water feature) located at 32.29009 N, 80.54459 W to Trenchards Inlet.

(2) LOGG–T–SC–21—St. Phillips Island: This unit consists of 2.3 km (1.4 miles) of island shoreline along the Atlantic Ocean and Trenchards Inlet and extends from Trenchards Inlet to Morse Island Creek Inlet East.

(3) LOGG–T–SC–22—Bay Point Island: This unit consists of 4.3 km (2.7 miles) of island shoreline along the Atlantic Ocean and Port Royal Sound and extends from Morse Island Creek Inlet East along the Atlantic Ocean

shoreline to Morse Island Creek Inlet West along the Port Royal Sound shoreline.

(B) *Note:* Map of Units LOGG–T–SC–20, LOGG–T–SC–21, and LOGG–T–SC–22: South Carolina Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(15) Units:

(i) LOGG–T–GA–01—Little Tybee Island, Chatham County, Georgia.

(ii) LOGG–T–GA–02—Wassaw Island, Chatham County, Georgia.

(iii) LOGG–T–GA–03—Ossabaw Island, Chatham County, Georgia.

(iv) LOGG–T–GA–04—St. Catherines Island, Liberty County, Georgia.

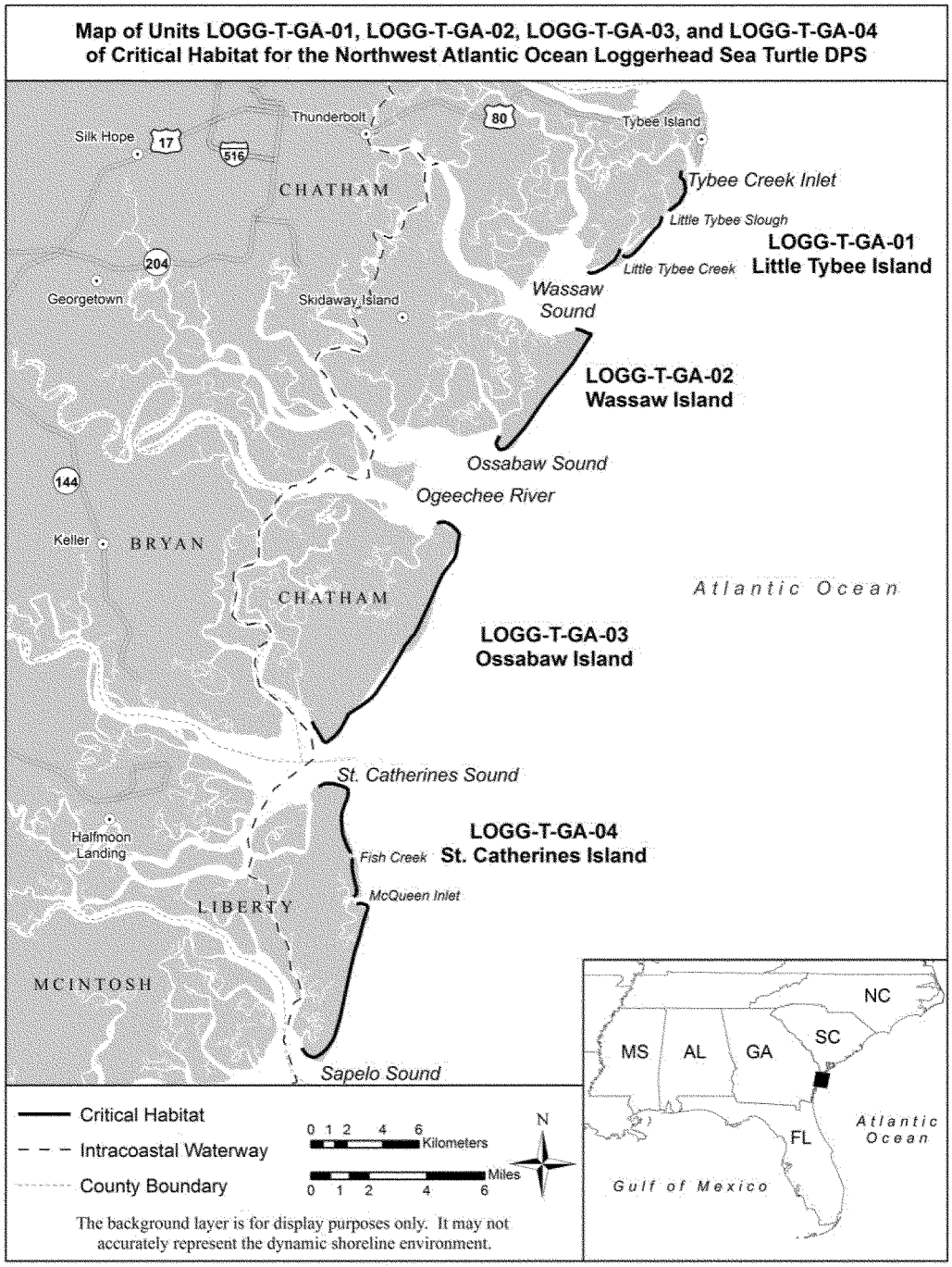
(A) (1) LOGG–T–GA–01—Little Tybee Island: This unit consists of 8.6 km (5.3 miles) of island shoreline along the Atlantic Ocean and extends from Tybee Creek Inlet to Wassaw Sound.

(2) LOGG–T–GA–02—Wassaw Island: This unit consists of 10.1 km (6.3 miles) of island shoreline along the Atlantic Ocean and extends from Wassaw Sound to Ossabaw Sound.

(3) LOGG–T–GA–03—Ossabaw Island: This unit consists of 17.1 km (10.6 miles) of island shoreline along the Atlantic Ocean and extends from Ogeechee River to St. Catherines Sound.

(4) LOGG–T–GA–04—St. Catherines Island: This unit consists of 18.4 km (11.5 miles) of island shoreline along the Atlantic Ocean and extends from St. Catherines Sound to Sapelo Sound.

(B) *Note:* Map of Units LOGG–T–GA–01, LOGG–T–GA–02, LOGG–T–GA–03, and LOGG–T–GA–04: Georgia Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(16) Units:

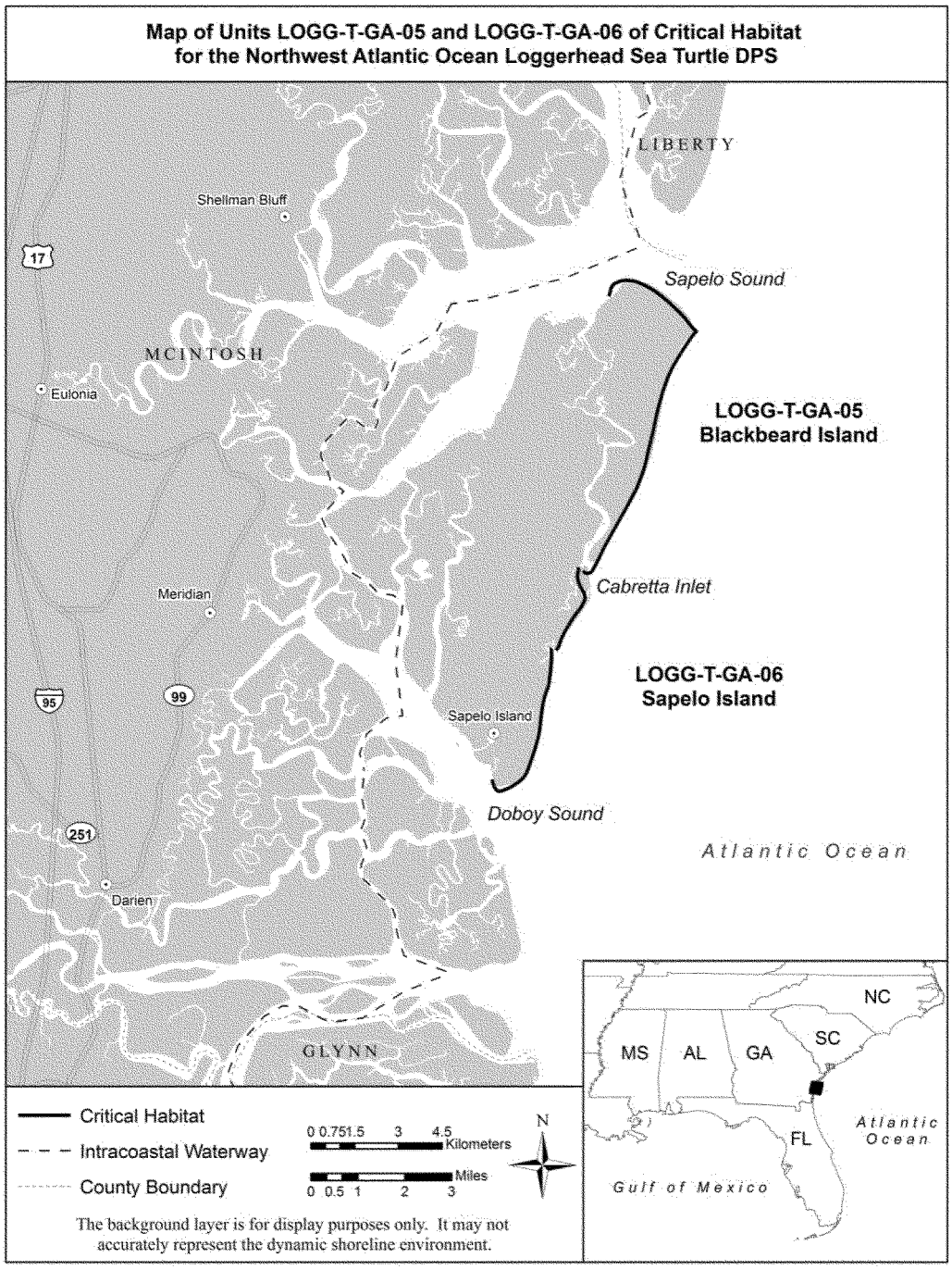
(i) LOGG–T–GA–05—Blackbeard Island, McIntosh County, Georgia.

(ii) LOGG–T–GA–06—Sapelo Island, McIntosh County, Georgia.

(A) (1) LOGG–T–GA–05—Blackbeard Island: This unit consists of 13.5 km (8.4 miles) of island shoreline along the Atlantic Ocean and extends from Sapelo Sound to Cabretta Inlet.

(2) LOGG–T–GA–06—Sapelo Island: This unit consists of 9.3 km (5.8 miles) of island shoreline along the Atlantic Ocean and extends from Cabretta Inlet to Doboy Sound.

(B) *Note:* Map of Units LOGG–T–GA–05 and LOGG–T–GA–06: Georgia Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(17) Units:

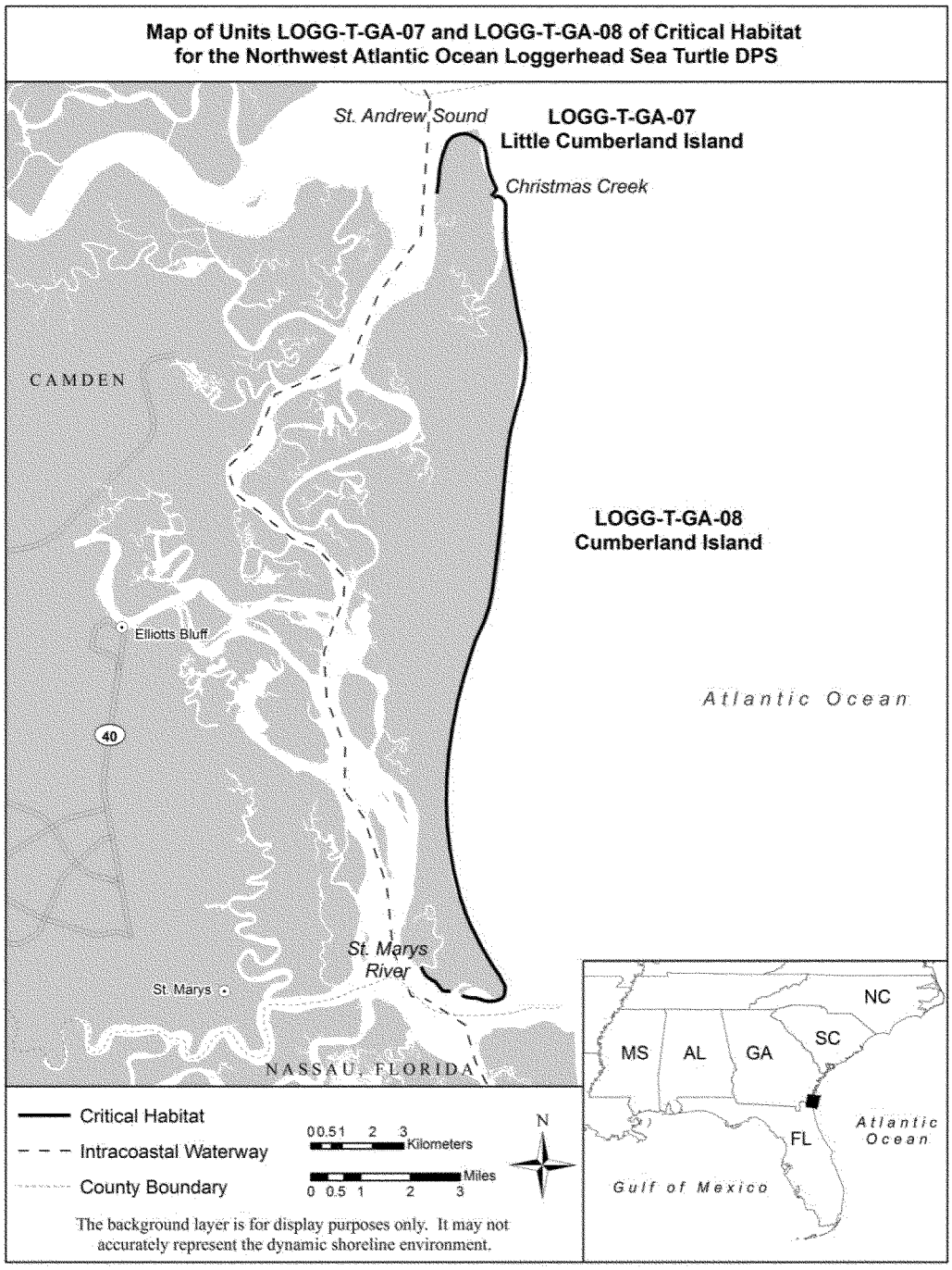
(i) LOGG–T–GA–07—Little Cumberland Island, Camden County, Georgia.

(ii) LOGG–T–GA–08—Cumberland Island, Camden County, Georgia.

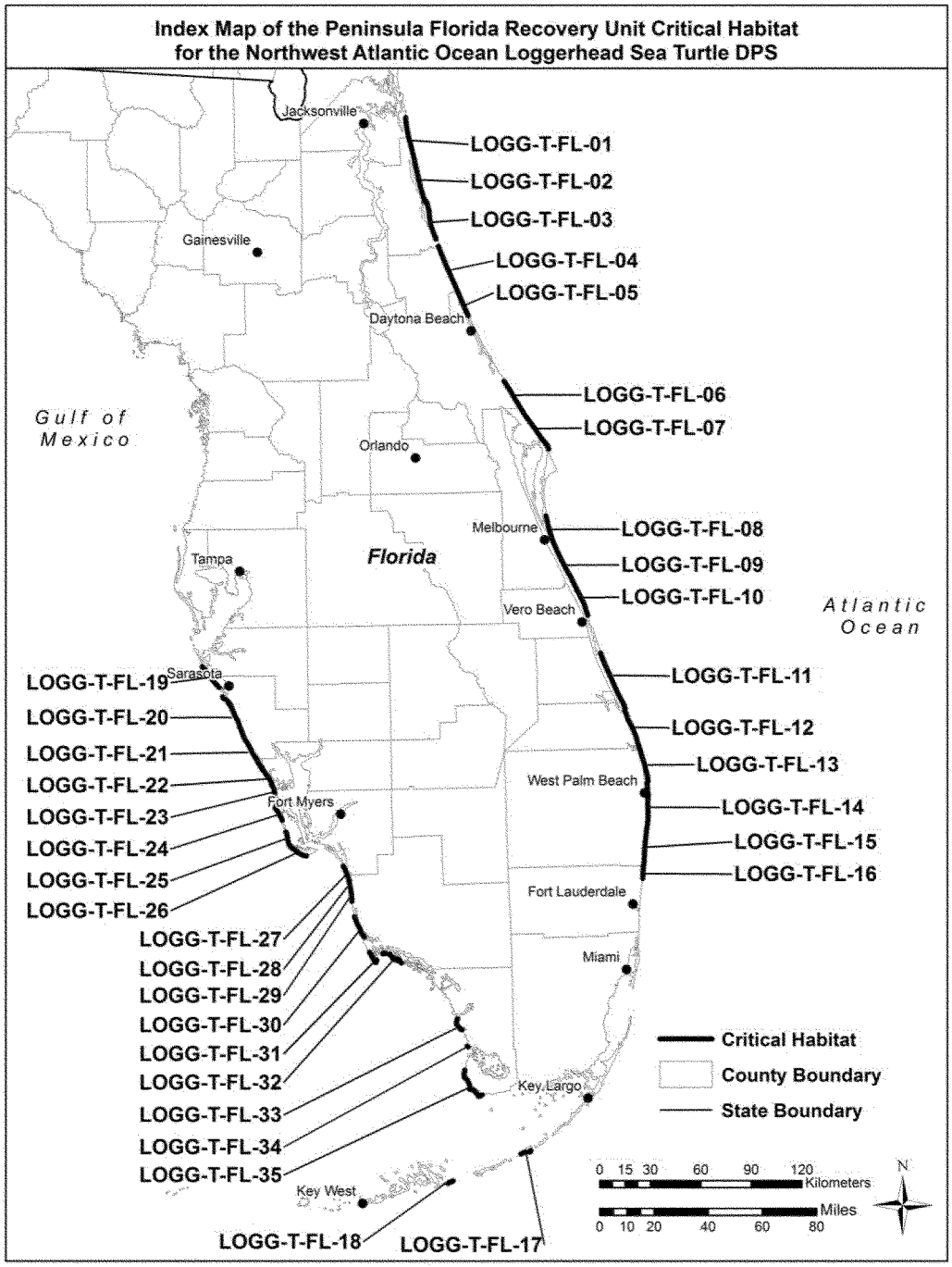
(A) (1) LOGG–T–GA–07—Little Cumberland Island: This unit consists of 4.9 km (3.0 miles) of island shoreline along the Atlantic Ocean and extends from St. Andrew Sound to Christmas Creek.

(2) LOGG–T–GA–08—Cumberland Island: This unit consists of 29.7 km (18.4 miles) of island shoreline along the Atlantic Ocean and extends from Christmas Creek to St. Marys River.

(B) *Note:* Map of Units LOGG–T–GA–07 and LOGG–T–GA–08: Georgia Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(18) Index Map of Critical Habitat Units in the Peninsular Florida Recovery Unit.



(19) Units:

(i) LOGG–T–FL–01—South Duval County-Old Ponte Vedra, Duval and St. Johns Counties, Florida.

(ii) LOGG–T–FL–02—Guana Tolomato Matanzas NERR-St. Augustine Inlet, St. Johns County, Florida.

(iii) LOGG–T–FL–03—St. Augustine Inlet-Matanzas Inlet, St. Johns County, Florida.

(iv) LOGG–T–FL–04—River to Sea Preserve at Marineland—North Peninsula State Park, Flagler and Volusia Counties, Florida.

(v) LOGG–T–FL–05—Ormond-by-the-Sea–Granada Blvd., Volusia County, Florida.

(A)(1) LOGG–T–FL–01—South Duval County-Old Ponte Vedra: This unit consists of 25.2 km (15.6 miles) of island shoreline along the Atlantic Ocean and extends from the south boundary of Kathryn Abbey Hanna Park in Duval County to the north boundary of the Guana Tolomato Matanzas National Estuarine Research Reserve in St. Johns County.

(2) LOGG–T–FL–02—Guana Tolomato Matanzas National Estuarine Research Reserve-St. Augustine Inlet: This unit consists of 24.1 km (15.0 miles) of island shoreline along the Atlantic Ocean and extends from the north boundary of the Guana Tolomato Matanzas National Estuarine Research Reserve to St. Augustine Inlet.

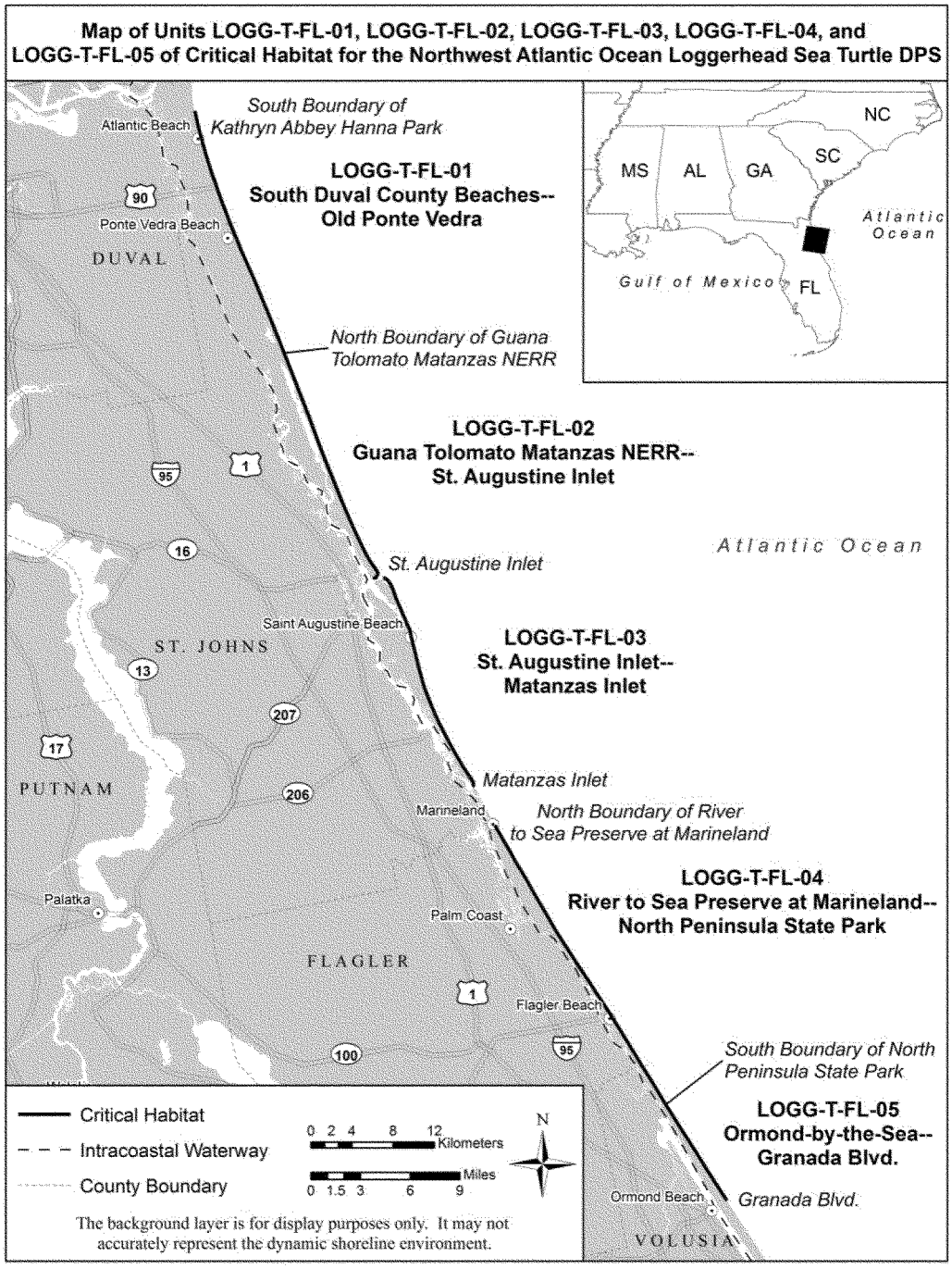
(3) LOGG–T–FL–03—St. Augustine Inlet-Matanzas Inlet: This unit consists of 22.4 km (14.0 miles) of island shoreline along the Atlantic Ocean and extends from St. Augustine Inlet to Matanzas Inlet.

(4) LOGG–T–FL–04—River to Sea Preserve at Marineland-North Peninsula

State Park: This unit consists of 31.8 km (19.8 miles) of island shoreline along the Atlantic Ocean and extends from the north boundary of the River to Sea Preserve at Marineland to the south boundary of North Peninsula State Park.

(5) LOGG–T–FL–05—Ormond-by-the-Sea–Granada: This unit consists of 11.1 km (6.9 miles) of island shoreline along the Atlantic Ocean and extends from the south boundary of North Peninsula State Park to Granada Boulevard in Ormond Beach.

(B) *Note:* Map of Units LOGG–T–FL–01, LOGG–T–FL–02, LOGG–T–FL–03, LOGG–T–FL–04, and LOGG–T–FL–05: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(20) Units:

(i) LOGG–T–FL–06—Canaveral National Seashore North, Volusia County, Florida.

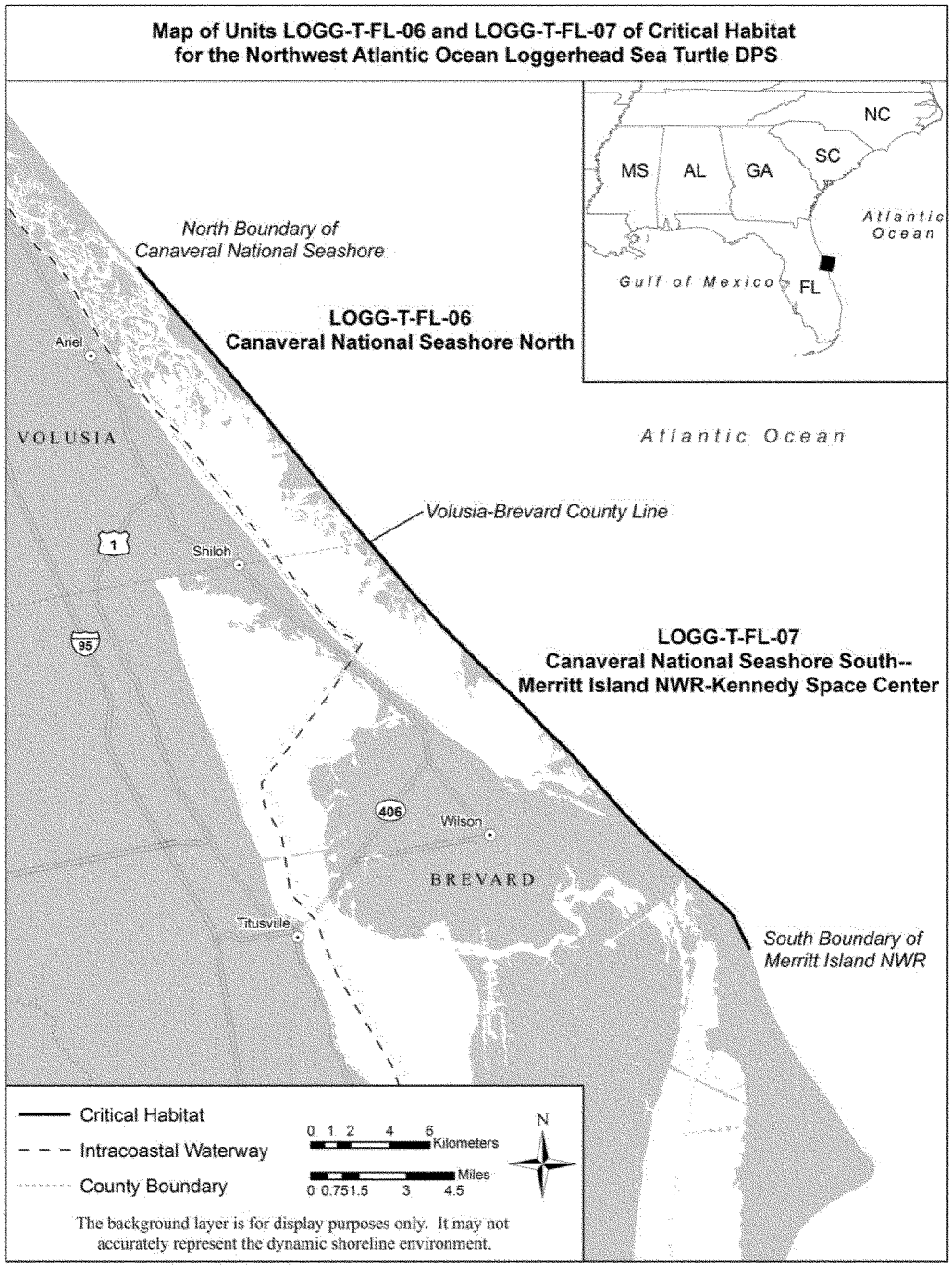
(ii) LOGG–T–FL–07—Canaveral National Seashore South-Merritt Island NWR-Kennedy Space Center, Brevard County, Florida.

(A)(1) LOGG–T–FL–06—Canaveral National Seashore North: This unit consists of 18.2 km (11.3 miles) of island shoreline along the Atlantic Ocean and extends from the north boundary of Canaveral National Seashore to the Volusia-Brevard County line.

(2) LOGG–T–FL–07—Canaveral National Seashore South-Merritt Island

NWR-Kennedy Space Center: This unit consists of 28.4 km (17.6 miles) of island shoreline along the Atlantic Ocean and extends from the Volusia-Brevard County line to the south boundary of Merritt Island NWR-Kennedy Space Center (Merritt Island NWR was established in 1963 as an overlay of the National Aeronautics and Space Administration's (NASA) John F. Kennedy Space Center).

(B) *Note:* Map of Units LOGG–T–FL–06 and LOGG–T–FL–07: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(21) Units:

(i) LOGG–T–FL–08—Central Brevard Beaches, Brevard County, Florida.

(ii) LOGG–T–FL–09—South Brevard Beaches, Brevard County, Florida.

(iii) LOGG–T–FL–10—Sebastian Inlet-Indian River Shores, Indian River County, Florida.

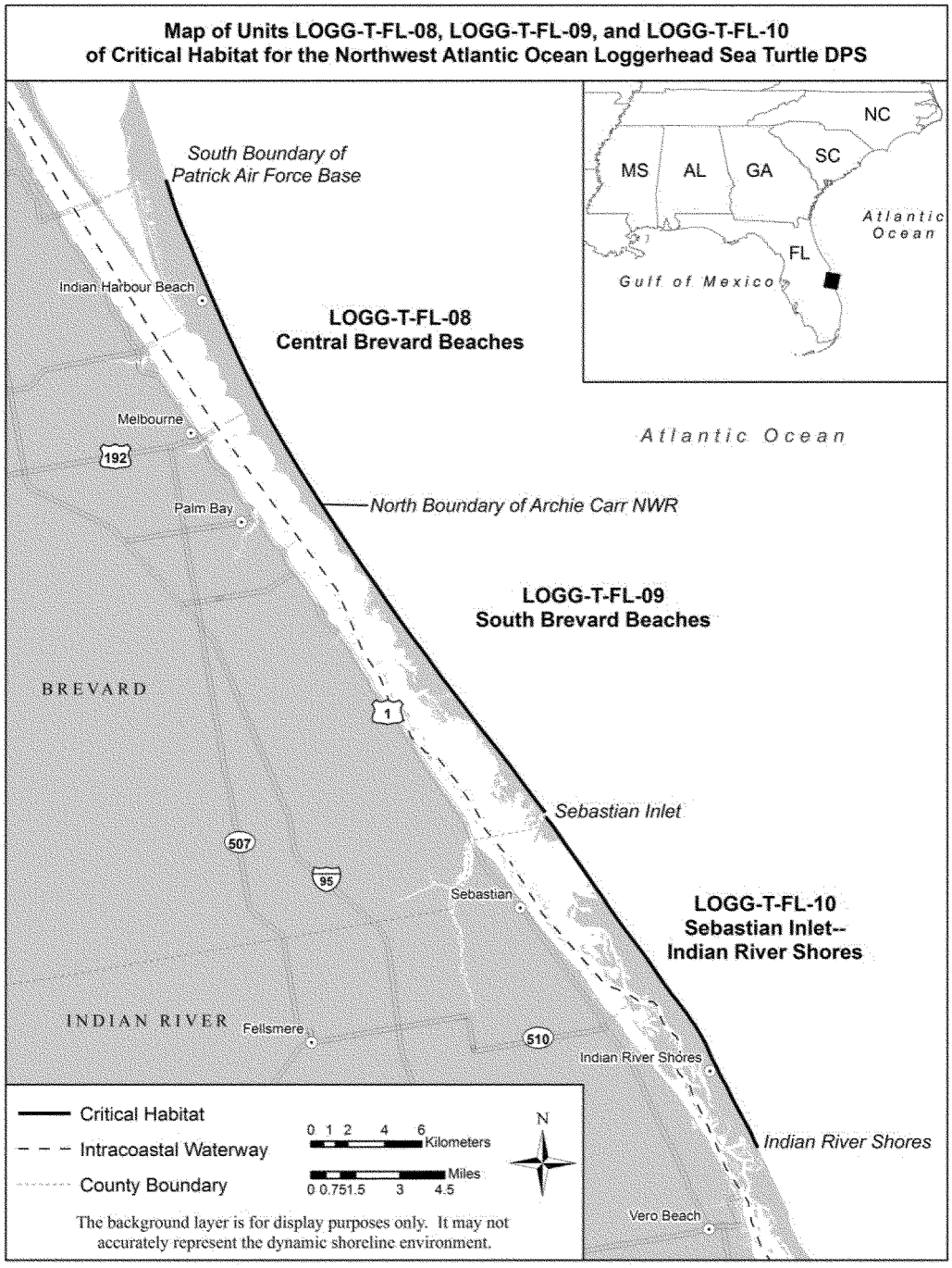
(A) (1) LOGG–T–FL–08—Central Brevard Beaches: This unit consists of 19.5 km (12.1 miles) of island shoreline along the Atlantic Ocean and extends from the south boundary of Patrick Air Force Base to the north boundary of Archie Carr National Wildlife Refuge (NWR).

(2) LOGG–T–FL–09—South Brevard: This unit consists of 20.8 km (12.9 miles) of island shoreline along the

Atlantic Ocean and extends from the north boundary of Archie Carr NWR to Sebastian Inlet.

(3) LOGG–T–FL–10—Sebastian Inlet-Indian River Shores: This unit consists of 21.4 km (13.3 miles) of island shoreline along the Atlantic Ocean and extends from Sebastian Inlet to the Indian River Shores southern city limits.

(B) *Note:* Map of Units LOGG–T–FL–08, LOGG–T–FL–09, and LOGG–T–FL–10: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(22) Units:

(i) LOGG–T–FL–11—Fort Pierce Inlet-St. Lucie Inlet, St. Lucie and Martin Counties, Florida.

(ii) LOGG–T–FL–12—St. Lucie Inlet-Jupiter Inlet, Martin and Palm Beach Counties, Florida.

(iii) LOGG–T–FL–13—Jupiter Inlet-Lake Worth Inlet, Palm Beach County, Florida.

(iv) LOGG–T–FL–14—Lake Worth Inlet-Boynton Inlet, Palm Beach County, Florida.

(v) LOGG–T–FL–15—Boynton Inlet-Boca Raton Inlet, Palm Beach County, Florida.

(vi) LOGG–T–FL–16—Boca Raton Inlet-Hillsboro Inlet, Palm Beach and Broward Counties, Florida.

(A)(1) LOGG–T–FL–11—Fort Pierce Inlet-St. Lucie Inlet: This unit consists

of 35.2 km (21.9 miles) of island shoreline along the Atlantic Ocean and extends from Fort Pierce Inlet to St. Lucie Inlet.

(2) LOGG–T–FL–12—St. Lucie Inlet-Jupiter Inlet: This unit consists of 24.9 km (15.5 miles) of island shoreline along the Atlantic Ocean and extends from St. Lucie Inlet to Jupiter Inlet.

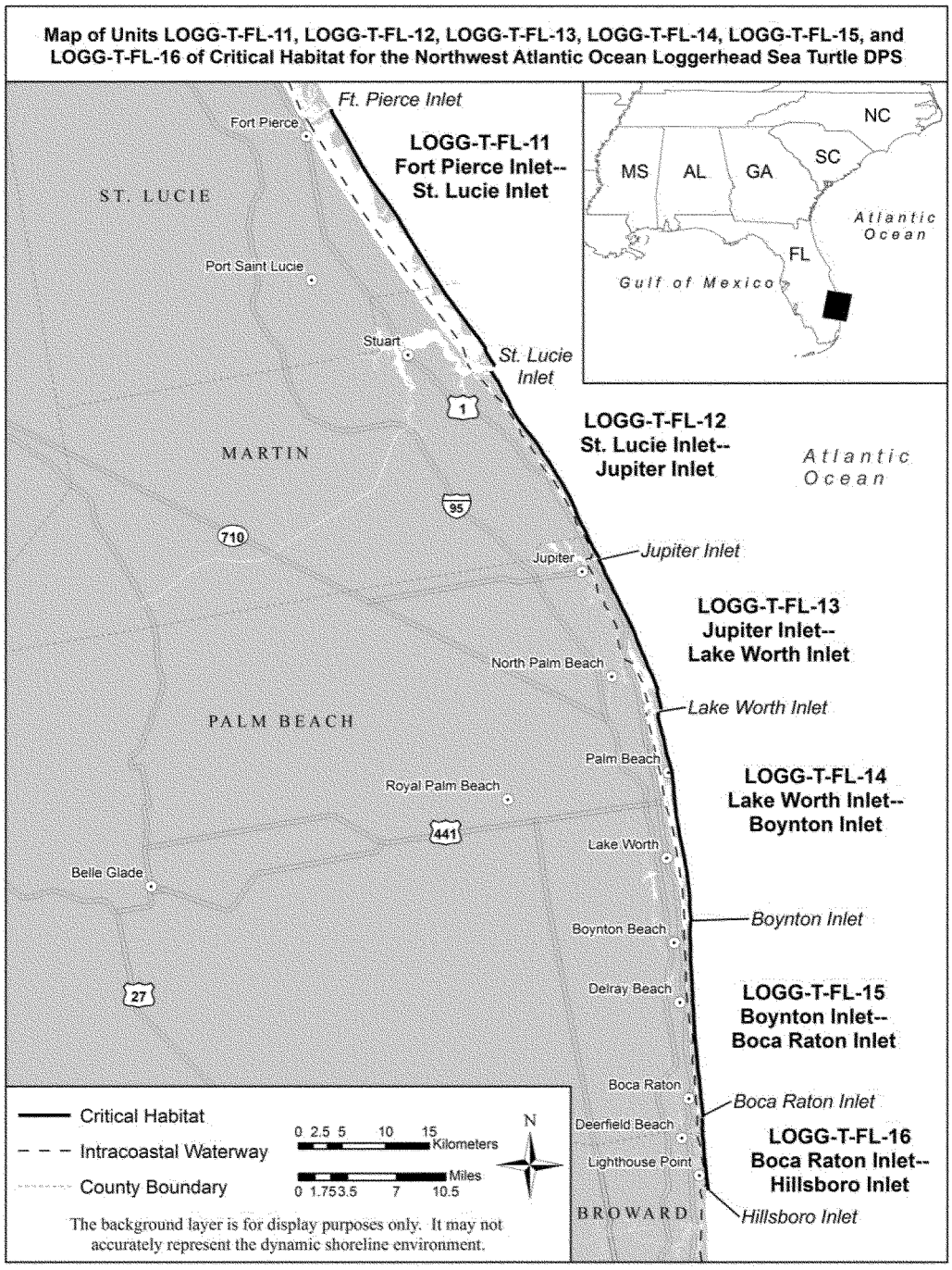
(3) LOGG–T–FL–13—Jupiter Inlet-Lake Worth Inlet: This unit consists of 18.8 km (11.7 miles) of island shoreline along the Atlantic Ocean and extends from Jupiter Inlet to Lake Worth Inlet.

(4) LOGG–T–FL–14—Lake Worth Inlet-Boynton Inlet: This unit consists of 24.3 km (15.1 miles) of island shoreline along the Atlantic Ocean and extends from Lake Worth Inlet to Boynton Inlet.

(5) LOGG–T–FL–15—Boynton Inlet-Boca Raton Inlet: This unit consists of 22.6 km (14.1 miles) of island shoreline along the Atlantic Ocean and extends from Boynton Inlet to Boca Raton Inlet.

(6) LOGG–T–FL–16—Boca Raton Inlet-Hillsboro Inlet: This unit consists of 8.3 km (5.2 miles) of island shoreline along the Atlantic Ocean and extends from Boca Raton Inlet to Hillsboro Inlet.

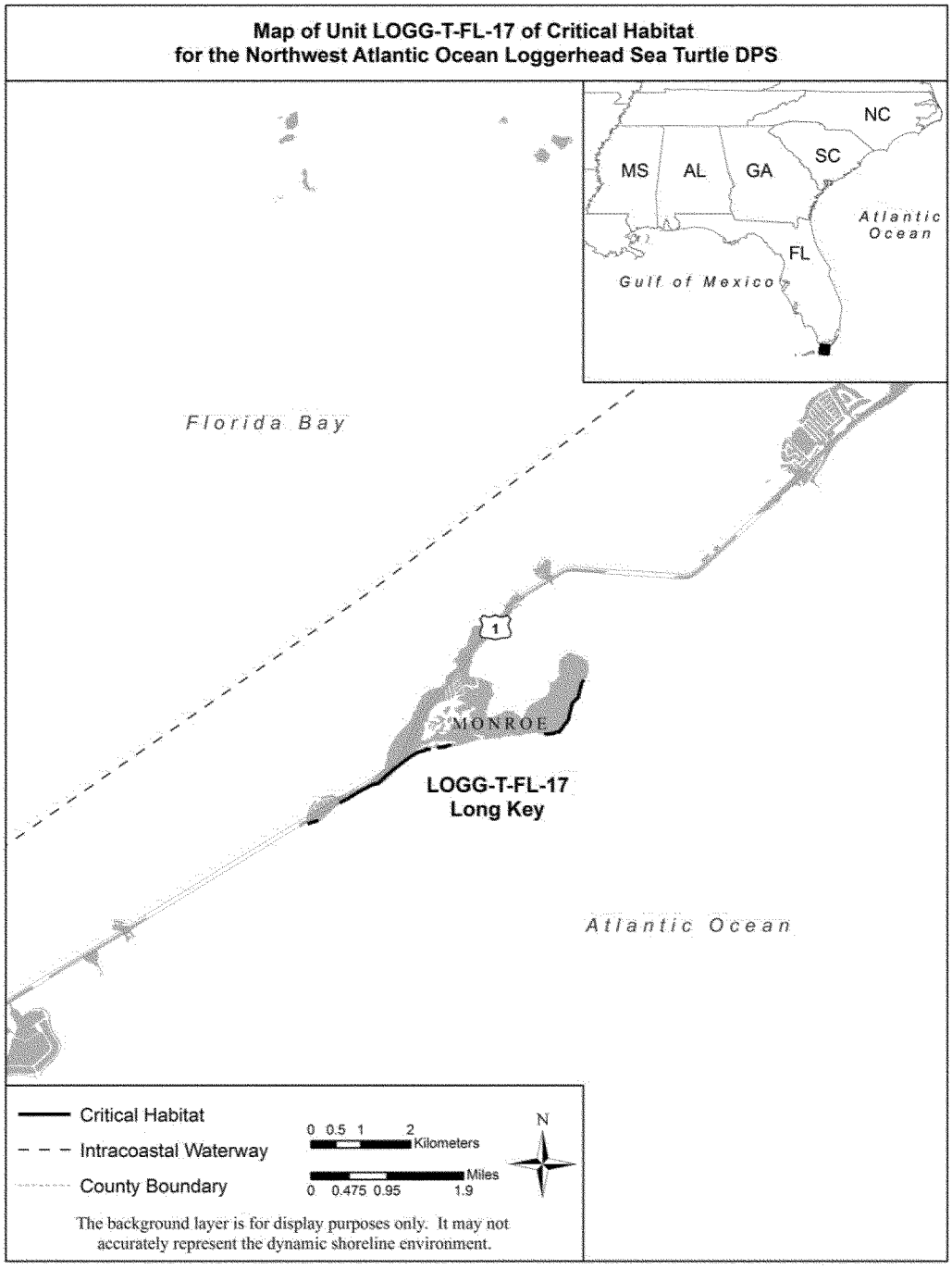
(B) *Note:* Map of Units LOGG–T–FL–11, LOGG–T–FL–12, LOGG–T–FL–13, LOGG–T–FL–14, LOGG–T–FL–15, and LOGG–T–FL–16: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(23) Unit LOGG–T–FL–17—Long Key, Monroe County, Florida.

(i) LOGG–T–FL–17—Long Key, Monroe: This unit consists of 4.2 km (2.6 miles) of island shoreline along the Atlantic Ocean and extends from the natural channel between Fiesta Key and Long Key to the natural channel between Long Key and Conch Key.

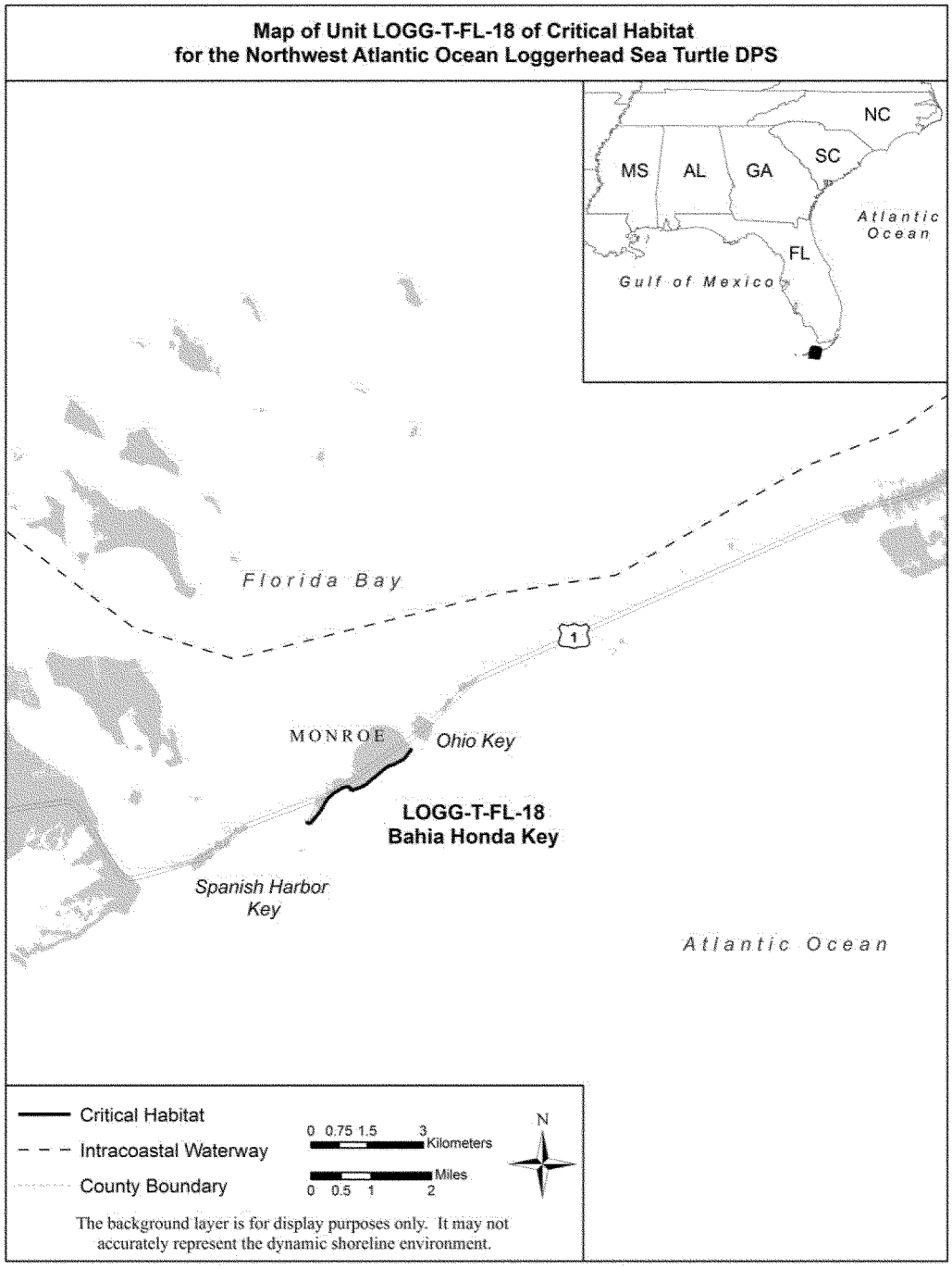
(ii) *Note:* Map of Unit LOGG–T–FL–17: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(24) Unit LOGG–T–FL–18—Bahia Honda Key, Monroe County, Florida.

(i) LOGG–T–FL–18—Bahia Honda Key, Monroe: This unit consists of 3.7 km (2.3 miles) of island shoreline along the Atlantic Ocean and extends from the natural channel between Ohio Key and Bahia Honda Key to the natural channel between Bahia Honda Key and Spanish Harbor Key.

(ii) *Note:* Map of Unit LOGG–T–FL–18: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(25) Units:

(i) LOGG–T–FL–19—Longboat Key, Manatee and Sarasota Counties, Florida.

(ii) LOGG–T–FL–20—Siesta and Casey Keys, Sarasota County, Florida.

(iii) LOGG–T–FL–21—Venice Beaches and Manasota Key, Sarasota and Charlotte Counties, Florida.

(iv) LOGG–T–FL–22—Knight, Don Pedro, and Little Gasparilla Islands, Charlotte County, Florida.

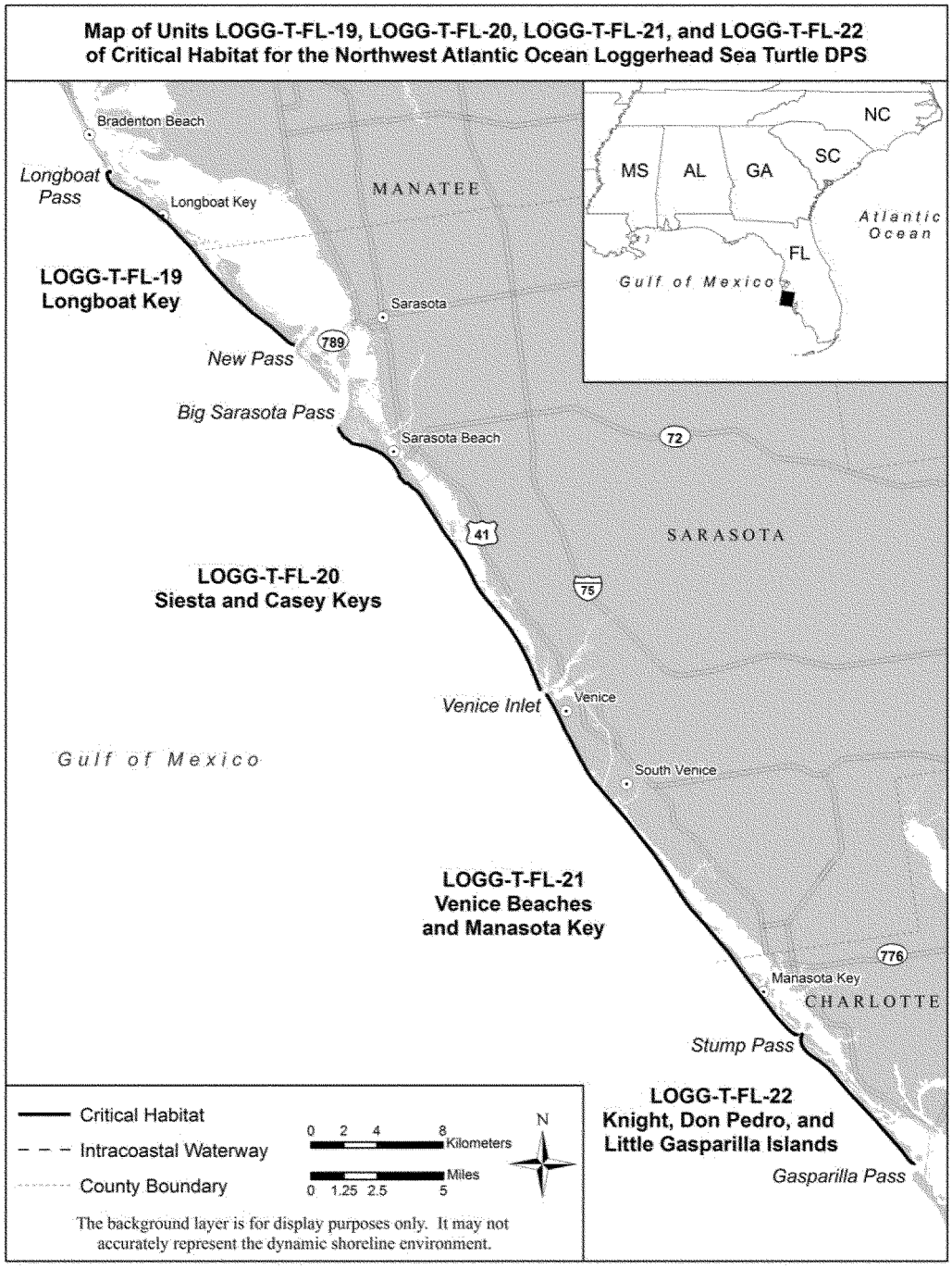
(A)(1) LOGG–T–FL–19—Longboat Key: This unit consists of 16.0 km (9.9 miles) of island shoreline along the Gulf of Mexico and extends from Longboat Pass to New Pass.

(2) LOGG–T–FL–20—Siesta and Casey Keys: This unit consists of 20.8 km (13.0 miles) of island shoreline along the Gulf of Mexico and extends from Big Sarasota Pass to Venice Inlet.

(3) LOGG–T–FL–21—Venice Beaches and Manasota Key: This unit consists of 26.0 km (16.1 miles) of island shoreline along the Gulf of Mexico and extends from Venice Inlet to Stump Pass.

(4) LOGG–T–FL–22—Knight, Don Pedro, and Little Gasparilla Islands: This unit consists of 10.8 km (6.7 miles) of island shoreline along the Gulf of Mexico and extends from Stump Pass to Gasparilla Pass.

(B) *Note:* Map of Units LOGG–T–FL–19, LOGG–T–FL–20, LOGG–T–FL–21, and LOGG–T–FL–22: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(26) Units:

(i) LOGG–T–FL–23—Gasparilla Island, Charlotte and Lee Counties, Florida.

(ii) LOGG–T–FL–24—Cayo Costa, Lee County, Florida.

(iii) LOGG–T–FL–25—Captiva Island, Lee County, Florida.

(iv) LOGG–T–FL–26—Sanibel Island West, Lee County, Florida.

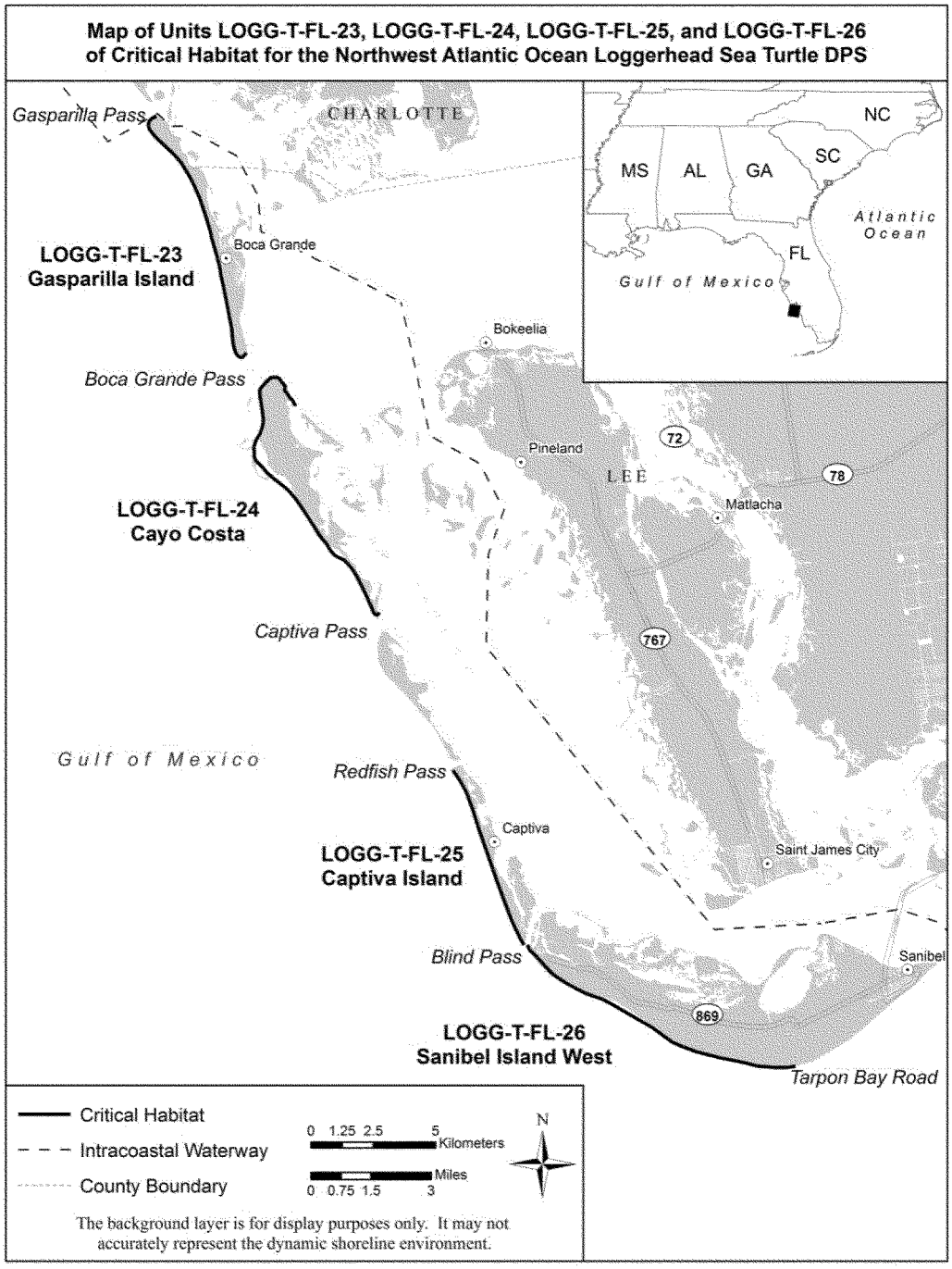
(A)(1) LOGG–T–FL–23—Gasparilla Island: This unit consists of 11.2 km (6.9 miles) of island shoreline along the Gulf of Mexico and extends from Gasparilla Pass to Boca Grande Pass.

(2) LOGG–T–FL–24—Cayo Costa: This unit consists of 13.5 km (8.4 miles) of island shoreline along the Gulf of Mexico and extends from Boca Grande Pass to Captiva Pass.

(3) LOGG–T–FL–25—Captiva Island: This unit consists of 7.6 km (4.7 miles) of island shoreline along the Gulf of Mexico and extends from Redfish Pass to Blind Pass.

(4) LOGG–T–FL–26—Sanibel Island West: This unit consists of 12.2 km (7.6 miles) of island shoreline along the Gulf of Mexico and extends from Blind Pass to Tarpon Bay Road.

(B) *Note:* Map of Units LOGG–T–FL–23, LOGG–T–FL–24, LOGG–T–FL–25, and LOGG–T–FL–26: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(27) Units:

(i) LOGG–T–FL–27—Little Hickory Island, Lee and Collier Counties, Florida.

(ii) LOGG–T–FL–28—Wiggins Pass-Clam Pass, Collier County, Florida.

(iii) LOGG–T–FL–29—Clam Pass-Doctors Pass, Collier County, Florida.

(iv) LOGG–T–FL–30—Keewaydin Island and Sea Oat Island, Collier County, Florida.

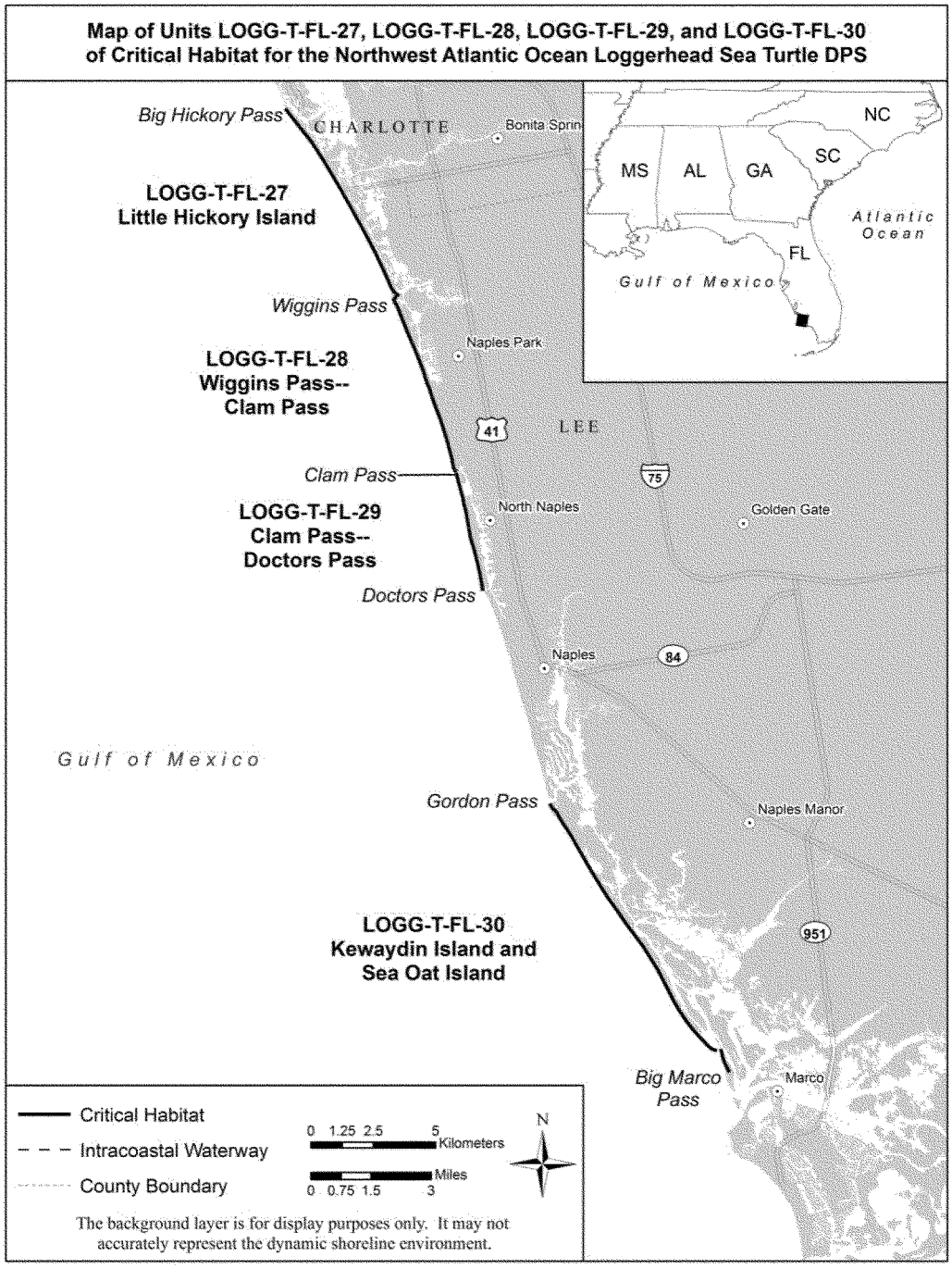
(A)(1) LOGG–T–FL–27—Little Hickory Island: This unit consists of 8.7 km (5.4 miles) of island shoreline along the Gulf of Mexico and extends from Big Hickory Pass to Wiggins Pass.

(2) LOGG–T–FL–28—Wiggins Pass-Clam Pass: This unit consists of 7.7 km (4.8 miles) of mainland shoreline along the Gulf of Mexico and extends from Wiggins Pass to Clam Pass.

(3) LOGG–T–FL–29—Clam Pass-Doctors Pass: This unit consists of 4.9 km (3.0 miles) of island shoreline along the Gulf of Mexico and extends from Clam Pass to Doctors Pass.

(4) LOGG–T–FL–30—Keewaydin Island and Sea Oat Island: This unit consists of 13.1 km (8.1 miles) of island shoreline along the Gulf of Mexico and extends from Gordon Pass to Big Marco Pass.

(B) *Note:* Map of Units LOGG–T–FL–27, LOGG–T–FL–28, LOGG–T–FL–29, and LOGG–T–FL–30: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(28) Units:

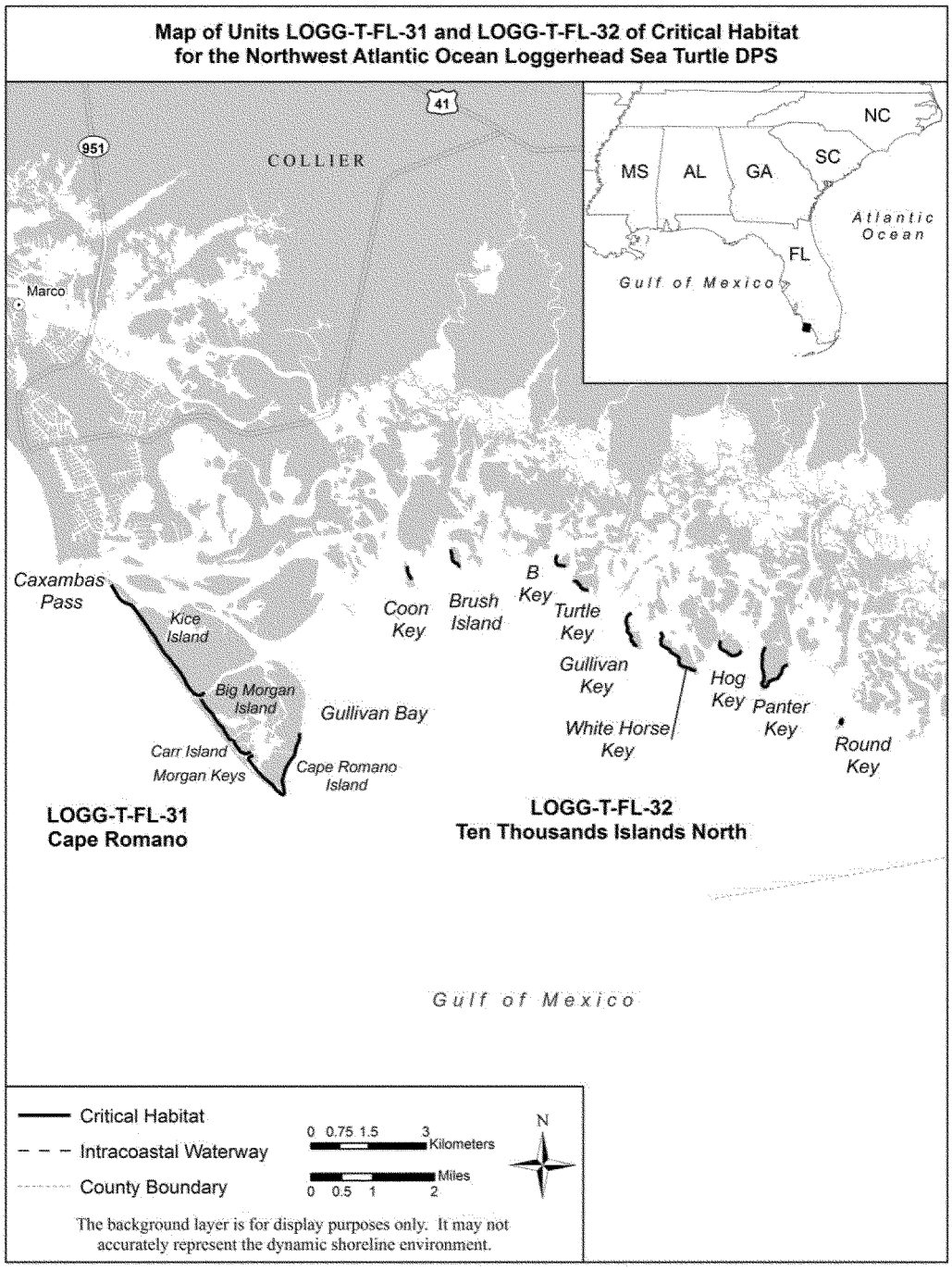
(i) LOGG–T–FL–31—Cape Romano, Collier County, Florida.

(ii) LOGG–T–FL–32—Ten Thousand Islands North, Collier County, Florida.

(A) (1) LOGG–T–FL–31—Cape Romano: This unit consists of 9.2 km (5.7 miles) of island shoreline along the Gulf of Mexico and Gullivan Bay and extends from Caxambas Pass to Gullivan Bay.

(2) LOGG–T–FL–32—Ten Thousand Islands North: This unit consists of 7.8 km (4.9 miles) of island shoreline along the Gulf of Mexico and within Gullivan Bay.

(B) *Note:* Map of Units LOGG–T–FL–31 and LOGG–T–FL–32: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(29) Units:

(i) LOGG–T–FL–33—Highland Beach, Monroe County, Florida.

(ii) LOGG–T–FL–34—Graveyard Creek-Shark Point, Monroe County, Florida.

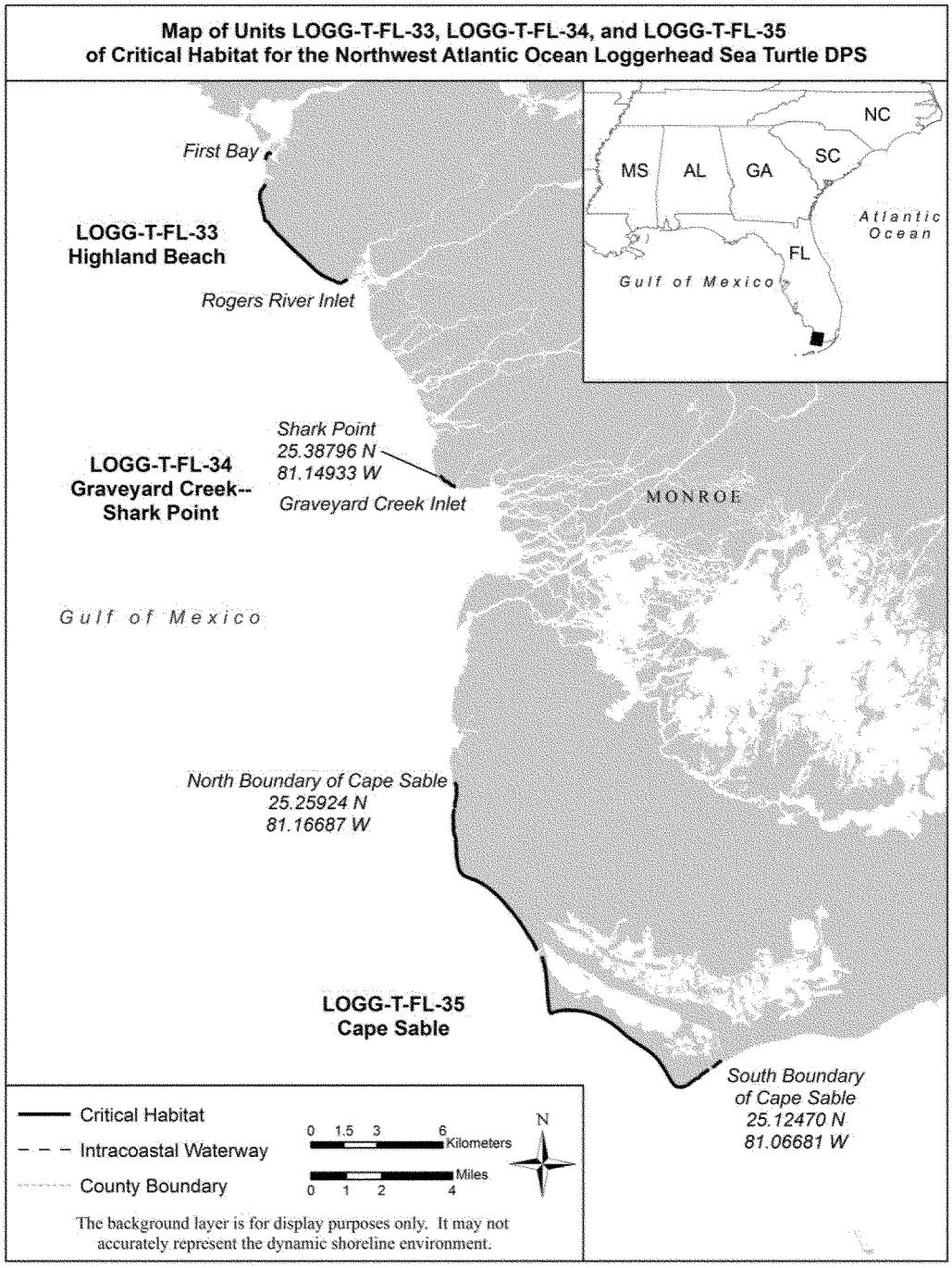
(iii) LOGG–T–FL–35—Cape Sable, Monroe County, Florida.

(A) (1) LOGG–T–FL–33—Highland Beach: This unit consists of 7.2 km (4.5 miles) of island (Key McLaughlin) shoreline along the Gulf of Mexico and extends from First Bay to Rogers River Inlet.

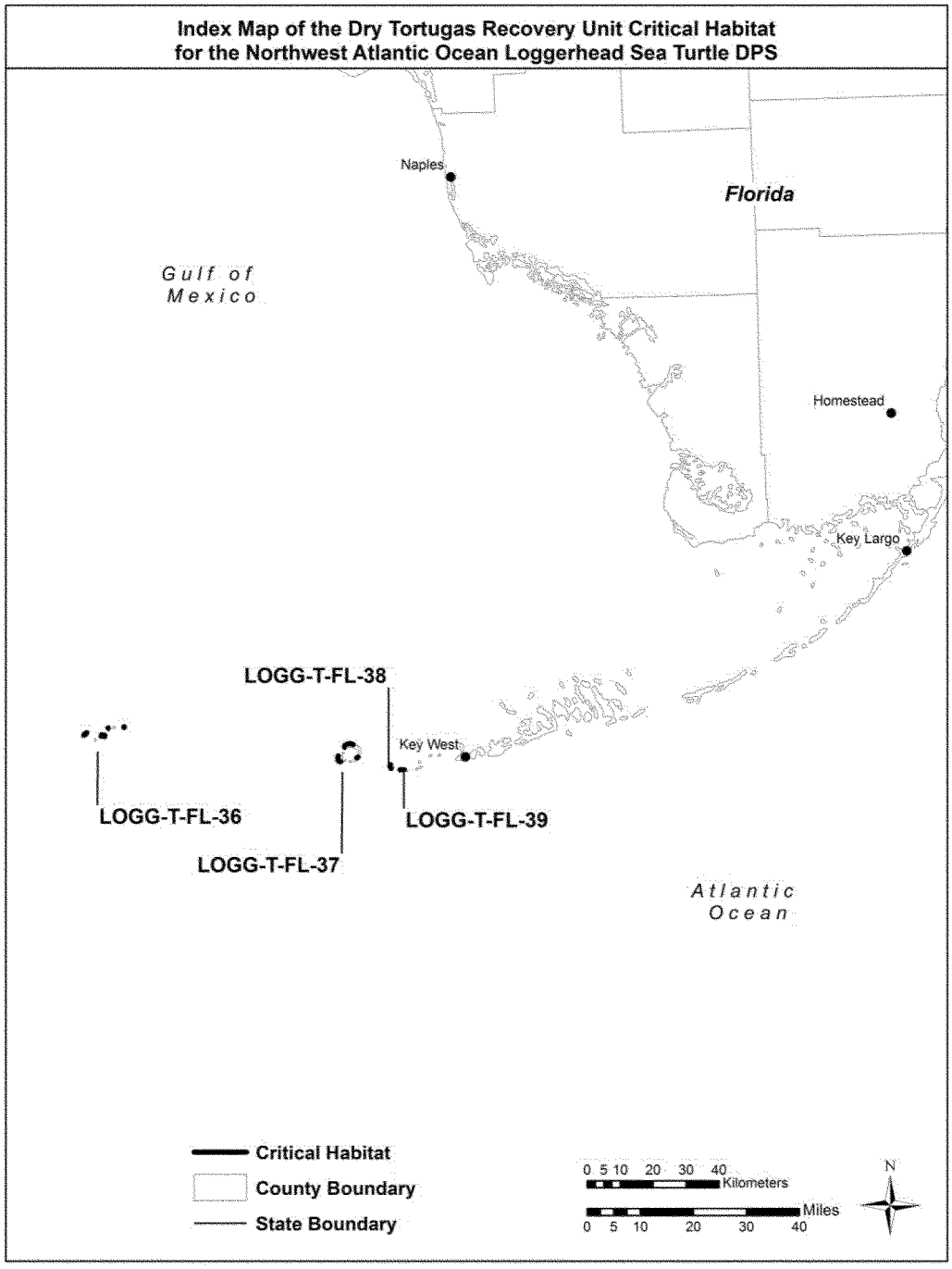
(2) LOGG–T–FL–34—Graveyard Creek-Shark Point: This unit consists of 0.9 km (0.6 mile) of mainland shoreline along the Gulf of Mexico and extends from Shark Point (25.38796 N, 81.14933 W) to Graveyard Creek Inlet.

(3) LOGG–T–FL–35—Cape Sable: This unit consists of 21.3 km (13.2 miles) of mainland shoreline along the Gulf of Mexico and extends from the north boundary of Cape Sable at 25.25924 N, 81.16687 W to the south boundary of Cape Sable at 25.12470 N, 81.06681 W.

(B) *Note:* Map of Units LOGG–T–FL–33, LOGG–T–FL–34, and LOGG–T–FL–35: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(30) Index Map of Critical Habitat Units in the Dry Tortugas Recovery Unit



(31) Units:

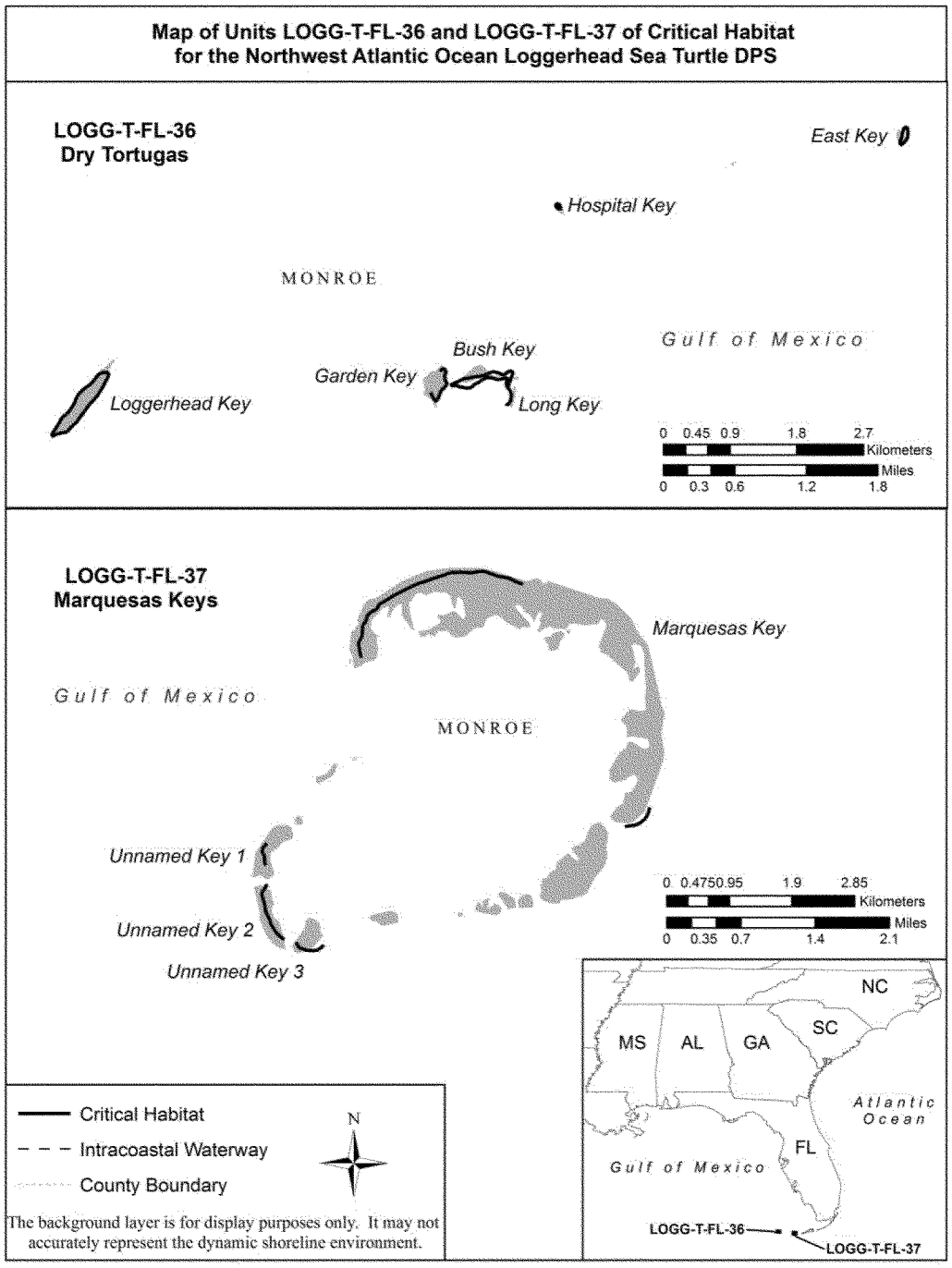
(i) LOGG–T–FL–36—Dry Tortugas, Monroe County, Florida.

(ii) LOGG–T–FL–37—Marquesas Keys, Monroe County, Florida.

(A) (1) LOGG–T–FL–36—Dry Tortugas: This unit consists of 6.3 km (3.9 miles) of shoreline along the Gulf of Mexico and consists of Loggerhead Key, Garden Key, Bush Key, Long Key, Hospital Key, and East Key located in the Dry Tortugas about 108 km (67 miles) west of Key West.

(2) LOGG–T–FL–37—Marquesas Keys: This unit consists of 5.6 km (3.5 miles) of shoreline along the Gulf of Mexico and consists of Marquesas Key, Unnamed Key 1, Unnamed Key 2, and Unnamed Key 3 located about 29.3 km (18.2 miles) west of Key West.

(B) *Note:* Map of Units LOGG–T–FL–36 and LOGG–T–FL–37: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(32) Units:

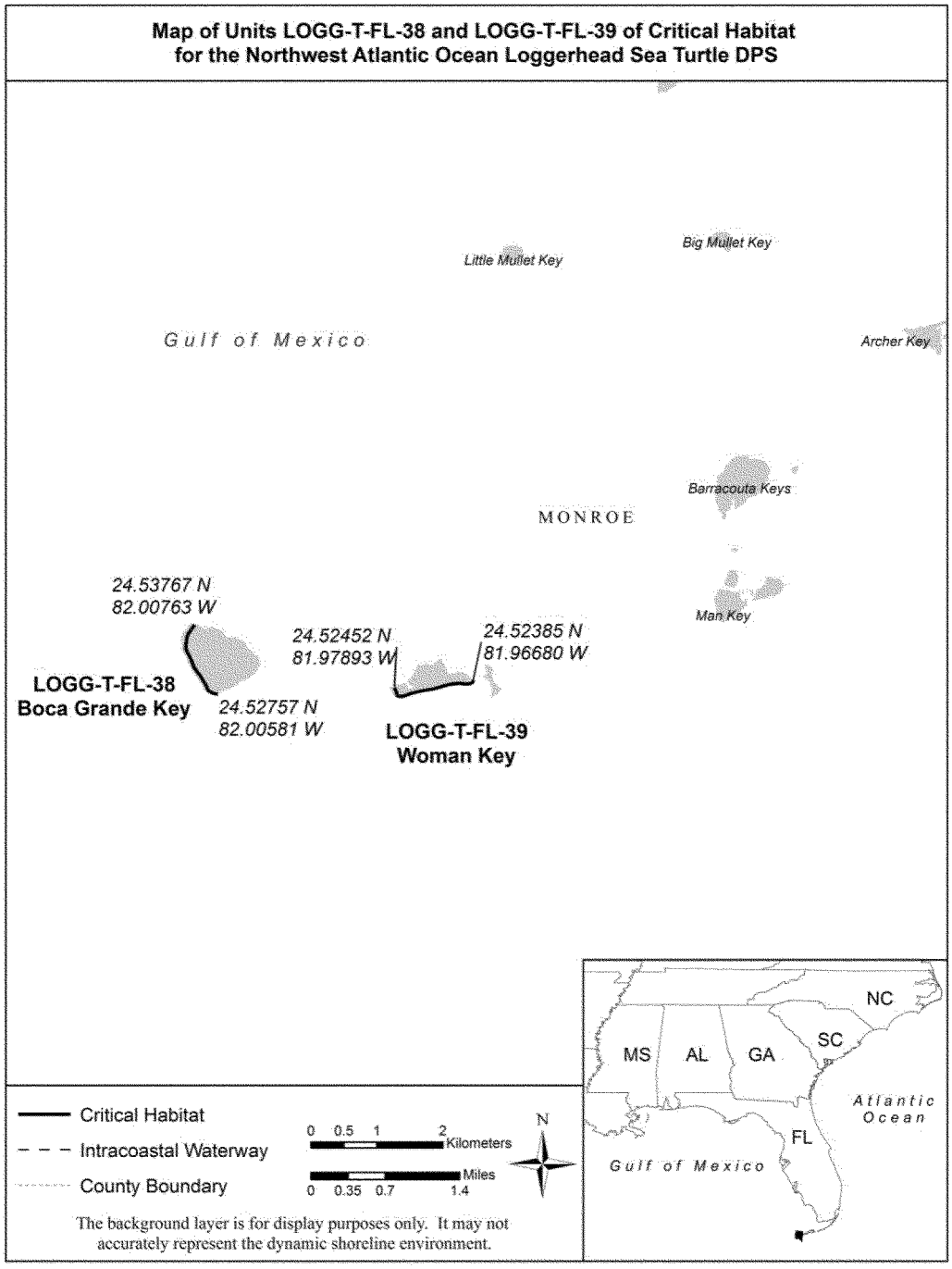
(i) LOGG–T–FL–38—Boca Grande Key, Monroe County, Florida.

(ii) LOGG–T–FL–39—Woman Key, Monroe County, Florida.

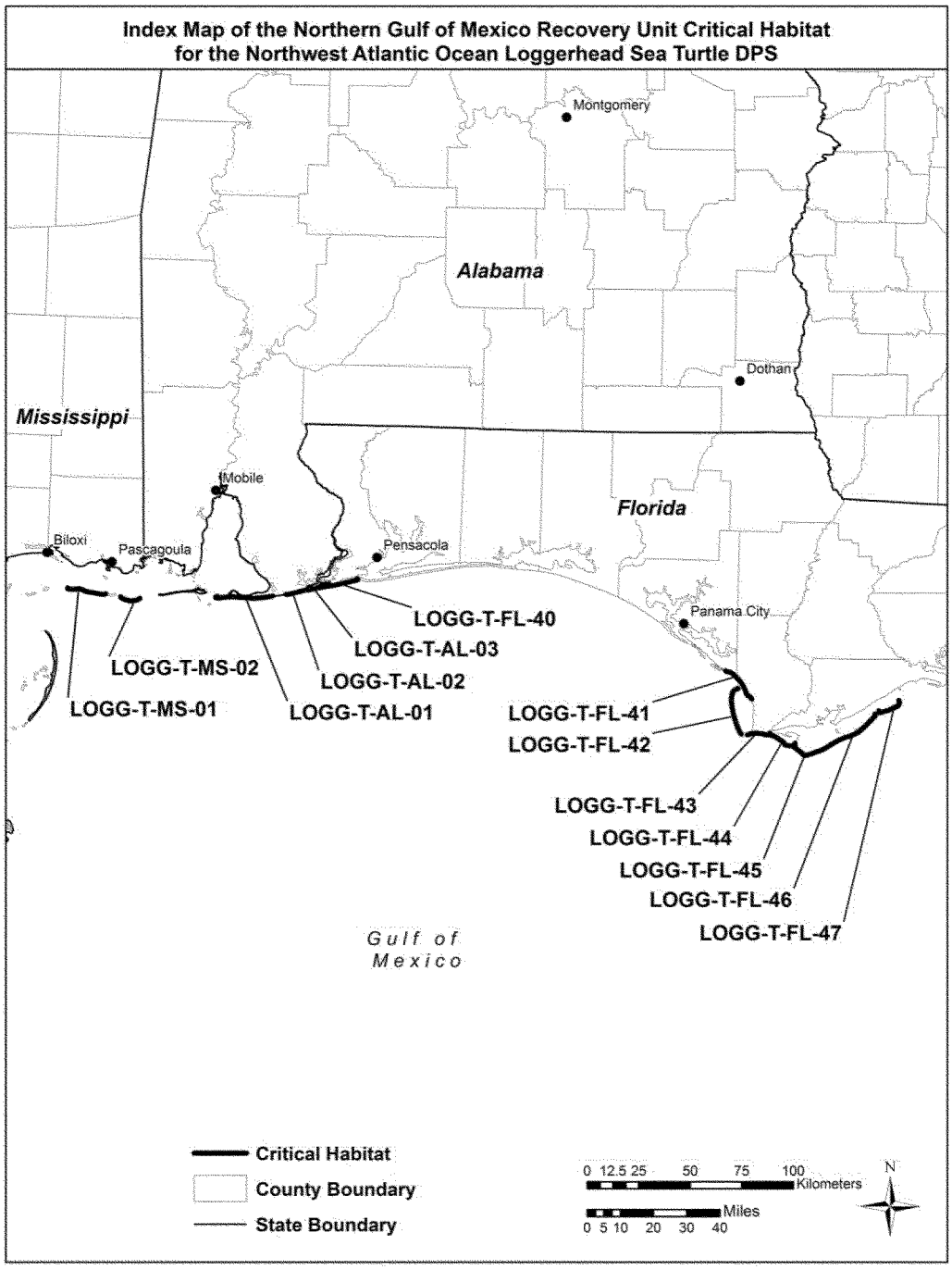
(A)(1) LOGG–T–FL–38—Boca Grande Key: This unit consists of 1.3 km (0.8 mile) of island shoreline along the Gulf of Mexico and extends from 24.53767 N, 82.00763 W (at the northern end of the key) to 24.52757 N, 82.00581 W (at the southern end of the key).

(2) LOGG–T–FL–39—Woman Key: This unit consists of 1.3 km (0.8 mile) of island shoreline along the Gulf of Mexico and extends from 24.52452 N, 81.97893 N (at the western end of the key) to 24.52385 N, 81.96680 W (at the eastern end of the key).

(B) *Note:* Map of Units LOGG–T–FL–38 and LOGG–T–FL–39: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(33) Index Map of Critical Habitat Units in the Northern Gulf of Mexico Recovery Unit.



(34) Units:

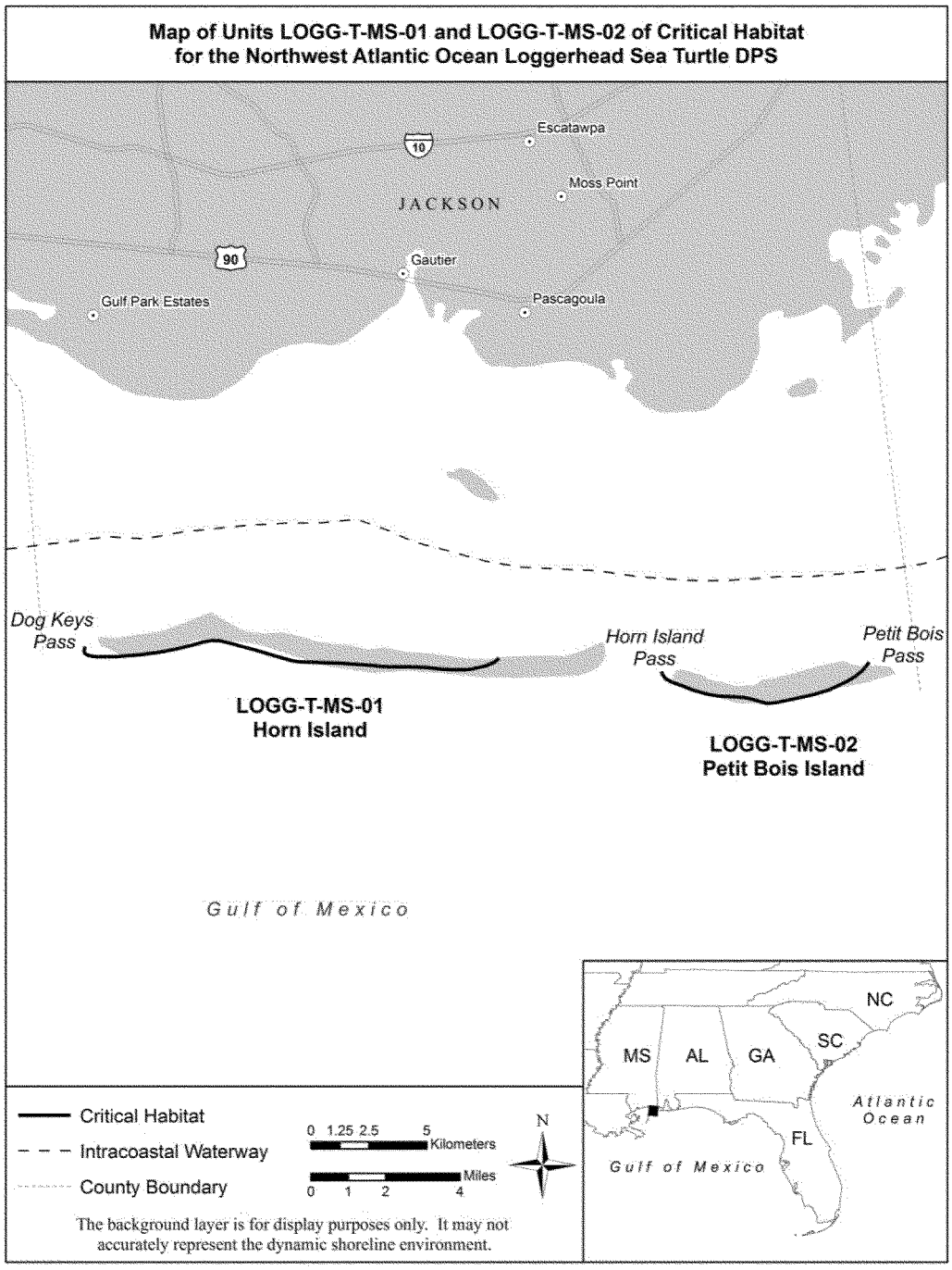
(i) LOGG–T–MS–01—Horn Island, Jackson County, Mississippi.

(ii) LOGG–T–MS–02—Petit Bois Island, Jackson County, Mississippi.

(A)(1) LOGG–T–MS–01—Horn Island: This unit consists of 18.6 km (11.5 miles) of island shoreline along the Gulf of Mexico and extends from Dog Keys Pass to the easternmost point of the ocean facing island shore.

(2) LOGG–T–MS–02—Petit Bois Island: This unit consists of 9.8 km (6.1 miles) of island shoreline along the Gulf of Mexico and extends from Horn Island Pass to Petit Bois Pass.

(B) *Note:* Map of Units LOGG–T–MS–01 and LOGG–T–MS–02: Mississippi Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(35) Units:

(i) LOGG–T–AL–01—Mobile Bay-Little Lagoon Pass, Baldwin County, Alabama.

(ii) LOGG–T–AL–02—Gulf State Park-Perdido Pass, Baldwin County, Alabama.

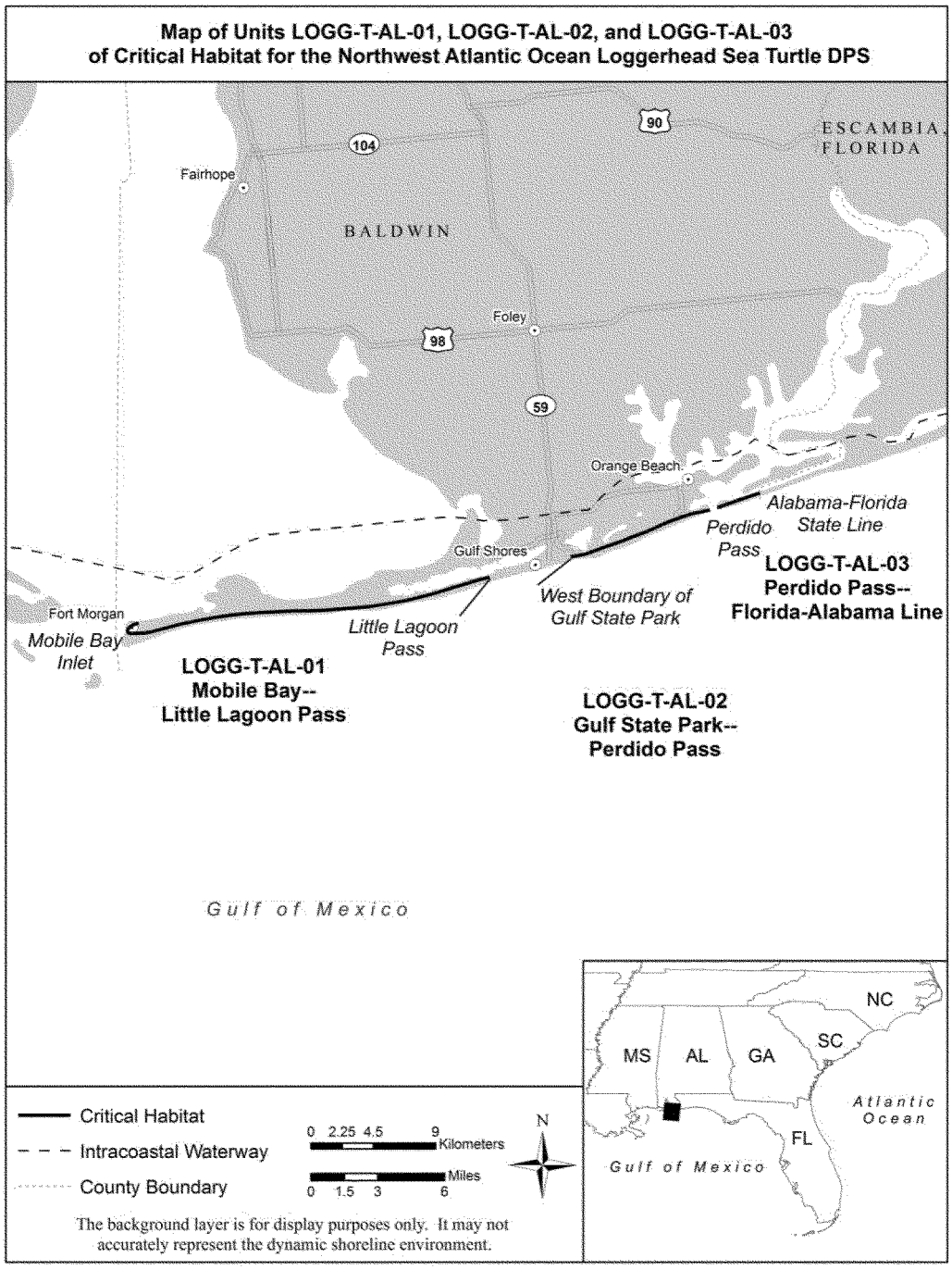
(iii) LOGG–T–AL–03—Perdido Pass-Florida-Alabama line, Baldwin County, Alabama.

(A) (1) LOGG–T–AL–01—Mobile Bay-Little Lagoon Pass: This unit consists of 28.0 km (17.4 miles) of island shoreline along the Gulf of Mexico and extends from Mobile Bay Inlet to Little Lagoon Pass.

(2) LOGG–T–AL–02—Gulf State Park-Perdido Pass: This unit consists of 10.7 km (6.7 miles) of island shoreline along the Gulf of Mexico and extends from the west boundary of Gulf State Park to Perdido Pass.

(3) LOGG–T–AL–03—Perdido Pass-Florida-Alabama line: This unit consists of 3.3 km (2.0 miles) of island shoreline along the Gulf of Mexico and extends from Perdido Pass to the Alabama–Florida border.

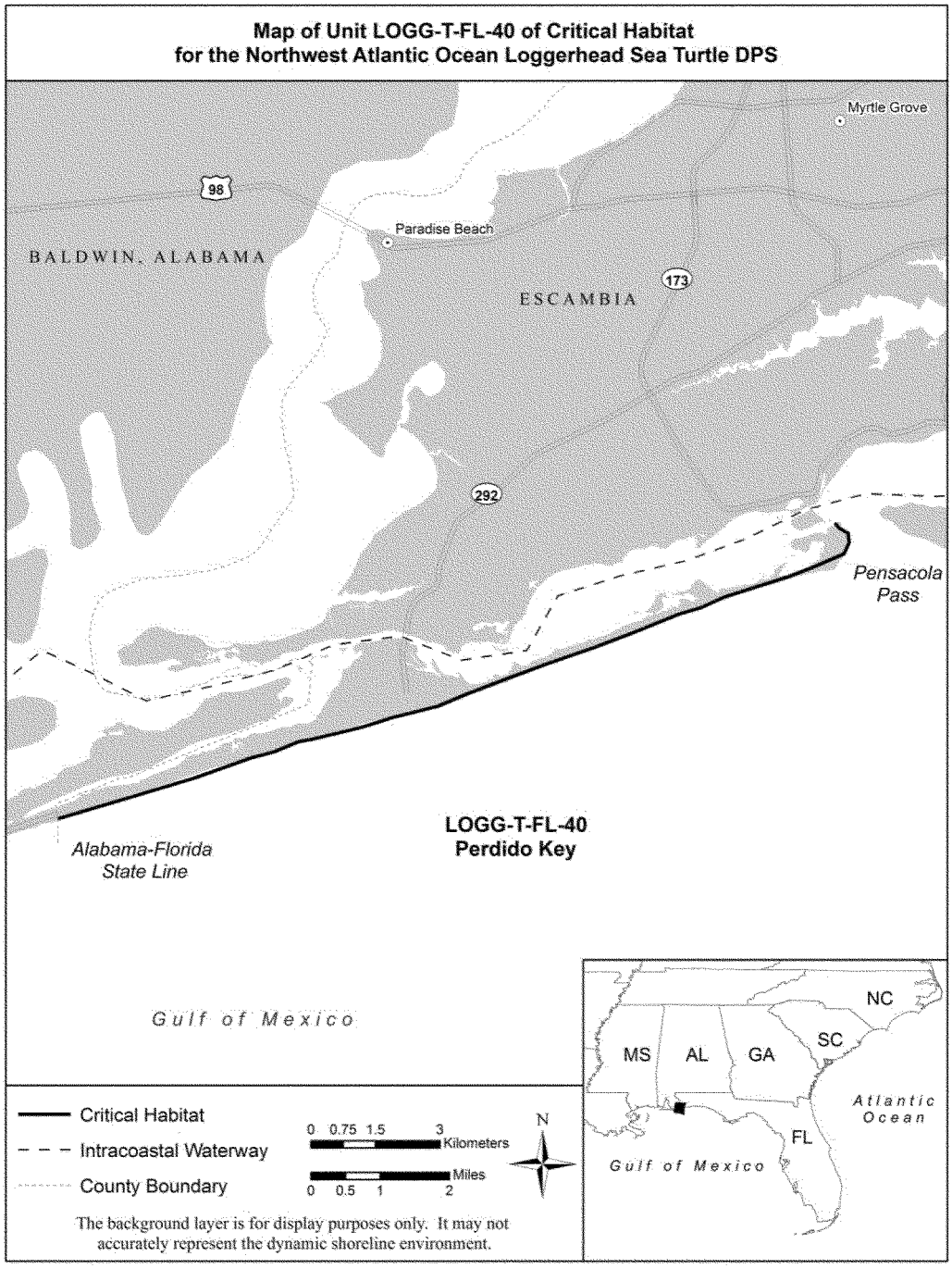
(B) *Note:* Map of Units LOGG–T–AL–01, LOGG–T–AL–02, and LOGG–T–AL–03: Alabama Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(36) Unit LOGG–T–FL–40—Perdido Key, Escambia County, Florida.

(i) LOGG–T–FL–40—Perdido Key: This unit consists of 20.2 km (12.6 miles) of island shoreline along the Gulf of Mexico and extends from the Alabama-Florida border to Pensacola Pass.

(ii) *Note:* Map of Unit LOGG–T–FL–40: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(37) Units:

(i) LOGG–T–FL–41—Mexico Beach and St. Joe Beach, Bay and Gulf Counties, Florida.

(ii) LOGG–T–FL–42—St. Joseph Peninsula, Gulf County, Florida.

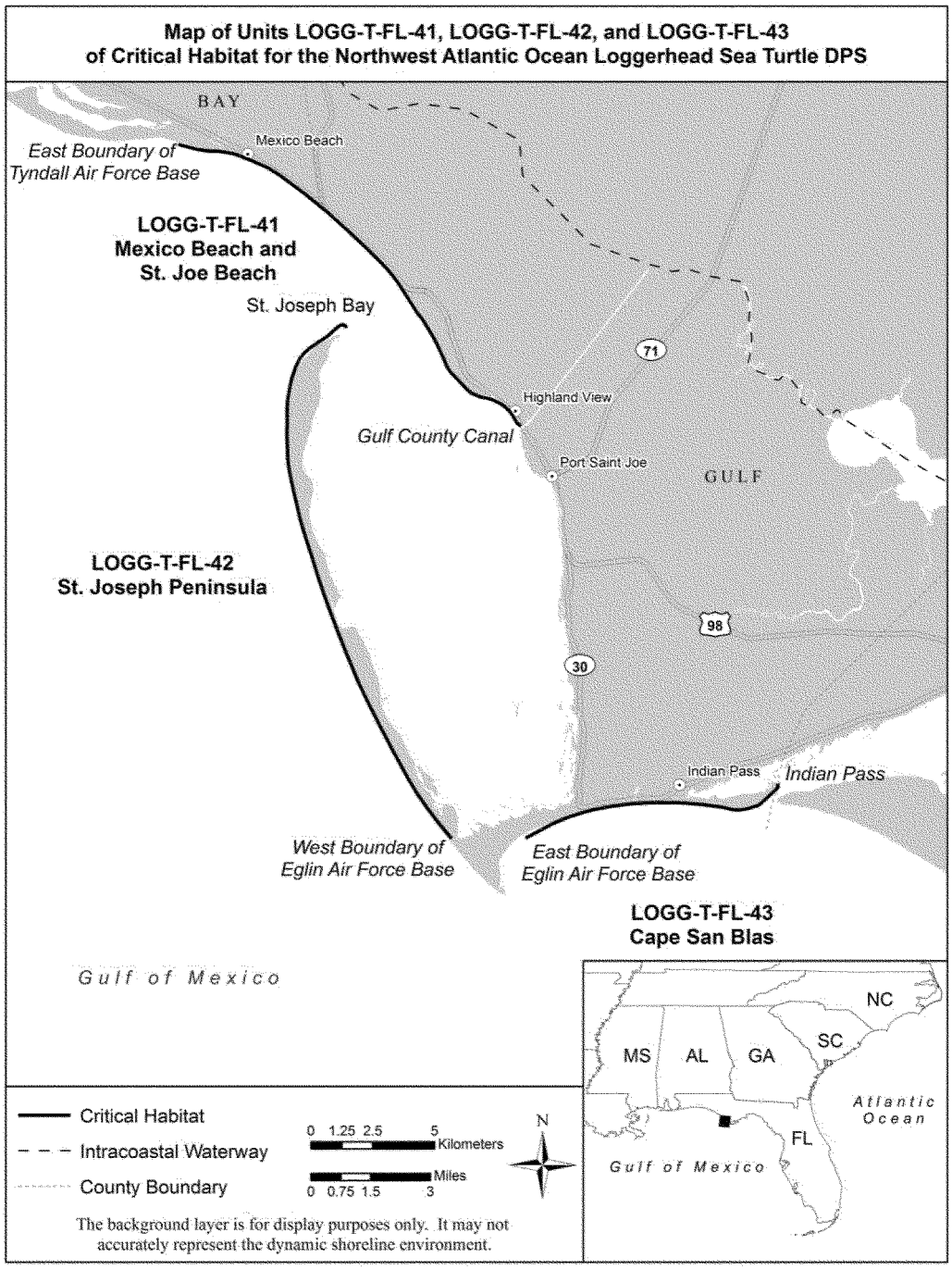
(iii) LOGG–T–FL–43—Cape San Blas, Gulf County, Florida.

(A)(1) LOGG–T–FL–41—Mexico Beach and St. Joe Beach: This unit consists of 18.7 km (11.7 miles) of mainland shoreline along the Gulf of Mexico and extends from the eastern boundary of Tyndall Air Force Base to Gulf County Canal in St. Joseph Bay.

(2) LOGG–T–FL–42—St. Joseph Peninsula: This unit consists of 23.5 km (14.6 miles) of a spit shoreline along the Gulf of Mexico and extends from St. Joseph Bay to the west boundary of Eglin Air Force Base.

(3) LOGG–T–FL–43—Cape San Blas: This unit consists of 11.0 km (6.8 miles) of mainland and spit shoreline along the Gulf of Mexico and extends from the east boundary of Eglin Air Force Base to Indian Pass.

(B) *Note:* Map of Units LOGG–T–FL–41, LOGG–T–FL–42, and LOGG–T–FL–43: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:



(38) Units:

(i) LOGG–T–FL–44—St. Vincent Island, Franklin County, Florida.

(ii) LOGG–T–FL–45—Little St. George Island, Franklin County, Florida.

(iii) LOGG–T–FL–46—St. George Island, Franklin County, Florida.

(iv) LOGG–T–FL–47—Dog Island, Franklin County, Florida.

(A)(1) LOGG–T–FL–44—St. Vincent Island: This unit consists of 15.1 km (9.4 miles) of island shoreline along the Gulf of Mexico and extends from Indian Pass to West Pass.

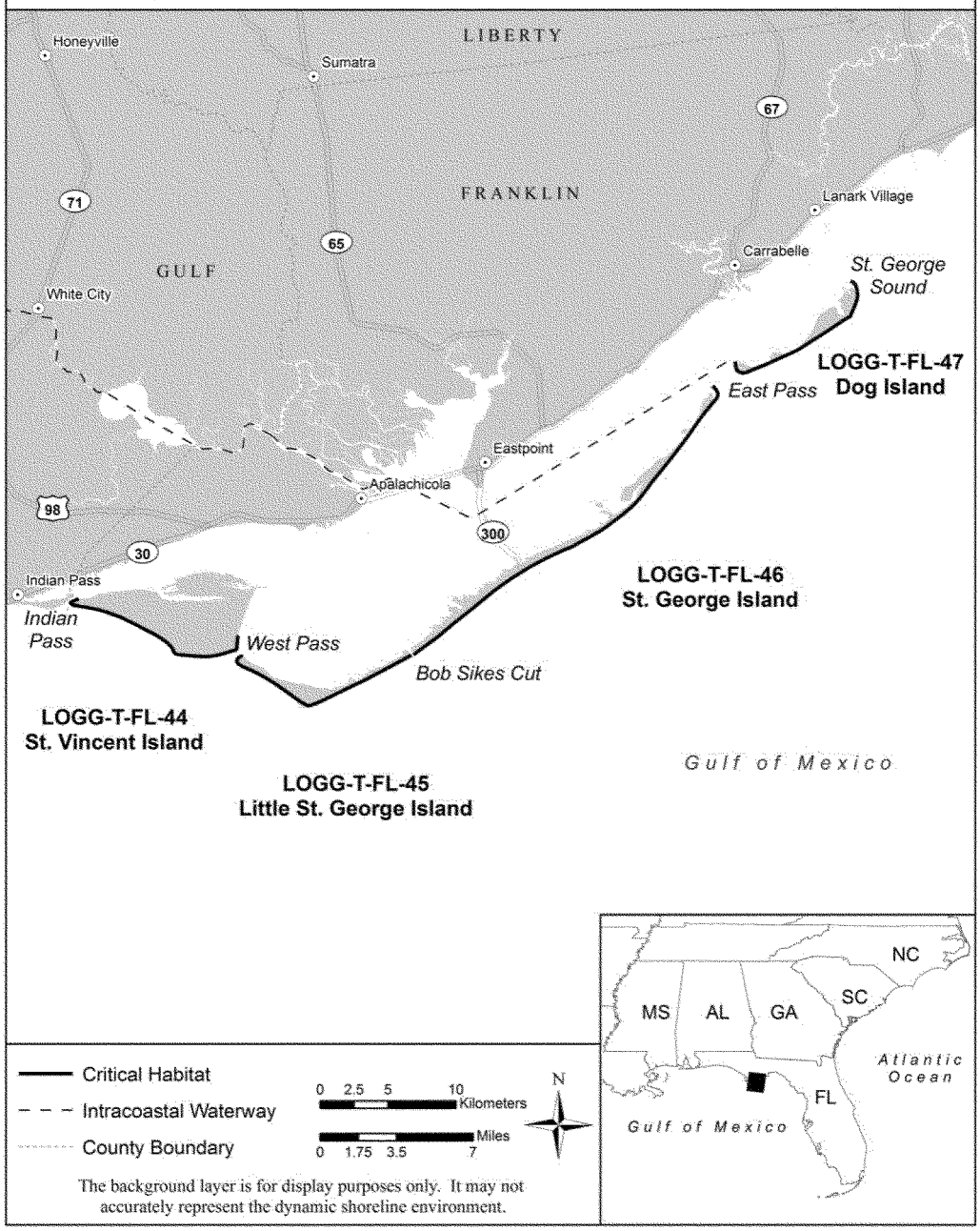
(2) LOGG–T–FL–45—Little St. George Island: This unit consists of 15.4 km (9.6 miles) of island shoreline along the Gulf of Mexico and extends from West Pass to Bob Sikes Cut.

(3) LOGG–T–FL–46—St. George Island: This unit consists of 30.7 km (19.1 miles) of island shoreline along the Gulf of Mexico and extends from Bob Sikes Cut to East Pass.

(4) LOGG–T–FL–47—Dog Island: This unit consists of 13.1 km (8.1 miles) of island shoreline along the Gulf of Mexico and extends from East Pass to St. George Sound.

(B) *Note:* Map of Units LOGG–T–FL–44, LOGG–T–FL–45, LOGG–T–FL–46, and LOGG–T–FL–47: Florida Terrestrial Critical Habitat Units for the Loggerhead Sea Turtle follows:

Map of Units LOGG-T-FL-44, LOGG-T-FL-45, LOGG-T-FL-46, and LOGG-T-FL-47 of Critical Habitat for the Northwest Atlantic Ocean Loggerhead Sea Turtle DPS



* * * * *

Dated: December 17, 2012.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–06458 Filed 3–22–13; 8:45 am]

BILLING CODE 4310–22–C

FEDERAL REGISTER

Vol. 78 Monday,

No. 57 March 25, 2013

Part III

Securities and Exchange Commission

17 CFR Parts 242 and 249

Regulation Systems Compliance and Integrity; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 242 and 249

[Release No. 34–69077; File No. S7–01–13]

RIN 3235–AL43

Regulation Systems Compliance and Integrity

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form; proposed rule amendment.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing Regulation Systems Compliance and Integrity (''Regulation SCI'') under the Securities Exchange Act of 1934 (''Exchange Act'') and conforming amendments to Regulation ATS under the Exchange Act. Proposed Regulation SCI would apply to certain self-regulatory organizations (including registered clearing agencies), alternative trading systems (''ATSs''), plan processors, and exempt clearing agencies subject to the Commission's Automation Review Policy (collectively, ''SCI entities''), and would require these SCI entities to comply with requirements with respect to their automated systems that support the performance of their regulated activities.

DATES: Comments should be submitted on or before May 24, 2013.

ADDRESSES: Interested persons should submit comments by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–01–13 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All comment letters should refer to File No. S7–01–13. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Heidi Pilpel, Special Counsel, Office of Market Supervision, at (202) 551–5666, Sara Hawkins, Special Counsel, Office of Market Supervision, at (202) 551–5523, Jonathan Balcom, Special Counsel, Office of Market Supervision, at (202) 551–5737, Yue Ding, Attorney, Office of Market Supervision, at (202) 551–5842, Dhawal Sharma, Attorney, Office of Market Supervision, at (202) 551–5779, Elizabeth C. Badawy, Senior Accountant, Office of Market Supervision, at (202) 551–5612, and Gordon Fuller, Senior Special Counsel, Office of Market Operations, at (202) 551–5686, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: Proposed Regulation SCI would supersede and replace the Commission's current Automation Review Policy (''ARP''), established by the Commission's two policy statements, each titled ''Automated Systems of Self-Regulatory Organizations,'' issued in 1989 and 1991.[1] Regulation SCI also would supersede and replace aspects of those policy statements codified in Rule 301(b)(6) under the Exchange Act,[2] applicable to significant-volume ATSs.[3] Proposed Regulation SCI would require SCI entities to establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in the manner intended. It would also require SCI entities to mandate participation by designated members or participants in scheduled testing of the operation of their business continuity and disaster recovery plans, including backup systems, and to coordinate such testing on an industry- or sector-wide basis with other SCI entities. In addition, proposed Regulation SCI would require notices and reports to be provided to the Commission on a new proposed Form SCI regarding, among other things, SCI events and material systems changes, and would require SCI entities to take corrective action upon any responsible SCI personnel becoming aware of SCI events. SCI events would be defined to include systems disruptions, systems compliance issues, and systems intrusions. The proposed regulation would further require that information regarding certain types of SCI events be disseminated to members or participants of SCI entities. In addition, proposed Regulation SCI would require SCI entities to conduct a review of their systems by objective personnel at least annually, and would require SCI entities to maintain certain books and records. The Commission also is proposing to modify the volume thresholds in Regulation ATS[4] for significant-volume ATSs, apply them to SCI ATSs (as defined below), and move this standard from Regulation ATS to proposed Regulation SCI.

Table of Contents

I. Background
A. History and Evolution of the Automation Review Policy Inspection Program
B. Evolution of the Markets Since the Inception of the ARP Inspection Program
C. Successes and Limitations of the Current ARP Inspection Program
D. Recent Events
II. Proposed Codification and Enhancement of ARP Inspection Program
III. Proposed Regulation SCI
A. Overview
B. Proposed Rule 1000(a): Definitions Establishing the Scope of Regulation SCI
1. SCI Entities
2. Definition of SCI Systems and SCI Security Systems
3. SCI Events
a. Systems Disruption
b. Systems Compliance Issue
c. Systems Intrusion
d. Dissemination SCI events
4. Material Systems Changes
C. Proposed Rule 1000(b): Obligations of SCI Entities
1. Policies and Procedures to Safeguard Capacity, Integrity, Resiliency, Availability, and Security
a. Proposed Rule 1000(b)(1)(i)
b. Proposed Rule 1000(b)(1)(ii)
2. Systems Compliance
3. SCI Events—Action required; Notification
a. Corrective Action

[1] *See* Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989) (''ARP I Release'' or ''ARP I'') and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) (''ARP II Release'' or ''ARP II'' and, together with ARP I, the ''ARP policy statements'').

[2] *See* 17 CFR 242.301(b)(6). *See also* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (''ATS Release'').

[3] *See infra* note 26.

[4] 17 CFR 242.300–303 (''Regulation ATS'').

b. Commission Notification
c. Dissemination of Information to Members or Participants
4. Notification of Material Systems Changes
5. Review of Systems
6. Periodic Reports
7. Proposed Rule 1000(b)(9): SCI Entity Business Continuity and Disaster Recovery Plans Testing Requirements for Members or Participants
D. Proposed Rule 1000(c)–(f): Recordkeeping, Electronic Filing on Form SCI, and Access
1. Recordkeeping Requirements
2. Electronic Submission of Reports, Notifications, and Other Communications on Form SCI
3. Access to the Systems of an SCI Entity
E. New Proposed Form SCI
1. Notice of SCI Events Pursuant to Proposed Rule 1000(b)(4)
2. Notices of Material Changes Pursuant to Proposed Rule 1000(b)(6)
3. Reports Submitted Pursuant to Rule 1000(b)(8)
4. Notifications of Member or Participant Designation Standards and List of Designees Pursuant to Proposed Rule 1000(b)(9)
5. Other Information and Electronic Signature
F. Request for Comment on Applying Proposed Regulation SCI to Security-Based Swap Data Repositories and Security-Based Swap Execution Facilities
G. Solicitation of Comment Regarding Potential Inclusion of Broker-Dealers, Other than SCI ATSs, and Other Types of Entities
IV. Paperwork Reduction Act
V. Economic Analysis
A. Background
B. Economic Baseline
C. Consideration of Costs and Benefits, and the Effect on Efficiency, Competition, and Capital Formation
D. Request for Comment on Economic Analysis
VI. Consideration of Impact on the Economy
VII. Regulatory Flexibility Act Certification
VIII. Statutory Authority and Text of Proposed Amendments

I. Background

A. History and Evolution of the Automation Review Policy Inspection Program

Section 11A(a)(2) of the Exchange Act,[5] enacted as part of the Securities Acts Amendments of 1975 (''1975 Amendments''),[6] directs the Commission, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under the Exchange Act to facilitate the establishment of a national market system for securities in accordance with the Congressional findings and objectives set forth in Section 11A(a)(1) of the Exchange Act.[7] Among the findings and objectives in Section 11A(a)(1) is that ''[n]ew data processing and communications techniques create the opportunity for more efficient and effective market operations'' [8] and ''[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure * * * the economically efficient execution of securities transactions.'' [9] In addition, Sections 6(b), 15A, and 17A(b)(3) of the Exchange Act impose obligations on national securities exchanges, national securities associations, and clearing agencies, respectively, to be ''so organized'' and ''[have] the capacity to * * * carry out the purposes of [the Exchange Act].'' [10]

For over two decades, Commission staff has worked with SROs to assess their automated systems under the Commission's ARP inspection program (''ARP Inspection Program''), a voluntary information technology review program created in response to the October 1987 market break.[11] In 1989, the Commission published ARP I, its first formal policy statement regarding steps that SROs should take in connection with their automated systems.[12] In ARP I, the Commission discussed the development by SROs of automated execution, market information, and trade comparison systems to accommodate increased trading activity from the 1960s through the 1980s.[13] The Commission acknowledged improvements in efficiency during that time period, but noted that the October 1987 market break had exposed that automated systems remained vulnerable to operational problems during extreme high volume periods. The Commission also expressed concern about the potential for systems failures to negatively impact public investors, broker-dealer risk exposure, and market efficiency.[14] The Commission further stated in ARP I that market movements should be ''the result of market participants' changing expectations about the direction of the market for a particular security, or group of securities, and not the result of investor confusion or panic resulting from operational failures or delays in SRO automated trading or market information systems.'' [15] The Commission issued ARP I as a result of these concerns, and stated that SROs should ''establish comprehensive planning and assessment programs to test systems capacity and vulnerability.'' [16] In particular, the Commission recommended that each SRO should: (1) Establish current and future capacity estimates for its automated order routing and execution, market information, and trade comparison systems; (2) periodically conduct capacity stress tests to determine the behavior of automated systems under a variety of simulated conditions; and (3) contract with independent reviewers to assess annually whether these systems could perform adequately at their estimated current and future capacity levels and have adequate protection against physical threat.[17] In addition, ARP I

[5] 15 U.S.C. 78k–1(a)(2).

[6] Public Law 94–29, 89 Stat. 97 (1975).

[7] 15 U.S.C. 78k–1(a)(1).

[8] Section 11A(a)(1)(B) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(B).

[9] Section 11A(a)(1)(C)(i) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C)(i). Further, the Senate Committee Report accompanying the 1975 Amendments states further that a paramount objective of a national market system is ''the maintenance of stable and orderly markets with maximum capacity for absorbing trading imbalances without undue price movements.'' Senate Comm. On Banking, Housing and Urban Affairs, *Report to accompany S. 249,* Sen. Rep. 94–75, 94th Cong., 1st Sess. at 7 (1975).

[10] *See* Sections 6(b)(1), 15A(b)(2), and 17A(b)(3) of the Exchange Act, 15 U.S.C. 78f(b)(1), 78*o*–3(b)(2), 78q–1(b)(3), respectively. *See also* Section 2 of the Exchange Act, 15 U.S.C. 78b, and Section 19 of the Exchange Act, 15 U.S.C. 78s.

[11] *See* ARP I, *supra* note 1, 54 FR 48706.

[12] *See* ARP I, *supra* note 1, 54 FR 48705–48706, stating that SROs should ''take certain steps to ensure that their automated systems have the capacity to accommodate current and reasonably anticipated future trading volume levels and respond to localized emergency conditions.'' In ARP I, the Commission also defined the terms ''automated systems'' and ''automated trading systems'' to refer ''collectively to computer systems for listed and OTC equities, as well as options, that electronically route orders to applicable market makers and systems that electronically route and execute orders, including the data networks that feed the systems * * * [and encompass] systems that disseminate transaction and quotation information and conduct trade comparisons prior to settlement, including the associated communication networks.'' *See id.* at n. 21. *See also id.* at n. 26 (stating that the Commission may suggest expansion of the ARP I policy statement to cover ''other SRO computer-driven support systems for, among other things, clearance and settlement, and market surveillance, if the Commission finds it necessary to ensure the maintenance of fair and orderly markets'').

[13] *See id.* at 48705.

[14] *See id.* at 48705. The Commission noted that problems encountered by trading systems during the October 1987 market break included: (i) Inadequate computer capacity causing queues of unprocessed orders to develop that, in turn, resulted in significant delays in order execution; (ii) inadequate contingency plans to accommodate increased order traffic; (iii) delays in the transmission of transaction reports to both member firms and markets; and (iv) delays in order processing.

[15] *See id.* at 48705.

[16] *See id.* at 48705–48706.

[17] *See id.* at 48706–48707. With respect to capacity estimates and testing, the Commission urged SROs to institute procedures for stress testing

Continued

called for each SRO to have its automated systems reviewed annually by an ''independent reviewer.'' [18]

In 1991, the Commission published ARP II.[19] In ARP II, the Commission further articulated its views on how SROs should conduct independent reviews.[20] ARP II stated that such reviews and analysis should: ''(1) Cover significant elements of the operations of the automation process, including the capacity planning and testing process, contingency planning, systems development methodology and vulnerability assessment; (2) be performed on a cyclical basis by competent and independent audit personnel following established audit procedures and standards; and (3) result in the presentation of a report to senior SRO management on the recommendations and conclusions of the independent reviewer, which report should be made available to Commission staff for its review and comment.'' [21]

In addition, ARP II addressed how SROs should notify the Commission of material systems changes and significant systems problems. Specifically, ARP II stated that SROs should notify Commission staff of significant additions, deletions, or other changes to their automated systems on an annual and an as-needed basis, as well as provide real-time notification of unusual events, such as significant outages involving automated systems.[22] Further, in ARP II, the Commission again suggested development of standards to meet the ARP policy statements, stating that ''the SROs, and other interested parties should begin the process of exploring the establishment of (1) standards for determining capacity levels for the SROs' automated trading systems; (2) generally accepted computer security standards that would be effective for SRO automated systems; and (3) additional standards regarding audits of computer systems.'' [23]

The current ARP Inspection Program was developed by Commission staff to implement the ARP policy statements,[24] and has garnered participation by all active registered clearing agencies, all registered national securities exchanges, the Financial Industry Regulatory Authority (''FINRA''), the only registered national securities association, one exempt clearing agency, and one ATS.[25] In 1998, the Commission adopted Regulation ATS which, among other things, imposed by rule certain aspects of ARP I and ARP II on significant-volume ATSs.[26] Thereafter, administration of these aspects of Regulation ATS was incorporated into the ARP Inspection Program.

Under the ARP Inspection Program, staff in the Commission's Division of Trading and Markets (''ARP staff'') conduct inspections of ARP entity systems, attend periodic technology briefings presented by ARP entity staff, monitor the progress of planned significant system changes, and respond to reports of system failures, disruptions, and other systems problems of ARP entities. An ARP inspection typically includes ARP staff review of information technology documentation, testing of selected controls, and interviews with information technology staff and management of the ARP entity.[27]

Just as markets have become increasingly automated and information technology programs and practices at ARP entities have changed, ARP inspections also have evolved considerably over the past 20 years. Today, the ARP Inspection Program covers nine general inspection areas, or information technology ''domains:'' application controls; capacity planning; computer operations and production environment controls; contingency planning; information security and networking; audit; outsourcing; physical security; and systems development methodology.[28] The goal of an ARP inspection is to evaluate whether an ARP entity's controls over its information technology resources in each domain are consistent with ARP and industry guidelines,[29] as identified by ARP staff from a variety of information technology publications that ARP staff believes reflect industry standards for securities market participants.

Most recently, these publications have included, among others, publications issued by the Federal Financial Institutions Examination Council (''FFIEC'') and the National Institute of

using ''standards generally set by the computer industry,'' and report the results of stress testing to Commission staff. The Commission also requested comment on whether it should mandate specific standards for the SROs to follow, and if so, what those standards should be. *See id.* With respect to vulnerability of systems to external and internal threat, the Commission requested in ARP I that SROs assess the susceptibility of automated systems to computer viruses, unauthorized use, computer vandalism, and failures as result of catastrophic events (such as fire, power outages, and earthquakes), and promptly notify Commission staff of any instances in which unauthorized persons gained or attempted to gain access to SRO systems, and follow up with a written report of the problem, its cause, and the steps taken to prevent a recurrence.

[18] *See id.*

[19] *See* ARP II Release, 56 FR 22490, *supra* note 1.

[20] *See id.*

[21] *See id.* at 22491. In ARP II the Commission also explained that, in its view, ''a critical element to the success of the capacity planning and testing, security assessment and contingency planning processes for [automated] systems is obtaining an objective review of those planning processes by persons independent of the planning process to ensure that adequate controls and procedures have been developed and implemented.'' *Id.*

[22] *See id.* at 22491.

[23] *See id.*

[24] While participation in the ARP Inspection Program is voluntary, the underpinnings of ARP I and ARP II are rooted in Exchange Act requirements. *See supra* notes 5–10 and accompanying text.

[25] *See infra* note 91 and accompanying text. One ATS currently complies voluntarily with the ARP Inspection Program. However, ARP staff has conducted ARP inspections of other ATSs over the course of the history of the ARP Inspection Program. *See also infra* notes, 134–135 and accompanying text.

[26] *See* Rule 301(b)(6) of Regulation ATS, 17 CFR 242.301(b)(6). With regard to systems that support order entry, order routing, order execution, transaction reporting, and trade comparison, Regulation ATS requires significant-volume ATSs to: establish reasonable current and future capacity estimates; conduct periodic capacity stress tests of critical systems to determine their ability to accurately, timely and efficiently process transactions; develop and implement reasonable procedures to review and keep current system development and testing methodology; review system and data center vulnerability to threats; establish adequate contingency and disaster recovery plans; perform annual independent reviews of systems to ensure compliance with the above listed requirements and perform review by senior management of reports containing the recommendations and conclusions of the independent review; and promptly notify the Commission of material systems outages and significant systems changes. *See* Rule 301(b)(6)(ii) of Regulation ATS, 17 CFR 242.301(b)(6)(ii). Regulation ATS defines significant-volume ATSs as ATSs that, during at least 4 of the preceding 6 calendar months, had: (i) with respect to any NMS stock, 20 percent or more of the average daily volume reported by an effective transaction reporting plan; (ii) with respect to equity securities that are not NMS stocks and for which transactions are reported to a self-regulatory organization, 20 percent or more of the average daily volume as calculated by the self-regulatory organization to which such transactions are reported; (iii) with respect to municipal securities, 20 percent or more of the average daily volume traded in the United States; or (iv) with respect to corporate debt securities, 20 percent or more of the average daily volume traded in the United States. *See* Rule 301(b)(6)(i) of Regulation ATS, 17 CFR 242.301(b)(6)(i).

[27] ARP inspections are typically conducted independently from the inspections and examinations of SROs, ATSs, and broker-dealers conducted by staff in the Commission's Office of Compliance Inspections and Examinations (''OCIE'') for compliance with the federal securities laws and rules thereunder.

[28] Each domain itself contains subcategories. For example, ''contingency planning'' includes business continuity, disaster recovery, and pandemic planning, among other things.

[29] The domains covered during an ARP inspection depend in part upon whether the inspection is a regular inspection or a ''for-cause'' inspection. Typically, however, to make the most efficient use of resources, a single ARP inspection will cover fewer than nine domains.

Standards and Technology (''NIST'').[30] ARP staff has also relied on the 2003 Interagency White Paper on Sound Practices to Strengthen the Resiliency of the U.S. Financial System[31] and the 2003 Policy Statement on Business Continuity Planning for Trading Markets.[32] Since 2003, however, the Commission has not issued formal guidance on which publications establish the most appropriate guidelines for ARP entities. At the conclusion of an ARP inspection, ARP staff typically issues a report to the ARP entity with an assessment of its information technology program with respect to its critical systems, including any recommendations for improvement.

Another significant aspect of the ARP Inspection Program relates to the monitoring of planned significant systems changes and reports of systems problems at ARP entities. As noted above, ARP II stated that SROs should notify Commission staff of significant additions, deletions, or other changes to their automated systems on an annual and an as-needed basis, as well as provide real-time notification of unusual events, such as significant outages involving automated systems.[33] Likewise, Regulation ATS requires significant-volume ATSs to promptly notify the Commission of material systems outages and significant systems changes.[34]

In addition to the Commission's ARP policy statements and Rule 301(b)(6) of Regulation ATS, Commission staff has provided guidance to ARP entities on how the staff believes they should report planned systems changes and systems issues to the Commission. For example, in 2001, Commission staff sent a letter to the SROs and other participants in the ARP Inspection Program to clarify what should be considered a ''significant system change'' and a ''significant system outage'' for purposes of reporting systems changes and problems to Commission staff.[35] Further, in 2009, Commission staff sent a letter to the national securities exchanges and FINRA expressing the staff's view that SROs are obligated to ensure that their systems' operations comply with the federal securities laws and rules and the SRO's rules, and that failure to satisfy this obligation could lead to sanctions under Section 19(h)(1) of the Exchange Act.[36] Unlike ARP I, ARP II, and Rule 301(b)(6) of Regulation ATS, the 2001 Staff ARP Interpretive Letter and 2009 Staff Systems Compliance Letter were not issued by the Commission and constitute only staff guidance. Proposed Regulation SCI, if adopted, would consolidate and supersede all such staff guidance, as well as the Commission's ARP policy statements and Rule 301(b)(6) of Regulation ATS.

In addition, OCIE conducts inspections of SROs, as part of the Commission's oversight of them. Unlike ARP inspections, however, which focus on information technology controls, OCIE primarily conducts risk-based examinations of securities exchanges, FINRA, and other SROs to evaluate whether they and their member firms are complying with the Exchange Act and the rules thereunder, as well as SRO rules. Examples of OCIE risk-based examination areas include: governance, regulatory funding, trading regulation, member firm examination programs, disciplinary programs for member firms, and exchange programs for listing compliance. In 2011, OCIE conducted baseline assessments of all of the national securities exchanges then operating. These assessments included these areas, among others, but did not include examinations of the exchanges' systems, as systems inspections are conducted under the ARP Inspection Program.[37] As part of the Commission's oversight of the SROs, OCIE also reviews systems compliance issues reported to Commission staff. The information gained from OCIE's review of reported systems compliance issues helps to inform its examination risk-assessments for SROs.

B. Evolution of the Markets Since the Inception of the ARP Inspection Program

Since the inception of the ARP Inspection Program more than two decades ago, the securities markets have experienced sweeping changes, evolving from a collection of relatively few, mostly manual markets, to a larger number and broader variety of trading centers that are almost completely automated, and dependent upon sophisticated technology and extremely

[30] Other examples of publications that ARP staff has referred to include those issued by the Center for Internet Security (*http://benchmarks.cisecurity.org/en-us/?route=downloads.benchmarks*); Information Systems Audit and Control Association (*Control Objections for Information Technology Framework,* available at: *http://www.isaca.org/Knowledge-Center/cobit/Pages/COBIT-Online.aspx);* Defense Information Systems Agency, Security Technical Implementation Guides (available at *http://iase.disa.mil/stigs/index.html*); and Government Accountability Office (*Federal Information System Controls Audit Manual* (February 2009), available at: *http://www.gao.gov/assets/80/77142.pdf*).

[31] *See* Securities Exchange Act Release No. 47638 (April 7, 2003), 68 FR 17809 (April 11, 2003) (Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial Systems) (''2003 Interagency White Paper'').

[32] *See* Securities Exchange Act Release No. 48545 (September 25, 2003), 68 FR 56656 (October 1, 2003) (Policy Statement: Business Continuity Planning for Trading Markets) (''2003 Policy Statement on Business Continuity Planning for Trading Markets'').

[33] *See supra* note 22 and accompanying text.

[34] *See* 17 CFR 242.301(b)(6)(ii)(G). *See also supra* note 26.

[35] In June 2001, staff from the Division of Market Regulation sent a letter to the SROs and other participants in the ARP Inspection Program regarding Guidance for Systems Outage and System Change Notifications (''2001 Staff ARP Interpretive Letter''), advising them that the staff considers a significant system change to include: (i) Major systems architectural changes; (ii) reconfiguration of systems that cause a variance greater than five percent in throughput or storage; (iii) introduction of new business functions or services; (iv) material changes in systems; (v) changes to external interfaces; (vi) changes that could increase susceptibility to major outages; (vii) changes that could increase risks to data security; (viii) a change that was, or will be, reported or referred to the entity's board of directors or senior management; or (ix) changes that may require allocation or use of significant resources. The 2001 Staff ARP Interpretive Letter also advised that Commission staff considers a ''significant system outage'' to include an outage that results in: (i) Failure to maintain service level agreements or constraints; (ii) disruption of normal operations, including switchover to back-up equipment with no possibility of near-term recovery of primary hardware; (iii) loss of use of any system; (iv) loss of transactions; (v) excessive back-ups or delays in processing; (vi) loss of ability to disseminate vital information; (vii) communication of an outage situation to other external entities; (viii) a report or referral of an event to the entity's board of directors or senior management; (ix) a serious threat to systems operations even though systems operations are not disrupted; or (x) a queuing of data between system components or queuing of messages to or from customers of such duration that a customer's normal service delivery is affected. The 2001 Staff ARP Interpretive Letter is available at *http://www.sec.gov/divisions/marketreg/sroautomation.shtml.*

[36] In December 2009, staff from the Division of Trading and Markets and Office of Compliance Inspections and Examinations sent a letter (''2009 Staff Systems Compliance Letter'') to each national securities exchange and FINRA reminding each of its obligation to ensure that its systems' operations are consistent with the federal securities laws and rules and the SRO's rules, and clarifying the staff's expectations regarding SRO systems compliance. The 2009 Staff Systems Compliance Letter also expressed the staff's view that SROs and other participants in the ARP Inspection Program should have effective written policies and procedures for systems development and maintenance that provide for adequate regulatory oversight, including testing of system changes, controls over system changes, and independent audits. The 2009 Staff Systems Compliance Letter also expressed the staff's expectation that, if an SRO becomes aware of a system function that could lead or has led to a failure to comply with the federal securities laws or rules, or the SRO's rules, the SRO should immediately take appropriate corrective action including, at a minimum, devoting adequate resources to remedy the issue as soon as possible, and notifying Commission staff and (if appropriate) the public of the compliance issue and efforts to rectify it. The 2009 Staff Systems Compliance Letter was sent to BATS, BATS–Y, CBOE, C2, CHX, EDGA, EDGX, FINRA, ISE, Nasdaq, Nasdaq OMX BX, Nasdaq OMX Phlx, NSX, NYSE, NYSE MKT (f/k/a NYSE Amex), NYSE Arca. *See infra* notes 47 and 51.

[37] *See* text accompanying notes 24–29.

fast and interconnected systems. Regulatory developments, such as Regulation NMS,[38] decimalization,[39] Regulation ATS,[40] and the Order Handling Rules,[41] also have impacted the structure of the markets by, among other things, mandating and providing incentives that encourage automation and speed. Although some markets today retain trading floors and accommodate some degree of manual interaction, these markets also have implemented electronic trading for their products. In stock markets, for example, in almost all cases, the volume of electronic trading dominates any residual manual activity.[42] In addition, in recent years, the new trading systems developed by existing or new exchanges and ATSs rely almost exclusively on fully-electronic, automated technology to execute trades.[43] As a result, the overwhelming majority of securities transactions today are executed on such automated systems.[44] A primary driver and catalyst of this transformation has been the continual evolution of technologies for generating, routing, and executing orders. These technologies have dramatically improved the speed, capacity, and sophistication of the trading functions that are available to market participants.[45] The increased speed and capacity of automated systems in the current market structure has contributed to surging message traffic.[46]

In addition to these changes, there has been an increase in the number of trading venues, particularly for equities. No longer is trading in equities dominated by one or two trading venues. Today, 13 national securities exchanges trade equities, with no single stock exchange having an overall market share of greater than twenty percent of consolidated volume for all NMS stocks,[47] but each with a protected quotation [48] that may not be traded through by other markets.[49] ATSs, including electronic communications networks (''ECNs'') and dark pools, as well as broker-dealer internalizers, also execute substantial volumes of securities transactions.[50] Each of these trading venues is connected with the others through a vast web of linkages, including those that provide connectivity, routing services, and market data. The number of venues trading options has likewise grown, with 11 national securities exchanges currently trading options, up from five as recently as 2004.[51]

The increased number of trading venues, dispersal of trading volume, and the resulting reliance on a variety of automated systems and intermarket linkages have increased competition and thus investor choice, but have also increased the complexity of the markets and the challenges for market participants seeking to manage their information technology programs and to ensure compliance with Commission rules.[52] These changes have also substantially heightened the potential for systems problems originating from any number of sources to broadly affect the market. Given the increased interconnectedness of the markets, a trading venue may not always recognize the true impact and cost of a problem that originates with one of its systems.

C. Successes and Limitations of the Current ARP Inspection Program

While the Commission generally considers the ARP Inspection Program to have been successful in improving the automated systems of the SROs and other entities participating in the program over the past 20 years, the Commission is mindful of its limitations. For example, because the ARP Inspection Program is established pursuant to Commission policy statements, rather than Commission rules,[53] the Commission's ability to assure compliance with ARP standards with certainty or adequate thoroughness is limited. In particular, the Commission may not be able to fully address major or systemic market problems at all entities that would meet the proposed definition of SCI entity. Further, the Government Accountability Office

[38] 17 CFR 242.600–612. *See also* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[39] *See* Securities Exchange Act Release No. 42360 (January 28, 2000), 65 FR 5003 (February 2, 2000).

[40] 17 CFR 242.300–303. *See also* ATS Release, *supra* note 2.

[41] Securities Exchange Act Release No. (September 6, 1996), 61 FR 48290 (September 12, 1996). *See also* Concept Release on Equity Market Structure, *supra* note 42, at 3594.

[42] *See, e.g.,* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594, 3594–95 (January 21, 2010) (Concept Release on Equity Market Structure). *See also* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (order approving NYSE's New Market Model, an electronic trading system with floor-based components).

[43] *See, e.g.,* Securities Exchange Act Release Nos. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (order approving the exchange registration application of BATS–Y Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (order approving the exchange registration applications of EDGA Exchange Inc. and EDGX Exchange Inc.); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (order approving a proposed rule change, as amended, by the NASDAQ Stock Market LLC to establish rules governing the trading of options on the NASDAQ Options Market).

[44] For example, less than 30 percent of stock trading takes place on listing exchanges as orders are dispersed to more than 50 competing venues, almost all of which are fully electronic. *See, e.g., http://www.batstrading.com/market_summary. See also* Concept Release on Equity Market Structure, *supra* note 42, for a more detailed discussion of equity market structure.

[45] For example, the speed of trading has increased to the point that the fastest traders now measure their latencies in microseconds. *See* Concept Release on Equity Market Structure, *supra* note 42, at 3598.

[46] *See, e.g.,* ''Climbing Mount Message: How Exchanges are Managing Peaks,'' Markets Media (posted on June 29, 2012), available at: *http://marketsmedia.com/climbing-mount-message-exchanges-managing-peaks/* (noting that message volumes across U.S. exchanges hit a daily peak of 4.47 million messages per second).

[47] *See, e.g.,* market volume statistics reported by BATS Exchange, Inc., available at: *http://www.batstrading.com/market_summary* (no single national securities exchange executed more than 20 percent of volume in NMS stocks during the 5-day period ending February 7, 2013). The following national securities exchanges have equities trading platforms: (1) BATS Exchange, Inc. (''BATS''); (2) BATS Y-Exchange, Inc. (''BATS–Y''); (3) Chicago Board Options Exchange, Incorporated (''CBOE''); (4) Chicago Stock Exchange, Inc. (''CHX''); (5) EDGA Exchange, Inc. (''EDGA''); (6) EDGX Exchange, Inc. (''EDGX''); (7) NASDAQ OMX BX, Inc. (''Nasdaq OMX BX''); (8) NASDAQ OMX PHLX LLC (''Nasdaq OMX Phlx''); (9) NASDAQ Stock Market LLC (''Nasdaq''); (10) National Stock Exchange, Inc. (''NSX''); (11) New York Stock Exchange LLC (''NYSE''); (12) NYSE MKT LLC (''NYSE MKT''); and (13) NYSE Arca, Inc. (''NYSE Arca'').

[48] A ''protected quotation'' is defined by Regulation NMS as a quotation in an NMS stock that (i) is displayed by an automated trading center; (ii) is disseminated pursuant to an effective national market system plan; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. *See* Rule 600(b)(57)–(58) of Regulation NMS, 17 CFR 242.600(b)(57)–(58).

[49] *See* Rule 611(a)(1) of Regulation NMS, 17 CFR 242.601(a)(1).

[50] *See* Concept Release on Equity Market Structure, *supra* note 42.

[51] The following venues trade options today: (1) BATS Exchange Options Market; (2) Boston Options Exchange LLC (''BOX''); (3) C2 Options Exchange, Incorporated (''C2''); (4) CBOE; (5) International Securities Exchange, LLC (''ISE''); (6) Miami International Securities Exchange, LLC (''MIAX''); (7) NASDAQ Options Market; (8) NASDAQ OMX BX Options; (9) Nasdaq OMX Phlx; (10) NYSE Amex Options; and (11) NYSE Arca.

[52] For example, one important type of linkage in the current market structure was created to comply with legal obligations to protect against trade-throughs as required by Rule 611 of Regulation NMS under the Exchange Act, 17 CFR 242.611. A trade-through is the execution of a trade at a price inferior to a protected quotation for an NMS stock. Importantly, Rule 611 applies to all trading centers, not just those that display protected quotations. Trading center is defined broadly in Rule 600(b)(78) of Regulation NMS to include, among others, all exchanges, all ATSs (including ECNs and dark pools), all OTC market makers, and any other broker-dealer that executes orders internally, whether as agent or principal. *See* Concept Release on Equity Market Structure, *supra* note 42, at 3601.

[53] As discussed in *infra* Section III.B.1, no ATS currently meets the volume thresholds in Rule 301(b)(6) of Regulation ATS.

(''GAO'') has identified the voluntary nature of the ARP Inspection Program as a limitation of the program and recommended that the Commission make compliance with ARP guidelines mandatory.[54]

The Commission believes that the continuing evolution of the securities markets to the current state, where they have become almost entirely electronic and highly dependent on sophisticated trading and other technology (including complex regulatory and surveillance systems, as well as systems relating to the provision of market data, intermarket routing and connectivity, and a variety of other member and issuer services), has posed challenges for the ARP Inspection Program. Accordingly, the Commission believes that the guidance in the ARP policy statements should be updated and formalized, and that clarity with respect to a variety of important matters, including regarding appropriate industry practices, notice to the Commission of all SCI events and to members or participants of SCI entities of certain systems problems, Commission access to systems, and procedures designed to better ensure that SRO systems comply with the SRO's own rules, would improve the Commission's oversight capabilities. Furthermore, given the importance of ensuring that an SRO's trading and other systems are operated in accordance with its rules, the Commission believes that improvements in SRO procedures could help to ensure that such systems are operating in compliance with relevant rules, and to promptly identify and address any instances of non-compliance.[55]

D. Recent Events

In the Commission's view, recent events further highlight why rulemaking in this area may be warranted. On May 6, 2010, according to a report by the staffs of the Commission and the Commodity Futures Trading Commission (''CFTC''), the prices of many U.S.-based equity products experienced an extraordinarily rapid decline and recovery, with major equity indices in both the futures and securities markets, each already down over four percent from their prior day close, suddenly plummeting a further five to six percent in a matter of minutes before rebounding almost as quickly.[56] According to the May 6 Staff Report, many individual equity securities and exchange traded funds suffered similar price declines and reversals within a short period of time, falling 5, 10, or even 15 percent before recovering most, if not all, of their losses.[57] The May 6 Staff Report stated that some equities experienced even more severe price moves, both up and down, with over 20,000 trades in more than 300 securities executed at prices more than 60 percent away from their values just moments before.[58]

Among the key findings in the May 6 Staff Report was that the interaction between automated execution programs and algorithmic trading strategies can quickly erode liquidity and result in disorderly markets, and that concerns about data integrity, especially those that involve the publication of trades and quotes to the consolidated tape, can contribute to pauses or halts in many automated trading systems and in turn lead to a reduction in general market liquidity.[59] According to the May 6 Staff Report, the events of May 6, 2010 clearly demonstrate the importance of data in today's world of fully automated trading strategies and systems, and that fair and orderly markets require the maintenance of high standards for robust, accessible, and timely market data.[60]

Both before and after the May 6, 2010 incident, individual markets have also experienced other systems-related issues. In February 2011, NASDAQ OMX Group, Inc. revealed that hackers had penetrated certain of its computer networks, though Nasdaq reported that at no point did this intrusion compromise Nasdaq's trading systems.[61] In October 2011, the Commission sanctioned EDGX and EDGA, two national securities exchanges, and their affiliated broker, Direct Edge ECN LLC, for violations of federal securities laws arising from systems incidents.[62] In the Direct Edge Order, the Commission noted that the ''violations occurred against the backdrop of weaknesses in Respondents' systems, processes, and controls.''[63]

More recently, in 2012, systems issues hampered the initial public offerings of BATS Global Markets, Inc. and Facebook, Inc.[64] On March 23, 2012, BATS announced that a ''software bug'' caused BATS to shut down the IPO of its own stock, BATS Global Markets, Inc.[65] On May 18, 2012, issues with Nasdaq's trading systems delayed the start of trading in the high-profile IPO of Facebook, Inc. and some market participants experienced delays in notifications over whether orders had been filled.[66]

While these are illustrative high-profile examples, they are not the only instances of disruptions and other systems problems experienced by SROs and ATSs.[67] Moreover, the risks

[54] *See* GAO, Financial Market Preparedness: Improvements Made, but More Action Needed to Prepare for Wide-Scale Disasters, Report No. GAO–04–984 (September 27, 2004). GAO cited instances in which the GAO believed that entities participating in the ARP Inspection Program failed to adequately address or implement ARP staff recommendations as the reasoning behind its recommendation to make compliance with ARP guidelines mandatory. As noted in *supra* Section I.A, the obligations underlying the policy statements are statutorily mandated.

[55] Section 19(b)(1) of the Exchange Act requires each SRO to file with the Commission any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO (a ''proposed rule change''), accompanied by a concise general statement of the basis and purpose of such proposed rule change, and provides that no proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this section. *See* 15 U.S.C. 78s(b)(1). An SRO's failure to file a proposed rule change when required would be a violation of Section 19(b)(1).

[56] *See* Findings Regarding The Market Events Of May 6, 2010, Report Of The Staffs Of The CFTC And SEC To The Joint Advisory Committee On Emerging Regulatory Issues, September 30, 2010 (''May 6 Staff Report'').

[57] *See id.*

[58] These trades subsequently were broken by the exchanges and FINRA. *See id.*

[59] *See id.* at 78.

[60] *See id.* at 8.

[61] *See* announcement by Nasdaq OMX (February 5, 2011), available at: *http://www.nasdaq.com/includes/announcement-2-5-11.aspx* (accessed May 20, 2011). *See also* Devlin Barrett, ''Hackers Penetrate NASDAQ Computers,'' Wall St. J., February 5, 2011, at A1; Devlin Barrett et al., ''NASDAQ Confirms Breach in Network,'' Wall St. J., February 7, 2011, at C1.

[62] *See* Securities Exchange Act Release No. 65556, In the Matter of EDGX Exchange, Inc., EDGA Exchange, Inc. and Direct Edge ECN LLC (settled action: October 13, 2011), available at: *http://www.sec.gov/litigation/admin/2011/34-65556.pdf* (''Direct Edge Order''); *see also* Commission News Release, 2011–208, ''SEC Sanctions Direct Edge Electronic Exchanges and Orders Remedial Measures to Strengthen Systems and Controls'' (October 13, 2011). EDGX, EDGA, and their affiliated routing broker, Direct Edge ECN LLC (dba DE Route), consented to an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order.

[63] *See* Direct Edge Order, *supra* note 62, at 3.

[64] *See also infra* note 334 and accompanying text.

[65] *See* ''BATS BZX Exchange Post-Mortem'' by BATS, March 23, 2012, available at: *www.batstrading.com/alerts* (accessed July 2, 2012).

[66] *See* ''Post-Mortem for NASDAQ issues related to the Facebook Inc. (FB) IPO Cross on Friday, May 18, 2012'' by NASDAQ, May 18, 2012, available at: *http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2012-20* (accessed July 2, 2012).

[67] The Commission notes that outages have occurred on foreign markets recently as well. *See, e.g.,* Kana Inagaki and Kosaku Narioka, ''Tokyo Tackles Trading Glitch,'' Wall St. J., February 2, 2012; and Neil Shah and Carrick Mellenkamp, ''London Exchange Paralyzed by Glitch,'' Wall St. J., September 9, 2008, Europe Business News. *See also* discussion in *infra* Section III.C.1.b regarding

Continued

associated with cybersecurity, and how to protect against systems intrusions, are increasingly of concern to all types of entities, including public companies.[68]

On October 2, 2012, the Commission conducted a roundtable entitled ''Technology and Trading: Promoting Stability in Today's Markets'' (''Roundtable'').[69] The Roundtable examined the relationship between the operational stability and integrity of the securities market and the ways in which market participants design, implement, and manage complex and interconnected trading technologies.[70] Panelists offered their views on how market participants could prevent, or at least mitigate, technology errors as well as how error response could be improved.

Although the discussion was wide-ranging, several themes emerged, with panelists generally agreeing that areas of focus across the industry should be on adherence to best practices, improved quality assurance, more robust testing, increased pre-trade and post-trade risk controls, real-time monitoring of systems, and improved communications when systems problems occur. The panelists also discussed whether there should be regulatory or other mandates for quality standards and industry testing, and whether specific mechanisms, such as ''kill switches,''[71] would be useful to protect the markets from technology errors and to advance the goal of bolstering investor confidence in the markets.[72] Several panelists also stated that, given the frequency of coding changes in the current market environment, testing of software changes should be far more robust.[73]

In addition to the Roundtable panels, the Commission solicited comment with respect to the Roundtable's topics, and received statements from some of the Roundtable panelists, as well as comment letters from the public.[74] Many comment letters specifically recommended improved testing as a way to aid error prevention.[75] In addition, several commenters expressed support for a ''kill-switch'' mechanism that would permit exchanges or other market centers to terminate a firm's trading activity if such activity was posing a threat to market integrity.[76]

business continuity planning during October 2012 due to Superstorm Sandy.

[68] *See, e.g.,* CF Disclosure Guidance: Topic No. 2, Cybersecurity (October 13, 2011), available at: *http://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm* (providing the Division of Corporation Finance's views regarding disclosure obligations relating to cybersecurity risks and cyber incidents).

[69] *See* Securities Exchange Act Release No. 67802 (September 7, 2012), 77 FR 56697 (September 13, 2012) (File No. 4–652). A webcast of the Roundtable is available at: *www.sec.gov/news/otherwebcasts/2012/ttr100212.shtml.*

[70] *See* Securities Exchange Act Release No. 67725 (August 24, 2012), 77 FR 52766 (August 30, 2012) (File No. 4–652). The Roundtable included panelists from academia, clearing agencies, national securities exchanges, broker-dealers, and other organizations. Panelists for the first panel were: Dr. Nancy Leveson, Professor of Aeronautics and Astronautics and Engineering Systems, MIT (''MIT''); Sudhanshu Arya, Managing Director, ITG (''ITG''); Chris Isaacson, Chief Operating Officer, BATS Exchange (''BATS''); Dave Lauer, Market Structure and HFT Consultant, Better Markets, Inc. (''Better Markets''); Jamil Nazarali, Head of Citadel Execution Services, Citadel (''Citadel''); Lou Pastina, Executive Vice President—NYSE Operations, NYSE (''NYSE''); Christopher Rigg, Partner—Financial Services Industry, IBM (''IBM''); and Jonathan Ross, Chief Technology Officer, GETCO LLC (''Getco'').

Panelists for the second panel were: Dr. M. Lynne Markus, Professor of Information and Process Management, Bentley University (''Bentley''); David Bloom, Head of UBS Group Technology (''UBS''); Chad Cook, Chief Technology Officer, Lime Brokerage LLC (''Lime''); Anna Ewing, Executive Vice President and Chief Information Officer, Nasdaq; Albert Gambale, Managing Director and Chief Development Officer, Depository Trust and Clearing Corp. (''DTCC''); Saro Jahani, Chief Information Officer, Direct Edge (''DE''); and Lou Steinberg, Chief Technology Officer, TD Ameritrade (''TDA''). *See* Technology and Trading: Promoting Stability in Today's Markets Roundtable — Participant Bios, available at: *http://www.sec.gov/news/otherwebcasts/2012/ttr100212-bios.htm.*

The Roundtable was announced on August 3, 2012, following a report by Knight Capital Group, Inc. (''Knight'') that, on August 1, 2012, it ''experienced a technology issue at the opening of trading at the NYSE * * * [which was] related to Knight's installation of trading software and resulted in Knight sending numerous erroneous orders in NYSE-listed securities into the market * * * Knight * * * traded out of its entire erroneous trade position, which * * * resulted in a realized pre-tax loss of approximately $440 million.'' *See* Knight Capital Group Provides Update Regarding August 1st Disruption To Routing In NYSE-listed Securities (August 2, 2012), available at: *http://www.knight.com/investorRelations/pressReleases.asp?compid=105070&releaseID=1721599.*

Although the Knight incident highlights the importance of the integrity of broker-dealer systems, the focus of the Roundtable was not limited to broker-dealers. *But see infra* Section III.G, soliciting comment regarding the potential inclusion of broker-dealers, other than SCI ATSs, in the proposed definition of SCI entity.

[71] The term ''kill switch'' is a shorthand expression used by market participants, including Roundtable participants and Roundtable commenters, to refer to mechanisms pursuant to which one or more limits on trading could be established by a trading venue for its participants that, if exceeded, would authorize the trading venue to stop accepting incoming orders from such participant. *See also infra* note 76 and accompanying text.

[72] With regard to quality assurance in particular, Roundtable panelists differed on the role of third parties in providing quality assurance, with some panelists believing that, given the difficulty for an outside party to understand the complex systems of trading firms and other market participants, such a role should be performed by internal staff who are better able to understand such systems, with other panelists opining that there it was critical that independent parties provide quality assurance.

[73] Panelists urging greater testing in general and industry testing in particular included those from BATS, Better Markets, DE, ITG, Getco, Nasdaq, NYSE, and TDA.

[74] *See http://www.sec.gov/comments/4-652/4-652.shtml,* listing and publishing all comment letters received by the Commission with respect to the Roundtable. The letters received cover a broad array of topics, some of which are unrelated to proposed Regulation SCI. This proposing release discusses and references the following letters when relevant to the discussion of proposed Regulation SCI: Letter dated September 5, 2012, from James J. Angel, Ph.D., CFA, Georgetown University and the Wharton School, University of Pennsylvania (''Angel''); Letter dated September 27, 2012, from Eric Swanson, BATS Global Markets, Inc.; Letter dated October 2, 2012, from Dave Lauer, Market Structure and HFT Consultant, Better Markets (''Better Markets''); Letter dated October 1, 2012, from Jamil Nazarali, Citadel (''Citadel''); Letter dated October 23, 2012, from Scott Goebel, Senior Vice President and General Counsel, Fidelity Management & Research Company (''Fidelity''); Letter dated November 1, 2012, from Arsalan Shahid, Program Director, Financial Information Forum (''FIF''); Letter dated October 19, 2012, from Courtney Doyle McGuinn, Operations Director, FIX Protocol Ltd. (''FIX''); Letter dated October 1, 2012, from Elizabeth K. King, Head of Regulatory Affairs, GETCO LLC (''Getco''); Letter dated October 18, 2012, from Adam Nunes, President, Hudson River Trading LLC (''Hudson''); Letter dated September 23, 2012, from Patrick J. Healy, CEO, Issuer Advisory Group LLC (''IAG''); Letter dated October 23, 2012, from Karrie McMillan, General Counsel, Investment Company Institute (''ICI''); Letter dated October 22, 2012, from James P. Selway III, Managing Director, Head of Liquidity Management, and Sudhanshu Arya, Managing Director, Head of Technology for Liquidity Management, ITG Inc. (''ITG''); Letter dated September 28, 2012, from Joseph M. Mecane, NYSE Euronext; Richard G. Ketchum, FINRA; Eric Noll, Nasdaq OMX, Inc.; Christopher A. Isaacson, BATS Global Markets, Inc.; Bryan Harkins, DirectEdge; David Herron, Chicago Stock Exchange; Murray Pozmanter, The Depository Trust & Clearing Corporation; Bank of America Merrill Lynch; Citadel LLC; Citigroup Global Markets Inc.; Deutsche Bank Securities Inc.; GETCO; Goldman, Sachs & Co/Goldman Sachs Execution and Clearing; IMC Chicago LLC; ITG, Inc.; Jane Street; J.P. Morgan Securities LLC; RBC Capital Markets, LLC; RGM Advisors, LLC; Two Sigma Securities; UBS Securities LLC; Virtu Financial; Wells Fargo Securities (''Industry Working Group''); Letter dated September 25, 2012, from R. T. Leuchtkafer (''Leuchtkafer''); Letter dated August 14, 2012, from Stuart J. Kaswell, Executive Vice President, Managing Director & General Counsel, Managed Funds Association (''MFA''); Letter dated October 1, 2012, from Richard Gorelick, RGM Advisors, Cameron Smith, Quantlab, and Peter Nabicht, Allston Trading (''RGM''); Letter dated September 28, 2012, from Nasser A. Sharara, Managing Director, Product Management, Raptor Trading Systems (''Raptor''); Letter dated October 1, 2012, from Lou Steinberg, Managing Director, Chief Technology Officer, TDA (''TDA''); Letter dated October 24, 2012, from David Weisberger, Executive Principal, Two Sigma Securities, LLC (''Two Sigma'').

[75] *See, e.g.,* letters from Angel, BATS, Better Markets, Citadel, Fidelity, FIF, FIX, Getco, Hudson, IAG, ICI, ITG, Industry Working Group, Leuchtkafer, MFA, RGM, and Two Sigma, *supra* note 74. Some of these commenters specifically urged greater integration testing and stated that testing with exchanges and other market centers under simulated market conditions were necessary in today's extremely fast and interconnected markets. One commenter (Angel) suggested that exchanges operate completely from their backup data centers one day each year to test such systems and market participants' connectivity to them.

[76] *See, e.g.,* letters from Angel, BATS, Citadel, FIF, Getco, IAG, Industry Working Group, MFA,

The Commission believes that the information presented at the Roundtable and received from commenters, as broadly outlined above, highlights that quality standards, testing, and improved error response mechanisms are among the issues needing very thoughtful and focused attention in today's securities markets.[77] In formulating proposed Regulation SCI, the Commission has considered the information and views discussed at the Roundtable and received from commenters.

Most recently, the U.S. national securities exchanges closed for two business days in the wake of Superstorm Sandy, a major storm that hit the East Coast of the United States during October 2012, and which caused significant damage in lower Manhattan, among other places.[78] Press reports stated that, while the markets planned to open on the first day of the storm (with the NYSE planning to operate under its contingency plan as an electronic-only venue),[79] after consultation with market participants, including the Commission and its staff, and in light of concerns over the physical safety of personnel and the possibility of technical issues, the national securities exchanges jointly decided not to open for trading on October 29 and October 30, 2012.[80] The market closures occurred even though the securities industry's annual test of how trading firms, market operators and their utilities could operate through an emergency using backup sites, backup communications, and disaster recovery facilities occurred on October 27, 2012, just two days before the storm.[81] According to press reports, the test did not uncover issues that would preclude markets from opening two days later with backup systems, if they so chose.[82] In addition, NYSE's contingency plan was tested seven months prior to the storm, though press reports indicate that a large number of NYSE members did not participate.[83] The Commission also has considered the impact of Superstorm Sandy on the securities markets, particularly with respect to business continuity planning and testing, in formulating proposed Regulation SCI.

II. Proposed Codification and Enhancement of ARP Inspection Program

In the Commission's view, the convergence of several developments—the evolution of the markets to become significantly more dependent upon sophisticated automated systems, the limitations of the existing ARP Inspection Program, and the lessons of recent events—highlight the need to consider an updated and formalized regulatory framework for ensuring that the U.S. securities trading markets develop and maintain systems with adequate capacity, integrity, resiliency, availability, and security, and reinforce the requirement that such systems operate in compliance with the Exchange Act. The Commission is proposing new Regulation SCI because the Commission preliminarily believes that it would further the goals of the national market system and reinforce Exchange Act obligations to require entities important to the functioning of the U.S. securities markets to carefully design, develop, test, maintain, and surveil systems integral to their operations.

Proposed Regulation SCI would replace the two ARP policy statements. Although proposed Regulation SCI would codify in a Commission rule many of the principles of the ARP policy statements with which SROs and other participants in the ARP Inspection Program are familiar, the proposed rule would apply to more entities than the current ARP Inspection Program and would place obligations not currently included in the ARP policy statements on entities subject to the rule. Specifically, proposed Regulation SCI would apply to ''SCI entities,'' a term that would include ''SCI SROs,'' ''SCI ATSs,'' ''plan processors,'' and ''exempt clearing agencies subject to ARP.''[84]

Further, to help ensure that the proposed rule covers key systems of SCI entities, the proposed rule would define (for purposes of Regulation SCI) the term ''SCI systems'' to mean those systems of, or operated by or on behalf of, an SCI entity that directly support trading, clearance and settlement, order routing, market data, regulation, or surveillance. In addition, the term ''SCI security systems'' would include systems that share network resources with SCI systems that, if breached, would be reasonably likely to pose a security threat to such systems.[85] The proposed rule also would define several other terms intended to specify what types of systems changes and problems (''SCI events'') the Commission considers to be most significant and, therefore, preliminarily believes should be covered by the proposed rule's requirements.

In addition, proposed Regulation SCI would specify the obligations SCI entities would have with respect to covered systems and SCI events. Specifically, proposed Regulation SCI would require that each SCI entity: (1)

RGM, and Raptor, *supra* note 74. *See also* letters from Fidelity, FIX, Hudson and ITG, *supra* note 74, submitted after the Roundtable, suggesting possible approaches for establishing kill switch criteria. *See also supra* note 71, describing the use of the term ''kill switch'' in this release.

[77] The Commission notes that Roundtable panelists and commenters offering their views and suggestions generally did so in the context of discussing the market as a whole, rather than focusing on the roles and regulatory status of different types of market participants. However, some commented on the utility of the ARP Inspection Program and suggested that it could be expanded. *See, e.g.,* letter from Leuchtkafer, *supra* note 74. In addition, the panelists from Getco, Nasdaq, and NYSE also suggested that ARP could be expanded, with the panelist from NYSE in particular advocating that the applicability of any new ARP-related regulations not be limited to SROs. One commenter suggested that the Commission update and formalize the ARP Inspection Program before extending it to other market participants. *See* letter from Fidelity, *supra* note 74. This commenter added further that, if the ARP program is extended to other market participants, it should not include a requirement that broker-dealers submit certain information, such as algorithmic code changes, for independent review. *See also infra* Section III.G, soliciting comment on whether the requirements of proposed Regulation SCI should apply, in whole or in part, to broker-dealers or a subset thereof.

[78] *See* ''NYSE to Remain Open for Trading While Physical Trading Floor and New York Building Close in Accordance with Actions Taken by City and State Officials,'' (October 28, 2012) (''NYSE Floor Closure Statement''), available at: *http://www.nyse.com/press/1351243407197.html;* and ''NYSE Euronext Statement on Closure of U.S. Markets on Monday Oct. 29 and Pending Confirmation on Tuesday, Oct. 30, 2012,'' (October 28, 2012) (''NYSE Closure Statement''), available at: *http://www.nyse.com/press/1351243418010.html.*

[79] The NYSE had initially planned to act pursuant to NYSE Rule 49 (Emergency Powers), which permits a designated official of the NYSE, in the event of an emergency (as defined in Section 12(k)(7) of the Exchange Act), to designate NYSE Arca to receive and process bids and offers and to execute orders on behalf of the NYSE. *See* ''NYSE Contingency Trading Plan in effect for Monday, October 29, 2012,'' (October 28, 2012) (''Market Operations Update''), available at: *http://markets.nyx.com/nyse/trader-updates/view/11503.* The Commission approved NYSE Rule 49 on December 16, 2009. *See* Securities Exchange Act Release No. 61177 (December 16, 2009), 74 FR 68643 (December 28, 2009) (SR–NYSE–2009–105) (approving proposed rule change by the NYSE relating to the designation of NYSE Arca as the NYSE's alternative trading facility in an emergency).

[80] *See, e.g.,* ''A giant storm and the struggle over closing Wall Street,'' October 31, 2012, available at: *http://www.reuters.com/article/2012/10/31/us-storm-sandy-nyse-insight-idUSBRE89T0F920121031. See also, e.g.,* NYSE Closure Statement, *supra* note 78.

[81] *See, e.g.,* ''Storm Over Wall Street Going Dark,'' November 12, 2012, available at: *http://www.tradersmagazine.com/news/storm-over-wall-street-going-dark-110526-1.html.*

[82] *See id. See also http://www.sifma.org/services/bcp/industry-testing.*

[83] *See id.* and NYSE Floor Closure Statement, *supra* note 78.

[84] Each of these terms is discussed in detail in Section III.B.1 below.

[85] *See infra* Section III.B.2 for a discussion of the proposed definitions of SCI systems and SCI security systems.

Establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, SCI security systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets; (2) establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems operate in the manner intended; (3) respond to SCI events with appropriate corrective action; (4) report SCI events to the Commission and submit follow-up reports, as applicable; (5) disseminate information regarding certain SCI events to members or participants of the SCI entity; (6) report material systems changes to the Commission; (7) conduct an SCI review of its systems not less than once each calendar year; (8) submit certain periodic reports to the Commission, including a report of the SCI review, together with any response by senior management; (9) mandate participation by designated members or participants in scheduled testing of the operation of the SCI entity's business continuity and disaster recovery plans, including backup systems, and coordinate such testing on an industry- or sector-wide basis [86] with other SCI entities; and (10) make, keep, and preserve records relating to the matters covered by Regulation SCI, and provide them to Commission representatives upon request. The proposal also would require that an SCI entity submit all required written notifications and reports to the Commission electronically using new proposed Form SCI.

III. Proposed Regulation SCI

A. Overview

The purpose of proposed Regulation SCI is to enhance the Commission's regulatory supervision of SCI entities and thereby further the goals of the national market system by helping to ensure the capacity, integrity, resiliency, availability, and security, and enhance compliance with federal securities laws and regulations, of automated systems relating to the U.S. securities markets through the formalization of standards to which their automated systems would be held, and a regulatory framework for ensuring more effective Commission oversight of these systems. Proposed Rule 1000(a) sets forth several definitions designed to establish the scope of the new rule. Proposed Rule 1000(b) sets forth the obligations that would be imposed on SCI entities with respect to systems and systems issues. Proposed Rules 1000(c)-(f) set forth recordkeeping and electronic filing requirements and address certain other related matters.

B. Proposed Rule 1000(a): Definitions Establishing the Scope of Regulation SCI

A series of definitions set forth in proposed Rule 1000(a) relate to the scope of proposed Regulation SCI. These include the definitions for ''SCI entity,'' ''SCI systems,'' ''SCI security systems,'' ''SCI event,'' ''systems disruption,'' ''systems compliance issue,'' ''systems intrusion,'' ''dissemination SCI event,'' and ''material systems change.''

1. SCI Entities

Although the ARP policy statements are rooted in Exchange Act requirements, the ARP Inspection Program has developed without the promulgation of Commission rules applicable to SROs or plan processors. Under the ARP Inspection Program, Commission staff conducts inspections of SROs to assess the capacity, integrity, resiliency, availability, and security of their systems. These inspections also have historically included the systems of entities that process and disseminate quotation and transaction data on behalf of the Consolidated Tape Association System (''CTA Plan''), Consolidated Quotation System (''CQS Plan''), Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq UTP Plan''), and Options Price Reporting Authority (''OPRA Plan'').[87] The ARP Inspection Program has also included one exempt clearing agency.[88] Pursuant to Rule 301(b)(6) of Regulation ATS, certain aspects of the ARP policy statements apply mandatorily to significant-volume ATSs, as they are currently defined under Regulation ATS.[89] However, because no ATSs currently meet the significant-volume thresholds specified in Rule 301(b)(6) of Regulation ATS,[90] compliance with the ARP Inspection Program is not mandatory at this time for any ATS.[91] Proposed Regulation SCI would provide mandatory uniform requirements for ''SCI entities.'' Proposed Rule 1000(a) would define ''SCI entity'' as an ''SCI self-regulatory organization, SCI alternative trading system, plan processor, or exempt clearing agency subject to ARP.'' The proposed rule also would define each of these terms for the purpose of designating specifically the entities that the Commission preliminarily believes should be subject to the rule.

Proposed Rule 1000(a) would define the term ''SCI self-regulatory organization.'' The definition of ''SCI self-regulatory organization,'' or ''SCI SRO,'' would be consistent with the definition of ''self-regulatory organization'' set forth in Section 3(a)(26) of the Exchange Act,[92] and

[86] *See infra* Section III.C.7 for a discussion of the terms industry-wide and sector-wide.

[87] *See* ARP I Release, *supra* note 1, at n. 8 and n. 17. Each of the CTA Plan, CQS Plan, Nasdaq UTP Plan, and OPRA Plan, is a ''national market system plan'' (''NMS Plan'') as defined under Rule 600(a)(43) of Regulation NMS under the Exchange Act, 17 CFR 242.600(a)(43). Rule 600(a)(55) of Regulation NMS under the Exchange Act, 17 CFR 242.600(a)(55), defines a ''plan processor'' as ''any self-regulatory organization or securities information processor acting as an exclusive processor in connection with the development, implementation and/or operation of any facility contemplated by an effective national market system plan.'' Section 3(a)(22)(B) of the Exchange Act, 15 U.S.C. 78c(22)(B), defines ''exclusive processor'' to mean ''any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic system operated or controlled by such association.''

As a processor involved in collecting, processing, and preparing for distribution transaction and quotation information, the processor of each of the CTA Plan, CQS Plan, Nasdaq UTP Plan, and OPRA Plan meets the definition of ''exclusive processor;'' and because each acts as an exclusive processor in connection with an NMS Plan, each also meets the definition of ''plan processor'' under Rule 600(a)(55) of Regulation NMS, as well as proposed Rule 1000(a) of Regulation SCI. For ease of reference, an NMS Plan having a current or future ''plan processor'' is referred to herein as an ''SCI Plan.'' The Commission notes that not every processor of an NMS Plan would be a ''plan processor,'' as proposed to be defined in Rule 1000(a), and therefore not every processor of an NMS Plan would be an SCI entity subject to the requirements of proposed Regulation SCI. For example, the processor of the Symbol Reservation System associated with the National Market System Plan for the Selection and Reservation of Securities Symbols (File No. 4–533) would not be a ''plan processor'' subject to Regulation SCI because it does not meet the ''exclusive processor'' statutory definition, as it is not involved in collecting, processing, and preparing for distribution transaction and quotation information.

[88] *See infra* notes 133–135 and accompanying text.

[89] *See* 17 CFR 242.301(b)(6). *See also supra* note 26.

[90] 17 CFR 242.301(b)(6).

[91] One ATS currently participates voluntarily in the ARP Inspection Program, though, in the past, other ATSs have also participated in the ARP Inspection Program.

[92] *See* 15 U.S.C. 78c(a)(26): ''The term 'self-regulatory organization' means any national

would cover all national securities exchanges registered under Section 6(b) of the Exchange Act,[93] registered securities associations,[94] registered clearing agencies,[95] and the Municipal Securities Rulemaking Board (''MSRB'').[96] The definition would, however, exclude an exchange that lists or trades security futures products that is notice-registered with the Commission as a national securities exchange pursuant to Section 6(g) of the Exchange Act, as well as any limited purpose national securities association registered with the Commission pursuant to Exchange Act Section 15A(k).[97] Accordingly, the definition of SCI SRO in proposed Rule 1000(a) would mandate that all national securities exchanges registered under Section 6(b) of the Exchange Act, all registered securities associations, all registered clearing agencies, and the MSRB, comply with Regulation SCI.[98]

Proposed Rule 1000(a) would define the term ''SCI alternative trading system,'' or ''SCI ATS,'' as an alternative trading system, as defined in § 242.300(a), which during at least four of the preceding six calendar months, had: (1) With respect to NMS stocks—(i) five percent or more in any single NMS stock, and 0.25 percent or more in all NMS stocks, of the average daily dollar volume reported by an effective transaction reporting plan, or (ii) one percent or more, in all NMS stocks, of the average daily dollar volume reported by an effective transaction reporting plan; (2) with respect to equity securities that are not NMS stocks and for which transactions are reported to a self-regulatory organization, five percent or more of the average daily dollar volume as calculated by the self-regulatory organization to which such transactions are reported; or (3) with respect to municipal securities or corporate debt securities, five percent or more of either—(i) the average daily dollar volume traded in the United States, or (ii) the average daily transaction volume traded in the United States.[99]

As proposed, ATSs would be covered if they met the proposed thresholds for at least four of the preceding six months, which the Commission preliminarily believes is an appropriate time period over which to evaluate the trading volume of an ATS.[100] The Commission preliminarily believes that this time period would help ensure that the standards are not so low as to capture ATSs whose volume would still be considered relatively low, but, for example, that may have had an anomalous increase in trading on a given day or small number of days.

The proposed definition would modify the thresholds currently appearing in Rule 301(b)(6) of Regulation ATS that apply to significant-volume ATSs.[101] Specifically, the proposed definition would: Use average daily dollar volume thresholds, instead of an average daily share volume threshold, for ATSs that trade NMS stocks or equity securities that are not NMS stocks (''non-NMS stocks''); use alternative average daily dollar and transaction volume-based tests for ATSs that trade municipal securities or corporate debt securities; lower the volume thresholds applicable to ATSs for each category of asset class; and move the proposed thresholds to Rule 1000(a) of proposed Regulation SCI. In particular, with respect to NMS stocks, the Commission proposes to

securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of sections 19(b), 19(c), and 23(b) of this title) the Municipal Securities Rulemaking Board established by section 15B of this title.'' *See infra* note 96.

[93] Currently, these registered national securities exchanges are: (1) BATS; (2) BATS–Y; (3) BOX; (4) CBOE; (5) C2; (6) CHX; (7) EDGA; (8) EDGX; (9) ISE; (10) MIAX; (11) Nasdaq OMX BX; (12) Nasdaq OMX Phlx; (13) Nasdaq; (14) NSX; (15) NYSE; (16) NYSE MKT; and (17) NYSE Arca.

[94] FINRA is the only registered national securities association.

[95] Currently, there are seven clearing agencies (Depository Trust Company (''DTC''); Fixed Income Clearing Corporation (''FICC''); National Securities Clearing Corporation (''NSCC''); Options Clearing Corporation (''OCC''); ICE Clear Credit; ICE Clear Europe; and CME) with active operations that are registered with the Commission. *See also infra* notes 133–135 and accompanying text. The Commission notes that it recently adopted Rule 17Ad–22, which requires registered clearing agencies to have effective risk management policies and procedures in place. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012). Among other things, Rule 17Ad–22(d)(4) requires that registered clearing agencies ''[i]dentify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures; implement systems that are reliable, resilient and secure, and have adequate, scalable capacity; and have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations.'' In its adopting release, the Commission stated that Rule 17Ad–22(d)(4) ''* * * complements the existing guidance provided by the Commission in its Automation Review Policy Statements and the Interagency White Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System.'' Similarly, the Commission preliminarily believes that proposed Regulation SCI, to the extent it addresses areas of risk management similar to those addressed by Rule 17Ad–22(d)(4), complements Rule 17Ad–22(d)(4). *See also infra* note 203.

[96] 15 U.S.C. 78c(a)(26). *See also supra* note 92. Historically, the ARP Inspection Program has not included the MSRB, but instead has focused on entities having trading, quotation and transaction reporting, and clearance and settlement systems more closely connected to the equities and options markets. In considering the entities that should be subject to proposed Regulation SCI, the Commission preliminarily believes that it would be appropriate to apply proposed Regulation SCI to all SROs (subject to the exception noted in *infra* note 97), of which the MSRB is one, particularly given the fact that the MSRB is the only SRO relating to municipal securities and is the sole provider of consolidated market data for the municipal securities market. Specifically, in 2008, the Commission amended Rule 15c2–12 to designate the MSRB as the single centralized disclosure repository for continuing municipal securities disclosure. In 2009, the MSRB established the Electronic Municipal Market Access system (''EMMA''). EMMA now serves as the official repository of municipal securities disclosure, providing the public with free access to relevant municipal securities data, and is the central database for information about municipal securities offerings, issuers, and obligors. Additionally, the MSRB's Real-Time Transaction Reporting System (''RTRS''), with limited exceptions, requires municipal bond dealers to submit transaction data to the MSRB within 15 minutes of trade execution, and such near real-time post-trade transaction data can be accessed through the MSRB's EMMA Web site. While pre-trade price information is not as readily available in the municipal securities market, the Commission's Report on the Municipal Securities Market also recommends that the Commission and MSRB explore the feasibility of enhancing EMMA to collect best bids and offers from material ATSs and make them publicly available on fair and reasonable terms. *See* Report on the Municipal Securities Market (July 31, 2012), available at: *http://www.sec.gov/news/studies/2012/munireport073112.pdf.*

[97] *See* 15 U.S.C. 78f(g); 15 U.S.C. 78*o*–3(k). These entities are security futures exchanges and the National Futures Association, for which the CFTC serves as their primary regulator. The Commission preliminarily believes that it would be appropriate to defer to the CFTC regarding the systems integrity of these entities.

[98] For any SCI SRO that is a national securities exchange, any facility of such national securities exchange, as defined in Section 3(a)(2) of the Exchange Act, 15 U.S.C. 78c(a)(2), also would be covered because such facilities are included within the definition of ''exchange'' in Section 3(a)(1) of the Exchange Act, 15 U.S.C. 78c(a)(1).

[99] Proposed Regulation SCI includes specific quantitative requirements, such as proposed Rule 1000(a), which would include numerical thresholds in the definition of SCI ATS. The Commission recognizes that the specificity of each such quantitative threshold could be read by some to imply a definitive conclusion based on quantitative analysis of that threshold and its alternatives. The numerical thresholds in the definition of SCI ATS have not been derived from econometric or mathematical models. Instead, they reflect a preliminary assessment by the Commission, based on qualitative and some quantitative analysis, of the likely economic consequences of the specific quantitative thresholds proposed to be included in the definition. There are a number of challenges presented in conducting such a quantitative analysis in a robust fashion as discussed in this section. Accordingly, the selection of the particular quantitative thresholds for the definition of SCI ATS reflects a qualitative and preliminary quantitative assessment by the Commission regarding the appropriate thresholds. In making such assessments and, in turn, selecting the proposed quantitative thresholds, the Commission has reviewed data from OATS and other sources. The Commission emphasizes that it invites comment, including relevant data and analysis, regarding all aspects of the various quantitative standards reflected in the proposed rules.

[100] The proposed measurement period would remain unchanged from the period currently in Rule 301(b)(6) of Regulation ATS.

[101] 17 CFR 242.301(b)(6). *See also supra* note 26.

change the volume threshold from 20 percent of average daily volume in any NMS stock such that an ATS that trades NMS stocks that meets either of the following two alternative threshold tests would be subject to the requirements of proposed Regulation SCI: (i) Five percent or more in any NMS stock, and 0.25 percent or more in all NMS stocks, of the average daily dollar volume reported by an effective transaction reporting plan; or (ii) one percent or more, in all NMS stocks, of the average daily dollar volume reported by an effective transaction reporting plan. This change is designed to ensure that proposed Regulation SCI is applied to an ATS that could have a significant impact on the NMS stock market as a whole, as well as an ATS that could have a significant impact on a single NMS stock and some impact on the NMS stock market as a whole at the same time.[102] Specifically, by imposing both a single NMS stock threshold and an all NMS stocks threshold in (i) above, proposed Regulation SCI would not apply to an ATS that has a large volume in a small NMS stock and little volume in all other NMS stocks. Based on data collected from FINRA's Order Audit Trail System (''OATS data'') for one week of trading in May 2012,[103] the Commission preliminarily believes that approximately 10 ATSs trading NMS stocks would exceed the proposed thresholds and fall within the definition of SCI entity, accounting for approximately 87 percent of the dollar volume market share of all ATSs trading NMS stocks.

The Commission notes that its analysis of the OATS data does not reveal an obvious threshold level above which a particular subset of ATSs may be considered to have a significant impact on individual NMS stocks or the overall market, as compared to another subset of ATSs. The Commission preliminarily believes that inclusion of the proposed dual dollar volume threshold is appropriate to help prevent an ATS from avoiding the requirements of proposed Regulation SCI by circumventing one of the two threshold tests. The Commission also preliminarily believes that a threshold that accounts for 87 percent of the dollar volume market share of all ATSs trading NMS stocks is a reasonable level that would not exclude new entrants to the ATS market.[104] Moreover, the Commission preliminarily believes the proposed thresholds would appropriately include ATSs having NMS stock dollar volume comparable to the NMS stock dollar volume of the equity exchanges that are SCI SROs and therefore covered by proposed Regulation SCI.[105]

Since the time that the Commission originally adopted Regulation ATS, the equity markets have evolved significantly, resulting in an increase in the number of trading centers and a reduction in the concentration of trading activity.[106] As such, even smaller trading centers, such as certain ATSs, now collectively represent a significant source of liquidity for NMS stocks and, by comparison, no single registered securities exchange executes more than 20 percent of volume in NMS stocks.[107] Given these developments in market structure, the Commission preliminarily believes that setting the average daily dollar volume threshold for NMS stocks at five percent in any NMS stock and 0.25 percent in all NMS stocks, or one percent in all NMS stocks, is appropriate to help ensure that entities that have determined to participate (in more than a limited manner) in the national market system as markets that bring buyers and sellers together, are subject to the requirements of proposed Regulation SCI. In addition, the Commission preliminarily believes that it is appropriate to propose average daily dollar volume thresholds for NMS stocks, rather than average daily share volume thresholds, because, by using dollar volume, the price level of a stock will not skew an ATS's inclusion or exclusion from the definition of SCI entity, as may be the case when using share volume, and the use of dollar thresholds may better reflect the economic impact of trading activity.[108]

In sum, the Commission preliminarily believes that the proposed dollar volume thresholds for NMS stocks would further the goals of the national market system by ensuring that ATSs that meet the thresholds are subject to the same baseline standards as other SCI entities for systems capacity, integrity, resiliency, availability, and security.

With respect to non-NMS stocks, municipal securities, and corporate debt securities, the Commission is proposing to lower the current thresholds in Rule 301(b)(6) of Regulation ATS. Specifically, the Commission is proposing to reduce the standard from 20 percent to five percent for these types of securities,[109] the same percentage threshold for such types of securities that triggers the fair access provisions of Rule 301(b)(5) of Regulation ATS.[110] The Commission preliminarily believes that ATSs that trade non-NMS stocks, municipal securities, and corporate debt securities above the proposed

[102] Under the proposed thresholds, inactive ATSs would not be included in the definition of SCI ATS.

The Commission has considered barriers to entry and the promotion of competition in setting the threshold (*see* discussion at *infra* Section V.C.4.b) such that new ATSs trading NMS stocks would be able to commence operations without, at least initially, being required to comply with—and thereby not incurring the costs associated with—proposed Regulation SCI. If the proposed thresholds are adopted, a new ATS could engage in limited trading in any one NMS stock or all NMS stocks, until it reached an average daily dollar volume of five percent or more in any one NMS stock and 0.25 percent or more in all NMS stocks, or one percent in all NMS stocks, over four of the preceding six months. Because a new ATS could begin trading in NMS stocks for at least three months (*i.e.,* less than four of the preceding six months), and conduct such trading at any dollar volume level without being subject to proposed Regulation SCI, and would have to exceed the specified volume levels for the requisite period to become so subject, the Commission preliminarily believes that these proposed thresholds should not prevent a new ATS entrant from having the opportunity to initiate and develop its business.

[103] Commission staff analyzed OATS data for the week of May 7–11, 2012, a week with average market activity and no holidays or shortened trading days, and thus intended to be a representative trading week. However, because the OATS data analysis does not consider trading volume over a six-month period and does not base the threshold test on four out of the preceding six calendar months as prescribed in proposed Rule 1000(a), it may overestimate the number of ATSs that would meet the proposed thresholds. For example, a large block trade during a single week could skew an ATS's numbers upward from what would be observed over the course of the four months with the highest volumes during a six-month period, particularly with respect to the proposed single-stock threshold. In addition, because the OATS data does not identify all ATSs and does not identify some ATSs uniquely, some ATSs may not be accounted for in the estimated number of ATSs that would meet the proposed threshold. Nevertheless, the Commission believes the analysis of OATS data offers useful insights.

[104] The Commission preliminarily believes that the remaining 13 percent of the dollar volume of all ATSs trading NMS stocks is limited to trading conducted on small and new ATSs. *See also supra* note 102.

[105] For example, based on trade and quotation data published by NYSE Euronext for the period July 1, 2012 through December 31, 2012, the national securities exchanges with the smallest market shares in NMS stocks (based on average daily dollar volume) had market shares slightly above and, in one case, below, the proposed 0.25 percent threshold in all NMS stocks (the market shares of CBOE, NSX, and NYSE MKT were approximately 0.44 percent, 0.27 percent, and 0.06 percent, respectively). Further, all national securities exchanges that trade NMS stocks had at least 5 percent or more of the average daily dollar volume in at least one NMS stock, with most exceeding such threshold for multiple NMS stocks.

[106] *See supra* notes 47–51 and accompanying text.

[107] *See supra* note 47.

[108] For example, if a threshold is based on the average daily share volume in all NMS stocks, an ATS that transacts in a stock that has recently been through a stock split could experience a significant increase in its share volume (or, for reverse stock splits, a decrease in its share volume), whereas the dollar value transacted would remain the same.

[109] *See* proposed Rule 1000(a). As discussed in this Section III.B.1, the thresholds in proposed Rule 1000(a) would be based on average daily dollar or transaction volume.

[110] *See* Rule 301(b)(5) of Regulation ATS under the Exchange Act. 17 CFR 242.301(b)(5).

thresholds are those that play a significant role in the market for such securities and thus preliminarily believes that the proposed thresholds are appropriately designed.

With respect to non-NMS stocks for which transactions are reported to a self-regulatory organization, the Commission proposes to lower the threshold to five percent or more of the average daily dollar volume as calculated by the self-regulatory organization to which such transactions are reported. Using data from the first six months of 2012, the Commission believes that an ATS executing transactions in non-NMS stocks at a level exceeding five percent of the average daily dollar volume traded in the United States would be executing trades at a level exceeding $31 million daily.[111] Based on data collected from Form ATS–R for the second quarter of 2012, the Commission estimates that two ATSs would exceed this threshold and fall within the definition of SCI entity. The Commission requests comment on the accuracy of these estimates.

With respect to municipal securities and corporate debt securities, the Commission proposes to lower the threshold to five percent or more of either: (i) The average daily dollar volume [112] traded in the United States; or (ii) the average daily transaction volume traded in the United States. The Commission preliminarily believes that this two-pronged threshold is appropriate for the debt market, as it should capture both ATSs that are focused on retail orders and facilitate a relatively greater number of trades with relatively lower dollar values, as well as those ATSs that are focused on institutional orders and facilitate a relatively lower number of trades with relatively greater dollar values. The Commission preliminarily believes that both of these thresholds are important in identifying ATSs that play a significant role in the debt markets for executing both retail- and institutional-sized trades.[113]

Using data from the first six months of 2012, the Commission believes that an ATS executing transactions in municipal securities at a level exceeding five percent of the average daily dollar volume traded in the United States would be executing trades at a level of at least approximately $550 million daily,[114] and that an ATS executing transactions in municipal securities at a level exceeding five percent of the average daily transaction volume traded in the United States would be executing an average of at least approximately 1,900 transactions daily.[115] Based on data collected from Form ATS–R for the second quarter of 2012, the Commission preliminarily believes that currently no ATSs executing transactions in municipal securities would exceed the proposed average daily dollar volume threshold and fall within the definition of SCI entity pursuant to that proposed prong. ATSs are not required to report transaction volume data for municipal securities on Form ATS–R. However, based on discussions with industry sources, the Commission preliminarily believes that three ATSs executing transactions in municipal securities would likely exceed the proposed average daily transaction volume threshold.[116] The Commission requests comment on the accuracy of these estimates.

Using data from the first six months of 2012, the Commission believes that an ATS executing transactions in corporate debt at a level exceeding five percent of the average daily dollar volume traded in the United States would be executing trades at a level of at least approximately $900 million daily,[117] and that an ATS executing transactions in corporate debt at a level exceeding five percent of the average daily transaction volume traded in the United States would be executing an average of at least approximately 2,100 transactions daily.[118] Based on data collected from Form ATS–R for the second quarter of 2012, the Commission preliminarily believes that currently no ATSs executing transactions in corporate debt would exceed the proposed average daily dollar volume threshold and fall within the definition of SCI entity pursuant to that proposed prong. ATSs are not required to report transaction volume data for corporate debt on Form ATS–R. However, based on discussions with industry sources, the Commission preliminarily believes that three ATSs executing transactions in corporate debt would likely exceed the proposed average daily transaction volume threshold.[119] The Commission requests comment on the accuracy of these estimates.

The Commission is proposing these numerical thresholds as a preliminary best estimate of when a market is of sufficient significance to the trading of the relevant asset class (*i.e.,* NMS stocks, non-NMS stocks, municipal securities, and corporate debt securities) as to warrant the protections and obligations of proposed Regulation SCI. As noted

[111] Source: Data provided by OTC Markets.

[112] As with the proposed measures for ATSs that trade NMS stocks or non-NMS stocks, the Commission is proposing to use average daily dollar volume for debt securities, which the Commission preliminarily believes is the measure most commonly used when analyzing daily trading volume in the debt markets.

[113] Most corporate and municipal bond trades are small (*i.e.,* less than $100,000), but small trades do not account for most of the dollar volume in these markets. *See, e.g.,* Edwards, Amy K., Harris, Lawrence and Piwowar, Michael S., *Corporate Bond Market Transaction Costs and Transparency,* Journal of Finance, Vol. 62, No. 3 (June 2007) and Lawrence E. Harris and Michael S. Piwowar, *Secondary Trading Costs in the Municipal Bond Market,* J.FIN. (June 2006). An ATS that specializes in large trades may account for a small portion of the trades but a large portion of the dollar volume. Likewise, an ATS that specializes in small trades may account for a small portion of the dollar volume but a large portion of the trades. Therefore, a systems disruption, systems compliance issue, or systems intrusion in either of these ATS types could potentially disrupt a large portion of the market.

As the Commission stated in the ATS Release, ''many of the same concerns about the trading of equity securities on alternative trading systems apply equally to the trading of fixed income securities on alternative trading systems. Specifically, it is important that markets with significant portions of the volume in particular instruments have adequate systems capacity, integrity, and security, regardless of whether those instruments are equity securities or debt securities. Similarly, as electronic systems for debt grow, it will become increasingly important for the fair operation of our markets for market participants to have fair access to significant market centers in debt securities. One of the consequences of the growing role of alternative trading systems in the securities markets generally is that debt securities are increasingly being traded on these systems, similar to the way equity securities are traded.'' *See* ATS Release, *supra* note 2, at 70862.

[114] For the period of January 1, 2012 to June 30, 2012, the average daily dollar volume of trades was over $11 billion. *See http://emma.msrb.org/marketactivity/ViewStatistics.aspx* (accessed January 30, 2013). Five percent of this amount is approximately $550 million.

[115] For the period of January 1, 2012 to June 30, 2012, the average daily transaction volume was approximately 39,000. *See http://emma.msrb.org/marketactivity/ViewStatistics.aspx* (accessed January 30, 2013). Five percent of this amount is approximately 1,900 trades.

[116] *See, e.g.,* the Commission's *Report on the Municipal Securities Market, supra* note 96 at n.715. The Commission preliminarily believes that the three ATSs that would likely exceed the proposed average daily transaction volume threshold for municipal securities are the same three ATSs that would likely exceed the corresponding threshold for corporate debt securities. *See infra* note 119.

[117] For the period of January to June 2012, the average daily dollar volume was approximately $18 billion. Five percent of this amount is approximately $900 million. *See* U.S. Bond Market Trading Volume, available at: *http://www.sifma.org/research/statistics.aspx.*

[118] Source: Corporate bond transactions reported to TRACE from January through June 2012, excluding instruments subject to Rule 144A and April 6, 2012 (short trading day).

[119] As noted above, the Commission preliminarily believes that the three ATSs that would likely exceed the proposed average daily transaction volume threshold for corporate debt securities are the same three ATSs that would likely exceed the corresponding threshold for municipal securities. *See supra* note 116.

above,[120] the numerical thresholds in the definition of SCI ATS have not been derived from econometric or mathematical models. Instead, they reflect a preliminary assessment by the Commission, based on qualitative and some quantitative analysis, of the likely economic consequences of the specific quantitative thresholds proposed to be included in the definition. The Commission recognizes that there may reasonably be differing views as to what the threshold levels for inclusion should be and thus the Commission solicits comment on the appropriateness of the proposed threshold levels.

The Commission recognizes that it is proposing numerically higher thresholds for non-NMS stocks, municipal securities, and corporate debt securities as compared to NMS stocks (five percent, as compared to one percent in all NMS stocks). While the Commission preliminarily believes that similar concerns about the trading of NMS stocks on ATSs apply to the trading of non-NMS stocks and debt securities on ATSs (namely, that markets with significant portions of the volume in particular instruments have adequate systems capacity, integrity, resiliency, availability, and security), the Commission notes that it has traditionally provided special safeguards with regard to NMS stocks in its rulemaking efforts relating to market structure.[121]

Further, in part due to the greater availability of, and reliance on, electronic trading for NMS stocks, the trading of such securities is generally more accessible to a wider range of investors and has resulted in increases in electronic trading volumes relative to 15 years ago, as compared to other markets, such as the debt markets, which still largely rely on manual trading. Because the degree of automation and electronic trading is generally lower in markets that trade non-NMS stocks and debt securities than in the markets that trade NMS stocks, the Commission preliminarily believes that a systems issue at an SCI entity that trades non-NMS stocks or debt securities would not have as significant an impact as readily as a systems issue at an SCI entity that trades NMS stocks. Therefore, the Commission preliminarily believes there is less need in the markets for those securities for more stringent thresholds that would trigger the requirements of proposed Regulation SCI.[122] For example, the most recent widely publicized issues involving systems problems and disruptions in the securities markets have generally all been related to NMS stocks.[123] The Commission also believes that imposition of a threshold that is set too low in markets that lack automation could have the unintended effects of discouraging automation in these markets and discouraging new entrants into these markets. For these reasons, the Commission preliminarily believes that it is appropriate at this time to apply a different threshold to ATSs trading NMS stocks than those ATSs trading non-NMS stocks, municipal securities, and corporate debt securities.

Under Proposed Rule 1000(a), the term ''plan processor'' would have the meaning set forth in Rule 600(b)(55) of Regulation NMS, which defines ''plan processor'' as ''any self-regulatory organization or securities information processor acting as an exclusive processor in connection with the development, implementation and/or operation of any facility contemplated by an effective national market system plan.'' [124] As noted above, the ARP Inspection Program has developed to include the systems of the plan processors of the four current SCI Plans.[125] Any entity selected as the processor of an SCI Plan is responsible for operating and maintaining computer and communications facilities for the receipt, processing, validating, and dissemination of quotation and/or last sale price information generated by the members of such plan.[126] Although an entity selected as the processor of an SCI Plan acts on behalf of a committee of SROs, such entity is not required to be an SRO, nor is it required to be owned or operated by an SRO.[127] The Commission believes, however, that the systems of such entities, because they deal with key market data, form the ''heart of the national market system,'' [128] and should be subject to the same systems standards as SCI SROs, and proposes to include ''plan processors'' in the definition of SCI entity.[129]

Pursuant to its terms, each SCI Plan is required to periodically review its selection of its processor, and may in the future select a different processor for the SCI Plan than its current processor.[130] The proposed inclusion of ''plan processors'' in the definition of SCI entity is designed to ensure that the processor for an SCI Plan, regardless of its identity, is independently subject to the requirements of proposed Regulation SCI. Thus, the proposed definition would cover any entity selected as the processor for a current or future SCI Plan.[131] The Commission preliminarily believes that it is important for such plan processors to be subject to the requirements of proposed Regulation SCI because of the important role they serve in the national market system: Operating and maintaining computer and communications facilities for the receipt, processing, validating, and dissemination of quotation and/or last sale price information generated by the members of the plan.[132]

Under proposed Rule 1000(a), the term ''exempt clearing agency subject to ARP'' would mean ''an entity that has received from the Commission an exemption from registration as a clearing agency under Section 17A of the Act, and whose exemption contains conditions that relate to the Commission's Automation Review Policies, or any Commission regulation that supersedes or replaces such policies.'' This proposed definition of

[120] *See supra note* 99.

[121] *See, e.g.,* Regulation NMS, 17 CFR 242.600–612; Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 27496 (June 29, 2005).

[122] *See also* discussion in *infra* Section V.C.3.c.

[123] *See, e.g., supra* notes 61–66 and accompanying text.

[124] *See* 17 CFR 242.600(b)(55).

[125] *See supra* note 87, defining the term ''SCI Plan'' and discussing plan processors.

[126] *See, e.g.,* CTA Plan Section V(d) and CQS Plan Section V(d), available at: *http://www.nyxdata.com/cta; see also* OPRA Plan, Section V, available at: *http://www.opradata.com/pdf/opra_plan.pdf;* and Nasdaq UTP Plan Section IV, available at: *http://www.utpplan.com.*

[127] Pursuant to Section 11A of the Exchange Act (15 U.S.C. 78k–1), and Rule 609 of Regulation NMS thereunder (17 CFR 242.609), such entities, as ''exclusive processors,'' are required to register with the Commission as securities information processors on Form SIP. *See* 17 CFR 249.1001 (Form SIP, application for registration as a securities information processor or to amend such an application or registration).

[128] *See* Concept Release on Equity Market Structure, *supra* note 42, at 3600 (quoting H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 93 (1975)).

[129] *See supra* note 87.

[130] *See* CTA Plan Section V(d) and CQS Plan Section V(d), available at: *http://www.nyxdata.com/cta;* OPRA Plan Section V, available at: *http://www.opradata.com/pdf/opra_plan.pdf;* and Nasdaq UTP Plan Section V, available at: *http://www.utpplan.com.*

[131] Currently, the Securities Industry Automation Corporation (''SIAC'') is the processor for the CTA Plan, CQS Plan, and OPRA Plan and Nasdaq is the processor for the Nasdaq UTP Plan. SIAC is wholly owned by NYSE Euronext. Both SIAC and Nasdaq are registered with the Commission as securities information processors, as required by Section 11A(b)(1) of the Exchange Act, 15 U.S.C. 78k-1(b)(1), and in accordance with Rule 609 of Regulation NMS thereunder, 17 CFR 242.609. The Commission preliminarily believes that the proposed definition of plan processor also would include any entity selected and acting as exclusive processor of a future NMS plan, such as that contemplated by the Commission's rules to create a consolidated audit trail. *See* Securities Exchange Act No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012) (''Consolidated Audit Trail Adopting Release'').

[132] *See supra* note 126 and accompanying text.

''exempt clearing agency subject to ARP'' presently would apply to one entity, Global Joint Venture Matching Services—US, LLC (''Omgeo'').[133]

Among the operational conditions required by the Commission in the Omgeo Exemption Order were several that directly related to the ARP policy statements.[134] For the same reasons that it required Omgeo to abide by the conditions relating to the ARP policy statements set forth in the Omgeo Exemption Order, the Commission preliminarily believes it would be appropriate that Omgeo (or any similarly situated exempt clearing agency) should be subject to the requirements of proposed Regulation SCI, and thus is proposing to include any ''exempt clearing agency subject to ARP'' as explained above, within the definition of SCI entity.[135]

Request for Comment

1. The Commission requests comment generally on the proposed definition of SCI entity and its constituent parts. Do commenters believe that entities of the type that would satisfy the proposed definition of SCI entity play significant roles in the U.S. securities markets such that they should be subject to proposed Regulation SCI? Why or why not?

2. Do commenters believe the scope of the proposed definition of SCI SRO is appropriate? Does the proposed definition of SCI SRO include types of entities that should not be subject to the proposed requirements, or exclude types of entities that should be subject to the proposed requirements? If so, please identify such types of entities and explain why they should or should not be included in the definition of SCI entity or SCI SRO. Should the definition of ''SCI self-regulatory organization'' include exchanges notice-registered with the Commission pursuant to 15 U.S.C. 78f(g) or a limited purpose national securities association registered with the Commission pursuant to 15 U.S.C. 78*o*–3(k)? Do commenters believe that it is appropriate to defer to the CFTC regarding the systems compliance and integrity of such entities? Why or why not?

3. Do commenters believe that the proposed definition of ''SCI alternative trading system'' is appropriate? Why or why not? Do commenters believe that the proposed volume thresholds for the different asset classes under the proposed definition of SCI ATS are appropriate? Specifically, are the proposed average daily dollar volume thresholds of five percent or more in any NMS stock and 0.25 percent or more in all NMS stocks, or one percent or more in all NMS stocks, appropriate? Would higher or lower daily dollar volume thresholds for NMS stocks be more appropriate?[136] Please explain and provide data in support. Alternatively, would a different threshold measurement be more appropriate (*e.g.,* transaction volume, share volume, etc.)? If so, which and at what threshold level?[137] Please explain and provide data in support.

4. The Commission notes that, unlike the threshold levels applicable to NMS stocks currently in Rule 301(b)(6) of Regulation ATS, the proposed thresholds for NMS stocks are based on average daily dollar volume in an individual NMS stock and/or all NMS stocks. Do commenters believe that these are appropriate standards? Why or why not? If not, what should be the appropriate standard, and why? Do commenters believe the proposed thresholds of five percent or more in any NMS stock and 0.25 percent or more in all NMS stocks would prevent a situation in which an ATS that has a large volume in one NMS stock and little volume in other NMS stocks would be covered by proposed Regulation SCI? How common is it for an ATS to trade illiquid NMS stocks without also trading more liquid NMS stocks? Please provide any data relevant to this question.

5. Should the SCI ATS thresholds be triggered only with respect to certain NMS stocks, for example, only with respect to the most liquid NMS stocks? If so, how should the Commission define the ''most liquid'' NMS stocks? For example, should the thresholds be triggered only for the 500 most liquid NMS stocks? The 100 most liquid NMS stocks? Another amount? Why or why not? Please describe your reasoning. Further, what would be the appropriate threshold measurement (*e.g.,* average daily share volume, average daily dollar volume, or another measurement)? Please explain.

6. Is the proposed five percent threshold level appropriate for non-NMS stocks, municipal securities (approximately $550 million in daily dollar volume or 1,900 in daily transaction volume based on data from the first six months of 2012), and corporate debt securities (approximately $900 million in daily dollar volume or 2,100 in daily transaction volume based

[133] On April 17, 2001, the Commission issued an order granting Omgeo an exemption from registration as a clearing agency subject to certain conditions and limitations in order that Omgeo might offer electronic trade confirmation and central matching services. *See* Global Joint Venture Matching Services—US, LLC; Order Granting Exemption from Registration as a Clearing Agency, Securities Exchange Act Release No. 44188 (April 17, 2001), 66 FR 20494 (April 23, 2001) (File No. 600–32) (''Omgeo Exemption Order''). Because the Commission granted it an exemption from clearing agency registration, Omgeo is not a self-regulatory organization. *See id.* at 20498, n.41.

[134] These conditions required Omgeo to, among other things: Provide the Commission with an audit report addressing all areas discussed in the Commission ARP policy statements; provide annual reports prepared by competent, independent audit personnel in accordance with the annual risk assessment of the areas set forth in the ARP policy statements; report all significant systems outages to the Commission; provide advance notice of any material changes made to its electronic trade confirmation and central matching services; and respond and require its service providers to respond to requests from the Commission for additional information relating to its electronic trade confirmation and central matching services, and provide access to the Commission to conduct inspections of its facilities, records and personnel related to such services. *See id.*

[135] In the Omgeo Exemption Order, the Commission stated that, ''[b]ecause these conditions are designed to promote interoperability, the Commission intends to require substantially the same conditions of other Central Matching Services that obtain an exemption from registration as a clearing agency.'' *See id.*

[136] For example, based on data from FINRA's Order Audit Trail System, if the threshold were instead to be set at five percent or more in any NMS stock and 0.5 percent or more in all NMS stocks, the Commission preliminarily estimates that approximately nine ATSs would satisfy the thresholds, accounting for approximately 84 percent of the dollar-volume market share of all ATSs trading NMS stocks (*i.e.,* not including NMS stocks traded on SROs). If the threshold were instead to be set at five percent or more in any NMS stock and one percent or more in all NMS stocks, the Commission preliminarily estimates that approximately three ATSs would satisfy the thresholds, accounting for approximately 38 percent of the market share. Further, if the threshold were instead to be set at 0.25 percent in all NMS stocks, the Commission preliminarily estimates that approximately ten ATSs would satisfy the threshold. If the threshold were instead to be set at 0.5 percent in all NMS stocks, the Commission preliminarily estimates that approximately nine ATSs would satisfy the threshold.

[137] For example, based on data collected from Form ATS–R for the second quarter of 2012 and consolidated NMS stock share volume from the first six months of 2012, if the threshold were instead to be set at 0.25 percent of average daily NMS stock consolidated share volume, the Commission preliminarily estimates that approximately 15 ATSs would satisfy the threshold, accounting for approximately 14 percent of the total average daily consolidated share volume. If the threshold were instead to be set at 0.5 percent of average daily NMS stock consolidated share volume, the Commission preliminarily estimates that approximately 12 ATSs would satisfy the threshold, accounting for approximately 13 percent of the total average daily consolidated share volume. If the threshold were instead to be set at one percent of average daily NMS stock consolidated share volume, the Commission preliminarily estimates that approximately 6 ATSs would satisfy the threshold, accounting for approximately nine percent of the total average daily consolidated share volume. Based on consolidated NMS stock share volume from the first six months of 2012, the Commission estimates that the equity securities exchanges with the smallest volume each account for approximately 0.2 percent to 0.4 percent of the total average daily consolidated share volume.

on data from the first six months of 2012)? Why or why not? Please explain and provide data in support. If not, what should be the appropriate thresholds and why?

7. As with NMS stocks, the proposed five percent thresholds for non-NMS stocks are to be calculated by reference to daily dollar volume, though the proposed threshold would only be with reference to all such stocks (as opposed to average daily dollar volume in individual NMS stocks and/or all NMS stocks). Do commenters believe that this is the appropriate standard for non-NMS stocks? Why or why not?

8. Do commenters agree with the Commission's assessment that there is less automation among markets that trade non-NMS stocks, municipal securities, and corporate debt securities as compared to markets that trade NMS stocks? Why or why not? What is the current level of automation in these markets?

9. Do commenters believe that there should be different thresholds for NMS stocks than non-NMS stocks, municipal securities, and corporate debt securities? Why or why not? Do commenters believe that the proposed two-pronged thresholds are appropriate for municipal securities and corporate debt securities? Why or why not? Would the proposed two-pronged approach be relevant or appropriate for securities other than municipal and corporate debt securities? Why or why not?

10. Do commenters believe that the Commission's estimates of the current number of ATSs that would meet the proposed thresholds are accurate? Why or why not? If not, please provide any data or estimates that commenters believe would more accurately reflect the number of ATSs that would meet the proposed thresholds.

11. The Commission is also considering whether it should instead adopt a definition for SCI ATS that is based solely on a single type of threshold measurement (such as average daily dollar volume), which would be simpler and provide consistency across different asset classes, rather than the differing types of threshold tests for NMS stocks, non-NMS stocks, municipal securities, and corporate debt securities currently proposed. In particular, the Commission is considering whether it would be appropriate to solely use a threshold based on a percentage of average daily dollar volume for all asset classes. Would a threshold based on a percentage of average daily dollar volume be an appropriate single measure that the Commission should use for all asset classes (*i.e.,* NMS stocks, non-NMS stocks, municipal securities, and corporate debt securities) within the definition of SCI ATS? Why or why not? If so, would it be appropriate for the Commission to adopt the same dollar volume threshold measurement that applies for all of the asset classes? Why or why not? Please explain. If so, what would be an appropriate threshold measurement? For example, would five percent of the asset class's total average daily dollar volume be appropriate? Should the measurement be higher or lower? Please be specific and explain. Or, rather than a threshold measurement that is based on a percentage of the asset class's total average daily dollar volume, would a fixed average daily dollar volume threshold, such as $500 million, be appropriate? If so, should such a threshold be higher or lower than $500 million? Why or why not? Should such a fixed dollar threshold be different for different asset classes? Why or why not? If so, what should such thresholds be for each asset class? Please be specific. What are the advantages and disadvantages of a percentage-based threshold versus a fixed dollar threshold? Please explain.

12. Would it be appropriate for the Commission to adopt a single dollar volume threshold measurement that applies across *all* asset classes? For example, if an ATS trades both municipal securities and corporate debt securities, should its trading volume in both asset classes be aggregated to determine whether it exceeded the threshold measurement? Why or why not?

13. The proposed SCI ATS thresholds are to be calculated by reference to executions ''during at least four of the preceding six calendar months,'' the measurement period and method that is currently used in Regulation ATS. Do commenters believe this is the appropriate time frame and method to be included in Regulation SCI? Why or why not? If not, is there a more appropriate approach? If so, what should it be and why?

14. With respect to calculating the proposed thresholds for securities other than NMS stocks (*i.e.,* non-NMS stocks, municipal securities, and corporate debt securities), would ATSs have available appropriate data with which to determine whether the proposed thresholds have been met? FINRA, through its OTC Reporting Facility and its Trade Reporting and Compliance Engine (''TRACE'') [138] facility, collects data on transactions in non-NMS stocks and corporate debt securities, and the MSRB collects data on transactions in municipal securities. Do commenters believe that FINRA, the MSRB, or another appropriate entity should be required to disseminate data in a format and frequency sufficient to enable ATSs to determine if they have met the proposed thresholds? Is there another mechanism or structure that could provide data in a format and frequency sufficient to enable ATSs to determine whether the proposed thresholds have been met? Please explain.

15. Are there ATSs or types of ATSs that would satisfy the proposed definition of SCI ATS that commenters believe should not be subject to proposed Regulation SCI? If so, please explain. Are there ATSs or types of ATSs that would not satisfy the proposed definition of SCI ATS that commenters believe should be subject to proposed Regulation SCI? If so, please explain. For example, should ATSs that execute transactions in U.S. treasuries and/or repurchase agreements be subject to proposed Regulation SCI? Why or why not? If a parent company owns multiple ATSs for a given asset class (*e.g.,* NMS stocks), should the trading volumes of these ATSs be aggregated for purposes of determining whether the ATSs exceed the proposed thresholds? Why or why not? If so, how should such aggregation work? What are the advantages or disadvantages of such an approach? Please explain.

16. Do commenters believe that, for purposes of Regulation SCI, the proposed definition of plan processor is appropriate? Why or why not? Is it appropriate to limit the definition of plan processor to entities within the meaning of plan processor in Rule 600(b)(55) of Regulation NMS? Why or why not? Do commenters believe the proposed definition is sufficiently clear? Are there any other entities similar to the plan processors of SCI Plans that commenters believe should be made subject to the requirements of proposed Regulation SCI? If so, please describe and explain why.

17. Do commenters believe that the proposed definition of ''exempt clearing agency subject to ARP'' is appropriate? Why or why not? Are there other exempt clearing agencies that should be included in the proposed definition of SCI entity? Why or why not? Is it appropriate to limit the definition of SCI entity with respect to exempt clearing agencies to those with exemptions that

[138] TRACE is an automated system that, among other things, accommodates reporting and dissemination of transaction reports for over-the-counter secondary market transactions in eligible fixed income securities, in accordance with the FINRA Rule 6700 series.

contain conditions that relate to the Commission's Automation Review Policies or any Commission regulation that supersedes or replaces such policies? Why or why not?

18. What are the current practices of the proposed SCI entities with respect to the subject matter covered by the ARP policy statements? How many of them have practices that are consistent with ARP? How do they differ? Please be specific.

2. Definition of SCI Systems and SCI Security Systems

The Commission is proposing that Regulation SCI cover the systems of SCI entities, which would include both SCI systems and, where applicable, SCI security systems. Proposed Rule 1000(a) would define the term ''SCI systems'' to mean ''all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity, whether in production, development, or testing, that directly support trading, clearance and settlement, order routing, market data, regulation, or surveillance,'' and the term ''SCI security systems'' to mean ''any systems that share network resources with SCI systems that, if breached, would be reasonably likely to pose a security threat to SCI systems.''

Thus, for purposes of all of the provisions of proposed Regulation SCI, the proposed definition of SCI systems would cover all systems of an SCI entity that directly support trading, clearance and settlement, order routing, market data, regulation, and surveillance. In addition, the proposed definition of SCI security systems is designed to cover other types of systems if they share network resources with SCI systems and, if breached, would be reasonably likely to pose a security threat to SCI systems. Unlike SCI systems, only certain provisions of proposed Regulation SCI would apply to SCI security systems.[139]

The Commission preliminarily believes that the proposed definition of SCI systems would reach those systems traditionally considered to be core to the functioning of the U.S. securities markets, namely trading, clearance and settlement, order routing, market data, regulation, and surveillance systems.[140] The proposed definition would also apply to, for example, such systems of exchange-affiliated routing brokers that are facilities of national securities exchanges or such systems operated on behalf of national securities exchanges. It would also apply to regulatory systems,[141] including systems for the regulation of the over-the-counter market, systems used to carry out regulatory services agreements, and similar future systems, including the Consolidated Audit Trail repository.[142] In addition, if an SCI entity contracts with a third party to operate its systems (such as those that use execution algorithms) on behalf of the SCI entity, such systems would also be covered by the proposed definition of SCI systems if they directly support trading, clearance and settlement, order routing, market data, regulation, or surveillance. Therefore, systems covered by the proposed definition of SCI systems would not be limited only to those owned by the SCI entity, but also could include those operated by or on behalf of the SCI entity.

Based on Commission staff's experience with the ARP Inspection Program, the Commission believes that some SCI systems of SCI entities may in some cases be highly interconnected with SCI security systems because the SCI systems and SCI security systems share network resources. As a result, the Commission is concerned that a security issue or systems intrusion with respect to SCI security systems would be reasonably likely to cause an SCI event with respect to SCI systems. Because certain SCI security systems of an SCI entity may present likely vulnerable entry points to an SCI entity's network, the Commission preliminarily believes that it is important that the provisions of proposed Regulation SCI relating to security standards and systems intrusions apply to SCI security systems.[143]

The proposed definition of SCI security systems does not identify the types of systems that would be covered, but rather describes them in terms of their connectivity and potential ability to undermine the integrity of SCI systems. However, examples of SCI security systems that could be highly interconnected with SCI systems and therefore be reasonably likely to pose a threat to SCI systems may include systems pertaining to corporate operations (*e.g.,* systems that support web-based services, administrative services, electronic filing, email capability and intranet sites, as well as financial and accounting systems) that are typically accessed by an array of users (*e.g.,* employees or executives of the SCI entity) authorized to view non-public information. In certain cases, such systems would likely offer insight into the vulnerabilities of an SCI entity if they were, for example, accessed by a hacker. The Commission is concerned that the breach of such systems would likely lead to disruption of an SCI entity's general operations and, ultimately, its market-related activities. Similarly, systems by which an SCI entity provides a service to issuers, participants, or clients (*e.g.,* transaction services, infrastructure services, and data services) may be accessed by employees or other representatives of the issuer, participant, or client organization, and may, in some instances, provide a point of access (and thus share network resources) to an SCI entity's SCI systems. Accordingly, the Commission is proposing that the term SCI security systems include any systems that share network resources with SCI systems that, if breached, would be reasonably likely to pose a security threat to SCI systems, but only for the limited provisions of proposed Regulation SCI noted above.[144]

In light of the above concerns, the proposed definitions of SCI systems and SCI security systems together are intended to reach all of the systems that would be reasonably likely to impact an SCI entity's operational capability and the maintenance of fair and orderly markets, rather than reaching solely SCI systems. Because of the dependence of today's securities markets on highly sophisticated electronic trading and other technology, including complex regulatory and surveillance systems, as well as systems relating to clearance and settlement, the provision of market data, and order routing, the Commission preliminarily believes that the proposed definitions of SCI systems and SCI security systems are appropriate to help ensure the capacity, integrity, resiliency, availability, and security of an SCI entity's systems.

[139] Specifically, under proposed Rule 1000(a), SCI security systems are included in the proposed definitions of ''material systems change,'' ''responsible SCI personnel,'' ''SCI review,'' and ''systems intrusion.'' For purposes of security standards, proposed Rule 1000(b)(1) would also apply to SCI security systems. In addition, with respect to systems intrusions, proposed Rules 1000(b)(3)–(5) would apply to SCI security systems. Further, because of the definitions of material systems change and SCI review, proposed Rules 1000(b)(6) and (7) would apply to SCI security systems. Finally, proposed Rules 1000(c) and (f), relating to recordkeeping and access, respectively, would apply to SCI security systems.

[140] *See* ARP I, *supra* note 1.

[141] SCI entities that are obligated to comply with Section 31 of the Exchange Act (15 U.S.C. 78ee), and Rule 31 thereunder (17 CFR 240.31), employ various systems to generate, process, transmit, or store electronic messages related to securities transactions. Such systems may include matching engines, transaction data repositories, trade reporting systems, and clearing databases.

[142] *See* Consolidated Audit Trail Adopting Release, *supra* note 131.

[143] *See supra* note 139.

[144] *See id.*

Request for Comment

19. The Commission requests comment generally on the proposed definitions of SCI systems and SCI security systems.

20. Do commenters believe that the proposed definitions appropriately capture the scope of systems of SCI entities that would be reasonably likely to impact the protection of investors and the maintenance of fair and orderly markets? Specifically, do the proposed definitions of SCI systems and SCI security systems capture the components of the critical systems infrastructure of SCI entities in a comprehensive manner? Are the proposed definitions sufficiently clear?

21. Are there any systems of SCI entities that should be included but would not be captured by the proposed definitions? Please explain. Are there any systems of SCI entities that should be excluded from the proposed definitions? Please explain.

22. By including in the proposed definition of ''SCI systems'' those systems operated ''on behalf of'' an SCI entity, systems operated by a third party under contract from an SCI entity and systems operated by affiliates of an SCI entity that are utilized by such SCI entity would also be included in the proposed definition of SCI systems. Do commenters agree that such systems should be included? Please explain. Should the requirements under proposed Regulation SCI apply differently to systems that are operated on behalf of an SCI entity? Why or why not? Please explain.

23. Do commenters agree with the proposal to distinguish between SCI systems and SCI security systems for purposes of triggering the various provisions of proposed Regulation SCI? For example, are the requirements that would apply to SCI security systems appropriate? Why or why not? If not, which requirements of proposed Regulation SCI should apply to SCI security systems and why? Should the requirements under proposed Regulation SCI apply differently to different types of systems, as proposed? Or, should SCI security systems be subject to all of the requirements of proposed Regulation SCI? Why or why not?

24. Alternatively, should SCI security systems be excluded entirely from the application of proposed Regulation SCI? Why or why not? The Commission is proposing its approach to distinguish between SCI systems and SCI security systems because it preliminarily believes that the interconnected nature of technology infrastructure today creates the potential for systems other than SCI systems to expose vulnerable points of entry that could lead to a security breach or intrusion into SCI systems. In light of this potential, the Commission is proposing, as discussed further below, that the following provisions of proposed Regulation SCI apply to the SCI security systems of an SCI entity: (1) For purposes only of the policies and procedures relating to systems security, proposed Rule 1000(b)(1) would apply to its SCI security systems; (2) proposed Rules 1000(b)(3)–(5) (relating to SCI events and taking corrective action, Commission notification, and dissemination of information to members or participants, respectively) would apply to SCI security systems only with respect to systems intrusions; and (3) proposed Rule 1000(b)(6) would require an SCI entity to report a material systems change in a SCI security system only to the extent that it materially affects the security of such system.[145]

25. The goal of this proposed approach is to ensure that SCI systems, as the core systems of an SCI entity, are adequately secure and protected from systems intrusions. However, the Commission recognizes that there may be alternative ways to achieve this goal, including those that do not extend the scope of the proposed rule beyond the core systems that are defined as ''SCI systems,'' and that focus the Commission's oversight on those systems. For example, one alternative would be to limit the scope of the proposed rule to SCI systems, but clarify that policies and procedures reasonably designed to ensure that SCI systems have adequate levels of security necessarily would require an assessment of security vulnerabilities created by other systems that share network resources with SCI systems, and appropriate steps to address those vulnerabilities. Specifically, under such an alternative, the defined term ''SCI security systems,'' and all references to them and any associated obligations, would be eliminated from the proposed rule text described herein, and clarifying guidance would be provided with respect to the security of SCI systems as noted above. With such an alternative, consideration also would need to be given to whether or not an SCI entity should notify the Commission (and potentially its members or participants) of a systems intrusion with respect to these non-SCI systems, or a systems change that materially impacts the security of such systems. Accordingly, the Commission solicits commenters' views on this or any other potential alternative approaches that would not include a definition of SCI security systems within the scope of the proposed rule.

26. If the Commission were to determine to eliminate the proposed definition of SCI security systems from proposed Regulation SCI, what would be the likely effect of such elimination on the ability of proposed Regulation SCI to ensure that SCI systems are adequately secure and protected from systems intrusions? Please explain. Specifically, if the Commission eliminated the proposed definition of SCI security systems from proposed Regulation SCI, and its direct oversight of systems that share network resources with SCI systems, would the Commission's ability to assure adequate security for SCI systems be materially weakened? Why or why not? Would such an alternative reduce compliance burdens for SCI entities, and improve the efficiency of Commission oversight without materially undermining its effectiveness?

27. If the Commission were to determine to eliminate the proposed definition of SCI security systems from proposed Regulation SCI, would it be appropriate, for example, for the Commission to interpret the requirement of proposed Rule 1000(b)(1) that would require an SCI entity to have ''policies and procedures *reasonably designed* to ensure that its SCI systems have levels of * * * security * * * adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets'' to require that an SCI entity's SCI systems be protected from security threats by other systems with which they share network resources? Why or why not? Please explain.

28. If the Commission were to determine to eliminate the proposed definition of SCI security systems from proposed Regulation SCI, should the Commission still require an SCI entity to report to the Commission an intrusion into *any* system (and not just SCI systems) of an SCI entity? Why or why not? If the Commission were to determine to eliminate the proposed definition of SCI security systems from proposed Regulation SCI, should the Commission require an SCI entity to notify members and participants of an intrusion into any system of an SCI entity? Why or why not? If the Commission were to determine to eliminate the proposed definition of SCI

[145] *See infra* Sections III.C.1, III.C.3, and III.C.4. In addition, the scope of the applicability of proposed Rules 1000(b)(7), 1000(b)(8), and 1000(c)–(f) to SCI security systems would be determined by the provisions of the proposed Rules 1000(b)(1), and (3)–(6). *See infra* Sections III.C.5, III.C.6, and D.

security systems from proposed Regulation SCI, are there any other changes to the rule that would be appropriate? What are they, and why would they be appropriate? Please describe in detail.

3. SCI Events

Pursuant to the current ARP policy statements and Regulation ATS, a key element of the ARP Inspection Program has been to encourage ARP participants to notify Commission staff of significant systems disruptions so that the staff can work with the affected entity to help ensure that the disruption is addressed promptly and effectively, and that appropriate steps are taken to reduce the likelihood of future problems. Commission staff has previously sought to provide guidance and clarification on what should be considered a ''significant system outage'' for purposes of reports to Commission staff. Specifically, in the 2001 Staff ARP Interpretive Letter, Commission staff provided examples of situations for which an outage is deemed significant and thus should be reported.[146] The examples listed in that letter included: (1) Outages resulting in a failure to maintain any service level agreements or constraints; (2) disruptions of normal operations, *e.g.,* switchover to back-up equipment with zero hope of near-term recovery of primary hardware; (3) the loss of use of any system; (4) the loss of transactions; (5) outages resulting in excessive back-ups or delays in processing; (6) the loss of ability to disseminate vital information; (7) outage situations communicated to other external entities; (8) events that are (or will be) reported or referred to the entity's board of directors or senior management; (9) events that threaten systems operations even though systems operations are not disrupted; for example, events that cause the entity to implement a contingency plan; and (10) the queuing of data between system components or queuing of messages to or from customers of such duration that a customer's usual and customary service delivery is affected.[147]

The Commission believes that guidance in the 2001 Staff ARP Interpretive Letter regarding what constitutes a significant systems outage has been useful over the years to the entities that received the 2001 Staff ARP Interpretive Letter, but understands that Commission action in this area would help SROs and other entities by providing definitive guidance through a formal rulemaking process that includes notice and comment. Furthermore, the Commission believes the term ''significant systems outage'' in plain usage denotes a category of systems problems that is considerably narrower than those the Commission believes could pose risks to the securities markets and market participants. Therefore, the Commission proposes to specify the types of events that would be required to be reported to the Commission and the types of systems problems that would trigger notice requirements on the part of an SCI entity. Specifically, the Commission is proposing to define the term ''SCI event'' in Rule 1000(a) as ''an event at an SCI entity that constitutes: (1) A systems disruption; (2) a systems compliance issue; or (3) a systems intrusion.'' As discussed in detail below, the proposed rule would define each of these terms used in the proposed definition of SCI event.

a. Systems Disruption

The Commission proposes that the term ''systems disruption'' be defined to mean ''an event in an SCI entity's SCI systems that results in: (1) A failure to maintain service level agreements or constraints; (2) a disruption of normal operations, including switchover to back-up equipment with near-term recovery of primary hardware unlikely; (3) a loss of use of any such system; (4) a loss of transaction or clearance and settlement data; (5) significant back-ups or delays in processing; (6) a significant diminution of ability to disseminate timely and accurate market data; or (7) a queuing of data between system components or queuing of messages to or from customers of such duration that normal service delivery is affected.'' The proposed definition is similar, but not identical, to the definition of ''significant systems outage'' in the 2001 Staff ARP Interpretive Letter.[148]

As proposed, a systems disruption would be an event in an SCI entity's SCI systems that manifests itself as a problem measured by reference to one or more of seven elements. The first proposed element, a failure to maintain service level agreements or constraints, is unchanged from the 2001 Staff ARP Interpretive Letter. This would include, for example, a failure or inability of the SCI entity to honor its contractual obligations to provide a specified level or speed of service to users of its SCI systems. A trading market could, for example, contract to maintain its trading system without delays over a specific threshold, *e.g.,* 100 milliseconds, and its failure to honor that obligation would thus be a systems disruption.

The second proposed element, ''a disruption of normal operations, including switchover to back-up equipment with near-term recovery of primary hardware unlikely'' differs from the element in the 2001 Staff ARP Interpretive Letter (disruption of normal operations, *e.g.,* switchover to back-up equipment with zero hope of near-term recovery of primary hardware). This modification is intended to convey that the Commission preliminarily believes that an SCI entity should be required to notify Commission staff of a SCI systems problem that involves a switchover to backup equipment, even if a determination that no recovery is possible has not been made because the probability that such switchover may continue indefinitely is significant. The Commission also intends that this proposed element, a ''disruption of normal operations,'' would capture problems with SCI systems such as programming errors, testing errors, systems failures, or if a system release is backed out after it is implemented in production.

The third proposed element, ''a loss of use of any such system,'' is unchanged from the 2001 Staff ARP Interpretive Letter and would cover situations in which an SCI system is broken, offline, or otherwise out of commission. For example, the Commission intends that a failure of primary trading or clearance and settlement systems, even if immediately replaced by backup systems without any disruption to normal operations, would be covered under this third proposed element. The Commission preliminarily believes the language of the fourth proposed element, ''a loss of transaction or clearance and settlement data,'' is more precise than the language in the 2001 Staff ARP Interpretive Letter, which lists ''loss of transactions'' as an example of a systems outage.

Similarly, the language of the fifth and sixth proposed elements is intended to be more precise than the comparable language in the fifth and sixth examples enumerated in the 2001 Staff ARP Interpretive Letter. The Commission is not at this time proposing to quantify what would constitute a ''significant back-up or delay in processing'' or a ''significant diminution of ability to disseminate timely and accurate market data'' because it preliminarily believes that the varying circumstances that

[146] *See* 2001 Staff ARP Interpretive Letter, *supra* note 35.

[147] *See id.*

[148] *See supra* note 35. The Commission believes that the term ''systems disruption'' is a more appropriate term to describe the types of events captured within the proposed definition and thus is proposing to use the term ''systems disruption,'' rather than the term ''systems outage,'' the term used in the ARP Inspection Program.

could give rise to such events, and the range of SCI systems potentially impacted, make precise quantification impractical.[149] These proposed elements are intended to include, for example, circumstances in which a problem with an SCI system results in a slowdown or disruption of operations that would adversely affect customers, impair quotation or price transparency, or impair accurate and timely regulatory reporting. Instances in which message traffic is throttled (*i.e.,* slowed) by an SCI entity for any market participant, without a corresponding provision in the SCI entity's rules, user agreements, or governing documents, as applicable, would also be covered here.[150] Further, the Commission preliminarily believes that if customers or systems users, for example, have complained or inquired about a slowdown or disruption of operations, including, for example, a slowdown or disruption in their receipt of market data, then such circumstance would be indicative of a problem at an SCI entity that results in ''significant back-ups or delays in processing'' or a ''significant diminution of ability to disseminate timely and accurate market data,'' that should be considered a ''systems disruption.'' The fifth and sixth elements of the proposed definition of systems disruption are also intended to cover the entry, processing, or transmission of erroneous or inaccurate orders, trades, price-reports, other information in the securities markets or clearance and settlement systems, or any other significant deterioration in the transmission of market data in an accurate, timely, and efficient manner. For example, it is possible that an SCI system of an SCI entity that disseminates market data could, as a result of a programming or testing error in another system of the SCI entity, be overwhelmed with erroneous market data to such an extent that the SCI entity's SCI systems are no longer able to disseminate market data in a timely and accurate manner.

Finally, the seventh proposed element, ''a queuing of data between system components or queuing of messages to or from customers of such duration that normal service delivery is affected,'' is proposed to be included because the Commission preliminarily believes that queuing of data between system components of SCI systems is often a warning signal of significant disruption of normal system operations.

Although the 2001 Staff ARP Interpretive Letter lists ''a report or referral of an event to the entity's board of directors or senior management'' and ''an outage situation communicated to other external entities'' as examples of a significant systems outage, the Commission is not proposing to include such reports or communications in the definition of systems disruption because it preliminarily believes these examples are more likely to be indicia of whether information about a systems disruption or other systems problem warrants dissemination to the SCI entity's members or participants.[151] Further, although the 2001 Staff ARP Interpretive Letter lists ''a serious threat to systems operations even though systems operations are not disrupted'' as an example of a significant systems outage, the Commission has not included that example as an element in the proposed definition of systems disruption because it preliminarily believes that such a threat would more likely be indicative of a systems intrusion or systems compliance issue.[152]

Request for Comment

29. The Commission requests comment generally on the proposed definition of ''systems disruption.'' Do commenters believe that it is appropriate to limit the proposed definition of ''systems disruption'' to SCI systems? Why or why not? Do commenters believe the proposed definition of ''systems disruption'' is too broad? Why or why not? Please explain.

30. Do commenters believe that there should be minimum thresholds associated with the circumstances specified in any elements of the proposed definition of systems disruption—*e.g.,* quantitative criteria describing when an event fitting the description of one of the elements of the proposed definition would meet the definition of SCI event? If so, what should such minimum thresholds be and to which elements of the definition of ''systems disruption'' should such minimum thresholds apply? Please explain. Should systems disruptions affecting different types of SCI systems be treated differently? For example, should trading systems have a different quantitative criteria than systems dedicated to surveillance? Please be specific with respect to which categories of SCI systems might deserve different treatment, and what such quantitative criteria might be and why.

31. Do commenters believe the term ''transaction or clearance and settlement data,'' as used in paragraph (4) of the proposed definition of ''systems disruption,'' is appropriate? Why or why not? Should other types of data be included, in addition to transaction and clearance and settlement data? For example, should customer account data, regulatory data, and/or audit trail data be included? Why or why not?

32. Do commenters believe that there should be exceptions to the proposed definition of systems disruption? If so, what should such exceptions be and why? For example, should the proposed definition of systems disruption include a de minimis exception? If so, what types of systems problems should be considered de minimis and what criteria should be used to determine whether a systems problem is de minimis? Should the proposed definition of systems disruption include a materiality threshold? If so, what types of systems problems should be considered material and what criteria should be used to determine whether a systems problem is material? Should the definition of systems disruption exclude regular planned outages occurring during the normal course of business?

33. Should the proposed definition be expanded, narrowed, or otherwise modified in any way? For example, should the proposed definition include quantitative criteria that establish a minimum deviation from normal performance levels, such as a tenfold increase or greater in latency for queuing of data, for an event to be considered an SCI event? Would a minimum deviation of 100 milliseconds from normal system performance levels be an appropriate indication of system degradation? Or, would a larger or smaller deviation be more appropriate? Why or why not? For example, would the choice of a specific threshold help to balance the tradeoff between the costs of over-reporting systems disruptions and the costs of failing to report systems disruptions that could lead to significant negative consequences? Should different quantitative criteria be used across different SCI systems? For example, a limited pause in the operations of a clearing system may not raise the same issues as a similar pause in the operation of a market data feed. If commenters believe that different criteria should be maintained, please be specific and provide examples of what

[149] The Commission is, however, soliciting comment on whether it would be appropriate to adopt quantitative criteria in connection with the definition of ''systems disruption.''

[150] However, if an SCI entity's rules or governing documents provided for such throttling in specified scenarios as a part of normal operations, such throttling would not be covered as such a situation would not represent an unexpected back-up or delay in processing but rather would be part of the SCI entity's normal operation.

[151] *See infra* Section III.B.4.d, discussing whether an SCI event is a ''dissemination SCI event.''

[152] *See infra* Sections III.B.3.b and III.B.3.c, discussing the proposed definition of systems compliance issue and systems intrusion, respectively.

the appropriate minimum deviations should be for such systems.

34. Are there other types of circumstances that should be included that are not part of the proposed definition? If so, please describe and explain. For example, if an SCI SRO or SCI ATS suspects a technology error originating from a third party (such as an SCI SRO's member firm or an SCI ATS's subscriber) that has the potential to disrupt the market, should that type of discovery be included in the definition of systems disruption? Why or why not? Is there additional guidance that commenters would find helpful to determine whether an event would meet the proposed definition of systems disruption?

35. How often do SCI entities currently experience systems disruptions?

b. Systems Compliance Issue

The Commission proposes that the term ''systems compliance issue'' be defined as ''an event at an SCI entity that has caused any SCI system of such entity to operate in a manner that does not comply with the federal securities laws and rules and regulations thereunder or the entity's rules or governing documents, as applicable.'' [153] Circumstances covered by the proposed definition would include, for example, situations in which a lack of communication between an SCI SRO's information technology staff and its legal or regulatory staff regarding SCI systems design or requisite regulatory approvals resulted in one or more SCI systems operating in a manner not in compliance with the SCI SRO's rules and, thus, in a manner other than how the users of the SCI SRO's SCI systems, as well as market participants generally, have been informed that such systems would operate. Another example of a systems compliance issue could arise when a change to an SCI system is made by information technology staff that results in the system operating in a manner that fails to comply with the federal securities laws and rules thereunder.

The phrase ''operate in a manner that does not comply with * * * the entity's rules or governing documents'' would mean that an SCI entity is operating in a manner that does not comply with the entity's applicable rules and other documents, whether or not filed with the Commission. Generally, such rules or other documents are made available to the public and/or to members, clients, users, and/or participants in the SCI entity.[154] Specifically, for an SCI SRO, this phrase would include operating in a manner that does not comply with the SCI SRO's rules as defined in the Exchange Act and the rules thereunder.[155] For a plan processor, this phrase would include operating in a manner that does not comply with an applicable effective national market system plan. For an SCI ATS or exempt clearing agency subject to ARP, this phrase would include operating in a manner that does not comply with documents such as subscriber agreements and any rules provided to subscribers and users and, for ATSs, described in their Form ATS filings with the Commission.[156]

Request for Comment

36. The Commission requests comment generally on the proposed definition of ''systems compliance issue.'' Do commenters believe it would be appropriate to define ''systems compliance issue'' to mean any instance in which an SCI system operates in a manner that does not comply with the federal securities laws and rules and regulations thereunder, or the entity's rules or governing documents, as applicable? Why or why not? If the proposed definition is not appropriate, what would be an appropriate definition? Do commenters believe that it is appropriate to limit the proposed definition of ''systems compliance issue'' to SCI systems? Why or why not? Please explain.

37. Do commenters believe that there should be exceptions to the proposed definition of systems compliance issue? If so, what should such exceptions be and why? For example, should the proposed definition of systems compliance issue include a de minimis exception? If so, what types of systems compliance issues should be considered de minimis and what criteria should be used to determine whether a systems compliance issue is de minimis? Should the proposed definition of systems compliance issue include a materiality threshold? If so, what types of systems compliance issues should be considered material and what criteria should be used to determine whether a systems compliance issue is material?

38. Do commenters believe other types of documents or agreements should be included in the definition? If so, please specify the types of documents or agreements and explain why.

39. How often do SCI entities currently experience systems compliance issues?

c. Systems Intrusion

The Commission proposes that ''systems intrusion'' be defined as ''any unauthorized entry into the SCI systems or SCI security systems of an SCI entity.'' The proposed definition is intended to cover all unauthorized entry into SCI systems or SCI security systems by outsiders, employees, or agents of the SCI entity, regardless of whether the intrusions were part of a cyber attack, potential criminal activity, or other unauthorized attempt to retrieve, manipulate or destroy data, or access or disrupt systems of SCI entities. The proposed definition of systems intrusion would cover the introduction of malware or other attempts to disrupt SCI systems or SCI security systems of SCI entities provided that such systems were actually breached. In addition, the proposed definition is intended to cover unauthorized access, whether intentional or inadvertent, by employees or agents of the SCI entity that result from weaknesses in the SCI entity's access controls and/or procedures. The proposed definition would not, however, cover *unsuccessful* attempts at unauthorized entry. An unsuccessful systems intrusion by definition is much less likely than a successful intrusion to disrupt the systems of an SCI entity. Moreover, because it is impossible to prevent *attempted* intrusions, the Commission preliminarily believes at this time that the focus of this aspect of proposed Regulation SCI should be on *successful* unauthorized entry.

Request for Comment

40. The Commission requests comment generally on the proposed definition of ''systems intrusion.'' Is the proposed definition sufficiently clear? If not, why not? Do commenters believe that it is appropriate to apply the proposed definition of ''systems

[153] As discussed in *infra* Section III.C.2, one of the elements of the safe harbor in proposed Rule 1000(b)(2)(ii)(A) would require that an SCI entity establish policies and procedures that provide for ongoing monitoring of SCI systems functionality to detect whether SCI systems are operating in the manner intended. This element would require that each SCI entity establish parameters for detection of a systems compliance issue, and is not intended to suggest one set of parameters for all SCI entities.

[154] For example, each SCI SRO is required to publish its rules on its publicly available Web site. *See* 15 U.S.C. 78s(b)(2)(E). Each plan processor is also required to post amendments to its national market system plan on its Web site. *See* 17 CFR 242.608. Subscriber agreements and other similar documents that govern operations of SCI ATSs and exempt clearing agencies subject to ARP are generally not publicly available, but are provided to subscribers and users of such entities.

[155] The rules of an SCI SRO are defined in Sections 3(a)(27) and (28) of the Exchange Act to include, among other things, its constitution, articles of incorporation, and bylaws. *See* 15 U.S.C. 78c(a)(27)–(28). *See also* Exchange Act Rule 19b–4(c), 17 CFR 240.19b–4(c).

[156] *See* 17 CFR 242.301(b) for a description of the filing requirements for ATSs.

intrusion'' to both SCI systems and SCI security systems? Why or why not? Please explain.

41. Do commenters believe it is appropriate to exclude from the proposed definition of systems intrusion an attempted intrusion that did not breach systems or networks? Why or why not? Should significant, sophisticated, repeated, and/or attempted intrusions, even if unsuccessful, be included? Why or why not? If yes, please explain what categories of attempted intrusions should be covered by the proposed rule and why.

42. Should the proposed definition of systems intrusion be expanded to include the unauthorized use or unintended release of information or data, for example, by an employee or agent of an SCI entity? Why or why not? If so, should the definition be limited to the unauthorized use of non-public or confidential information or should it apply to any unauthorized use of information or data? The Commission recognizes that including in the definition all instances of unauthorized use or unintended release of information or data may be broad and solicits comment generally on how the definition might be more narrowly defined to encompass those types of events that commenters believe would be appropriate to be included in proposed Regulation SCI.

43. How often do SCI entities currently experience known systems intrusions or known attempted systems intrusions?

d. Dissemination SCI events

The Commission proposes that the term ''dissemination SCI event'' be defined as ''an SCI event that is a: (1) Systems compliance issue; (2) systems intrusion; or (3) systems disruption that results, or the SCI entity reasonably estimates would result, in significant harm or loss to market participants.'' [157]

As discussed below in Section III.C.3, proposed Rule 1000(b)(5) includes requirements for disseminating information regarding certain SCI events to members or participants.[158] Specifically, only information relating to dissemination SCI events would be required to be disseminated to members or participants pursuant to proposed Rule 1000(b)(5).[159] The Commission recognizes that public disclosure of each and every systems issue (such as very brief outages or minor disruptions of normal systems operations where the effects on trading, market data, and clearance and settlement are immaterial) could be counterproductive, potentially overwhelming the public with information, masking significant issues that might arise, and thus preliminarily believes that requiring the dissemination of information about dissemination SCI events to members or participants would promote dissemination of information to persons who are most directly affected by such events and who would most naturally need, want, and be able to act on the information, without creating a separate regulatory standard governing when broader public disclosure should be made.

In the case of a dissemination SCI event, the Commission preliminarily believes that dissemination to members or participants of the nature of the event and the steps being taken to remedy it would be necessary to help ensure that potentially impacted market participants, and others that might be evaluating whether to use the affected systems, have basic information about the event so that they might be able to better assess what, if any, next steps they might deem prudent to take in light of the event.[160]

Proposed Rule 1000(a) specifies three categories of SCI events that would constitute a dissemination SCI event. First, any SCI event that is a systems compliance issue would be a dissemination SCI event.[161] The Commission preliminarily believes that, if an SCI entity's SCI systems were operating in a manner not in compliance with the federal securities laws and rules and regulations thereunder, or the entity's rules or governing documents, as applicable, the SCI entity should be required to disseminate that information to all members or participants, *i.e.,* the users of its SCI systems. In addition, because SCI entities that are SCI SROs or plan processors are required by the Exchange Act to comply with their rules, proposing to require dissemination of information about systems compliance issues to members or participants should help to reinforce this statutory obligation.

Second, any SCI event that is a systems intrusion would also be a dissemination SCI event. The Commission preliminarily believes that a systems intrusion may represent a significant weakness in the security of an SCI entity's systems and thus warrant dissemination of information to an SCI entity's members or participants. However, because detailed information about a systems intrusion may expose an SCI entity's systems to further probing and attack, an SCI entity would only be required to provide a summary description of the systems intrusion, including a description of the corrective action taken by the SCI entity and when the systems intrusion has been or is expected to be resolved.[162] In addition, because immediate dissemination of information about a systems intrusion may in some cases further compromise the security of the SCI entity's SCI systems or SCI security systems, or an investigation of the systems intrusion, an SCI entity in some cases may be permitted to delay the dissemination of information about such systems intrusion.[163]

Finally, the Commission is proposing that any systems disruption that results, or the SCI entity reasonably estimates would result, in significant harm or loss to market participants would also be a dissemination SCI event. Some systems disruptions may have an immediate, obvious, and detrimental impact on market participants, hampering the ability of an SCI entity's members or participants to utilize the SCI entity's SCI systems and, in some cases, making

[157] *See* proposed Rule 1000(a).

[158] Proposed Rule 1000(b)(5) would require the dissemination of specified information relating to dissemination SCI events and specify the nature and timing of such dissemination, with a delay in dissemination permitted for certain systems intrusions. *See infra* Section III.C.3.c.

[159] *See infra* note 235.

[160] However, as discussed below, the Commission recognizes that, in the case of systems intrusions, there may be circumstances in which full prompt dissemination of information to members or participants of a systems intrusion could hinder an investigation into such an intrusion or an SCI entity's ability to mitigate it. As such, the Commission is proposing that dissemination of information for certain systems intrusions could be delayed in specified circumstances. Specifically, the Commission is proposing that an SCI entity disseminate information about a systems intrusion to its members or participants, unless the SCI entity determines that dissemination of such information would likely compromise the security of the SCI entity's SCI systems or SCI security systems, or an investigation of the systems intrusion, and documents the reasons for such determination. *See* proposed Rule 1000(b)(5)(ii) and text accompanying *infra* note 174. The Commission preliminarily believes, however, that an SCI entity should ultimately disseminate information regarding systems intrusions, and that the provisions of proposed Rule 1000(b)(5)(ii) permitting a delay in dissemination, if applicable, should only affect the timing of such dissemination.

The Commission notes that some Roundtable panelists and commenters discussed the role that communications and disclosure should play in mitigation of risk from systems issues. For example, panelists from Citadel, DE, Nasdaq, Lime, and TDA, among others, spoke about the role of communications and management involvement in responding to errors. *See* discussion of Roundtable, *supra* Section I.D. *See also* text accompanying *infra* note 238.

[161] *See supra* Section III.B.3.b, discussing the definition of ''systems compliance issue.''

[162] *See infra* Section III.C.3.c and proposed Rule 1000(b)(5)(ii).

[163] *See id.*

such systems unusable. At the same time, the Commission recognizes that disseminating information relating to a single systems disruption that results in harm or loss to one or a small number of market participants that is not significant may not warrant the cost of such dissemination. Furthermore, the Commission preliminarily believes that the proposed standard is appropriate in that it does not set a specific threshold or definition of ''significant harm or loss to market participants,'' and provides an SCI entity with reasonable discretion in estimating whether a given systems disruption has resulted, or would result, in significant harm or loss to market participants.[164] Although the particular facts and circumstances will differ for each systems disruption, some systems disruptions would clearly result in significant harm or loss to market participants and warrant dissemination of information regarding such systems disruption to the SCI entity's members or participants, even if the harm or loss, or the potential harm or loss, is difficult to quantify. For example, if a market experiences a problem with a trading system such that order processing and execution in certain securities is halted and members are not able to confirm transactions in such securities, the Commission preliminarily believes that such a systems disruption would be a dissemination SCI event. In contrast, if a trading market or a clearing agency experienced a momentary power disruption causing a fail over to the backup data center with no customer, member, or participant impact, such SCI event would be a systems disruption requiring written notice to the Commission, but would not be a dissemination SCI event.

Request for Comment

44. Do commenters believe the proposed definition of ''dissemination SCI event'' is appropriate? Why or why not?

45. Do commenters believe that a ''systems compliance issue'' should constitute a dissemination SCI event? Why or why not? Please explain.

46. Do commenters believe that a ''systems intrusion'' should constitute a dissemination SCI event? Why or why not? Please explain.

47. Do commenters believe that systems disruptions that meet the ''significant harm or loss to market participants'' standard should be included as dissemination SCI events? Why or why not? If not, what would be an appropriate threshold, and how should it be measured? Should the term ''significant harm or loss to market participants'' be further clarified or defined in the rule? Why or why not? If so, what should such clarification or definition be and why?

48. Would an alternative measurement, or group of alternative measurements, for systems disruptions, such as a 50 millisecond pause in service or some other nonmonetary measure (for example, out of memory situations, memory overloads, data loss due to an SCI system exceeding capacity limitations, excessive queuing or throttling), also be an appropriate and effective means to measure certain events about which an SCI entity should disseminate information to its members or participants? If so, what are they and why? Should any such measurements vary based on the type of SCI system involved? If so, how? Please be specific.

49. Are there any other types of systems disruptions that should be required to be disseminated to members or participants? If so, please explain why. Should, for example, information relating to a systems disruptions be required to be disseminated to members or participants if it affects a certain number of market participants? If so, how should such a level (number of market participants) be determined?

4. Material Systems Changes

Rule 1000(a) of proposed Regulation SCI would define ''material systems change'' as ''a change to one or more: (1) SCI systems of an SCI entity that: (i) Materially affects the existing capacity, integrity, resiliency, availability, or security of such systems; (ii) relies upon materially new or different technology; (iii) provides a new material service or material function; or (iv) otherwise materially affects the operations of the SCI entity; or (2) SCI security systems of an SCI entity that materially affects the existing security of such systems.'' [165] This proposed definition of ''material systems change'' is substantively similar to the definition of ''significant system change'' discussed in the ARP II Release.[166]

Item (1)(i) of the proposed definition of material systems change differs from item (1) in the definition in the ARP II Release of ''significant system change,'' as proposed item (1)(i) refers to changes to an SCI entity's SCI systems that affect not only capacity and security, but also integrity, resiliency, and availability.[167] Items (1)(ii) and (1)(iii) in the proposed definition of material systems change are intended to be substantively identical to items (3) and (4) of the definition of significant system change in the 2001 Staff ARP Interpretive Letter, generally covering changes to an SCI entity's SCI systems designed to advance systems development.[168] Proposed item (1)(iv), covering a change to an SCI entity's SCI systems that ''otherwise materially affects the operations of the SCI entity,'' is intended to require notification of major systems changes to SCI systems that are not captured by other elements of paragraph (1) of the proposed definition. Proposed item (2), covering a change to an SCI entity's SCI security systems that ''materially affects the existing security of such systems,'' is intended to ensure that significant changes that would affect the security of an SCI entity's SCI security systems (*i.e.,* systems that share network resources with SCI systems that, if breached, would be reasonably likely to pose a security threat to SCI systems) [169] are reported to the Commission.

Examples that the Commission preliminarily believes could be included within the proposed definition of material systems change are: Major systems architecture changes; reconfigurations of systems that would cause a variance greater than five percent in throughput or storage; the introduction of new business functions or services; changes to external interfaces; changes that could increase susceptibility to major outages; changes that could increase risks to data

[164] The tradeoffs of setting thresholds are discussed in the Economic Analysis Section below. *See infra* Section V.B.

[165] *See* proposed Rule 1000(a). *See also infra* Sections III.C.4 and III.C.6 discussing notices of material systems changes and reports of material systems changes, respectively.

[166] *See* ARP II Release, *supra* note 1, at 22592–93. *See also* 2001 Staff ARP Interpretive Letter, *supra* note 35 (citing ARP II, *supra* note 1, at 22492–93: ''ARP II provides a non-exclusive list of factors that should be considered in determining whether a system change is significant and should be reported. The list includes a change that: (1) Affects existing capacity or security; (2) in itself raises capacity or security issues, even if it does not affect other existing systems; (3) relies upon substantially new or different technology; (4) is designed to provide a new service or function for SRO members or their customers; or (5) otherwise significantly affects the operations of the entity.'').

[167] Proposed item (1)(i) consolidates items (1) and (2) of the definition of material systems change in the 2001 Staff ARP Interpretive Letter. The Commission believes that the addition of integrity, resiliency, and availability aspects of SCI systems that are important in today's automated trading environments appropriately reflects the evolution of the types of systems issues since the 2001 Staff ARP Interpretive Letter.

[168] In addition, each of proposed items (1)(i) through (1)(iii) are changes that concern the adequacy of capacity estimates, testing, and security measures taken by an SCI entity, for which adequate procedures are required by proposed Rule 1000(b)(1). *See infra* Section III.C.1.

[169] *See supra* Section III.B.2 (discussing definition of SCI security system).

security; changes that were, or would be, reported to or referred to the entity's board of directors, a body performing a function similar to the board of directors, or senior management; and changes that could require allocation or use of significant resources. These examples are cited in the 2001 Staff ARP Interpretive Letter.[170] Based on Commission staff's experience working with SROs that have relied on the guidance provided in the 2001 Staff ARP Interpretive Letter, the Commission preliminarily believes that such examples could continue to be relevant guidance to SCI SROs as well as to other SCI entities. In addition, the Commission preliminarily believes that any systems change occurring as a result of the discovery of an actual or potential systems compliance issue, as that term would be defined in proposed Rule 1000(a), would be material.

Based on its experience with SROs and other entities reporting significant systems changes in the context of the ARP Inspection Program, the Commission preliminarily believes that the proposed definition of material systems change is appropriate for all SCI entities. The Commission preliminarily believes that proposed items (1)(i)–(iv) and (2), which would cover changes affecting capacity estimates, security measures, the use of new technology and new functionality, could also highlight the need for SCI entities that are SROs, when applicable, to file a proposed rule change with the Commission under Section 19(b) of the Exchange Act and SCI entities that are SROs to file proposed amendments for SCI Plans under Rule 608 of Regulation NMS.[171] As the Commission noted in ARP II, the purpose of urging SROs to notify Commission staff of significant system changes was not to supplant or provide an alternative means for SROs to satisfy their obligations to file proposed rule changes as required by the Exchange Act.[172] Rather, under ARP II, the Commission was primarily concerned with fulfilling its oversight responsibilities and was also interested in obtaining a full view and understanding of systems development at SROs.[173] Likewise, the proposal to require an SCI entity to notify the Commission of material systems changes would not relieve an SCI SRO of any obligation it may have to file a proposed rule change, the participants of an SCI Plan to file a proposed amendment to such SCI Plan, or any other obligation any SCI entity may have under the Exchange Act or rules thereunder.[174]

Request for Comment

50. The Commission requests comment generally on the proposed definition of ''material systems change.'' Is the proposed definition of material systems change clear? Should the Commission provide additional guidance on, or further define what would constitute a ''material systems change?'' Are there other factors that should be included? Please be specific and give examples of types of system changes that should be included in the proposed definition but currently are not.

51. The Commission sets forth above examples of systems changes that it preliminarily believes could be included within the proposed definition of material systems change (*i.e.,* major systems architecture changes; reconfigurations of systems that would cause a variance greater than five percent in throughput or storage; the introduction of new business functions or services; changes to external interfaces; changes that could increase susceptibility to major outages; changes that could increase risks to data security; changes that were, or would be, reported to or referred to the entity's board of directors, a body performing a function similar to the board of directors, or senior management; and changes that could require allocation or use of significant resources). Do commenters agree each of these examples could constitute material systems changes? Why or why not?

52. Should any of the proposed factors be eliminated or refined? If so, please explain. Should material systems changes be defined to include cumulative systems changes over a specified period that might not otherwise qualify individually as a material systems change? For example, if systems changes (such as reconfigurations of systems that would cause a variance greater than five percent in throughput or storage) occurred that, on their own, each would not constitute a material systems change but, if grouped together with other similar or even identical changes (or, alternatively, that occurred repeatedly over a certain period of time such as a week or a month) could represent a material system change, should such changes together be considered a material systems change? If so, what would be the appropriate number of similar or identical systems changes that should be considered and/or what would be an appropriate time period to consider? Should all non-material systems changes count towards this threshold or should only non-material systems changes of the same or similar type count? Would cumulative changes over a week be an appropriate measurement period? Would a 30-day measurement period be appropriate? Should the period be longer or shorter? Please explain.

53. Do commenters believe that a change to the SCI systems of an SCI entity that ''materially affects the existing capacity, integrity, resiliency, availability, or security of such systems'' should constitute a material systems change as proposed? Why or why not? Should a change with respect to any of the proposed characteristics of such systems (*i.e.,* capacity, integrity, resiliency, availability, or security) be eliminated or modified? Should any be added? Please explain.

54. Should a change to the SCI systems of an SCI entity that ''relies upon materially new or different technology'' constitute a material systems change as proposed? Why or why not? Is the phrase ''materially new or different'' sufficiently clear? If not, please explain.

55. Should a change to an SCI entity's SCI systems that ''provides a new material service or material function'' constitute a material systems change as proposed? Why or why not? Is the phrase ''a new material service or

[170] *See supra* note 35.

[171] Section 19(b)(1) of the Exchange Act requires an SRO to file proposed rules and proposed rule changes with the Commission in accordance with rules prescribed by the Commission. *See* 15 U.S.C. 78s(b)(1). Section 19(b)(1) further requires the Commission to solicit public comment on any proposed rule change filed by an SRO. *See id.* Rule 608(a)(1) of Regulation NMS under the Exchange Act, 17 CFR 242.608(a)(1), permits ''self-regulatory organizations, acting jointly, [to] file a national market system plan or [to] propose an amendment to an effective national market system plan.'' Rule 608(b) of Regulation NMS, 17 CFR 242.608(b), requires the Commission to publish such proposed national market system plan or national market system plan amendment for notice and comment, and, in certain situations, approve such NMS plan or plan amendment before it may become effective.

[172] *See* ARP II, *supra* note 1, at 22493. ARP II explained that because the rule change process pursuant to Section 19(b) of the Exchange Act and Rule 19b–4 thereunder ''imposes shortened timeframes for action on proposed rule changes and because not all systems changes trigger the need for changes to rules of the SROs,'' the rule change process was not providing staff with timely and complete detail on various significant systems changes occurring at the SROs. The policy of urging SROs to provide timely and accurate information on systems changes was intended as an adjunct to, and not a substitution for the rule change process. *See id.*

[173] *See id.* at 22493–94, n. 20.

[174] *See infra* request for comment in Section III.C.1.b, wherein the Commission solicits comment on whether SCI SROs should be required to provide notice to their members of anticipated technology deployments prior to implementation and offer their members the opportunity to test anticipated technology deployments prior to implementation.

material function'' sufficiently clear? If not, please explain.

56. Do commenters believe it is appropriate to include a change to an SCI entity's SCI systems that ''otherwise materially affects the operations of the SCI entity'' as proposed? Why or why not? Please explain.

57. Do commenters believe that a change to the SCI security systems of an SCI entity that ''materially affects the existing security of such systems'' should constitute a material systems change as proposed? Why or why not? Please explain.

58. Do commenters believe the rule should include quantitative criteria or other minimum thresholds for the effect of a change to an SCI entity's SCI systems or SCI security systems beyond which the Commission must be notified of the change? Why or why not? If so, what should such quantitative criteria or other minimum thresholds be and why?

59. How often do SCI entities currently make material systems changes? How often do SCI SROs make material systems changes and what percentage of the time are such changes filed with the Commission as proposed rule changes under Section 19 of the Exchange Act?

C. Proposed Rule 1000(b): Obligations of SCI Entities

Paragraph (b) of proposed Rule 1000 would set forth requirements that would apply to SCI entities relating to written policies and procedures, obligations with regard to corrective actions, reporting of SCI events to the Commission, dissemination of information relating to certain SCI events to members or participants, reporting of material systems changes, SCI reviews, and the participation of designated members or participants of SCI entities in testing the business continuity and disaster recovery plans of SCI entities.

1. Policies and Procedures To Safeguard Capacity, Integrity, Resiliency, Availability, and Security [175]

Proposed Rule 1000(b)(1) would require each SCI entity to establish, maintain, and enforce written policies and procedures, reasonably designed to ensure that its SCI systems and, for purposes of security standards, SCI security systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets. Proposed Rule 1000(b)(1)(i) would further provide that such policies and procedures include, at a minimum: ''(A) The establishment of reasonable current and future capacity planning estimates; (B) periodic capacity stress tests of such systems to determine their ability to process transactions in an accurate, timely, and efficient manner; (C) a program to review and keep current systems development and testing methodology for such systems; (D) regular reviews and testing of such systems, including backup systems, to identify vulnerabilities pertaining to internal and external threats, physical hazards, and natural or manmade disasters; (E) business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse to ensure next business day resumption of trading and two-hour resumption of clearance and settlement services following a wide-scale disruption; and (F) standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data.'' [176] Proposed Rule 1000(b)(1)(ii) would deem an SCI entity's policies and procedures required by proposed Rule 1000(b)(1) to be reasonably designed if they are consistent with SCI industry standards.[177] In particular, for purposes of complying with proposed Rule 1000(b)(1), if an SCI entity has policies and procedures that are consistent with such SCI industry standards, as discussed further in Section III.C.1.b below, such policies and procedures would be deemed to be reasonably designed and thus the SCI entity would be in compliance with proposed Rule 1000(b)(1). In addition, under proposed Rule 1000(b)(1)(ii), compliance with the identified SCI industry standards would not be the exclusive means to comply with the requirements of proposed Rule 1000(b)(1).

a. Proposed Rule 1000(b)(1)(i)

Proposed Rule 1000(b)(1) would require that an SCI entity have policies and procedures that address items (i)(A)-(F) for its SCI systems and, for purposes of security standards, SCI security systems. Items (A)-(C) enumerated in proposed Rule 1000(b)(1)(i) are substantively the same as the requirements of Rule 301(b)(6)(ii)(A)-(C) of Regulation ATS, applicable to significant-volume alternative trading systems, and trace their origin to the ARP I Release.[178] With respect to SCI systems and, as applicable, SCI security systems, proposed item (A), which would require an SCI entity to establish, maintain, and enforce policies and procedures for the establishment of reasonable current and future capacity planning estimates, and proposed item (B), which would require an SCI entity to establish, maintain, and enforce policies and procedures for periodic capacity stress tests of such systems, would help an SCI entity determine its systems' ability to process transactions in an accurate, timely, and efficient manner, and thereby help ensure market integrity. Proposed item (C), which would require an SCI entity to establish, maintain, and enforce policies and procedures that include a program to review and keep current systems development and testing methodology for such systems, would help ensure that the SCI entity continues to monitor and maintain systems capacity and availability.

Proposed item (D), which would require an SCI entity to establish, maintain, and enforce policies and procedures to review and test regularly such systems, including backup systems, to identify vulnerabilities pertaining to internal and external threats, physical hazards, and natural or manmade disasters, would likewise assist an SCI entity in ascertaining whether its SCI systems and SCI security systems are and remain sufficiently secure and resilient. Unlike Rule 301(b)(6)(ii)(D) of Regulation ATS, proposed item (D) includes ''manmade disasters'' in the list of vulnerabilities an SCI entity would be required to consider and protect against. The Commission proposes to add ''manmade disasters'' to be clear that acts of terrorism and sabotage—threats that some SCI entities have faced in recent history [179]—are threats that an SCI entity must prepare for in reviewing and testing its systems and operations.

Proposed items (B), (C), and (D) would each require, among other things, the establishment of policies and procedures relating to various aspects of systems testing, including capacity stress tests, testing methodology, and tests for systems vulnerabilities to internal and external threats, physical hazards, and natural or manmade disasters, respectively. The Commission preliminarily believes that, to help ensure an effective testing regime, such

[175] *See infra* Sections IV.D.1.a and V.B for discussions related to current practices of SCI entities.

[176] *See* proposed Rule 1000(b)(1)(i)(A)-(F).

[177] *See infra* Section III.C.1.b.

[178] *See* 17 CFR 242.301(b)(6)(ii)(A)–(C); *see also* ARP I Release, *supra* note 1, at 48706–07.

[179] *See, e.g., supra* note 61.

policies and procedures would need to address when testing with members, participants, and other market participants would be appropriate.[180]

Proposed item (E), which would require SCI entities to establish, maintain, and enforce policies and procedures for business continuity and disaster recovery plans, is substantially similar to a requirement in Rule 301(b)(6)(ii) of Regulation ATS and ARP I.[181] However, proposed item (E) would further require SCI entities to have plans for maintaining backup and recovery capabilities sufficiently resilient and geographically diverse to ensure next business day resumption of trading and two-hour resumption of clearance and settlement services following a wide-scale disruption. The proposed resiliency and geographic diversity requirement is designed particularly to help ensure that an SCI entity would be able to continue operations from the backup site during a wide-scale disruption resulting from natural disasters, terrorist activity, or other significant events. For example, the Commission preliminarily believes that backup sites should not rely on the same infrastructure components (*e.g.,* transportation, telecommunications, water supply, and electric power) used by the primary site.[182] The proposed next business day trading resumption standard reflects the Commission's preliminary view that an SCI entity, being part of the critical infrastructure of the U.S. securities markets, should have plans to limit downtime caused by a wide-scale disruption to less than one business day.[183] Likewise, the proposed two-hour resumption standard for clearance and settlement services, which traces its origin to the 2003 Interagency White Paper,[184] reflects the Commission's preliminary view that an SCI entity that is a registered clearing agency or an ''exempt clearing agency subject to ARP'' should have contingency plans to avoid a scenario in which failure to settle transactions by the end of the day could present systemic risk to the markets.[185]

Proposed item (F) would require SCI entities to have standards that result in systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data. As the Commission previously noted, when Congress mandated a national market system in 1975, it emphasized that the systems for collecting and distributing consolidated market data would ''form the heart of the national market system.'' [186] As a result of consolidated market data, the public has ready access to a comprehensive, accurate, and reliable source of information for the prices and volume of any NMS stock at any time during the trading day.[187] This information helps to ensure that the public is aware of the best displayed prices for a stock, no matter where they may arise in the national market system.[188] It also enables investors to monitor the prices at which their orders are executed and assess whether their orders received best execution.[189] Further, as noted above, one of the findings of the May 6 Staff Report is that ''fair and orderly markets require that the standards for robust, accessible, and timely market data be set quite high.'' [190] The Commission believes that the accurate, timely and efficient processing of data is similarly important to the proper functioning of the securities markets. For example, if a clearing agency were not able to process data accurately, settlements could potentially be impacted. Similarly, if an exchange does not process trades accurately, erroneous executions could occur.

Consistent with these goals and Congress's statement, proposed item (F) would be a new requirement that has no precedent in either Rule 301(b)(6) of Regulation ATS or the ARP policy statements and would require SCI entities to have ''standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data.'' [191] The Commission preliminarily believes that proposed item (F) would assist an SCI entity in ensuring that its market data systems are designed to maintain market integrity.

b. Proposed Rule 1000(b)(1)(ii)

Proposed Rule 1000(b)(1) would generally require that each SCI entity's policies and procedures be reasonably designed to ensure that its SCI systems and, for purposes of security standards, SCI security systems, ''have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance

[180] *See also* the Commission's request for comment in *infra* Sections III.C.1.b and III.C.7, on whether proposed Regulation SCI should be more prescriptive regarding testing standards and requirements in light of comments on testing made by Roundtable panelists and commenters, and the closure of the national securities exchanges in the wake of Superstorm Sandy, as discussed in the text accompanying *supra* notes 78–83.

[181] *See* 17 CFR 242.301(b)(6)(ii)(E); ARP I Release, *supra* note 1, at 48706.

[182] *See* 2003 Interagency White Paper, *supra* note 31.

As discussed further below in Section III.C.1.b, proposed Rule 1000(b)(1) would require an SCI entity to have policies and procedures that are ''reasonably designed'' and ''adequate to maintain [its] operational capability and promote the maintenance of fair and orderly markets.'' Proposed Rule 1000(b)(1)(i)(E) would require that such policies and procedures include ''business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and *geographically diverse,''* (emphasis added) to ensure next business day or two-hour resumption as applicable, following a wide-scale disruption. While ''sufficient'' geographic diversity would be a required element of reasonably designed business continuity and disaster recovery plans, the proposed rule does not specify any particular minimum distance or geographic location that would be necessary to achieve the requisite level of geographic diversity. Instead, the proposed rule focuses on the ability to achieve the goal of resuming business within the applicable time frame in the wake of a wide-scale disruption. As noted above, the Commission also preliminarily believes that an SCI entity should have a reasonable degree of flexibility to determine the precise nature and location of its backup site depending on the particular vulnerabilities associated with those sites, and the nature, size, technology, business model, and other aspects of its business.

[183] Standards with respect to resilient and geographically remote back-up sites and resumption of operations are discussed in the 2003 Interagency White Paper and the 2003 Policy Statement on Business Continuity Planning for Trading Markets, and these publications are proposed to be designated as industry standards in the context of contingency planning. *See* 2003 Interagency White Paper, *supra* note 31 and 2003 Policy Statement on Business Continuity Planning for Trading Markets, *supra* note 32.

In addition, the 2003 Policy Statement on Business Continuity Planning for Trading Markets urged SRO markets and ECNs to ''have a business continuity plan that anticipates the resumption of trading * * * no later than the next business day following a wide-scale disruption.'' *See supra* note 32, at 56658.

[184] *See supra* note 31. *See also infra* note 195, discussing further the 2003 Interagency White Paper.

[185] The Commission believes that all clearing agencies that would be subject to proposed Regulation SCI (*i.e.,* all of the registered clearing agencies and the current ''exempt clearing agency subject to ARP'') currently strive to adhere to this standard.

[186] *See* Concept Release on Equity Market Structure, *supra* note 42, at 3600 (quoting H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 93 (1975)).

[187] *See id.*

[188] *See id.*

[189] *See id.* The benefits of consolidated market data discussed here are true for the options markets as well.

[190] *See* May 6 Staff Report, *supra* note 56, at 8.

[191] This proposed requirement is consistent with Rule 603(a) of Regulation NMS, which states that any ''* * * broker or dealer with respect to information for which it is the exclusive source, that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor shall do so on terms that are fair and reasonable.'' In adopting Regulation NMS, the Commission stated that Rule 603(a) ''prohibits an SRO or broker-dealer from transmitting data to a vendor or user any sooner than it transmits the data to a Network processor.'' Rule 603(a) by its terms applies only to NMS stocks. *See supra* note 121. *See also* 17 CFR 242.603(a).

of fair and orderly markets.'' As discussed above, proposed Rule 1000(b)(1)(i) would also require that an SCI entity have policies and procedures that address items (A)–(F). The Commission notes that SCI entities that are ARP participants have been applying the ARP I principles underlying proposed Rule 1000(b)(1)(i)(A)–(F) for many years. However, while the items enumerated in proposed Rule 1000(b)(1)(i)(A)–(F) identify the areas that would be required to be addressed by an SCI entity's policies and procedures, the Commission is not proposing to prescribe the specific policies and procedures an SCI entity must follow to comply with the requirements of proposed Rule 1000(b)(1). Instead, the Commission intends to, and preliminarily believes that the proposed requirements as written would, provide SCI entities sufficient flexibility, based on the nature, size, technology, business model, and other aspects of their business, to identify appropriate policies and procedures that would meet the articulated standard, namely that they be reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets. However, the Commission also preliminarily believes that it would be helpful to SCI entities to provide additional guidance about one way in which they might elect to satisfy this general standard in proposed Rule 1000(b)(1). Therefore, the Commission is proposing Rule 1000(b)(1)(ii), which would provide that, for purposes of complying with proposed Rule 1000(b)(1), an SCI entity's policies and procedures would be deemed to be reasonably designed, and thus satisfy the requirements of proposed Rule 1000(b)(1), if they are consistent with current SCI industry standards. Proposed Rule 1000(b)(1)(ii) further states that such SCI industry standards shall be: (A) comprised of information technology practices that are widely available for free to information technology professionals in the financial sector; and (B) issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or agencies, or widely recognized organization. Proposed Rule 1000(b)(1)(ii) would additionally provide that compliance with the SCI industry standards identified in the proposal would not be the exclusive means to comply with the requirements of paragraph (b)(1). As noted above, the Commission intends to, and preliminarily believes that the proposed requirements as written would, provide SCI entities sufficient flexibility, based on the nature, size, technology, business model, and other aspects of their business, to identify appropriate policies and procedures to comply with proposed Rule 1000(b)(1).

The Commission is proposing this approach because it preliminarily believes that providing additional guidance on the types of industry standards that would satisfy the requirements of proposed Rule 1000(b)(1) could assist an SCI entity in determining how to best allocate resources to maintain its systems' operational capability, and promote the maintenance of fair and orderly markets.[192] The Commission acknowledges that current industry standards applicable to SCI entities have been developed in a number of areas to help ensure that systems have adequate capacity, integrity, resiliency, availability, and security. Accordingly, the current SCI industry standards that would be deemed to be reasonably designed for purposes of proposed Rule 1000(b)(1) are not limited to the SCI industry standards discussed and contained in the publications identified in Table A below, but rather may be found in a variety of publications, issued by a range of sources. The Commission acknowledges that an SCI entity's choice of a current SCI industry standard in a given domain or subcategory thereof may be different than those contained in the publications identified in Table A. Further, some of the identified standards may be more relevant for some SCI entities than others, based on the nature and amount of their respective activities. Thus, the Commission's proposed approach is designed to provide a non-exclusive method of compliance.

The Commission preliminarily believes that the publications set forth in Table A below[193] contain examples of SCI industry standards that an SCI entity may elect to look to in establishing its policies and procedures under proposed Rule 1000(b)(1). However, as proposed Rule 1000(b)(1)(ii) makes clear, compliance with such current SCI industry standards would not be the exclusive means to comply with the requirements of proposed Rule 1000(b)(1). Thus, as proposed, written policies and procedures that are consistent with the relevant examples of SCI industry standards contained in the publications identified in Table A, would be deemed to be ''reasonably designed'' for purposes of proposed Rule 1000(b)(1). The publications identified in Table A cover nine inspection areas, or ''domains,'' that have evolved over the past 20 years of the ARP Inspection Program and that are relevant to SCI entities' systems capacity, integrity, resiliency, availability, and security, namely: Application controls; capacity planning; computer operations and production environment controls; contingency planning; information security and networking; audit; outsourcing; physical security; and systems development methodology.

The publications included in Table A set forth industry standards that the Commission understands are currently used by information technology and audit professionals in the financial and government sectors. These industry standards have been issued primarily by NIST and FFIEC. NIST, an agency within the U.S. Department of Commerce, has issued special publications regarding information technology systems. The FFIEC is a U.S. intergovernmental body that prescribes uniform principles and practices for the examination of certain financial institutions by U.S. regulators, and has issued publications on numerous topics, including development and acquisition of applications, computer operations, outsourcing technology, business continuity planning, information security, and internal audits.[194] In addition to these standards issued by FFIEC and NIST, financial regulatory agencies, including the Commission, provided guidance on business continuity and disaster recovery plans

[192] *See infra* Sections V.B and V.C, discussing market failures and the anticipated economic benefits of proposed Regulation SCI. Each SCI entity, to the extent it seeks to rely on SCI industry standards in complying with proposed Rule 1000(b)(1), would have discretion to identify those industry standards that provide an appropriate way for it to comply with the requirements set forth in the rule, given its technology, business model, and other factors.

[193] Each of these publications would meet the proposed criteria that they be: (i) Information technology practices that are widely available for free to information technology professionals in the financial sector; and (ii) issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or agencies, or widely recognized organization. *See* proposed Rules 1000(b)(1)(ii).

[194] The federal agencies represented on the FFIEC are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau.

in the 2003 Interagency White Paper [195] and the 2003 Policy Statement on Business Continuity Planning for Trading Markets.[196]

Also included in Table A is a publication issued by the Institute of Internal Auditors (''IIA''). The IIA is an international professional association that has developed and published guidance setting forth industry best practices in internal auditing for internal audit professionals. It has more than 175,000 members in 165 countries and territories around the world.[197] IIA is also a credentialing organization, awarding the Certified Internal Auditor (CIA), Certified Government Auditing Professional (CGAP), Certified Financial Services Auditor (CFSA), Certification in Control Self-Assessment (CCSA), and Certification in Risk Management Assurance (CRMA) certifications to those who meet the requirements.[198] The Commission preliminarily believes these factors support identification of IIA as an authoritative body that is a widely recognized organization.

In addition, one of the publications identified in Table A is issued by the Security Benchmarks division of the Center for Internet Security (''CIS''). The CIS is a not-for-profit organization focused on enhancing the cybersecurity readiness and response of public and private sector entities. The CIS Security Benchmarks division facilitates the development of industry best practices for security configuration, tools for measuring information security status, and resources to assist entities in making security investment decisions.[199] Its members include commercial organizations, academic organizations, government agencies, and security service, consulting, and software organizations.[200] According to the CIS, its benchmarks are regularly referred to by U.S. government agencies for compliance with information security rules and regulations.[201] The Commission preliminarily believes these factors support a determination that CIS is an authoritative body that is a widely recognized organization.

Table A lists the publication(s) that the Commission has preliminarily identified as SCI industry standard(s) in each domain that an SCI entity, taking into account its nature, size, technology, business model, and other aspects of its business, could, but is not required to, use to establish, maintain, and enforce reasonably designed policies and procedures that satisfy the requirements of proposed Rule 1000(b)(1). Thus, the Commission is proposing that the industry standards contained in the publications identified in Table A be one example of ''current SCI industry standards'' for purposes of proposed Rule 1000(b)(1), and requests commenters' views on the appropriateness of each publication identified in Table A as a ''current SCI industry standard.'' Each listed publication is identified with specificity, and includes the particular publication's date, volume number, and/or publication number, as the case may be. Thus, to the extent an SCI entity seeks to rely on SCI industry standards for purposes of complying with proposed Rule 1000(b)(1)(ii), the Commission intends SCI entities that establish policies and procedures based on the SCI industry standards contained in the publications set forth in Table A to enforce written policies and procedures, taking into account their nature, size, technology, business model, and other aspects of their business, consistent with relevant standards, even if the issuing organization were to subsequently update a given industry practice, until such time as the list of SCI industry standards were to be updated, as discussed below.[202] Of course, SCI entities could elect to use standards contained in the publications other than those identified on Table A to satisfy the requirements of proposed Rule 1000(b)(1).

[195] *See* 2003 Interagency White Paper, *supra* note 31. In the 2003 Interagency White Paper, which was issued jointly by the Commission, the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency, the agencies identified a broad consensus on three important business continuity objectives: (1) Rapid recovery and timely resumption of critical operations following a wide-scale disruption; (2) rapid recovery and timely resumption of critical operations following the loss or inaccessibility of staff in at least one major operating location; and (3) a high level of confidence, through ongoing use or robust testing, that critical internal and external continuity arrangements are effective and compatible. *See id.* at 17811.

The agencies also identified sound practices for core clearing and settlement organizations and firms that play significant roles in critical financial markets. They stated that in this context, ''core clearing and settlement organizations'' consist of market utilities that provide clearing and settlement services for critical financial markets or act as large-value payment system operators and present systemic risk to the markets should they be unable to perform. ''Firms that play significant roles in critical financial markets'' refers to organizations whose participation in one or more critical financial markets is significant enough that their failure to settle their own or their customers' material pending transactions by the end of the day could present systemic risk to the markets. The sound practices address the risks of a wide-scale disruption and strengthen the resilience of the financial system. They also reduce the potential that key market participants will present systemic risk to one or more critical markets because primary and back-up processing facilities and staffs are concentrated within the same geographic region.

The sound practices are as follows. First, identify clearing and settlement activities in support of critical financial markets. These activities include the completion of pending large-value payments; clearance and settlement of material pending transactions; meeting material end-of-day funding and collateral obligations necessary to ensure the performance of pending large-value payments and transactions; and updating records of accounts. Second, determine appropriate recovery and resumption objectives for clearing and settlement activities in support of critical markets. In this regard, core clearing and settlement organizations are expected to develop the capacity to recover and resume clearing and settlement activities within the business day on which the disruption occurs with the overall recovery goal of two hours after an event. Third, maintain sufficient geographically dispersed resources to meet recovery and resumption objectives. The 2003 Interagency White Paper states that back-up arrangements should be as far away from the primary site as necessary to avoid being subject to the same set of risks as the primary location and should not rely on the same infrastructure components used by the primary site. Fourth, routinely use or test recovery and resumption arrangements. This includes regular tests of internal recovery and resumption arrangements as well as cross-organization tests to ensure the effectiveness and compatibility of recovery and resumption strategies within and across critical markets. *See id.* at 17811–13.

[196] *See supra* note 32. The Commission's policy statement applies more broadly to all ''SRO markets'' and ECNs, not just those that play ''significant roles in critical financial markets,'' as discussed in the 2003 Interagency White Paper. Each SRO market and ECN is expected to (1) have in place a business continuity plan that anticipates the resumption of trading in the securities traded by that market no later than the next business day following a wide-scale disruption; (2) maintain appropriate geographic diversity between primary and back-up sites in order to assure resumption of trading activities by the next business day; (3) assure the full resilience of shared information streams, such as the consolidated market data stream generated for the equity and options markets; and (4) confirm the effectiveness of the back-up arrangements through testing. *See id.* at 56658.

[197] *See* IIA's 2011 Annual Report, available at: *https://na.theiia.org/about-us/Pages/Annual-Reports.aspx.*

[198] *See id.*

[199] *See http://benchmarks.cisecurity.org/en-us/?route=default.about.*

[200] *See http://benchmarks.cisecurity.org/en-us/?route=membership.*

[201] The CIS states that its benchmarks are widely accepted by U.S. government agencies for compliance with the Federal Information Security Management Act (FISMA), Gramm-Leach-Bliley Act, Sarbanes-Oxley Act, The Health Insurance Portability and Accountability Act of 1996 (HIPAA), and other the regulatory requirements for information security. *See http://benchmarks.cisecurity.org/en-us/?route=membership.*

[202] *See* discussion in this Section III.C.1.b following Table A below.

[203] The Commission recently adopted a similar contingency planning practice in Rule 17Ad–22(d)(4) that requires registered clearing agencies to have policies and procedures designed to identify sources of operational risk and minimize those risks through the development of appropriate systems controls and procedures. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012). *See also supra* note 95.

TABLE A—PUBLICATIONS RELATING TO INDUSTRY STANDARDS IN 9 DOMAINS

Domain	Industry standards
Application Controls	NIST DRAFT Security and Privacy Controls for Federal Information Systems and Organizations (Special Publication 800–53 Rev. 4) available at: *http://csrc.nist.gov/publications/drafts/800-53-rev4/sp800-53-rev4-ipd.pdf.*
Capacity Planning	FFIEC, Operations IT Examination Handbook (July 2004), available at: *http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_Operations.pdf.*
Computer Operations and Production Environment Controls.	NIST DRAFT Security and Privacy Controls for Federal Information Systems and Organizations (Special Publication 800–53 Rev. 4), available at: *http://csrc.nist.gov/publications/drafts/800-53-rev4/sp800-53-rev4-ipd.pdf.*
Contingency Planning (BCP) [203]	NIST Contingency Planning Guide for Federal Information Systems (Special Publication 800–34 Rev. 1), available at: *http://csrc.nist.gov/publications/nistpubs/800-34-rev1/sp800-34-rev1_errata-Nov11-2010.pdf.*
	2003 Interagency White Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System, Securities Exchange Act Release No. 47638 (April 8, 2003), 68 FR 17809 (April 11, 2003), available at: *http://www.sec.gov/news/studies/34-47638.htm.*
	2003 Policy Statement on Business Continuity Planning for Trading Markets, Securities Exchange Act Release No. 48545 (September 25, 2003), 68 FR 56656 (October 1, 2003), available at: *http://www.sec.gov/rules/policy/34-48545.htm.*
Information Security and Networking	NIST DRAFT Security and Privacy Controls for Federal Information Systems and Organizations (Special Publication 800–53 Rev. 4), available at: *http://csrc.nist.gov/publications/drafts/800-53-rev4/sp800-53-rev4-ipd.pdf.*
	NIST Guidelines on Security and Privacy in Public Cloud Computing (Special Publication 800–144), available at: *http://csrc.nist.gov/publications/nistpubs/800-144/SP800-144.pdf.*
	The Center for Internet Security Configuration Benchmarks, available at: *http://benchmarks.cisecurity.org/en-us/?route=downloads.benchmarks.*
Audit	FFIEC, Audit IT Examination Handbook (August 2003), available at: *http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_Audit.pdf.*
	IIA, The Role of Internal Auditing in Enterprise-wide Risk Management, available at: *http://www.theiia.org/iia* and *http://www.theiaa.org/index.*
Outsourcing	FFIEC, Outsourcing Technology Services IT Examination Handbook (June 2004), available at: *http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_OutsourcingTechnologyServices.pdf.*
Physical Security	NIST DRAFT Security and Privacy Controls for Federal Information Systems and Organizations (Special Publication 800–53 Rev. 4), available at: *http://csrc.nist.gov/publications/drafts/800-53-rev4/sp800-53-rev4-ipd.pdf.*
Systems Development Methodology	NIST Security Considerations in the System Development Life Cycle (Special Publication 800–64 Rev. 2), available at: *http://csrc.nist.gov/publications/nistpubs/800-64-Rev2/SP800-64-Revision2.pdf.*

As noted above, each of the publications listed in Table A is intended to identify information technology practices that are widely available for free to information technology professionals in the financial sector and are issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or agencies, or widely recognized organization.

Although the industry standards contained in the publications identified in Table A above are intended as an appropriate *initial* set of industry standards under proposed Regulation SCI, the Commission does not seek to foreclose the development, whether by the Commission or otherwise, of a set of industry standards that is more focused on the specific businesses and systems of SCI entities.[204] In such a case, the Commission preliminarily believes that it would be appropriate to use the industry standards contained in the publications listed in Table A as a starting point for such development.

Further, the Commission recognizes that systems and technologies are continually evolving. As such, the standards identified in this proposal would likely be updated from time to time by the organizations issuing them. However, the Commission also preliminarily believes that, following its initial identification of one set of SCI industry standards, it may be appropriate to update the identified set of standards from time to time through the periodic issuance of Commission staff guidance. Accordingly, the Commission preliminarily believes it would be appropriate for Commission staff, from time to time, to issue notices to update the list of previously identified set of SCI industry standards after receiving appropriate input from interested persons.[205] The Commission preliminarily believes that this approach would provide the public, including SCI entities and other market participants, an opportunity to comment on newly proposed SCI industry standards. However, until such time as Commission staff were to update the identified set of SCI industry standards, the then-current set of SCI industry standards would be the standards referred to in proposed Rule 1000(b)(1)(ii) of Regulation SCI.

As noted above, proposed Rule 1000(b)(1)(ii) would require that any SCI industry standards be: (i) Comprised of information technology practices that are widely available for free to information technology professionals in the financial sector; and (ii) issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or agencies, or a widely recognized organization.

[204] Standards issued by the Commission itself would meet the proposed criteria in that they would be: (i) Comprised of information technology practices that are widely available for free to information technology professionals in the financial sector; and (ii) issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or agencies, or widely recognized organization.

[205] As noted in the request for comment section below, the Commission solicits comment on the ways in which appropriate input from interested persons should be obtained for updating the SCI industry standards.

Request for Comment

60. The Commission requests comment generally on proposed Rule 1000(b)(1). Do commenters believe the proposed scope of required policies and procedures is appropriate? Why or why not? Please explain.

61. Do commenters believe that it is appropriate to apply the requirements of proposed Rule 1000(b)(1) to SCI systems and, for purposes of security standards, to SCI security systems? Why or why not? Please explain.

62. Do commenters believe the enumeration of the items in proposed Rule 1000(b)(1)(i)(A)–(F) that are to be addressed in the required policies and procedures is appropriate? Why or why not? Specifically, is the proposal to require that such policies and procedures include the establishment of reasonable current and future capacity planning estimates, as provided in proposed Rule 1000(b)(1)(i)(A), appropriate? Why or why not?

63. Should the Commission specify the interval (*e.g.,* monthly or quarterly) at which SCI entities would be required to conduct periodic capacity stress tests of relevant systems, as provided in proposed Rule 1000(b)(1)(i)(B)? Should such periodic tests be limited to a subset of systems? If so, for which systems should such tests be required and why would that limitation be appropriate?

64. Should the Commission require SCI entities to have a program to review and keep current systems development and testing methodology, as proposed to be required in proposed Rule 1000(b)(1)(i)(C)? Why or why not?

65. Should the Commission specify the interval at which SCI entities would be required to conduct reviews and tests of SCI systems and SCI security systems, including backup systems, to identify vulnerabilities pertaining to internal and external threats, physical hazards, and natural or manmade disasters, as provided in proposed Rule 1000(b)(1)(i)(D)? Why or why not? And, if so, what would be appropriate intervals and why?

66. The Commission notes that items (i)(B), (C), and (D) would each require the establishment of policies and procedures for: Testing of capacity, testing methodology, and testing for vulnerabilities, respectively. The Commission also notes that the need for improved testing was a recurring theme during the Roundtable and discussed in several comment letters.[206] The Commission requests comment on whether the testing policies and procedures requirements in proposed Rule 1000(b)(1)(i)(B), (C), and (D) would be sufficiently comprehensive to foster development of the types of testing that Roundtable panelists and commenters recommended. Why or why not? Please be specific. Should the Commission require certain types of testing by SCI entities? Why or why not? Please be specific. If so, what specific types of testing should the Commission require in proposed Regulation SCI? Please describe in detail.

67. Should the Commission require SCI entities to have, and make available to their members or participants, certain infrastructure or mechanisms that would aid industry-wide testing or direct testing with an SCI entity, such as test facilities or test symbols? Why or why not? If so, please specify what types of infrastructures or mechanisms should be required.

68. Should the Commission require industry-wide testing for certain types of anticipated technology deployments?[207] Why or why not? If so, what should be the criteria for identifying anticipated technology deployments that warrant mandatory industry-wide testing and which market participants should be required to participate? Please explain in detail.

69. Should the Commission require SCI entities to mandate that their members or participants participate in direct testing with such SCI entities for certain types of anticipated technology deployments by the members or participants?[208] Why or why not? If so, what should be the criteria for identifying anticipated technology deployments that warrant mandatory testing with an SCI entity? Should the Commission identify such criteria, or should SCI entities identify such criteria? Please explain.

70. Similarly, would proposed item (i)(E), regarding policies and procedures for business continuity and disaster recovery plans, be sufficiently comprehensive to foster the establishment of the types of contingency plans discussed by Roundtable panelists and Roundtable commenters, such as predetermined communication plans, escalation procedures, and/or kill switches?[209] Why or why not? Should proposed Regulation SCI expressly require that an SCI entity's contingency plans include such details?[210] Why or why not? Please explain. Should SCI entities' contingency plans and the testing of such plans be required to account for specific types of disaster or threat scenarios, such as an extreme volume surge, the failure of a major market participant, and/or a terrorist or cyber attack? Why or why not? Please explain. If so, what other types of scenarios should such plans take into account? Please be specific.

71. There was considerable discussion at the Roundtable about kill switches, with several panelists advocating the kill switch proposal outlined in the Industry Working Group comment letter,[211] while others expressed concerns.[212] The Commission is not proposing at this time any requirements related to kill switches. However, do commenters believe that the implementation of kill switches, as outlined in the Industry Working Group comment letter, would assist SCI entities in maintaining the integrity of their systems? Why or why not? If so, how, if at all, should the Commission foster the development of coordinated contingency plans among SCI SROs and SCI ATSs that would include such a kill switch mechanism?

72. Should the Commission include the criteria of geographic diversity in the requirement relating to business continuity and disaster recovery plans in proposed Rule 1000(b)(1)(i)(E)? Why or why not? Please explain. Should the Commission specify minimum standards for ''geographically diverse'' in proposed Rule 1000(b)(1)(i)(E)? Why or why not? If so, what would be an appropriate standard?

73. Is the next business day resumption of trading following a wide-scale disruption requirement in

[206] *See* text accompanying *supra* note 72, discussing recommendations by Roundtable panelists and commenters to lower rates of error in software development by improving testing opportunities and participation in testing by member firms. *See also* text accompanying *supra* note 180.

[207] *See also infra* Section III.C.7 (discussing, among other things, the requirement of proposed Rule 1000(b)(9)(ii) that an SCI entity coordinate the testing of the SCI entity's business continuity and disaster recovery plans, including its backup systems, with other SCI entities).

[208] *See also infra* Section III.C.7 (discussing, among other things, the requirement of proposed Rule 1000(b)(9)(i) that an SCI entity require participation by designated members or participants in scheduled functional and performance testing of the operation of the SCI entity's business continuity and disaster recovery plans, including its backup systems).

[209] *See* discussion of Roundtable in *supra* Section I.D. The Commission is not proposing at this time any requirements related to kill switches.

[210] *See also infra* Section III.C.3.a, discussing proposed Rule 1000(b)(3), which would require an SCI entity, upon any responsible SCI personnel becoming aware of an SCI event, to begin to take appropriate corrective action, including, at a minimum, mitigating potential harm to investors and market integrity resulting from the SCI event and devoting adequate resources to remedy the SCI event as soon as reasonably practicable, and the associated request for comment.

[211] *See* letter from Industry Working Group, *supra* note 74 and accompanying text.

[212] *See, e.g.,* letter from TDA, *supra* note 74.

proposed Rule 1000(b)(1)(i)(E) appropriate? Why or why not? Is the two-hour resumption of clearance and settlement services following a wide-scale disruption an appropriate requirement for an SCI entity that is a registered clearing agency or ''exempt clearing agency subject to ARP?'' Why or why not?

74. As discussed above, the U.S. national securities exchanges closed for two business days in October 2012 in the wake of Superstorm Sandy, even though the securities industry's annual test of how trading firms, market operators, and their utilities could operate through an emergency using backup sites, backup communications, and disaster recovery facilities occurred without significant incident on October 27, 2012, just two days before the storm.[213] As discussed in greater detail below, proposed Rule 1000(b)(9) would require SCI entities to mandate participation by designated members or participants in scheduled testing of the operation of their business continuity and disaster recovery plans, including backup systems, and to coordinate such testing with other SCI entities.[214] Are there other industry practices related to proposed Regulation SCI that should be considered further in light of the two-day closure of the U.S. securities markets during the storm? If so, what are they? For example, for SCI entities that are trading markets, should the Commission limit the extent to which an SCI entity's business continuity and disaster recovery plans may involve changing how trading may be conducted? For example, the NYSE, pursuant to its rules, initially proposed to conduct trading only electronically on October 29, 2012, using NYSE Arca systems, rather than conduct trading both electronically as well as on a physical trading floor, as it normally does.[215] Should an SCI entity that is experiencing a wide-scale disruption be permitted to offer its members or participants an alternative that significantly differs from its usual method of operation? Please explain. What are the costs and benefits associated with each type of approach?

75. Should business continuity and disaster recovery plans involving backup data centers be required to be tested in a live ''production'' environment on a periodic basis (*e.g.,* annually, or at some other frequency)? Why or why not? Please explain.

76. The Commission understands that certain entities that would be defined as SCI entities (such as registered clearing agencies) are already effectively operating under business resumption requirements of less than one business day. Should the Commission consider revising the proposed next business day resumption requirement for trading to a shorter or longer period, for example, a specific number of hours less or more than one business day or within the business day for certain entities that play a significant role within the securities markets? Why or why not? Similarly, should the proposed two-hour resumption standard for clearance and settlement services be shortened or lengthened? Why or why not?

77. Following a systems disruption (including, for example, activation of an SCI entity's business continuity plan), should the Commission require user testing and certification prior to resuming operation of the affected systems? Why or why not? If so, what should the testing requirements be? Should they vary depending on the type of system(s) affected? To whom should an SCI entity certify that an affected system or group of systems is ready to resume operation?

78. Is the requirement in proposed Rule 1000(b)(1)(i)(F) for ''standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data'' appropriate? Are there other factors that the Commission should consider in determining whether standards to process data are adequate? Or, should some of the proposed standards be eliminated or modified? If so, please explain how and why.

79. Do commenters believe there are specific internal controls or other mechanisms that would reinforce the effectiveness of an SCI entity's reasonably designed policies and procedures under proposed Rule 1000(b)(1)? Why or why not? Please explain. How do SCI entities presently use specific internal controls or other mechanisms to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets? How do commenters generally view the advantages and disadvantages of specific internal controls or other mechanisms? The Commission is not proposing to prescribe specific internal controls under proposed Rule 1000(b)(1). Should the Commission propose that any particular internal controls or other mechanisms be required (for example, that a senior officer be designated to be responsible for the SCI entity's compliance with proposed Regulation SCI, or that personnel of the SCI entity certify that the SCI entity's policies and procedures are reasonably designed)?

80. Would any of the Commission's proposed requirements under proposed Rule 1000(b)(1) create inappropriate barriers to entry for new entities seeking to register with the Commission as an SRO, ATS, or plan processor? Would any of the proposed requirements inappropriately limit the growth or expansion of entities currently registered with the Commission as an SRO, ATS, or plan processor? Why or why not?

81. As noted above, the Commission proposes that policies and procedures would be deemed to be reasonably designed for purposes of proposed Rule 1000(b)(1) if they are consistent with current SCI industry standards. Do commenters agree with this approach? Why or why not? What are the advantages or disadvantages of such an approach?

82. Do commenters believe that the publications listed in Table A represent publications that are suitable for purposes of proposed Rule 1000(b)(1)(ii) and that should be the ''current SCI industry standards'' for purposes of proposed Rule 1000(b)(1)(ii)? Why or why not? If not, what publications would be appropriate? Do commenters believe that SCI entities currently follow the industry standards contained in the publications listed in Table A?

83. Are there areas within one of the nine identified domains that these publications do not cover? For example, should the Commission identify additional publications that provide industry standards for specific areas such as personnel security or information security risk management? If so, please identify any such publications that would be appropriate for the Commission to apply to SCI entities. Are there other areas that commenters believe are not covered at all by the publications listed in Table A that should be included? If so, what publications would be appropriate for such areas? Are there any areas within one of the nine identified domains that commenters believe should not be included? If so, why not?

84. Should any of the publications listed in Table A be eliminated? If so, which ones and why? Are there any publications that should be added? If so, which ones and why? Are there industry practices that apply to, or are developed by, entities related to the securities markets that should be considered? If so, what are they and why? Are there any types of SCI entities for which the proposed publications would not be appropriate? If so, which

[213] *See supra* Section I.D.

[214] *See infra* Section III.C.7.

[215] *See supra* Section I.D.

types of entities and why? How should any such possible concerns be addressed? The Commission notes that many of the publications in Table A have been issued by either NIST or FFIEC. Do commenters believe that SCI entities generally currently follow the industry standards issued by one of these organizations more frequently than the other? If so, which one and why? Is one organization's publications more appropriate or preferable for SCI entities? If so, please explain. What are the advantages and/or disadvantages of the publications issued by each organization?

85. The Commission seeks comment on whether commenters believe that the identified publications, and the industry standards within, are adequate in terms of the detail, specificity and scope. Are there areas in which the industry standards listed in the publications in Table A should be modified to provide adequate guidance to SCI entities? If so, please explain in detail. For example, the Commission understands that many businesses, including SCI entities, now utilize cloud computing as part of their operations, and the Commission has identified industry standards with respect to cloud computing among the publications listed in Table A. However, do commenters believe that these industry standards provide an adequate level of specificity to allow an SCI entity to ascertain how to comply with such standards? Further, do the industry standards contained in the publications in Table A cover all of the relevant areas related to a particular subject area (such as cloud computing)? Similarly, the Commission notes that it has identified publications with respect to capacity planning, but that the industry standards in such publications focus primarily on continuity of operations. As such, the Commission seeks comment on whether commenters believe that the identified publications with respect to capacity planning are adequate in terms of the detail, specificity, and scope? Specifically, do these publications provide an adequate level of specificity to allow an SCI entity to ascertain how to comply with such standards, and do the industry standards cover all of the necessary areas related to a particular subject area such as capacity planning? Why or why not? As noted above, compliance with the industry standards contained in the publications on Table A would not be the exclusive means to comply with the requirements of proposed Rule 1000(b)(1).

86. Do commenters agree with the Commission's proposed policies and procedures approach to the requirements of proposed Rule 1000(b)(1)? Why or why not? If not, is there another approach that is more appropriate? If so, please describe and explain. Do commenters agree with the Commission's proposed approach to deem an SCI entity's policies and procedures to be reasonably designed if they are consistent with current SCI industry standards, as provided for in proposed Rule 1000(b)(1)(ii)? Why or why not? How do commenters believe the actions of SCI entities might differ if such a provision were not available? What are the costs and benefits of the Commission's approach ? What would be the costs and benefits of other approaches? Please explain.

87. Do commenters agree or disagree with the Commission's proposed criteria to evaluate publications suitable for inclusion on Table A as an SCI industry standard and to update such list? Do commenters agree with the proposed criteria that identified publications should be: (i) Comprised of information technology practices that are widely available for free to information technology professionals in the financial sector; and (ii) issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or agencies, or widely recognized organization? Why or why not? Are there other criteria that would be more appropriate? Should the proposed criteria allow for a publication that may be available for an incidental charge rather than being required to be available for free? Why or why not? How frequently should such list of publications be updated and revised and what should the process be to update and/or revise them?

88. Are there SCI entities for which the proposed requirements in Rule 1000(b)(1) would be inappropriate (*e.g.,* not cost effective)? If so, please identify such type of entity or entities, or the characteristics of such entity or entities, and explain which proposed requirements would be inappropriate and why. Would cost burden be an appropriate reason to omit an SCI entity or proposed requirement generally? Alternatively, would cost burden be an appropriate reason to omit an SCI entity or proposed requirement, on a case-by-case basis, as the Commission determined to be consistent with Exchange Act requirements?

89. When the Commission adopts new rules, or when SCI SROs implement rule changes, SCI SROs and their members often need to make changes to their systems to comply with such new rules. Would the requirements of proposed Rule 1000(b)(1) add additional time to this process and would the requirements increase the amount of time SCI entities would need to adjust their systems for Commission or SCI SRO rule changes? If so, how much additional time would SCI SROs need to adjust their systems? If not, should proposed Regulation SCI or another Commission rule require SCI SROs to provide minimum advance notice to their members of anticipated technology deployments prior to the implementation of any associated new rule or rule change by the SCI SRO? Why or why not? If so, how much advance notice should be required (*e.g.,* a few days, a week, 30 days, 60 days, some other period)? Along with any such advance notice, should SCI SROs be required to offer to its members the opportunity to test such change with the SCI SRO prior to deployment of the new technology and implementation of any associated new rule or rule change? Why or why not? Should there be a similar requirement for other types of SCI entities? Why or why not? If so, what types of entities and what sorts of requirements should be included?

90. Do commenters believe the potential additional time SCI SROs allocate to this process would result in fewer SCI events by helping to ensure that SCI SROs properly implement systems changes? Why or why not? How would the benefits and costs of such potential additional time compare? Please be as specific as possible.

91. The Commission generally solicits comments on its proposed process for updating current SCI industry standards. Do commenters believe that it would be appropriate that Commission staff, from time to time, issue notices to update the list of previously identified publications containing SCI industry standards after receiving appropriate input from interested persons? Is there a more appropriate method? If so, what would it be? If not, why not?

92. Would such a process in allow for Commission staff to receive sufficient input from the public, including experts, SCI entities, and other market participants regarding the appropriate standards it should update, and how to do so? Why or why not?

93. Would it be useful, for example, to provide notice to the public that it was focusing on a given domain or standard and seek comment on a domain-by-domain, or standard-by-standard, basis? Would it be useful for the Commission to set up a committee to advise Commission staff on such standards? If so, which groups or types of market participants should be represented on such a committee and

why? Is there any other process that the Commission or its staff should use to help it obtain useful input? Would it be appropriate to instead require SROs, for example, to submit an NMS plan under Rule 608 of Regulation NMS that contained standards? Why or why not?

94. If the Commission, its staff, or another entity seeks to develop a set of standards that is more focused on the specific businesses and systems of SCI entities, do commenters agree that the industry standards contained in the publications listed in Table A would be appropriate to be used as a starting point for this effort? Why or why not? If not, what publication(s) should be used as a starting point? Please describe in detail and explain.

95. Do commenters believe it would be feasible to establish industry standards through means other than identification through Table A? For example, should SCI entities take the lead in developing such standards? Why or why not? If so, how should the process be organized and what parameters should be put in place to facilitate the process? For example, should SCI entities jointly develop industry standards that apply to all SCI entities or should the various types of SCI entities (*e.g.,* national securities exchanges, ATSs, plan processors, clearing agencies) work separately to develop their own standards? Should one or more industry organizations take the lead in developing such standards? If so, which ones, and why? Should any such standards identified by the SCI entities and/or industry organizations be formally approved or disapproved by the Commission as part of any such process?

2. Systems Compliance

Proposed Rule 1000(b)(2)(i) would require each SCI entity to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems operate in the manner intended, including in a manner that complies with the federal securities laws and rules and regulations thereunder and the entity's rules and governing documents, as applicable.[216] Whereas proposed Rule 1000(b)(1) concerns the robustness of the SCI entity's SCI systems and SCI security systems—*i.e.,* such systems' capacity and resiliency against failures and security threats—proposed Rule 1000(b)(2) concerns the SCI entity's establishment of policies and procedures reasonably designed to ensure the operational compliance of an SCI entity's SCI systems with applicable laws, rules, and the SCI entity's governing documents. Diligent discharge of this proposed obligation to establish, maintain, and enforce written policies and procedures would establish the organizational framework for an SCI entity to meet its other obligations under proposed Regulation SCI. In particular, with respect to SCI SROs, compliance with proposed Rule 1000(b)(2)(i) should help to ensure that SCI SROs comply with Section 19(b)(1) of the Exchange Act, which requires each SRO to file with the Commission copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of the SRO.[217] Therefore, compliance with this proposed requirement may help ensure not only that SCI SROs operate in compliance with the Exchange Act, but also help reinforce existing processes for filing SRO rule changes in order to better assist market participants and the public in understanding how the SCI systems of SCI SROs are intended to operate.[218]

Because of the complexity of SCI systems and the breadth of the federal securities laws and rules and regulations thereunder and the SCI entities' rules and governing documents, the Commission preliminarily believes that it would be appropriate to provide an explicit safe harbor for SCI entities and their employees in order to provide greater clarity as to how they can ensure that their conduct will comply with this provision. Therefore, the Commission is proposing Rules 1000(b)(2)(ii) and (iii), which would provide a safe harbor from liability under proposed Rule 1000(b)(2)(i) for SCI entities and persons employed by SCI entities, respectively, as further described below.

Specifically, proposed Rule 1000(b)(2)(ii) would provide that an SCI entity would be deemed not to have violated proposed Rule 1000(b)(2)(i) if: (A) the SCI entity has established and maintained policies and procedures reasonably designed to provide for: (*1*) Testing of all SCI systems and any changes to such systems prior to implementation; (*2*) periodic testing of all such systems and any changes to such systems after their implementation; (*3*) a system of internal controls over changes to such systems; (*4*) ongoing monitoring of the functionality of such systems to detect whether they are operating in the manner intended; (*5*) assessments of SCI systems compliance performed by personnel familiar with applicable federal securities laws and rules and regulations thereunder and the SCI entity's rules and governing documents, as applicable; and (*6*) review by regulatory personnel of SCI systems design, changes, testing, and controls to prevent, detect, and address actions that do not comply with applicable federal securities laws and rules and regulations thereunder and the SCI entity's rules and governing documents, as applicable; (B) the SCI entity has established and maintained a system for applying such policies and procedures which would reasonably be expected to prevent and detect, insofar as practicable, any violations of such policies and procedures by the SCI entity or any person employed by the SCI entity; and (C) the SCI entity: (*1*) has reasonably discharged the duties and obligations incumbent upon the SCI entity by such policies and procedures, and (*2*) was without reasonable cause to believe that such policies and procedures were not being complied with in any material respect.

The Commission preliminarily believes that, if an SCI entity establishes and maintains policies and procedures reasonably designed to provide for the items in proposed Rule 1000(b)(2)(ii)(A)(*1*)-(*6*), such policies and procedures would meet the requirement articulated in proposed Rule 1000(b)(2)(i). Specifically, the Commission preliminarily believes that items (*1*) and (*2*), which, for purposes of qualifying for the safe harbor, would require SCI entities to have policies and procedures requiring the testing of SCI systems and changes to such systems before they are put into production and periodically thereafter, should help SCI entities to identify potential problems before such problems have the ability to impact markets and investors. Items (*3*) and (*4*), which, for purposes of qualifying for the safe harbor, would require a system of internal controls over changes to SCI systems and ongoing monitoring of the functionality of such systems, would provide a framework for SCI entities seeking to bring newer, faster, and more innovative SCI systems online. In conjunction with ongoing monitoring, the Commission preliminary believes the policies and procedures proposed to be required in items (*3*) and (*4*) for purposes of qualifying for the safe harbor, would help prevent SCI systems becoming noncompliant resulting from, for example, inattention or failure to review compliance with established written policies and procedures.

[216] *See supra* Section III.B.3.b, discussing the definition of ''systems compliance issue.''

[217] *See* 15 U.S.C. 78s(b)(1).

[218] SCI SROs would similarly be assisted in meeting their obligations to file plan amendments to SCI Plans under Rule 608 of Regulation NMS.

Further, the Commission preliminarily believes that item (*5*) (which, for purposes of qualifying for the safe harbor, would require that an SCI entity establish, maintain, and enforce written policies and procedures for assessments of SCI systems compliance by personnel familiar with applicable federal securities laws, rules and regulations thereunder, and the SCI entity's rules and governing documents), in conjunction with item (*6*) (which, for purposes of qualifying for the safe harbor, would require policies and procedures directing that regulatory personnel review SCI systems design, changes, testing, and controls), would help foster coordination between the information technology and regulatory staff of an SCI entity so that SCI events and other issues related to an SCI entity's SCI systems would be more likely to be addressed by a team of staff in possession of the requisite range of knowledge and skills to help ensure compliance with the SCI entity's obligations under proposed Regulation SCI.

Insofar as an SCI entity follows them to qualify for the safe harbor, proposed items (*5*) and (*6*) also are intended to help to ensure that an SCI entity's business interests do not undermine regulatory, surveillance, and compliance functions and, more broadly, the requirements of the federal securities laws, during the development, testing, implementation, and operation processes for SCI systems. Thus, proposed items (*1*)-(*6*) together, insofar as SCI entities follow them to qualify for the safe harbor, are meant to promote the development and implementation of policies and procedures consistent with the functioning of SCI systems of SCI entities as planned and as described by the SCI entity's rules and governing documents, as well as in compliance with applicable federal securities laws and rules.[219]

In addition to establishing and maintaining the policies and procedures described in proposed Rule 1000(b)(2)(ii)(A)(*1*)-(*6*), to qualify for the safe harbor, an SCI entity would also be required to satisfy two additional requirements. First, under proposed Rule 1000(b)(2)(ii)(B), it would be required to have established and maintained a system for applying such policies and procedures which would reasonably be expected to prevent and detect, insofar as practicable, any violations of such policies and procedures by the SCI entity or any person employed by the SCI entity. In addition, under proposed Rule 1000(b)(2)(ii)(C), the SCI entity would be required to: (*1*) Have reasonably discharged the duties and obligations incumbent upon it by such policies and procedures; and (*2*) have been without reasonable cause to believe that such policies and procedures were not being complied with in any material respect. To the extent an SCI entity seeks to qualify for the safe harbor, the elements of proposed Rules 1000(b)(2)(ii)(B) and (C) would require not only that its policies and procedures are reasonably designed to achieve SCI systems compliance, as described in items (A)(*1*)-(*6*) above, but also that, as part of such policies and procedures, the SCI entity establishes and maintains a system for applying those policies and procedures, and enforces its policies and procedures, in a manner that would reasonably allow it to prevent and detect violations of the policies and procedures. Proposed Rules 1000(b)(2)(ii)(B) and (C) are also designed to ensure that the SCI entity reasonably discharges duties and obligations incumbent upon it by such policies and procedures and is without reasonable cause to believe that such policies and procedures were not being complied with in any material respect.

In addition, proposed Rule 1000(b)(2)(iii) would provide a safe harbor from liability for individuals. Specifically, proposed Rule 1000(b)(2)(iii) would provide that a person employed by an SCI entity shall be deemed not to have aided, abetted, counseled, commanded, caused, induced, or procured the violation by any other person of proposed Rule 1000(b)(2)(i) if the person employed by the SCI entity has reasonably discharged the duties and obligations incumbent upon such person by such policies and procedures, and was without reasonable cause to believe that such policies and procedures were not being complied with in any material respect. The Commission preliminarily believes that the safe harbor for individuals under proposed Rule 1000(b)(2)(iii) would appropriately provide protection from liability under Rule 1000(b)(2) to employees of SCI entities who reasonably conduct their assigned responsibilities under the SCI entity's policies and procedures and do not have reasonable cause to believe the policies and procedures were not being complied with in any material respect.

In this regard, an SCI entity would not be deemed to violate proposed Rule 1000(b)(2)(i) merely because it experienced a systems compliance issue, and could take advantage of the safe harbor for SCI entities if it satisfied the elements enumerated in proposed Rule 1000(b)(2)(ii).[220] Likewise, an employee of an SCI entity, including an employee involved in the design or implementation of policies and procedures under the rule, would not be deemed to have aided, abetted, counseled, commanded, caused, induced, or procured the violation by any other person of proposed Rule 1000(b)(2)(i) merely because the SCI entity at which he or she worked experienced a systems compliance issue, whether or not the employee was able to take advantage of the safe harbor for individuals under proposed Rule 1000(b)(2)(iii).

Request for Comment

96. The Commission requests comment generally on all aspects of proposed Rule 1000(b)(2). Do commenters believe that it is appropriate to limit the application of the requirements of proposed Rule 1000(b)(2)(i) to SCI systems? Why or why not? Please explain. Do commenters agree with the requirements of the proposed safe harbor for SCI entities? Why or why not? Specifically, with respect to proposed Rule 1000(b)(2)(ii)(A)(*1*), which would include in the safe harbor a requirement that each SCI entity establish and maintain written policies and procedures that provide for testing of all SCI systems and any changes to such systems prior to implementation, should certain types of SCI systems be excluded from the proposed requirement? If so, please specify which types and explain.

97. Should the Commission specify the interval at which SCI entities would be required to conduct the periodic testing of all SCI systems contemplated by the safe harbor under proposed Rule 1000(b)(2)(ii)(A)(*2*)? Why or why not? And if so, what would be an appropriate interval? Should certain types of SCI systems be tested on a more or less frequent basis? If so, please specify which types and explain.

98. With respect to proposed Rule 1000(b)(2)(ii)(A)(*3*), which would include in the safe harbor a requirement that an SCI entity establish and maintain written policies and procedures that provide for a system of internal controls over changes to SCI

[219] *See supra* note 154–156 and accompanying text.

[220] The language of proposed Rules 1000(b)(2)(ii)(B) and (C) is drawn in significant part from language in Section 15(b)(4)(E) of the Exchange Act, 15 U.S.C. 78*o*(b)(4)(E), which generally provides a safe harbor from liability for failure to supervise, with a view to preventing violations of the securities laws, another person who is subject to his or her supervision and who commits such a violation.

systems, should the Commission specify minimum standards for internal controls? If so, please explain why, as well as what such standards should be.

99. With respect to proposed Rule 1000(b)(2)(ii)(A)(*4*), which would include in the safe harbor a requirement that an SCI entity establish and maintain written policies and procedures that provide for ongoing monitoring of the functionality of SCI systems to detect whether they are operating in the manner intended, should the Commission specify the frequency with which the monitoring of such systems' functionality should occur? If so, please explain. Should the Commission require different monitoring frequencies depending on the type of SCI system? Why or why not? If so, what should they be? Please explain.

100. For purposes of the safe harbor and proposed Rule 1000(b)(2)(ii)(A)(*5*), do commenters believe the Commission should require that the assessments of SCI systems compliance be performed by persons having specified qualifications? Why or why not? If so, what would be appropriate and/or necessary qualifications for such personnel?

101. Proposed Rule 1000(b)(2)(ii)(A)(*6*) would include in the safe harbor a requirement that each SCI entity establish and maintain policies and procedures that provide for review by regulatory personnel of SCI systems design, changes, testing, and controls to prevent, detect, and address actions that are not in compliance with applicable federal securities laws and rules and regulations thereunder and the SCI entity's rules and governing documents, as applicable. Do commenters believe, for purposes of qualifying for the safe harbor, the roles and allocations of responsibility for personnel in proposed Rules 1000(b)(2)(ii)(A)(*5*) and (*6*) are appropriate? Why or why not?

102. Do commenters agree that in order for an SCI entity to qualify for the safe harbor from liability under proposed Rule 1000(b)(2)(i), it should, in addition to establishing and maintaining the policies and procedures described in proposed Rule 1000(b)(2)(ii)(A)(*1*)-(*6*), be required to establish and maintain a system for applying such policies and procedures which would reasonably be expected to prevent and detect, insofar as practicable, any violations of such policies and procedures by the SCI entity or any person employed by the SCI entity? Why or why not? To qualify for the safe harbor from liability under proposed Rule 1000(b)(2)(i), should an SCI entity be further required to: have reasonably discharged the duties and obligations incumbent upon the SCI entity by such policies and procedures; and be without reasonable cause to believe that such policies and procedures were not being complied with in any material respect? Why or why not? Please explain.

103. Do commenters agree with the requirements for the proposed safe harbor for individuals in proposed Rule 1000(b)(2)(iii), which would provide that a person employed by an SCI entity shall be deemed not to have aided, abetted, counseled, commanded, caused, induced, or procured the violation by any other person of proposed Rule 1000(b)(2)(i) if the person employed by the SCI entity: has reasonably discharged the duties and obligations incumbent upon such person by such policies and procedures; and was without reasonable cause to believe that such policies and procedures were not being complied with in any material respect? Why or why not? Should a similar safe harbor be available to individuals other than persons employed by SCI entities? Why or why not? Please explain.

104. Do commenters agree with the Commission's proposed policies and procedures approach to the requirements of proposed Rule 1000(b)(2)? Why or why not? If not, is there another approach that is more appropriate? If so, please describe and explain. As discussed above, the Commission is proposing to include safe harbor provisions in proposed Rule 1000(b)(2) for SCI entities and employees of SCI entities. The Commission preliminarily believes that, in the context of proposed Regulation SCI, this approach may be appropriate to provide clarity and guidance to SCI entities and SCI entity employees on one method to comply with the proposed general standard in proposed Rule 1000(b)(2)(i). The Commission solicits commenters' views on the Commission's proposed approach. Specifically, do commenters agree with the Commission's proposed approach to provide safe harbors for SCI entities and employees of SCI entities from liability under proposed Rule 1000(b)(2)(i)? Why or why not? How do commenters believe the actions of SCI entities or behavior of employees of SCI entities might differ if the safe harbors under proposed Rule 1000(b)(2) were not available? What are the costs and benefits of the Commission's approach to provide safe harbors? What would be the costs and benefits of other approaches? Please explain.

105. Do commenters believe there are specific internal controls or other mechanisms that would reinforce the effectiveness of an SCI entity's reasonably designed policies and procedures under proposed Rule 1000(b)(2)? Why or why not? Please explain. How do SCI entities presently use specific internal controls or other mechanisms to ensure that their systems operate in a manner that complies with the federal securities laws and rules and regulations thereunder and their rules and governing documents, as applicable? How do commenters generally view the advantages and disadvantages of specific internal controls or other mechanisms? The Commission is not proposing to prescribe specific internal controls related to compliance with proposed Rule 1000(b)(2). Should the Commission propose that any particular internal controls or other mechanisms be required (for example, that a senior officer be designated to be responsible for the SCI entity's compliance with proposed Regulation SCI, or that personnel of the SCI entity certify that the SCI entity's policies and procedures are reasonably designed)?

3. SCI Events—Action Required; Notification

Proposed Rule 1000(b)(3)–(5) would govern the actions an SCI entity must take upon any responsible SCI personnel becoming aware of an SCI event, whether it be a systems disruption, systems compliance issue, or systems intrusion.[221]

a. Corrective Action

Proposed Rule 1000(b)(3) would require an SCI entity, upon any responsible SCI personnel becoming aware of an SCI event, to begin to take appropriate corrective action including, at a minimum, mitigating potential harm to investors and market integrity resulting from the SCI event and devoting adequate resources to remedy the SCI event as soon as reasonably practicable. The Commission is proposing this requirement to make clear that, upon learning of an SCI event, an SCI entity would be required to take the steps necessary to remedy the problem or problems causing the SCI event and mitigate the effects of the SCI event, if any, on customers, market participants and the securities markets.

Proposed Rule 1000(a) would define ''responsible SCI personnel'' to mean, for a particular SCI system or SCI security system impacted by an SCI event, any personnel, whether an

[221] *See supra* Section III.B.3 for a discussion of the proposed definition of systems disruption, systems compliance issue, and systems intrusion.

employee or agent, of an SCI entity having responsibility for such system. The proposed definition is intended to include any personnel used by the SCI entity that has responsibility for the specific system(s) impacted by a given SCI event. Thus, such personnel would include, for example, any technology, business, or operations staff with responsibility for such systems. With respect to systems compliance issues, such personnel would also include regulatory, legal, or compliance personnel with legal or compliance responsibility for such systems. In addition, such ''responsible SCI personnel'' would not be limited to managerial or senior-level employees of the SCI entity. For example, the proposed definition is intended to include a junior systems analyst responsible for monitoring the operations or testing of an SCI system or SCI security system. The proposed definition would also include not only applicable employees of the SCI entity, but applicable agents of the SCI entity as well. Thus, for example, if an SCI entity were to contract the monitoring of the operations of a given SCI system to an external firm, the proposed definition of ''responsible SCI personnel'' would include the personnel of such firm that were responsible for the monitoring. The proposed definition, however, is not intended to include all personnel of an SCI entity. For example, personnel of the SCI entity who have no responsibility for any SCI system or SCI security system of an SCI entity are not intended to be included in the proposed definition.

b. Commission Notification

Proposed Rule 1000(b)(4) would address the obligation of an SCI entity to notify the Commission upon any responsible SCI personnel becoming aware of an SCI event.[222] Proposed Rule 1000(b)(4)(i) would require an SCI entity, upon any responsible SCI personnel[223] becoming aware of a systems disruption that the SCI entity reasonably estimates would have a material impact on its operations or on market participants, any systems compliance issue, or any systems intrusion (''immediate notification SCI event''), to notify the Commission of such SCI event, which may be done orally or in writing (*e.g.,* by email). Proposed Rule 1000(b)(4)(ii) would require an SCI entity to submit a written notification pertaining to any SCI event to the Commission within 24 hours of any responsible SCI personnel becoming aware of the SCI event. Proposed Rule 1000(b)(4)(iii) would require an SCI entity to submit to the Commission continuing written updates on a regular basis, or at such frequency as reasonably requested by a representative of the Commission, until such time as the SCI event is resolved.[224]

Proposed Rule 1000(b)(4) also would require that any written notification to the Commission made pursuant to proposed Rules 1000(b)(4)(ii) or 1000(b)(4)(iii) be made electronically on new proposed Form SCI (§ 249.1900), and include all information as prescribed in Form SCI and the instructions thereto.[225] To help ensure that the Commission and its staff receive all information known by the SCI entity relevant to aiding the Commission's understanding of an SCI event, proposed Rule 1000(b)(4)(iv) would provide that a written notification under proposed Rule 1000(b)(4)(ii) must include all pertinent information known about an SCI event, including: (1) A detailed description of the SCI event; (2) the SCI entity's current assessment of the types and number of market participants potentially affected by the SCI event; (3) the potential impact of the SCI event on the market; and (4) the SCI entity's current assessment of the SCI event, including a discussion of the SCI entity's determination regarding whether the SCI event is a dissemination SCI event or not.[226] In addition, to the extent available as of the time of the initial notification, Exhibit 1 would require inclusion of the following information: (1) A description of the steps the SCI entity is taking, or plans to take, with respect to the SCI event; (2) the time the SCI event was resolved or timeframe within which the SCI event is expected to be resolved; (3) a description of the SCI entity's rule(s) and/or governing documents, as applicable, that relate to the SCI event; and (4) an analysis of the parties that may have experienced a loss, whether monetary or otherwise, due to the SCI event, the number of such parties, and an estimate of the aggregate amount of such loss.[227]

Proposed Rule 1000(b)(4)(iv)(B) would require an SCI entity to update any of the pertinent information contained in previous written notifications, including any information required by proposed Rule 1000(b)(4)(iv)(A)(2) that was not available at the time of initial submission. Subsequent notifications would be required to update any of the pertinent information previously provided until the SCI event is resolved.

Proposed Rule 1000(b)(4)(iv)(C) would further require an SCI entity to provide a copy of any information disseminated to date regarding the SCI event to its members or participants or on the SCI entity's publicly available Web site.

The Commission preliminarily believes an SCI entity's obligation to notify the Commission of significant SCI events should begin upon any responsible SCI personnel *becoming aware* of an SCI event. Thus, for all immediate notification SCI events, an SCI entity would be required to notify the Commission of the SCI event. Such notification could be made orally (*e.g.,* by telephone) or in a written form (*e.g.,* by email). The Commission preliminarily believes that, by not prescribing the precise method of communication for an initial notification of an immediate notification SCI event under proposed Rule 1000(b)(4)(i), SCI entities would have the needed flexibility to determine the most appropriate method.[228] Further, if the responsible SCI personnel became aware of such an SCI event outside of normal business hours, the SCI entity would still be required to notify the Commission at that time rather than, for example, the start of the next business day. For all SCI events, including immediate notification SCI events, an SCI entity would be required to submit a written notification pertaining to such SCI event to the Commission on Form SCI, and follow up with regular written updates until the SCI event is resolved. Even if an SCI entity had notified the Commission of an immediate notification SCI event in writing as would be permitted under proposed Rule 1000(b)(4)(i), the SCI entity would still be required to submit a separate written notification on Form SCI pursuant to proposed Rule 1000(b)(4)(ii).[229]

[222] Proposed Rule 1000(b)(5), addressed in Section III.C.3.c below, would address whether and when an SCI entity would be required to disseminate information regarding an SCI event to its members or participants.

[223] *See supra* III.C.3.a (discussing definition of ''responsible SCI personnel'').

[224] *See supra* Section III.B.3.d, for a discussion of dissemination SCI events.

[225] New proposed Form SCI is discussed in detail in Section III.E below.

[226] *See* proposed Rule 1000(b)(4)(iv)(A)(*1*).

[227] *See* proposed Rule 1000(b)(4)(iv)(A)(*2*).

[228] The Commission expects that it would establish a telephone hotline, designated email accounts, or similar arrangements, to enable receipt of notifications of immediate notification SCI events.

[229] *See* proposed Rule 1000(b)(4)(iv), which would require that written notifications under 1000(b)(4)(ii) be submitted on Form SCI, and which would not provide for the ability of SCI entities to submit a written notification of an immediate notification SCI event on Form SCI.

The Commission preliminarily believes that the proposed notification requirement for immediate notification SCI events, the proposed 24-hour time frame for submission of written notices, and the proposed continuing update requirement, are appropriately tailored to help the Commission and its staff quickly assess the nature and scope of an SCI event, and help the SCI entity identify the appropriate response to the SCI event, including ways to mitigate the impact of the SCI event on investors and promote the maintenance of fair and orderly markets. These requirements would help to ensure not only that the Commission and its staff are kept apprised of such SCI events, including their causes and their effect on the markets, but also that the Commission is aware of the steps and resources necessary to correct such SCI events, mitigate their effects on other SCI entities and the market, and prevent recurrence to the extent possible. The Commission also preliminarily believes that the proposal to require an SCI entity to update the Commission regularly regarding an SCI event, or at such frequency as reasonably requested by a representative of the Commission, until the SCI event is resolved, provides appropriate flexibility to the Commission to request additional information as necessary, depending on the facts and circumstances of the SCI event and the SCI entity's progress in resolving it. At the same time, the Commission recognizes that the information required to be provided to it by an SCI entity about an immediate notification SCI event under proposed Rule 1000(b)(4)(i) would represent the SCI entity's initial assessment of the SCI event, and that even the written notification on Form SCI required under proposed Rule 1000(b)(4)(ii) may, in some cases, be a preliminary assessment of the SCI event for which the SCI entity may still be in the process of analyzing and assessing the precise facts and circumstances related to the SCI event. Thus, the Commission is proposing to only require that SCI entities provide certain key information for the written notification required under proposed Rule 1000(b)(4)(ii),[230] and only provide certain additional details ''to the extent available as of the time of the notification.'' [231] In addition, the Commission's proposal allows for the SCI entity to subsequently ''update any information previously provided regarding the SCI event, including any information required by paragraph (b)(4)(iv)(A)(2) which was not available at the time of the notification made pursuant to paragraph (b)(4)(ii).'' [232]

Comprehensive reporting of all SCI events would facilitate the Commission's regulatory oversight of the national securities markets. The proposed reporting requirements should provide the Commission with an aggregate and comprehensive set of data on SCI events, a significant improvement over the current state of administration, whereby SCI entities report events through multiple methods and with varying consistency.[233] The aggregated data that would result from the reporting of SCI events would also permit the Commission to analyze such data, *e.g.,* to examine the most common types of events and the types of systems most often affected. This ability to more efficiently analyze a comprehensive set of data would help the Commission to carry out its oversight responsibilities because it would help the Commission identify more effectively, for example, areas of persistent or recurring problems across the systems of all SCI entities.

As discussed in greater detail below, the Commission also preliminarily believes that submission of required notifications by SCI entities by filing Form SCI in an electronic format would be less burdensome and a more efficient filing process for SCI entities and the Commission than the submission of such notices in non-standardized ad hoc formats, as they are currently provided under the ARP Program.[234]

c. Dissemination of Information to Members or Participants [235]

Proposed Rule 1000(b)(5) would require information relating to dissemination SCI events to be disseminated to members or participants, and specify the nature and timing of such disseminations, with a limited delay permitted for certain systems intrusions, as discussed further below.[236] Proposed Rule 1000(b)(5)(i)(A) would require that an SCI entity, promptly after any responsible SCI personnel [237] becomes aware of a dissemination SCI event other than a systems intrusion, disseminate to its members or participants the following information about such SCI event: (1) The systems affected by the SCI event; and (2) a summary description of the SCI event. In addition, proposed Rule 1000(b)(5)(i)(B) would require an SCI entity to further disseminate to its members or participants, when known: (1) A detailed description of the SCI event; (2) the SCI entity's current assessment of the types and number of market participants potentially affected by the SCI event; and (3) a description of the progress of its corrective action for the SCI event and when the SCI event has been or is expected to be resolved. Proposed Rule 1000(b)(5)(i)(C) would further require an SCI entity to provide regular updates to members or participants on any of the information required to be disseminated under proposed Rules 1000(b)(5)(i)(A) and (i)(B).

For the disseminations of information to members or participants to be meaningful, the Commission preliminarily believes it would be necessary for an SCI entity to describe the SCI event in sufficient detail to enable a member or participant to determine whether and how it was affected by the SCI event and make appropriate decisions based on that determination. For example, the Commission preliminarily believes that a general statement that a systems disruption occurred that impacted trading for a certain period of time would not be sufficient. The

[230] *See* proposed Rule 1000(b)(4)(iv)(A)(1).

[231] *See* proposed Rule 1000(b)(4)(iv)(A)(2).

[232] *See* proposed Rule 1000(b)(4)(iv)(B).

[233] Currently, there is no Commission rule specifically requiring SCI entities to notify the Commission of systems problems in writing or in a specific format. Nevertheless, voluntary communications of systems problems to Commission staff occur in a variety of ways, including by telephone and email. The Commission notes that proposed Rule 1000(b)(4) would impose a new reporting requirement on SCI entities, regardless of whether they currently voluntarily notify the Commission of SCI events on an ad hoc basis. As such, the Commission preliminarily believes that a history of voluntarily reporting such events to the Commission would not lessen the future burden of reporting such events to the Commission on Form SCI as required under proposed Rule 1000(b)(4).

[234] *See infra* Section III.D.2 discussing proposed Rule 1000(d), requiring electronic filings on new proposed Form SCI, and Section III.E, discussing information proposed to be required to be submitted on new Form SCI. *See also infra* note 235 and accompanying text.

[235] The requirements relating to dissemination of information relating to dissemination SCI events to members or participants proposed to be included in Regulation SCI relate solely to Regulation SCI. Nothing in proposed Regulation SCI should be construed as superseding, altering, or affecting the reporting obligations of SCI entities under other federal securities laws or regulations. Accordingly, in the case of an SCI event, SCI entities subject to the public company reporting requirements of Section 13 or Section 15(d) of the Exchange Act would need to ensure compliance with their disclosure obligations pursuant to those provisions (including, for example, with respect to Regulation S–K and Forms 10–K, 10–Q and 8–K) in addition to their disclosure and reporting obligations under Regulation SCI. *See, e.g.,* CF Disclosure Guidance: Topic No. 2, Cybersecurity (October 13, 2011), available at: *http://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm.* As an additional example, nothing in proposed Regulation SCI should be construed as superseding the obligations such SCI entities may have under Regulation FD.

[236] *See supra* Section III.B.3.d for a discussion of dissemination SCI events.

[237] *See supra* III.C.3.a (discussing definition of ''responsible SCI personnel'').

dissemination of information should, for example, specify with particularity such information as necessary to provide readers meaningful context with regard to the issue, which may include but is not limited to, details relating to, if applicable: the magnitude of the issue (such as estimates with respect to the number of shares affected, numbers of stocks affected, and total dollar volumes of the affected trades); the specific system(s) or part of the system(s) that caused the issue; the Commission and SCI entity rule(s) that relate most directly to the issue; the specific time periods in which the issue occurred, including whether the issue may be ongoing; and the specific names of the securities affected. The Commission preliminarily believes these proposed items, which concern the timing, nature, and foreseeable possible consequences of a systems problem, comprise the appropriate minimum detail that a member or participant would need to assess whether an SCI event affected or would potentially affect that member or participant, and would assist members and participants in making investment or business decisions based on disclosed facts rather than on speculation regarding, for example, the cause of a market disruption.[238]

The Commission preliminarily believes that it is appropriate to require that the information specified by proposed Rule 1000(b)(5)(i)(A) be disseminated by the SCI entity to its members or participants promptly after any responsible SCI personnel becomes aware of an applicable dissemination SCI event. The Commission also preliminarily believes that it is appropriate to require the further dissemination of information specified by proposed Rule 1000(b)(5)(i)(B) ''when known'' by the SCI entity. These requirements reflect the Commission's preliminary view that, given the sensitivities of such dissemination of information, it is important that, before information is shared with the SCI entity's members or participants, the SCI entity be given a reasonable amount of time to gather, confirm, and preliminarily analyze facts regarding a dissemination SCI event. The Commission preliminarily believes that the value of dissemination of information to an SCI entity's members or participants in these circumstances is enhanced when the SCI entity has taken an appropriate amount of time to ensure that the information it is sharing with its members or participants is accurate, such that incorrect information does not cause or exacerbate market confusion. At the same time, the Commission preliminarily believes that it is important that basic information about dissemination SCI events, such as those items required by proposed Rule 1000(b)(5)(i)(A), be made available to members or participants promptly.

The proposed requirement relating to dissemination of information to members or participants of dissemination SCI events, other than systems intrusions as specified in proposed Rule 1000(b)(5)(i), is intended to aid members or participants of SCI entities in determining whether their trading activity has been or might be impacted by the occurrence of an SCI event at an SCI entity, so that they could consider that information in making trading decisions, seeking corrective action or pursuing remedies, or taking other responsive action. Further, the requirement to disseminate information regarding dissemination SCI events could provide an incentive for SCI entities to devote more resources and attention to improving the integrity and compliance of their systems and preventing the occurrence of SCI events.

Proposed Rule 1000(b)(5)(ii) would provide a limited exception to the proposed requirement of prompt dissemination of information to members or participants for certain systems intrusions.[239] Proposed Rule 1000(b)(5)(ii) would require an SCI entity, promptly after any responsible SCI personnel becomes aware of a systems intrusion, to disseminate to its members or participants a summary description of the systems intrusion, including a description of the corrective action taken by the SCI entity and when the systems intrusion was resolved or an estimate of when the systems intrusion is expected to be resolved, unless the SCI entity determines that dissemination of such information would likely compromise the security of the SCI entity's SCI systems or SCI security systems, or an investigation of the systems intrusion, and documents the reasons for such determination.[240] The Commission preliminarily believes that information relating to all dissemination SCI events, including systems intrusions, should be disseminated to members or participants, but that there may be circumstances in which such dissemination of information relating to a systems intrusion should be delayed, for example, to avoid compromising the investigation or resolution of a systems intrusion.[241] If an SCI entity determines to delay the dissemination of information to members or participants relating to a systems intrusion, it would be required to make an affirmative determination and document the reasons for such determination that such dissemination would likely compromise the security of its SCI systems or SCI security systems, or an investigation of the systems intrusion. If it cannot make such a determination, or at whatever point in time such a determination no longer applies, information relating to the systems intrusion would be required to be disseminated to the SCI entity's members or participants.

The information required to be disseminated to members or participants for systems intrusions by proposed Rule 1000(b)(5)(ii) is not as extensive as that required to be disseminated to members or participants for other types of dissemination SCI events. The Commission is sensitive to the fact that dissemination of too much detailed information regarding a systems intrusion may provide hackers or others seeking unauthorized entry into the systems of an SCI entity with insights into the potential vulnerabilities of the SCI entity's systems. At the same time, the occurrence of a systems intrusion may reveal a weakness in the SCI systems or SCI security systems of the SCI entity that warrants dissemination of information about such event to the SCI entity's members or participants. Proposed Rule 1000(b)(5)(ii) is therefore intended to strike an appropriate balance by requiring dissemination to members or participants, which may be delayed when necessary, of key summary information about a given systems intrusion.

Request for Comment

106. The Commission requests comment on all aspects of proposed Rules 1000(b)(3), (4), and (5).

107. Do commenters believe the proposed definition of ''responsible SCI personnel'' in proposed Rule 1000(a) is appropriate? Why or why not? Please

[238] *See supra* note 160, referring to Roundtable panelists suggesting that communication and disclosure are important elements of risk mitigation.

[239] As noted in *supra* note 235, the requirements relating to information disseminations to members or participants proposed to be included in Regulation SCI, including the proposal to permit an SCI entity to delay such dissemination for certain systems intrusions, relate solely to Regulation SCI. Nothing in proposed Regulation SCI should be construed as superseding, altering, or affecting the reporting obligations of SCI entities under other federal securities laws or regulations.

[240] Unlike proposed Rule 1000(b)(5), proposed Rule 1000(b)(4) (relating to Commission notification), discussed above in Section III.C.3.b, would not provide for a delay in reporting any systems intrusions to the Commission.

[241] *See supra* note 239.

explain. Is the proposed definition sufficiently clear? If not, why not? Should the proposed definition only apply to personnel of a given seniority, such as managerial personnel or officers of an SCI entity? Why or why not? Should the proposed definition include both employees and agents of an SCI entity? Why or why?

108. As proposed to be required by Rule 1000(b)(3), do commenters believe the Commission should require an SCI entity, upon any responsible SCI personnel becoming aware of an SCI event, to begin to take appropriate corrective action including, at a minimum, mitigating potential harm to investors and market integrity resulting from the SCI event and devoting adequate resources to remedy the SCI event as soon as reasonably practicable? If not, why not? Should the proposed requirement that an SCI entity take corrective action be triggered by something other than awareness of an SCI event? If so, what would be an appropriate trigger, and why?

109. In addition to requiring an SCI entity to take appropriate corrective action, should the Commission also require an SCI entity to have written policies and procedures regarding how it should respond to SCI events, such as an incident response plan that, for example, would lay out in advance of any SCI event the courses of action, responsibilities of personnel, chains of command, or similar information regarding how the SCI entity and its personnel should respond to various SCI event scenarios? Why or why not? Would such a requirement be useful? What would be the potential costs and benefits of such a requirement? Would SCI entities be able to meet the requirements of proposed Rule 1000(b)(3) without developing such response plans? [242] Why or why not? Do SCI entities have such plans in place today? If so, please describe.

110. With respect to proposed Rule 1000(b)(4), do commenters believe the proposal to require an SCI entity to report all SCI events to the Commission is appropriate?

111. Are there SCI events that should not be required to be reported to the Commission? If so, what are they, and why should reporting of such SCI events not be required? Or, as an alternative, would it be appropriate for the Commission to require SCI entities to keep and preserve the documentation relating to certain types of SCI events without sending that documentation to the Commission? Why or why not? If so, how would commenters recommend the Commission distinguish between SCI events that should be reported to the Commission and those that should only be subject to a recordkeeping requirement? What do commenters believe might be the advantages or disadvantages of such an alternative approach? Do commenters believe proposed Rule 1000(b)(4) may require the reporting of types of issues or types of information that may not be critical to the goals of proposed Regulation SCI? Please be specific and describe such situations.

112. What criteria do ARP participants currently use for reporting ARP events? How many SCI events would an SCI entity expect to report each year?

113. For immediate notification SCI events, is the initial notification requirement in proposed Rule 1000(b)(4)(i) to the Commission appropriate? Why or why not? If so, should this requirement apply to such SCI events that occur outside normal business hours as well? If not, what should be the requirement? Should the Commission require a different notification procedure for immediate notifications that might occur outside normal business hours? What are the advantages and disadvantages of different methods of immediate notifications? Please describe. Do commenters agree that those systems disruptions that the SCI entity reasonably estimates would have a material impact on its operations or on market participants should be subject to the immediate notification requirement? Why or why not? Please explain. Do commenters agree that all systems compliance issues should be subject to the immediate notification requirement? Why or why not? Do commenters agree that all systems intrusions should be subject to the immediate notification requirement? Why or why not? Should additional types of SCI events be subject to the immediate notification requirement? If so, which types of SCI events? Please be specific.

114. Do commenters agree with the proposed 24-hour written notification requirement for all SCI events?

115. Do commenters believe it is appropriate to require that written updates be submitted regularly until an SCI event is resolved, or at such frequency as reasonably requested by a representative of the Commission?

116. Do commenters believe the proposed required dissemination of information to an SCI entity's members or participants regarding dissemination SCI events set forth in proposed Rule 1000(b)(5) are appropriate? If not, why not? Do commenters believe that requiring the dissemination of information about dissemination SCI events to members or participants would promote dissemination of information to persons who are most directly affected by such events? Why or why not? With respect to proposed Rule 1000(b)(5), should any of the proposed requirements relating to dissemination of information to members or participants be eliminated or modified? [243] Please explain. What other information, if any, should be required to be disseminated to members or participants? Please explain. Could these proposed requirements have any negative or unintended impact on the market or market participants? If so, please explain.

117. Do commenters agree with the timing requirements contained in proposed Rule 1000(b)(5)? Do commenters agree that the initial dissemination of information to members or participants should be required promptly after an SCI entity's responsible SCI personnel becomes aware of a dissemination SCI event, as would be required by proposed Rule 1000(b)(5)(i)(A)? Do commenters believe that more specific timing requirements would be more appropriate? If so, what should such requirements be? Should there be a specific time period requirement with respect to subsequent updates on the status of the dissemination SCI event? Why or why not? For example, should there be a requirement that an SCI entity provide updates daily or weekly? If so, what additional specificity should be included?

118. Do commenters believe it is appropriate to permit an SCI entity to delay the dissemination of information to members or participants for certain systems intrusions as proposed in Rule 1000(b)(5)(ii)? Should an SCI entity be required to immediately disseminate information to members or participants regarding a systems intrusion, with delays permitted only when the Commission specifically authorizes the delay? Why or why not? Should the proposed rule impose a maximum period of time that an SCI entity may delay its dissemination of information to members or participants for certain systems intrusions? Why or why not? If

[242] *See also supra* Section III.C.1.a (requesting comment on proposed Rule 1000(b)(1)(i)(E) regarding policies and procedures for development of business continuity plans and on whether the Commission and/or SCI SROs should propose rules governing how such plans are tested).

[243] *See also infra* Section III.E.1, discussing proposed Exhibit 3 to Form SCI, which would require that an SCI entity provide a copy of any information disseminated to date regarding an SCI event to its members or participants or on the SCI entity's publicly available Web site.

so, what should such a maximum period of time be and should the rule set forth a specific maximum time period applicable to all instances? Please explain.

119. Are there types of dissemination SCI events that should not be required to be disseminated to members or participants? If so, what are they, and why should it not be required?

120. Should dissemination of information to members or participants of any types of dissemination SCI events, other than those that are systems intrusions, be delayed? If so, please describe the types of SCI events and explain why. In addition, please describe the time period within which commenters believe such types of dissemination SCI events should be disseminated and why such time period would be appropriate.

121. For any types of dissemination SCI events for which commenters believe information should either not be required to be disseminated to members or participants or be permitted to have a delay in dissemination in certain circumstances (such as for systems intrusions), what might be the impact of such non-dissemination or delay in dissemination with respect to different types of market participants?

122. Are there SCI entities for which the proposed requirements in Rules 1000(b)(3), (b)(4), and (b)(5) would not be appropriate (*e.g.,* not cost-effective)? If so, please identify such entity or entities, or the characteristics of such entity or entities, and explain which proposed requirements would be inappropriate and why. Is the fact that they might not be cost-effective an appropriate reason to omit them generally for those SCI entities, or on a case-by-case basis, as the Commission determined to be consistent with Exchange Act requirements?

123. What are the current practices of SCI entities with respect to the dissemination of information about systems issues to members or participants? What type of information do SCI entities currently disseminate? Please describe.

4. Notification of Material Systems Changes

Proposed Rule 1000(b)(6) addresses notification to the Commission regarding planned material systems changes,[244] which the Commission believes is important to help ensure it has information about important changes at an SCI entity that may affect the SCI entity's ability to effectively oversee the operations of its systems. Proposed Rule 1000(b)(6) would require an SCI entity, absent exigent circumstances, to notify the Commission in writing at least 30 calendar days before implementation of any planned material systems changes including a description of the planned material systems changes as well as the expected dates of commencement and completion of implementation of such changes. A written notification to the Commission made pursuant to paragraph (b)(6) would be required to be made electronically on Form SCI and include all information as prescribed in Form SCI and the instructions thereto.[245]

The Commission preliminarily believes that the proposed 30 calendar day requirement regarding pre-implementation written notification to the Commission of planned material systems changes would be an appropriate time period. The Commission has found through its experience with the current ARP Inspection Program that this amount of advance notice typically is needed to allow Commission staff to effectively monitor technology developments associated with a planned material systems change. A shorter timeframe might not provide sufficient time for Commission staff to understand the impact of the systems change; a longer time frame might unnecessarily interfere with SCI entities' flexibility in planning and implementing systems changes.

If exigent circumstances existed, or if the information previously provided to the Commission regarding any planned material systems change has become materially inaccurate, the SCI entity would be required to notify the Commission, either orally or in writing, with any oral notification to be memorialized within 24 hours after such oral notification by a written notification, as early as reasonably practicable.[246] The existence of exigent circumstances would be determined by the SCI entity and might exist where, for example, a systems compliance issue or systems intrusion were discovered that requires immediate corrective action to ensure compliance with the Exchange Act and the rules and regulations thereunder, and/or the SCI entity's own rules and procedures. In such cases, it would not be prudent or desirable to delay corrective action simply to permit the 30 calendar days' advance notice required in non-exigent circumstances. In addition, there may be circumstances where the information previously provided to the Commission regarding a material systems change has become materially inaccurate. For example, if a material systems change's expected implementation completion date were to be substantially delayed because of an inability to procure systems components, or due to difficulties in systems programming, an update to reflect this development would enable the Commission to make further inquiry (as appropriate) in order to understand the potential consequences of the delay. Similarly, an update would be required if the SCI entity were to decide to significantly alter the scope of its planned material systems change.

The Commission notes further that, in such cases, an SCI entity might separately be obligated to notify the Commission or its members or participants pursuant to proposed Rules 1000(b)(4) and (5), as discussed above.[247]

Request for Comment

124. The Commission requests comment generally on proposed Rule 1000(b)(6). Is the proposed requirement to notify the Commission in advance of implementation of material systems changes appropriate?

125. Should the Commission provide additional guidance on, or define, what constitutes ''exigent circumstances'' that would obviate the need for advance notification? If so, what information, clarification, or definition would be helpful, and why?

126. Do commenters believes that an SCI entity should be required to provide updated information to the Commission regarding a planned material systems change if the information previously provided to the Commission regarding such change were to become materially inaccurate? Why or why not?

127. Do commenters believe that the proposed notification requirements would discourage an SCI entity from making necessary systems changes? Why or why not?

128. Is the proposed requirement that an SCI entity report all material systems changes too broad or too narrow? Why or why not? Should all material systems changes be reported to the Commission? If not, which systems changes should be excluded? Do commenters believe the proposed rule should specify quantitative criteria or other minimum thresholds for the effect of a change to an SCI entity's systems on the entity's capacity, security, and operations, beyond which the SCI entity would be

[244] *See supra* Section III.B.4 (discussing the proposed definition of material systems change).

[245] *See infra* Section III.E.2, discussing proposed new Form SCI and electronic submission of the notices required by proposed Rule 1000(b)(6).

[246] *See* proposed Rule 1000(b)(6)(ii).

[247] *See supra* Section III.B.3.

required to notify the Commission of the change?

129. Do commenters believe it is appropriate for the Commission to require a standardized format for disclosing planned material systems changes on new proposed Form SCI? If not, why not? What would be a better approach?

130. Are there SCI entities for which the proposed requirements in Rule 1000(b)(6) would not be appropriate (*e.g.,* cost-effective)? If so, please identify such entity or entities, or the characteristics of such entity or entities, and explain which proposed requirements would be inappropriate and why. If they are not cost-effective, would that be an appropriate reason to omit them generally for those SCI entities, or on a case-by-case basis, as the Commission determined to be consistent with Exchange Act requirements?

131. How often do SCI entities make material systems changes?

5. Review of Systems

Proposed Rule 1000(b)(7) would require an SCI entity to conduct an SCI review of the SCI entity's compliance with Regulation SCI not less than once each calendar year, and submit a report of the SCI review to senior management of the SCI entity no more than 30 calendar days after completion of such SCI review. Proposed Rule 1000(a) would define the term ''SCI review'' to mean a review, following established procedures and standards, that is performed by objective personnel having appropriate experience in conducting reviews of SCI systems and SCI security systems, and which review contains: (1) A risk assessment with respect to such systems of the SCI entity; and (2) an assessment of internal control design and effectiveness to include logical and physical security controls, development processes, and information technology governance, consistent with industry standards.[248] In addition, such review would be required to include penetration test reviews of the SCI entity's network, firewalls, development, testing and production systems at a frequency of not less than once every three years.[249] The proposed requirement for an annual SCI review would formalize a practice in place under the current ARP Inspection Program in which SROs conduct annual systems reviews following established audit procedures and standards that result in the presentation of a report to senior SRO management on the recommendations and conclusions of the review.[250]

The risk assessment with respect to SCI entity's systems and assessment of internal control design and effectiveness should help an SCI entity assess the effectiveness of its information technology practices and determine where to best devote resources, including identifying instances in which the SCI entity was not in compliance with the policies and procedures required by proposed Rules 1000(b)(1) and (2). The penetration test reviews of the SCI entity's network, firewalls, and development, testing and production systems should help an SCI entity evaluate the system's security and resiliency in the face of attempted and successful systems intrusions. In requiring a frequency of not less than once every three years for penetration test reviews, the Commission seeks to balance the frequency of such tests with the costs associated with performing the tests.[251]

For such assessments and reviews to be effective, the Commission preliminarily believes that it is important that they be conducted by objective personnel having appropriate experience performing such types of reviews. The Commission is not proposing a definition of the term ''objective,'' but preliminarily believes that to satisfy the criterion that an SCI review be conducted by ''objective personnel,'' it should be performed by persons who have not been involved in the development, testing, or implementation of the systems being reviewed.[252] The Commission preliminarily believes that persons who were not involved in the process for development, testing, or implementation of such systems would likely be in a better position to identify weaknesses and deficiencies that were not identified in the development, testing, and implementation stages. As proposed, the SCI review could be performed by personnel of the SCI entity (*e.g.,* an SCI entity's internal audit department) or an external firm with objective personnel.

In addition, proposed Rule 1000(b)(7) would require an SCI entity to submit a report of the SCI review to senior management of the SCI entity no more than 30 calendar days after completion of such SCI review.[253] The proposed 30-day time frame is based on the Commission's experience with the current ARP Inspection Program that an entity is able within 30 calendar days to consider the review and prepare a report for senior management consideration prior to submission to the Commission.

Request for Comment

132. The Commission requests comment on all aspects of proposed Rule 1000(b)(7). Is the proposed definition of ''SCI review'' appropriate? Why or why not? And, if not, what would be an appropriate definition?

133. Is the proposed scope of the SCI review appropriate? Why or why not? Is it sufficiently clear? Why or why not? Should the SCI review include, as proposed in Rule 1000(a), an assessment of internal control design and effectiveness to include logical and physical security controls, development processes, and information technology governance, consistent with industry standards? Why or why not? Should it include, as proposed in Rule 1000(a), penetration test reviews of the SCI entity's network, firewalls, development, testing and production systems? Is the proposed frequency of such penetration test reviews (*i.e.,* not less than once every three years) appropriate? Why or why not? Should it be more or less frequent? Why or why not?

134. Do commenters agree with the proposed requirement that the review be performed by persons with appropriate experience conducting reviews of SCI systems and SCI security systems? Should the Commission define how it would evaluate whether a person or persons performing the review would satisfy the proposed requirement that they have appropriate systems review experience? Are there any credentials or specific qualifications that the Commission should require or specify as meeting the requirement? For example, should the Commission specify that a review be conducted by a Certified Information System Auditor (CISA) or GIAC Systems and Network Auditor (GSNA) certification?[254]

[248] *See infra* discussion of proposed Rule 1000(b)(8). *See also supra* publications listed in Table A, Domain: Audit.

[249] *See* proposed Rule 1000(a).

[250] *See supra* notes 17–21 and accompanying text. Although ARP policy statements used the term ''independent,'' the Commission is using the term ''objective'' in proposed Regulation SCI to distinguish the meaning of ''objective'' from the meaning of ''independent,'' which may be considered a term of art in the context of financial accounting audits.

[251] *See infra* Section IV.D.2.d (estimating, among other things, the cost of conducting SCI reviews, including penetration test reviews).

[252] *See also supra* ARP II note 1 at 22492 n.9.

[253] This proposed requirement would formalize a recommendation under the current ARP Inspection Program. *See supra* note 21 and accompanying text.

[254] For further information regarding these certifications, *see, e.g., http://www.isaca.org/Certification/CISA-Certified-Information-Systems-*

Continued

135. Should the term ''objective personnel'' be defined or further clarified? If so, what should be such definition?

136. Are there other elements that should be included in the scope of the SCI review? If so, which ones? For example, should the review include an assessment of the systems' compliance with the federal securities laws and rules and regulations thereunder or the entity's rules or governing documents as applicable? Why or why not?

137. Under what circumstances do SCI entities presently use outside consultants or other third parties to review their systems and controls? When such outside reviews are conducted, what is the scope and the stated purpose? How do outside reviews compare to internal reviews by audit or other staff in terms of scope or other factors? What are the considerations used by SCI entities in determining whether and when to engage outside consultants? How do commenters generally view the advantages and disadvantages of internal v. external reviews? The Commission is not proposing at this time any requirements related to third party reviews. Should the Commission propose to require that SCI review be conducted by third parties?

138. What are the current practices of SCI entities with respect to reviews of their SCI systems and SCI security systems? How often are such reviews conducted? Who conducts such reviews? What do such reviews entail? What types of assessments or tests are included in such reviews? Do such reviews include penetration test reviews? Please describe.

139. Do commenters agree with the proposal to require an SCI entity to submit a report of the SCI review to senior management of the SCI entity no more than 30 calendar days after completion of such SCI review? Why or why not? Is the 30-day time frame reasonable? Would a shorter or longer time period be more appropriate, such as 20, 45, or 60 days? If so, what should such a time period be and why? Please explain.

6. Periodic Reports

Proposed Rule 1000(b)(8)(i) would require an SCI entity to submit to the Commission a report of the SCI review required by paragraph (b)(7), together with any response by senior management, within 60 calendar days after its submission to senior management of the SCI entity.

The proposed requirement to submit a report of the SCI review required by paragraph (b)(7), together with any response by senior management, within 60 calendar days after its submission to senior management of the SCI entity, is designed to ensure that the senior management of the SCI entity is aware of any issues with its systems and promptly establishes plans for resolving such issues. The Commission preliminarily believes that the report would also help ensure that the Commission and its staff receive the report and any management response in a timely manner,[255] would help to ensure that the Commission is aware of areas that may warrant more focused attention during its inspections (*i.e.,* which SCI entities would already have identified for itself through its SCI review), and would allow the Commission to review the SCI entity's progress in resolving any systems issues. Further, the proposed requirement to submit the annual report within 60 calendar days after its submission to senior management is based on the Commission's experience with the current ARP Inspection Program that 60 calendar days after completion of an annual review or report is a sufficient period of time to enable senior management to consider such review or report before submitting it to the Commission.

In addition, proposed Rule 1000(b)(8)(ii) would require each SCI entity to submit a report within 30 calendar days after the end of June and December of each year containing a summary description of the progress of any material systems change during the six-month period ending on June 30 or December 31, as the case may be, and the date, or expected date, of completion of implementation of such changes. The proposed requirement to submit these semi-annual reports within 30 calendar days of the end of each semi-annual period is designed to ensure that the Commission would have regularly updated information with respect to the status of ongoing material systems changes that were originally reported pursuant to proposed Rule 1000(b)(6).[256] This proposed requirement would formalize a practice in place under the current ARP Inspection Program in which senior information technology, audit, and compliance staff of certain SROs prepare such reports in advance of meeting with Commission staff periodically throughout the year to present and discuss recently completed systems projects and proposed systems projects. Further, the proposed requirement to submit the semi-annual report within 30 calendar days after the end of the applicable semi-annual period is based on the Commission's experience with the current ARP Inspection Program that 30 calendar days after completion of a report is a sufficient time period to enable senior management to consider such report before submitting it to the Commission. The Commission is proposing to require these reports to be submitted to the Commission on a semi-annual basis because the proposal would separately require information relating to planned material systems changes to be submitted (absent exigent circumstances or when information regarding any planned material systems change becomes materially inaccurate) at least 30 calendar days before their implementation[257] and thus requiring an ongoing summary report more frequently would not, in the Commission's preliminary view, be necessary. On the other hand, the Commission is concerned that a longer period of time (such as on an annual basis) would permit significant updates and milestones relating to systems changes to occur without notice to the Commission.

Pursuant to proposed Rule 1000(b)(8)(iii), the reports required to be submitted to the Commission by proposed Rule 1000(b)(8) would be required to be submitted electronically as prescribed in Form SCI and the instructions thereto.[258]

Request for Comment

140. Do commenters believe it would be appropriate to require SCI entities to submit a report of an SCI review to the Commission within 60 calendar days of its submission to senior management of the SCI entity? Should the Commission lengthen or shorten the time period for submission? Why or why not? If so, what is an appropriate period?

Auditor/What-is-CISA/Pages/default.aspx and *http://www.giac.org/certifications.*

[255] *See infra* Section III.E.3 and General Instructions to the Form, explaining that, ''within 60 calendar days after its submission to senior management of the SCI entity, the SCI entity shall attach [as Exhibit 5] the report of the SCI review of the SCI entity's compliance with Regulation SCI, together with any response by senior management.''

[256] As discussed above in supra Section III.C.4, proposed Rule 1000(b)(6)(ii) would require SCI entities to provide the Commission with an update if the information it previously provided to the Commission regarding any planned material systems change had become materially inaccurate.

[257] *See* proposed Rule 1000(b)(6); *see supra* notes 244–247 and accompanying text.

[258] *See infra* Section III.E discussing new proposed Form SCI and its contemplated use by SCI entities to submit reports and other required information to the Commission electronically in a standardized format with attachments when and as required.

141. Is the proposed requirement to submit semi-annual reports on material systems changes necessary or appropriate? Do commenters believe it would be appropriate to require each SCI entity to submit a semi-annual report within 30 calendar days after the end of each semi-annual period containing a description of the progress of any material systems change during the applicable semi-annual period and the date, or expected date, of completion of implementation? Should the Commission lengthen or shorten the 30-day period for submission? Is the semi-annual submission requirement appropriate or should these reports be required to be submitted more or less frequently? If so, please state what such frequency should be and why.

142. Are there any other reports the Commission should require of SCI entities? If so, please explain.

143. Are there SCI entities for which the proposed requirements in Rule 1000(b)(8) would not be cost-effective? If so, please identify such entity or entities, or the characteristics of such entity or entities. For proposed requirements that commenters believe would not be cost-effective, would that be an appropriate reason to omit them generally for those SCI entities, or on a case-by-case basis, as the Commission determines to be consistent with Exchange Act requirements?

7. Proposed Rule 1000(b)(9): SCI Entity Business Continuity and Disaster Recovery Plans Testing Requirements for Members or Participants

The Commission is proposing Rule 1000(b)(9), which would address testing of SCI entity business continuity and disaster recovery plans, including backup systems, by SCI entity members or participants. Specifically, proposed Rule 1000(b)(9)(i) would require an SCI entity, with respect to its business continuity and disaster recovery plans, including its backup systems, to require participation by designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency as specified by the SCI entity, at least once every 12 months. Proposed Rule 1000(b)(9)(ii) would further require an SCI entity to coordinate such testing on an industry- or sector-wide basis with other SCI entities. Proposed Rule 1000(b)(9)(iii) would require each SCI entity to designate those members or participants it deems necessary, for the maintenance of fair and orderly markets in the event of the activation of its business continuity and disaster recovery plans, to participate in the testing of such plans. Proposed Rule 1000(b)(9)(iii) would also require each SCI entity to notify the Commission of such designations and its standards for designation on Form SCI and promptly update such notification after any changes to its designations or standards.[259]

The Commission preliminarily believes that the testing participation requirement in proposed Rule 1000(b)(9) would help an SCI entity to ensure that its efforts to develop effective business continuity and disaster recovery plans are not undermined by a lack of participation by its members or participants that the SCI entity believes would be necessary to the success of such plans if they were to be put into effect. The Commission further preliminarily believes that the appropriate standard for measuring whether a business continuity and disaster recovery plans can be activated successfully is whether such activation would likely result in the maintenance of fair and orderly markets, a goal Congress found important in adopting Section 11A of the Exchange Act.[260]

The 2003 Interagency White Paper, which underlies the requirement in proposed Rule 1000(b)(1)(i)(E) pertaining to business continuity and disaster recovery plans,[261] identifies three important business continuity objectives that would apply to SCI entities: (1) Rapid recovery and timely resumption of critical operations following a wide-scale disruption; (2) rapid recovery and timely resumption of critical operations following the loss or inaccessibility of staff in at least one major operating location; and (3) a high level of confidence, through ongoing use or robust testing, that critical internal and external continuity arrangements are effective and compatible.[262] The 2003 Interagency White Paper also states that it is a ''sound practice'' for organizations to ''routinely use or test recovery and resumption arrangements.'' [263] Further, the Commission's 2003 Policy Statement on Business Continuity Planning for Trading Markets states, among other things, that market centers, including SROs, are to: (1) Have in place a business continuity plan that anticipates the resumption of trading in the securities traded by that market no later than the next business day following a wide-scale disruption; (2) maintain appropriate geographic diversity between primary and back-up sites in order to assure resumption of trading activities by the next business day; and (3) confirm the effectiveness of the backup arrangements through testing.[264] SCI entities that currently participate in the ARP Inspection Program are familiar with the standards identified in the 2003 Interagency White Paper and the Commission's 2003 Policy Statement on Business Continuity Planning for Trading Markets.

As noted above,[265] the experience of the equities and options markets in the wake of Superstorm Sandy demonstrates the importance of not only an SCI entity itself being able to operate following an event that triggers its business continuity and disaster recovery plans, but also that the members or participants of the SCI entity be able to conduct business with such SCI entity when its business continuity and disaster recovery plans have been activated. The Commission preliminarily believes that, even if an SCI entity is able to operate following an event that triggers its business continuity and disaster recovery plans, unless there is effective participation by certain of its members or participants in the testing of such plans, the objective of ensuring resilient and available markets in general,[266] and the maintenance of fair and orderly markets in particular, would not be achieved. Accordingly, the Commission preliminarily believes that it is appropriate to require SCI entities to designate members or participants they believe are necessary to the successful activation of their business continuity and disaster recovery plans, including backup systems, and require them to participate in the testing of such plans.

Under the proposed rule, each SCI entity would need to schedule, and require their designated members or participants to participate in, scheduled ''functional and performance testing'' [267] of the entity's business continuity and

[259] The proposed rule does not specify when the Commission would need to be notified about the designations and standards because SCI entities would be required to provide an initial notification at such point as when proposed Regulation SCI were effective, and subsequent updates only promptly after its designations and/or standards changed.

[260] *See* Section 11A(a)(1)(C) and (a)(2), 15 U.S.C. 76k–1(a)(1)(C) and (a)(2).

[261] The 2003 Interagency White Paper is included in Table A as a proposed SCI industry standard. *See supra* Section III.C.1.b.

[262] *See supra* note 195.

[263] *See id.*

[264] *See supra* notes 32 and 196.

[265] *See supra* notes 78–83 and accompanying text.

[266] *See* proposed Rule 1000(b)(1) (requiring SCI entities to have policies and procedures relating to, among other things, resiliency and availability) and *supra* Section III.C.1.

[267] As commonly understood, functional testing examines whether a system operates in accordance with its specifications, whereas performance testing examines whether a system is able to perform under a particular workload.

disaster recovery plans. Such functional and performance testing should include not only testing of connectivity, but also testing of an SCI entity's systems, such as order entry, execution, clearance and settlement, order routing, and the transmission and/or receipt of market data, as applicable, to determine if they can operate as contemplated by its business continuity and disaster recovery plans.

Proposed Rule 1000(b)(9)(i) would require that testing of an SCI entity's business continuity and disaster recovery plans occur at least once every 12 months. This proposed requirement reflects the Commission's preliminary view that the testing of business continuity and disaster recovery plans, including backup systems, must occur regularly if such plans are to be effective when an actual disaster or disruption occurs. The Commission preliminarily believes that its proposed required testing frequency of at least once every 12 months is the minimum frequency that would be consistent with seeking to ensure that testing is meaningful and effective.[268] However, the proposed rule would not prevent an SCI entity from conducting testing and requiring participation by members or participants in such testing more frequently than once every 12 months, if the SCI entity believes it is necessary or if, for example, it materially modifies its business continuity and disaster recovery plans.

Proposed Rule 1000(b)(9)(i) would also provide an SCI entity with discretion to determine the precise manner and content of the testing. Thus, for example, the SCI entity would have discretion to determine, for example, the duration of the testing, the sample size of transactions tested, the scenarios tested, and the scope of the test. The Commission preliminarily believes that SCI entities are in the best position to structure the details of the test in a way that would maximize its utility.

Although proposed Rule 1000(b)(9)(i) would give SCI entities discretion to determine the precise manner and content of the testing, the Commission is also proposing Rule 1000(b)(9)(ii), which would require an SCI entity to coordinate its testing on an industry- or sector-wide basis with other SCI entities.[269] The proposed coordination requirement is designed to enhance the value of testing by requiring SCI entities to work together to schedule and conduct the testing in as efficient and effective a manner as possible. Given that trading in the U.S. securities markets today is dispersed among a wide variety of exchanges, ATSs, and other trading venues, and is often conducted through sophisticated algorithmic trading strategies that access many trading platforms simultaneously, the Commission preliminarily believes that requiring SCI entities to coordinate testing is necessary to ensure the goal of achieving robust and effective business continuity and disaster recovery plans, because it would result in testing under more realistic market conditions. In addition, the Commission is cognizant that situations that trigger implementation of an SCI entity's business continuity and disaster recovery plans are often not limited in scope to a single SCI entity, but may affect multiple, or even all, SCI entities at the same time. Thus, proposed Rule 1000(b)(9)(ii)'s requirement is designed to foster better coordination and cooperation across the securities industry such that the markets, investors, and all market participants may benefit from more efficient and meaningful testing. Further, the Commission preliminarily believes that it would be more cost-effective for market participants to participate in the testing of the business continuity and disaster recovery plans of SCI entities on an industry- or sector-wide basis because such coordination would likely reduce duplicative testing efforts.

While proposed Rule 1000(b)(9)(ii) would require SCI entities to coordinate testing on an industry- or sector-wide basis, it would provide discretion to SCI entities to determine how to best meet this requirement because the Commission preliminarily believes that SCI entities currently are best suited to find the most efficient and effective way to test. Of course, as noted above, each SCI entity may require its members or participants to participate in additional testing beyond the industry- or sector-wide testing under proposed Rule 1000(b)(9)(ii).

Proposed Rule 1000(b)(9)(iii) would require each SCI entity to designate those members or participants it deems necessary, for the maintenance of fair and orderly markets in the event of the activation of its business continuity and disaster recovery plans, to participate in the testing of such plans. In addition, proposed Rule 1000(b)(9)(iii) would require each SCI entity to provide to the Commission on Form SCI its standards for determining which members or participants are necessary for the maintenance of fair and orderly markets in the event of the activation of its business continuity and disaster recovery plans and promptly update such notification following any changes to such standards. The Commission believes that the viability of an SCI entity's business continuity and disaster recovery plans, and the usefulness of its backup systems, depend upon the ability of such members or participants to be ready, able, and willing to use such systems during an actual disaster or disruption. The proposed requirement that designated members or participants be required to test such plans in advance reflects the Commission's preliminary view that the proposed testing would enhance the value of SCI entities' business continuity and disaster recovery plans, and thereby advance the goal of achieving resilient and available markets.[270]

For SCI SROs, proposed Rule 1000(b)(9)(iii) would require SRO rules pursuant to Section 19(b) of the Exchange Act, setting forth the standards for designation. For an SCI ATS or an exempt clearing agency subject to ARP, the requirement in proposed Rule 1000(b)(9)(iii) would be satisfied by setting forth such standards in its internal procedures, as well as any subscriber or similar agreement, as applicable. For an SCI entity that is a plan processor, proposed Rule 1000(b)(9)(iii) would require an amendment to the applicable SCI Plan pursuant to Rule 608 of Regulation NMS, setting forth such standards. Further, proposed Rule 1000(b)(9)(iii) would require each SCI entity to provide to the Commission on Form SCI the list of designated members or participants and promptly update such notification following any changes to the designations.[271]

Request for Comment

144. The Commission requests comment generally on proposed Rule 1000(b)(9).

[268] Consistent with the frequency of testing under proposed Rule 1000(b)(9), the Securities Industry and Financial Markets Association coordinates an industry-wide business continuity test each year in October. *See http://www.sifma.org/services/bcp/industry-testing. See also supra* notes 81–82 and accompanying text.

[269] Thus, to satisfy the requirement of proposed Rule 1000(b)(9)(ii), an SCI entity could coordinate its testing with all SCI entities, or an appropriate subset of them, such as by asset class(es) (NMS stocks, non-NMS stocks, municipal debt, corporate bonds, options) or type of SCI entity (national securities exchanges, clearing agencies, plan processors).

[270] *See supra* note 266.

[271] As discussed in *infra* Section III.E, Form SCI would also require SCI entities to attach the relevant provision of their rules (for SCI SROs), SCI Plans (for plan processors) or subscriber or similar agreements (for SCI ATSs and exempt clearing agencies subject to ARP) that require designated members or participants to participate in the testing required by proposed Rule 1000(b)(9).

145. Do commenters believe the proposal to require an SCI entity, with respect to its business continuity and disaster recovery plans, including its backup systems, to require participation by designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency as specified by the SCI entity, is appropriate? Why or why not? Is the proposed requirement that SCI entities require participation in ''functional and performance testing'' appropriate? Why or why not? Is the term ''functional and performance testing'' clear? If not, why not and what would be a better description of the nature of the proposed required testing?

146. Do commenters believe it is appropriate to require that such testing occur at least once every 12 months? Why or why not? Would another minimum interval for such testing, such as bi-annually, semi-annually, or quarterly, be more appropriate? Please explain. Would it be appropriate to also require such testing to occur following a material change to the SCI entity's business continuity and disaster recovery plans? Why or why not? If yes, would it be appropriate to require such testing within 90 days of the material change? Why or why not? Would another time period be more appropriate? If so, what should such time period be?

147. Should the Commission give SCI entities discretion in designating the members or participants that must participate in the testing of the business continuity and disaster recovery plans? Why or why not? Should the Commission instead specify standards for such designation? If so, what should the standards be based on? For example, should the standards be based on the size, volume traded or cleared, and/or geographic proximity of a member or participant to the SCI entity's backup systems? Why or why not? Should only members or participants that execute or clear transactions above a certain volume threshold and/or that account for a certain percentage of trading volume on the SCI entity be required to participate? Why or why not? If so, what should be such threshold or thresholds (*e.g.,* 0.5 percent, 1 percent, 5 percent)? Should an SCI entity be required to mandate participation in testing by some other subset of members or participants? For example, should such subset comprise members or participants that account for a certain percentage of trading in each or all of the equities, options, or fixed-income markets traded through the SCI entity? Why or why not? If so, what should be such threshold (*e.g.,* 0.5 percent, 1 percent, 5 percent)? Or, should testing be mandated only for certain types of market participants (*e.g.,* market makers, clearing broker-dealers, retail broker-dealers)? If so, for which types of market participants should testing be mandatory and why? Please explain. Alternatively, should all members or participants of an SCI entity (or certain types of SCI entities, *e.g.,* plan processors) be required to participate in the testing of its business continuity and disaster recovery plans? Why or why not?

148. Do commenters believe those members or participants that would likely be designated by SCI entities under proposed Rule 1000(b)(9)(iii) currently have the ability, including the infrastructure, to participate in the required testing? Do commenters believe *all* members or participants of SCI entities currently have the ability, including the infrastructure, to participate in such testing? What would be the costs and benefits to a member or participant of an SCI entity to participate in such testing, including for such member or participant to establish and maintain connectivity to an SCI entity's backup systems? What would be the economic effect of this proposed rule, particularly with regard to a member or participant? Please describe in detail and provide data to support your views if possible.

149. Should an SCI entity be required to notify the Commission on Form SCI of its standards for designating members or participants for testing and its list of designated members or participants? Why or why not? Should an SCI entity be required to promptly update such Commission notification if its standards for designation or list of designated members or participants change? Why or why not? Is there a more appropriate time period for updating Commission notifications (*e.g.,* 7 days following a change, 30 days following a change, quarterly)? Please explain.

150. Proposed Rule 1000(b)(9)(i) would require each SCI entity to mandate participation by designated members or participants in ''functional and performance testing'' of its business continuity and disaster recovery plans, including its backup systems, but would leave to the discretion of the SCI entity the details regarding the manner of testing. Should the Commission be more prescriptive with respect to such testing? For example, should the Commission require that SCI entities periodically operate from their backup facilities during regular trading hours? Why or why not? Please explain. Are there other details that the Commission should prescribe in relation to the proposed rule? If so, please explain.

151. Proposed Rule 1000(b)(9)(ii) would require SCI entities to coordinate testing on an industry- or sector-wide basis, but would not specify how or the parameters. Do commenters believe it is appropriate to leave such discretion to SCI entities? Why or why not? Are the terms ''industry-wide'' and ''sector-wide'' clear? Should the Commission define these terms? If so, what would be appropriate definitions? Would such an approach foster the creation of meaningful, efficient testing of business continuity and disaster recovery plans across SCI entities and their members or participants? Why or why not? If not, what would be a more appropriate approach? Should the Commission require a minimum number of SCI entities needed to satisfy the coordination requirement of proposed Rule 1000(b)(9)(ii)? Or should that requirement only be satisfied if all SCI entities (or all SCI entities within a sector of the industry) participate? Why or why not? Should the Commission mandate a minimum list of actions that SCI entities must take to satisfy the requirement of proposed Rule 1000(b)(9)(ii)? If so, what actions should be required and why? If not, why not?

152. Should the Commission require SCI entities to submit reports on the results of their testing of business continuity and disaster recovery plans or reports of any systems testing that was not successful? If not, why not? If so, should such reports be required to be submitted within a specified time frame or in a specified manner or format? Please explain. In addition, should the Commission require SCI entities to submit reports on systems testing opportunities required of or made available to members or subscribers and the extent to which such members or subscribers participate in such opportunities?

153. Would proposed Rule 1000(b)(9) enhance investor confidence in the integrity of the U.S. securities markets? Why or why not? Please explain. What would be the costs associated with proposed Rule 1000(b)(9)? What would be the benefits? Please be specific. What would be the potential competitive impacts of proposed Rule 1000(b)(9), including impacts on small members or small participants? To the extent possible, please provide data to support your views.

154. To help ensure that the goals of an SCI entity's business continuity and disaster recovery plans are achieved, should the Commission impose other requirements (in addition to the mandatory testing participation

requirement in proposed Rule 1000(b)(9)) on the members or participants of SCI entities?[272] For example, proposed Rule 1000(b)(1)(i)(E) would require that an SCI entity's business continuity and disaster recovery plans allow for ''maintaining backup and recovery capabilities sufficiently resilient and geographically diverse to ensure next business day resumption of trading.'' Should the Commission require SCI entities to mandate that some or all of their members or participants be able to meet the next business day resumption of trading standards for SCI entities in proposed Rule 1000(b)(1)(i)(E)? Why or why not? If not all, which members or participants should be required to meet such resumption of trading standards? For example, should an SCI entity require members or participants that execute transactions above a certain volume threshold and/or that account for a certain percentage of trading on the SCI entity to meet such resumption of trading standards? Why or why not? If so, what should be such threshold or thresholds?

155. Are there other requirements that SCI entities should mandate for their members or participants to help SCI entities meet their obligations under proposed Regulation SCI? If so, what are they? Please describe. For example, should the Commission also require each SCI entity to mandate that its members or participants maintain continuous connectivity with the SCI entity's backup data centers? Why or why not? If not all, which members or participants should be required to maintain continuous connectivity with the SCI entity's backup data centers? For example, should an SCI entity require members or participants designated under proposed Rule 1000(b)(9)(iii), or that execute transactions above a certain volume threshold and/or that account for a certain percentage of trading on the SCI entity, to maintain such connectivity? Why or why not? If so, what should be such threshold or thresholds?

D. Proposed Rule 1000(c)–(f): Recordkeeping, Electronic Filing on Form SCI, and Access

1. Recordkeeping Requirements

The Commission notes that many SCI entities are already subject to recordkeeping requirements,[273] but that records relating to systems review and testing may not be specifically addressed in certain current recordkeeping rules. Accordingly, the Commission is proposing Rule 1000(c) to specifically address recordkeeping requirements for SCI entities with respect to records relating to Regulation SCI compliance.

Proposed Rule 1000(c)(1) would require each SCI SRO to make, keep, and preserve all documents relating to its compliance with Regulation SCI, as prescribed by Rule 17a–1 under the Exchange Act.[274] Rule 17a–1(a) under the Exchange Act requires every national securities exchange, national securities association, registered clearing agency, and the MSRB to keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made and received by it in the course of its business as such and in the conduct of its self-regulatory activity.[275] In addition, Rule 17a–1(b) requires these entities to keep all such documents for a period of not less than five years, the first two years in an easily accessible place, subject to the destruction and disposition provisions of Rule 17a–6.[276] Rule 17a–1(c) requires these entities, upon request of any representative of the Commission, to promptly furnish to the possession of Commission representatives copies of any documents required to be kept and preserved by it pursuant to Rule 17a–1(a) and (b).[277] The Commission believes that the breadth of Rule 17a–1 under the Exchange Act is such that it would require SCI SROs to make, keep, and preserve records relating to their compliance with proposed Regulation SCI should the Commission adopt Regulation SCI. Thus, the Commission proposes to cross-reference Rule 17a–1 in proposed Regulation SCI to be clear that it intends all SCI entities to be subject to the same recordkeeping requirements regarding compliance with proposed Regulation SCI.

For SCI entities that are not SCI SROs (*i.e.,* SCI ATSs, plan processors, and exempt clearing agencies subject to ARP), the Commission is proposing broad recordkeeping requirements relating to compliance with proposed Regulation SCI that are consistent with those applicable to SROs under Rule 17a–1 under the Exchange Act. Thus, the Commission is proposing Rule 1000(c)(2), which would require SCI entities other than SCI SROs to: (i) Make, keep, and preserve at least one copy of all documents, including correspondence, memoranda, papers, books, notices, accounts, and other such records, relating to its compliance with Regulation SCI, including, but not limited to, records relating to any changes to its SCI systems and SCI security systems; (ii) keep all such documents for a period of not less than five years, the first two years in a place that is readily accessible to the Commission or its representatives for inspection and examination;[278] and (iii) upon request of any representative of the Commission, promptly furnish to the possession of such representative copies of any documents required to be kept and preserved by it pursuant to (i) and (ii) above.

Proposed Rule 1000(c)(3), applicable to all SCI entities, would require each SCI entity, upon or immediately prior to ceasing to do business or ceasing to be registered under the Exchange Act, to take all necessary action to ensure that records required to be made, kept, and preserved by proposed Rule 1000(c) would be accessible to the Commission or its representatives for the remainder of the period required by proposed Rule 1000(c). For example, an SCI entity could fulfill its obligations under proposed Rule 1000(c)(3) by delivering

[272] *See also infra* Section III.G (soliciting comment on whether broker-dealers, other than SCI ATSs, should be subject to some or all of the additional system safeguard rules that are proposed for SCI entities).

[273] *See, e.g.,* 17 CFR 240.17a–1, applicable to SCI SROs; 17 CFR 240.17a–3, 17a–4, applicable to broker-dealers; and 17 CFR 242.301–303, applicable to ATSs.

It has been the experience of the Commission that SCI entities presently subject to the ARP Inspection Program (nearly all of whom are SCI SROs that are also subject to the record keeping requirements of Rule 17a–1(a)) do generally keep and preserve the types of records that would be subject to the requirements of proposed Rule 1000(c). Nevertheless, the Commission preliminarily believes that Regulation SCI's codification of these preservation practices will support an accurate, timely, and efficient inspection and examination process and help ensure that all types of SCI entities keep and preserve such records.

[274] 17 CFR 240.17a–1.

[275] *See* 17 CFR 240.17a–1(a). Such records would, for example, include copies of incident reports and the results of systems testing.

[276] *See* 17 CFR 240.17a–1(b). Rule 17a–6(a) under the Exchange Act states: ''Any document kept by or on file with a national securities exchange, national securities association, registered clearing agency or the Municipal Securities Rulemaking Board pursuant to the Act or any rule or regulation thereunder may be destroyed or otherwise disposed of by such exchange, association, clearing agency or the Municipal Securities Rulemaking Board at the end of five years or at such earlier date as is specified in a plan for the destruction or disposition of any such documents if such plan has been filed with the Commission by such exchange, association, clearing agency or the Municipal Securities Rulemaking Board and has been declared effective by the Commission.'' 17 CFR 240.17a–6(a).

[277] *See* 17 CFR 240.17a–1(c).

[278] The proposed five-year and two-year time frames would be the same as those applicable to SCI SROs pursuant to Rule 17a–1 under the Exchange Act, and the Commission preliminarily believes it would be appropriate for all SCI entities to be subject to the same time frame requirements.

such records, immediately prior to deregistration, to a repository or other similar entity and by making all necessary arrangements for such records to be readily accessible to the Commission or its representative, for inspection and examination for the duration of the requirement under proposed Rule 1000(c)(3).

The Commission preliminarily believes that its ability to examine for and enforce compliance with proposed Regulation SCI could be hampered if an SCI entity were not required to adequately provide accessibility for the full proposed retention period. In addition, while many SCI events may occur, be discovered, and be resolved in a short time frame, there may be other SCI events that may not be discovered until months or years after their occurrences, or may take significant periods of time to fully resolve. In such cases, having an SCI entity's records available even after it has ceased to do business or be registered under the Exchange Act would be beneficial. Because SCI events have the potential to negatively impact investor decisions, risk exposure, and market efficiency, the Commission also preliminarily believes that its ability to oversee the securities markets could be undermined if it is unable to review records to determine the causes and consequences of one or more SCI events experienced by an SCI entity that deregisters or ceases to do business. This information would provide an additional tool to help the Commission reconstruct important market events and better understand how such events impacted investor decisions, risk exposure, and market efficiency.

Proposed Rule 1000(e) would provide that, if the records required to be made or kept by an SCI entity under proposed Regulation SCI were prepared or maintained by a service bureau or other recordkeeping service on behalf of the SCI entity, the SCI entity would be required to ensure that the records are available for review by the Commission and its representatives by submitting a written undertaking, in a form acceptable to the Commission, by such service bureau or other recordkeeping service, signed by a duly authorized person at such service bureau or other recordkeeping service. The written undertaking would be required to include an agreement by the service bureau designed to permit the Commission and its representatives to examine such records at any time or from time to time during business hours, and to promptly furnish to the Commission and its representatives true, correct, and current electronic files in a form acceptable to the Commission or its representatives or hard copies of any, all, or any part of such records, upon request, periodically, or continuously and, in any case, within the same time periods as would apply to the SCI entity for such records. The preparation or maintenance of records by a service bureau or other recordkeeping service would not relieve an SCI entity from its obligation to prepare, maintain, and provide the Commission and its representatives with access to such records. Proposed Rule 1000(e) is substantively the same as the requirement applicable to broker-dealers under Rule 17a–4(i) of the Exchange Act.[279]

The Commission is proposing this requirement for SCI entities to prevent the inability of the Commission to obtain required SCI entity records because they are held by a third party that may not otherwise have an obligation to make such records available to the Commission. In addition, the requirement that SCI entities obtain from such third parties a written undertaking would help ensure that such service bureau or other recordkeeping service is aware of this obligation with respect to records relating to proposed Regulation SCI. The Commission preliminarily believes that it is appropriate to include this requirement in proposed Regulation SCI to help ensure that the Commission would have prompt and efficient access to all required records, including those housed at a service bureau or any other recordkeeping service.[280]

Request for Comment

156. The Commission requests comment on all aspects of proposed Rule 1000(c). Specifically, do SCI entities currently make, keep, and preserve the types of records that would be required to be made, kept, and preserved by proposed Rule 1000(c)? Are there any records that could be important to make, keep, and preserve that would not be captured under proposed Rule 1000(c) or the existing recordkeeping requirements for SROs under Rule 17a–1? If so, please explain and identify the records. Should any of the records subject to proposed Rule 1000(c) not be required? If so, please explain and identify the records. Should the Commission require SCI entities to furnish records to Commission representatives electronically in a tagged data format (*e.g.,* XML, XBRL, or similar structured data formats which may be tagged)? The Commission notes that a tagged data format would have the benefit of permitting records to be organized and searched more easily, and thereby enable more efficient analyses, but that there would also be costs associated with implementing a tagged data format requirement. Do commenters believe the benefits of using a tagged data format would justify the costs? Why or why not? Please explain. If so, should any particular electronic format be mandated? If so, please describe.

157. Should the Commission lengthen or shorten the proposed periods for SCI entities to keep and preserve records? If so, by how much and why? Is it appropriate for an SCI entity, prior to ceasing to do business or ceasing to be regulated under the Exchange Act, to be required to ensure that its records are accessible in some way to the Commission and its representatives? Why or why not? What practical steps do commenters envision an SCI entity taking to comply with this proposed requirement?

158. The Commission requests comment on all aspects of proposed Rule 1000(e). Specifically, would the written undertaking required by proposed Rule 1000(e) be sufficient to help ensure that the Commission and its representatives would be able to obtain and examine true, correct, and current records of SCI entities? Why or why not? Are the provisions of proposed Rule 1000(e) an appropriate means of addressing any potential problems with access to books and records at service bureaus? Why or why not? Are there alternatives that the Commission should consider with respect to recordkeeping requirements for SCI entities? If so, please explain your reasoning.

2. Electronic Submission of Reports, Notifications, and Other Communications on Form SCI

Proposed Rule 1000(d) provides that, except with respect to notifications to the Commission under proposed Rule 1000(b)(4)(i) (Commission notification of certain SCI events), and oral notifications to the Commission under proposed Rule 1000(b)(6)(ii) (Commission notification of certain material systems changes), any notification, review, description, analysis, or report required to be submitted to the Commission under proposed Regulation SCI must be submitted electronically and contain an electronic signature. This proposed requirement is intended to provide a uniform manner in which the Commission would receive—and SCI entities would provide—written

[279] 17 CFR 240.17a–4(i).

[280] *See* 17 CFR 240.17a–4(i) (records preserved or maintained by a service bureau).

notifications, reviews, descriptions, analyses, or reports made pursuant to proposed Regulation SCI. The Commission preliminarily believes that such standardization would guide SCI entities in completing such submissions and make it easier and more efficient for them to draft and submit such required reports. Additionally, the standardization would make it easier and more efficient for the Commission to promptly review, analyze, and respond, as necessary, to the information proposed to be provided.[281] The electronic signature requirement is consistent with the intention of the Commission to receive documents that can be readily accessed and processed electronically.

Proposed Rule 1000(d) also would require that submissions by SCI entities be filed electronically on new proposed Form SCI, in accordance with the instructions contained in Form SCI.[282] The Commission's proposal contemplates the use of an online filing system, similar to the electronic form filing system (''EFFS'') currently used by SCI SROs to submit Form 19b–4 filings, through which an SCI entity would be able to file a completed Form SCI.[283] Based on the widespread use and availability of the Internet, the Commission preliminarily believes that filing Form SCI in an electronic format would be less burdensome and a more efficient filing process for SCI entities and the Commission, as it is likely to be less expensive and cumbersome than mailing and filing paper forms to the Commission.

Request for Comment

159. The Commission requests comment on all aspects of proposed Rule 1000(d). Do commenters believe that the electronic submission requirement of proposed Rule 1000(d) is appropriate? Alternatively, would the submission of a required notification, review, description, analysis, or report via electronic mail to one or more Commission email addresses be a more appropriate way for the Commission to implement the proposed requirement? Are there other alternative methods that would be preferable? If so, please describe. Should there be any additional security requirements for such communications (*e.g.,* password protection or encryption)? If so, please describe. Should the submissions be made in a tagged data format, *e.g.,* XML, XBRL, or similar structured data formats which may be tagged? The Commission notes that a tagged data format would have the benefit of permitting records to be organized and searched more easily, and thereby enable more efficient analyses, but that there would also be costs associated with implementing a tagged data format requirement. Do commenters believe the benefits of using a tagged data format would justify the costs? Why or why not? Please explain. If so, should any particular electronic format be mandated? If so, please describe.

3. Access to the Systems of an SCI Entity

Proposed Rule 1000(f) would require SCI entities to provide Commission representatives reasonable access to their SCI systems and SCI security systems. Thus, the proposed rule would facilitate the access of representatives of the Commission to such systems of an SCI entity either remotely or on site.[284] Proposed Rule 1000(f) is intended to be consistent with the Commission's current authority with respect to access to records generally[285] and help ensure that Commission representatives have ready access to the SCI systems and SCI security systems of SCI entities in order to evaluate an SCI entity's practices with regard to the requirements of proposed Regulation SCI.[286]

Request for Comment

160. The Commission requests comment generally on proposed Rule 1000(f). Are there restrictions that should be placed on the proposed access that would still allow the Commission and its representatives to be able to evaluate an SCI entity's practices with regard to the requirements of proposed Regulation SCI? If so, what should such restrictions be and why? Please describe.

E. New Proposed Form SCI

The Commission is proposing that the notices, reports, and other information required to be provided to the Commission pursuant to proposed Rules 1000(b)(4), (6), (8), and (10) of Regulation SCI be submitted electronically on new proposed Form SCI. Proposed Form SCI would solicit information through a series of questions designed to elicit short-form answers and also would require SCI entities to provide information and/or reports in narrative form by attaching specified exhibits. All filings on proposed Form SCI would require that an SCI entity identify itself and indicate the basis for submitting Form SCI, whether a: notification or update notification regarding an SCI event pursuant to proposed Rule 1000(b)(4); notice of a planned material systems change pursuant to proposed Rule 1000(b)(6); submission of a required report pursuant to proposed Rule 1000(b)(8); or notification of an SCI entity's standards for designation of members or participants to participate in required testing and the identity of such designated members or participants pursuant to proposed Rule 1000(b)(9). A filing on Form SCI required by proposed Rules 1000(b)(4), (6), (8), or (9) would require that an SCI entity provide additional information on attached exhibits, as discussed below.

1. Notice of SCI Events Pursuant to Proposed Rule 1000(b)(4)

As discussed above, proposed Rule 1000(b)(4)(i) would require an SCI entity, upon any responsible SCI personnel becoming aware of a systems disruption that the SCI entity reasonably estimates would have a material impact on its operations or on market participants, any systems compliance issue, or any systems intrusion, to notify the Commission of such SCI event. Proposed Rule 1000(b)(4)(ii) would require an SCI entity, upon any responsible SCI personnel becoming aware of any SCI event, to notify the Commission of the SCI event in writing within 24 hours. Proposed Rule 1000(b)(4)(iii) would require continuing written updates on a regular basis, or at such frequency as reasonably requested by a representative of the Commission, until such time as the SCI event is resolved. Proposed Rule 1000(b)(4)(iv) would direct an SCI entity to submit the required notifications on Form SCI. Further, proposed Rule 1000(b)(4)(iv) and new proposed Form SCI would specify the particular information an

[281] This proposed requirement is consistent with electronic-reporting standards set forth in other Commission rules under the Exchange Act, such as Rule 17a–25 (Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers). *See* 17 CFR 240.17a–25.

[282] *See* proposed Rule 1000(d) and *infra* Section III.E.

[283] *See* Securities Exchange Act Release No. 50486 (October 4, 2004), 69 FR 60287 (October 8, 2004) (adopting the EFFS for use in filing Form 19b–4).

[284] For example, with access to an SCI entity's SCI systems and SCI security systems, Commission representatives could test an SCI entity's firewalls and vulnerability to intrusions.

[285] *See, e.g.,* Section 17(b) of the Exchange Act which states that all records of the entities listed in Section 17(a) ''are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission * * * as the Commission * * * deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of [the Exchange Act].''

[286] *See* 15 U.S.C. 78q(b). The Commission believes proposed Rule 1000(f) also is authorized by Sections 11A, 6(b)(1), 15A(b)(2), and 17A(b)(3)(A) of the Exchange Act, among others. *See supra* notes 9–11 and accompanying text.

SCI entity would be required to provide to the Commission to comply with the Commission notification requirements of proposed Rules 1000(b)(4)(ii) and 1000(b)(4)(iii). As such, proposed Rule 1000(b)(4) would specify when and how notices would be required to be filed, and it and new proposed Form SCI would address the content of required notices.

For a written notification to the Commission of an SCI event under proposed Rule 1000(b)(4)(ii), new proposed Form SCI would require that an SCI entity indicate that the filing is being made pursuant to proposed Rule 1000(b)(4)(ii) and provide the following information in a short, standardized format: (i) Whether the filing is a Rule 1000(b)(4)(ii) notification or Rule 1000(b)(4)(iii) update of an SCI event; (ii) the SCI event type(s) (*i.e.,* systems compliance issue, systems intrusion, and/or systems disruption); (iii) whether the event is a systems disruption that the SCI entity reasonably estimates would have a material impact on its operations or on market participants; (iv) if so, whether the Commission has been notified of the SCI event; (v) whether the SCI event has been resolved; (vi) the date/time the SCI event started; (vii) the duration of the SCI event; (viii) the date and time when responsible SCI personnel became aware of the SCI event; (ix) the estimated number of market participants impacted by the SCI event; (x) the type(s) of systems impacted; [287] and (xi) if applicable, the type of systems disruption.[288] In addition, proposed Form SCI would require attachment of Exhibit 1, providing a narrative description of the SCI event, including: (1) A detailed description of the SCI event; (2) the SCI entity's current assessment of the types and number of market participants potentially affected by the SCI event; (3) the potential impact of the SCI event on the market; and (4) the SCI entity's current assessment of the SCI event, including a discussion of the SCI entity's determination regarding whether the SCI event is a dissemination SCI event or not.[289] In addition, to the extent available as of the time of the initial notification, Exhibit 1 would require inclusion of the following information: (1) A description of the steps the SCI entity is taking, or plans to take, with respect to the SCI event; (2) the time the SCI event was resolved or timeframe within which the SCI event is expected to be resolved; (3) a description of the SCI entity's rule(s) and/or governing documents, as applicable, that relate to the SCI event; and (4) an analysis of the parties that may have experienced a loss, whether monetary or otherwise, due to the SCI event, the number of such parties, and an estimate of the aggregate amount of such loss.[290]

Proposed Rule 1000(b)(4)(iii) would require an SCI entity to provide continuing written updates regularly for each SCI event, or at such frequency as reasonably requested by a representative of the Commission, until such time as the SCI event is resolved.[291] Proposed Form SCI would require that an SCI entity indicate that it is providing such written update pursuant to Rule 1000(b)(4)(iii) and attach such update as Exhibit 2 to Form SCI.

If any of the foregoing information is not available for inclusion on Exhibit 1 as of the date of the initial notification, the SCI entity would be required to provide such information when it becomes available on Exhibit 2. The information proposed to be required in narrative format in Exhibit 1, and if applicable, Exhibit 2, is intended to elicit a fuller description of the SCI event, and would require an SCI entity to provide detail and context not easily conveyed in short-form responses.

Proposed Form SCI would further require attachment of Exhibit 3, providing a copy in pdf or html format of any information disseminated to date regarding the SCI event to its members or participants or on the SCI entity's publicly available Web site.[292]

The Commission preliminarily believes that the proposed items of information required to be disclosed by an SCI entity on Exhibit 1 within 24 hours of any of its responsible SCI personnel becoming aware of an SCI event, or when available, on Exhibit 2, would help the Commission and its staff quickly assess the nature and scope of an SCI event, and help the SCI entity identify the appropriate response to the SCI event, including ways to mitigate the impact of the SCI event on investors and promote the maintenance of fair and orderly markets.

2. Notices of Material Changes Pursuant to Proposed Rule 1000(b)(6)

Proposed Rule 1000(b)(6) would require an SCI entity to notify the Commission of planned material systems changes on proposed Form SCI 30 calendar days in advance of such change, unless exigent circumstances exist or information previously provided regarding a material systems change has become materially inaccurate, necessitating notice regarding a material systems change with less than 30 calendar days' notice. To implement this requirement, proposed Form SCI would require an SCI entity to indicate on Form SCI that it is filing a planned material systems change notification, provide the date of the planned material systems change, indicate whether exigent circumstances exist or if the information previously provided to the Commission regarding any planned material systems change has become materially inaccurate, and, if so, whether the Commission has been notified orally, and attach as Exhibit 4 a description of the planned material systems change as well as the expected dates of commencement and completion of implementation of such changes, or, if applicable, a material systems change that has already been made due to exigent circumstances.

3. Reports Submitted Pursuant to Rule 1000(b)(8)

Proposed Rule 1000(b)(8) would require an SCI entity to submit to the Commission: (i) A report of the SCI review required by proposed Rule 1000(b)(7), together with any response by senior management, within 60 calendar days after submission of the SCI review to senior management; and (ii) a report within 30 calendar days after the end of June and December of each year containing a summary description of the progress of any material systems change during the six-month period ending on June 30 or December 31, as the case may be, and the date, or expected date, of completion of implementation of such changes. For filings of the reports of SCI reviews, proposed Form SCI would require an SCI entity to indicate on Form SCI that it is filing a report of SCI review, indicate the date of completion of the SCI review, and date of submission of the SCI review to senior management of the SCI entity. The report of the SCI review required by

[287] The types of systems listed on proposed Form SCI track the types of systems that make up the proposed definitions of ''SCI system'' and ''SCI security system'' in proposed Rule 1000(a).

[288] The types of systems disruptions listed on proposed Form SCI track the provisions of the proposed definition of ''system disruption'' in proposed Rule 1000(a) and include, with respect to SCI systems: (1) A failure to maintain service level agreements or constraints; (2) a disruption of normal operations, including switchover to back-up equipment with near-term recovery of primary hardware unlikely; (3) a loss of use of any such system; (4) a loss of transaction or clearance and settlement data; (5) significant back-ups or delays in processing; (6) a significant diminution of ability to disseminate timely and accurate market data; or (7) a queuing of data between system components or queuing of messages to or from customers of such duration that normal service delivery is affected.

[289] *See* proposed Rule 1000(b)(4)(iv)(A)(*1*).

[290] *See* proposed Rule 1000(b)(4)(iv)(A)(*2*).

[291] *See* proposed Rule 1000(b)(4)(iv)(B).

[292] *See* proposed Rule 1000(b)(4)(iv)(C).

proposed Rule 1000(b)(7), together with any response by senior management, would be required to be submitted as Exhibit 5 to proposed Form SCI. For filings of the semi-annual reports of material systems changes, proposed Form SCI would require an SCI entity to indicate on Form SCI that it is filing a semi-annual report of material systems changes, and attach the semi-annual report as Exhibit 6 to proposed Form SCI.

4. Notifications of Member or Participant Designation Standards and List of Designees Pursuant to Proposed Rule 1000(b)(9)

Proposed Rule 1000(b)(9) would require an SCI entity to notify the Commission of its standards for designating members or participants it deems necessary, for the maintenance of fair and orderly markets in the event of the activation of the SCI entity's business continuity and disaster recovery plans, to participate in the testing of such plans as well as a list of members or participants designated in accordance with such standards, and prompt updates following any changes to such standards and designations. Form SCI would require such information to be submitted as Exhibit 7 to Form SCI. Thus, an SCI SRO would be required to attach any relevant provisions of its rules, an SCI ATS or exempt clearing agency subject to ARP would be required to attach its relevant internal processes or other documents, and a plan processor would be required to attach the relevant provisions of its SCI Plan.

The Commission preliminarily believes that the proposed mechanism of submitting the reports, notices, and other information required by proposed Rules 1000(b)(4), (6), (8), and (10) by attaching them as exhibits to Form SCI would be an efficient manner for providing such information to the Commission and its staff, and that it would be more cost-effective for SCI entities as well as the Commission than requiring the submission in a paper format or using an electronic method that differs from that proposed.

5. Other Information and Electronic Signature

In addition to the foregoing, proposed Form SCI would require an SCI entity to provide Commission staff with point of contact information for systems personnel and regulatory personnel responsible for addressing an SCI event, including the name, title, telephone number and email address of such persons. Proposed Form SCI would also require the SCI entity to designate on the form contact information for a senior officer of the SCI entity responsible for matters concerning the submission of such Form SCI. Finally, proposed Form SCI would require an electronic signature to help ensure the authenticity of the Form SCI submission. The Commission preliminarily believes these proposed requirements would expedite communications between Commission staff and an SCI entity and help to ensure that only personnel authorized by the SCI entity are submitting required filings and working with Commission staff to address an SCI event or systems issue promptly and efficiently.

To the extent that the Commission receives confidential information pursuant to these reports and submissions, such information would be kept confidential, subject to the provisions of applicable law.[293]

Request for Comment

161. The Commission requests comment on all aspects of proposed Form SCI. Do commenters believe proposed Form SCI would capture the information necessary to assist the Commission in obtaining relevant information about SCI events to mitigate the effects of such events on investors and the public? Specifically, do commenters believe that the proposal to elicit the following information on Form SCI within 24 hours of any responsible SCI personnel becoming aware of an SCI event is appropriate: (i) Whether the filing is a Rule 1000(b)(4)(ii) notification or Rule 1000(b)(4)(iii) update of an SCI event; (ii) the SCI event type(s) (*i.e.,* systems compliance issue, systems intrusion, and/or systems disruption); (iii) whether the event is a systems disruption that the SCI entity reasonably estimates would have a material impact on its operations or on market participants; (iv) if so, whether the Commission has been notified of the SCI event; (v) whether the SCI event has been resolved; (vi) the date/time the SCI event started; (vii) the duration of the SCI event (viii) the date and time when responsible SCI personnel became aware of the SCI event; (ix) the estimated number of market participants impacted by the SCI event; (x) the type(s) of systems impacted; and (xi) if applicable, the type of systems disruption.

162. Do commenters believe that all relevant information relating to a systems disruption, systems compliance issue, or systems intrusion would be captured on proposed Form SCI? If not, what additional information should be included on proposed Form SCI? For example, should proposed Form SCI require that an SCI entity specifically identify market participants that may have been affected by the SCI event? Why or why not?

163. Do commenters believe the proposed information required to be provided to the Commission regarding SCI events in the 24-hour notification on Exhibit 1 is appropriate? Do commenters believe that the proposal to require an update notification on Exhibit 2, and the information required to be provided for such updates, are appropriate? Why or why not?

164. Commenters that believe the information proposed to be required on Form SCI, whether in short form or in narrative form on proposed Exhibits 1 and 2, is not appropriate should explain their reasoning and suggest alternatives, as appropriate. Should any information proposed to be required be eliminated? Should any other information be required? Please describe and explain.

165. Do commenters believe the required contents of proposed Exhibit 3 are appropriate (*i.e.,* a copy in pdf or html format of any information disseminated to an SCI entity's members or participants or on the SCI entity's publicly available Web site)? If not, why not?

166. Do commenters believe submission of proposed Form SCI and attachment of Exhibits 4, 5, 6, and 7 regarding material systems changes, SCI reviews, and notifications of standards for designations and designees for the testing of an SCI entity's business continuity and disaster recovery plans, is an appropriate method for SCI entities to provide this information to the Commission? If not, why not? Should any information proposed to be required be eliminated? Should any other information be required? Please explain.

167. Is the proposal to require contact information for systems, regulatory, and senior officer appropriate? Should any information proposed to be required be eliminated? Is there any other type of information that proposed Form SCI should require? Is the proposal to require an electronic signature appropriate? If not, why not?

168. Would proposed Form SCI contain enough information so that the Commission and its staff would be able

[293] *See, e.g.,* 5 U.S.C. 552 (Exemption 4 of the Freedom of Information Act provides an exemption for ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.'' 5 U.S.C. 552(b)(8)).

to accurately analyze SCI events, material changes to systems, and all other required filings?

169. Upon receiving information submitted as part of an SCI entity's electronic filing, it is the Commission's objective that such information be easily analyzed, searched, and manipulated. The Commission has designed proposed Form SCI with this objective in mind, particularly with the uniform requirements on the front of the form. The Commission, however, is cognizant that certain information, particularly with respect to the information required on the various exhibits to the proposed form, may not be as easily analyzed, searched, or manipulated. The Commission seeks comment as to whether it should mandate that proposed Form SCI as a whole, including the proposed exhibits, employ a particular structured data format that would allow the Commission and its staff to analyze, search, and manipulate the form's information. At the same time, the Commission recognizes that employing a particular tagged data format may potentially reduce the flexibility afforded to such entities to collect and report data in a manner that is more efficient and cost effective for them. The Commission requests comments as to whether there may be tagged data formats that are sufficiently flexible and that are accepted and used throughout the industry, such as XML, XBRL, or another structured data format that could be used for proposed Form SCI. Are there different standard data formats currently in use depending on the type of SCI entity that would enable the Commission to achieve its goals? If so, what are they? Should the SCI entity have the flexibility to specify the acceptable data format for submitting information? Why or why not? Do commenters have concerns with proposed Regulation SCI requiring the use of a tagged data format, such as XML, XBRL, or some other structured data format that may be tagged, to report data? If so, what are they? Are there any licensing fees or other costs associated with the use of tagged data formats, such as XML, XBRL, or similar structured data formats that may be tagged? If so, what action should the Commission take, if any, to help ensure wide availability of a common data format by all participants?

F. Request for Comment on Applying Proposed Regulation SCI to Security-Based Swap Data Repositories and Security-Based Swap Execution Facilities

On July 21, 2010, the President signed the Dodd-Frank Act into law.[294] The Dodd-Frank Act was enacted, among other things, to promote the financial stability of the United States by improving accountability and transparency of the nation's financial system.[295] Title VII of the Dodd-Frank Act provides the Commission and the CFTC with the authority to regulate over-the-counter (''OTC'') derivatives.

1. Proposed System Safeguard Rules for SB SDRs and SB SEFs

Section 763 of the Dodd-Frank Act amends the Exchange Act by adding various new statutory provisions to govern the regulation of various entities, including security-based swap data repositories and security-based swap execution facilities.[296] Under the authority of Section 13(n) of the Exchange Act, applicable to SB SDRs, and Section 3D(d) of the Exchange Act, applicable to SB SEFs, the Commission recently proposed rules for these entities with regard to their automated systems' capacity, resiliency, and security.[297] Specifically, in the SB SDR Proposing Release and the SB SEF Proposing Release, respectively, the Commission proposed Rule 13n–6 and Rule 822 under the Exchange Act, which would set forth the requirements for these entities with regard to their automated systems' capacity, resiliency, and security.[298] In each release, the Commission stated that it was proposing standards comparable to the standards applicable to SROs, including exchanges and clearing agencies, and other registrants, pursuant to the Commission's ARP standards.[299]

Proposed Rules 13n–6 and 822, applicable to SB SDRs and SB SEFs, respectively, would require these entities, ''with respect to those systems that support or are integrally related to the performance of its activities'' to ''establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its systems provide adequate levels of capacity, resiliency, and security.'' [300] Under proposed Rules 13n–6 and 822, such policies and procedures, at a minimum, would require these SB SDRs and SB SEFs to: (i) Establish reasonable current and future capacity estimates; (ii) conduct periodic capacity stress tests of critical systems to determine such systems' ability to process transactions in an accurate, timely, and efficient manner; (iii) develop and implement reasonable procedures to review and keep current their system development and testing methodologies; (iv) review the vulnerability of their systems and data center computer operations to internal and external threats, physical hazards, and natural disasters; and (v) establish adequate contingency and disaster recovery plans.[301] Proposed Rules 13n–6 and 822 would further require SB SDRs and SB SEFs to submit, on an annual basis, an ''objective review'' of their systems to the Commission within 30 calendar days of its completion; [302] notify the Commission in writing of material systems outages; and notify the Commission in writing at least 30 calendar days before implementation of any planned material systems changes.

To date, the Commission has received two comment letters from one commenter in response to proposed Rule 13n–6 [303] and four comment letters

[294] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, H.R. 4173) (''Dodd-Frank Act'').

[295] *See* Public Law 111–203 Preamble.

[296] *See* Public Law 111–203, Section 763 (adding Sections 13(n), 3C, and 3D of the Exchange Act). The Dodd-Frank Act also directs the Commission to harmonize to the extent possible Commission regulation of SB SDRs and SB SEFs with CFTC regulation of swap data repositories (''SDRs'') and swap execution facilities (''SEFs'') under the CFTC's jurisdiction, an endeavor that Commission staff is undertaking as it seeks to move the SB SDR and SB SEF proposals toward adoption. *See* Public Law 111–203, Section 712, directing the Commission, before commencing any rulemaking with regard to SB SDRs or SB SEFs, to consult and coordinate with the CFTC for purposes of assuring regulatory consistency and comparability to the extent possible.

[297] *See* Securities Exchange Act Release Nos. 63347 (November 19, 2010), 75 FR 77306 (December 10, 2010) (proposing new Rule 13n–6 under the Exchange Act applicable to SB SDRs) (''SB SDR Proposing Release''); 63825 (February 2, 2011), 76 FR 10948 (February 28, 2011) (proposing new Rule 822 under the Exchange Act applicable to SB SEFs) (''SB SEF Proposing Release,'' together with the SB SDR Proposing Release, the ''SBS Releases''). *See also* Public Law 111–203, Section 761(a) (adding Section 3(a)(75) of the Exchange Act) (defining the term ''security-based swap data repository''), and Section 761(a) (adding Section 3(a)(77) of the Exchange Act) (defining the term ''security-based swap execution facility'').

[298] *See* SB SDR Proposing Release and SB SEF Proposing Release, *supra* note 297.

[299] *See* SB SDR Proposing Release, *supra* note 293, at 77332 and SB SEF Proposing Release, *supra* note 297, at 10987.

[300] *See* SB SDR Proposing Release, 75 FR 77370 and SB SEF Proposing Release, 76 FR 11064, *supra* note 297.

[301] *Id.*

[302] Such review may be performed internally if an external firm reports on the objectivity, competency, and work performance with respect to the internal review.

[303] *See* Letter from Larry E. Thompson, General Counsel, The Depository Trust & Clearing

Continued

in response to proposed Rule 822.[304] Both comment letters on proposed Rule 13n-6 expressed support for the proposed rule.[305] Two commenters on proposed Rule 822 expressed support for the proposed rule.[306] Two other commenters on proposed Rule 822 suggested modifications, including that the Commission (1) require SB SEFs to establish policies and procedures reasonably designed to prevent any provision in a valid swap transaction from being invalidated or modified through the utilization of, or execution on, a SB SEF;[307] and (2) provide for the implementation of the system safeguards requirements on a staged basis.[308]

2. Proposed System Safeguard Rules for SB SDRs and SB SEFs as Compared to Proposed Regulation SCI

As noted above, proposed Regulation SCI is intended to build upon and update the Commission's ARP standards,[309] which were the basis for proposed Rules 13n–6 and 822 for SB SDRs and SB SEFs, respectively. Although proposed Rules 13n–6 and 822 have much in common with proposed Regulation SCI, they differ in scope and detail from proposed Regulation SCI in a number of ways. Among the differences are certain provisions in proposed Regulation SCI that proposed Rules 13n–6 and 822 do not include. Specifically, as discussed above, proposed Regulation SCI would: (i) Define the terms ''SCI systems'' and ''SCI security systems;''[310] (ii) specifically require the establishment, maintenance, and enforcement of written policies and procedures reasonably designed to ensure that SCI systems and, for purposes of security standards, SCI security standards, have levels of capacity, integrity, resiliency, availability, and security adequate to maintain an SCI entity's operational capability and promote the maintenance of fair and orderly markets;[311] (iii) require SCI entities to establish policies and procedures regarding standards that result in systems designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data; (iv) require SCI entities to establish, maintain, and enforce reasonably designed written policies and procedures to ensure that SCI systems operate in the manner intended, including in a manner that complies with the federal securities laws and rules and regulations thereunder and, as applicable, the entity's rules and governing documents; (v) require SCI entities to take corrective action, including devoting adequate resources, to remedy an SCI event as soon as reasonably practicable;[312] (vi) require SCI entities to have backup and recovery capabilities sufficiently resilient and geographically diverse to ensure next business day resumption of trading following a wide scale disruption; (vii) require an annual SCI review of the SCI entity's compliance with proposed Regulation SCI and the reporting of such review to the Commission; (viii) require an SCI entity, with respect to its business continuity and disaster recovery plans, including its backup systems, to require participation by designated members or participants in scheduled functional and performance testing of the operation of such plans at specified intervals, and to coordinate such required testing with other SCI entities; (ix) require all SCI events to be reported to the Commission, and certain types of SCI events to be disseminated to an SCI entity's members or participants; and (x) establish semi-annual reporting obligations for planned material systems changes. In addition, proposed Regulation SCI would establish a system for submitting required notices, reports, and other information to the Commission on proposed new Form SCI. Each of these proposed requirements goes beyond the explicit requirements in proposed Rules 13n–6 and 822.

3. Consideration of Applying the Requirements of Proposed Regulation SCI to SB SDRs and/or SB SEFs

If the Commission were to adopt Rules 13n–6 and 822 as proposed in the SBS Releases and also adopt Regulation SCI as proposed herein, there would be differences, as noted above, between the obligations imposed on SB SDRs and SB SEFs with respect to system safeguards on the one hand and the obligations imposed on SCI entities on the other. Therefore, the Commission solicits comment on whether it should propose to apply the requirements of proposed Regulation SCI, in whole or in part, to SB SDRs and/or SB SEFs. In providing views on whether the Commission should propose to apply proposed Regulation SCI to SB SDRs and/or SB SEFs, commenters are encouraged to consider the discussion regarding each provision of proposed Regulation SCI that is set forth in Sections III.B through III.E above. Should the Commission to decide to propose to apply the requirements of proposed Regulation SCI to such entities, the Commission would issue a separate release discussing such a proposal.

In enacting Title VII of the Dodd-Frank Act, Congress judged it important to increase the transparency and oversight of the OTC derivatives market. In addition, in proposing Regulation SB SEF, the Commission noted that SB SEFs are intended to ''lead to a more robust, transparent, and competitive environment for the market for security-based swaps (''SBS'' or ''SB swaps'').''[313] Similarly, in proposing rules for SB SDRs, the Commission

Corporation to Elizabeth M. Murphy, Secretary, Commission, dated January 24, 2011 (''DTCC SB SDR Letter 1''); and Letter from Larry E. Thompson, General Counsel, Depository Trust & Clearing Corporation to Mary Shapiro, Chairman, Commission, dated June 3, 2011 (''DTCC SB SDR Letter 2'').

[304] *See* Letter from American Benefits Counsel to Elizabeth M. Murphy, Secretary, Commission, dated April 8, 2011 (''ABC SB SEF Letter''); Letter from Nancy C. Gardner, Executive Vice President & General Counsel, Markets Division, Thomson Reuters to Elizabeth M. Murphy, Secretary, Commission, dated April 4, 2011 (''Thomson SB SEF Letter''); Letter from Stephen Merkel, Chairman, Wholesale Markets Brokers' Association Americas to Elizabeth M. Murphy, Secretary, Commission, dated April 4, 2011 (''WMBAA SB SEF Letter''); and Letter from Robert Pickel, Executive Vice Chairman, International Swaps and Derivatives Association, and Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, Securities Industry and Financial Markets Association to Elizabeth M. Murphy, Secretary, Commission, dated April 4, 2011 (''ISDA SIFMA SB SEF Letter'').

[305] *See* DTCC SB SDR Letter 1, *supra* note 304, at 3; DTCC SB SDR Letter 2, *supra* note 304, at 4 (recommending that SB SDRs ''maintain multiple levels of operational redundancy and data security'').

[306] *See* Thomson SB SEF Letter, *supra* note 304, at 8; WMBAA SB SEF Letter, *supra* note 304, at 24.

[307] *See* ABC SB SEF Letter, *supra* note 304, at 10.

[308] *See* ISDA SIFMA SB SEF Letter, *supra* note 304, at 12 (noting that the system safeguard requirements would require time and systems expertise to implement fully).

[309] *See supra* Sections I and II.

[310] *See* proposed Rule 1000(a), which would define ''SCI systems'' as ''all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity, whether in production, development, or testing, that directly support trading, clearance and settlement, order routing, market data, regulation, or surveillance,'' and ''SCI security systems'' as ''any systems that share network resources with SCI systems that, if breached, would be reasonably likely to pose a security threat to SCI systems.''

[311] While proposed Rule 13n–6 did not specifically include such a requirement for SB SDRs, the SB SDR Proposing Release stated that ''[a]s a general matter, the Commission preliminarily believes that, if an SDR's policies and procedures satisfy industry best practices standards, then these policies and procedures would be adequate.'' *See* SB SDR Proposing Release, *supra* note 297, at 77333. *See also* SB SEF Proposing Release, *supra* note 297, at 10988.

[312] *See* proposed Rule 1000(a), defining ''SCI event'' as an event at an SCI entity that constitutes: (1) A systems disruption; (2) a systems compliance issue; or (3) a systems intrusion.

[313] *See* SB SEF Proposing Release, *supra* note 297, at 11035.

noted that ''SDRs may be especially critical during times of market turmoil, both by giving relevant authorities information to help limit systemic risk and by promoting stability through enhanced transparency'' and that, ''[b]y enhancing stability in the SBS market, SDRs may also indirectly enhance stability across markets, including equities and bond markets.'' [314]

The Commission notes that it may or may not be appropriate to apply the requirements of proposed Regulation SCI to SB SDRs and SB SEFs. In particular, SB SDRs will play an important role in limiting systemic risk and promoting the stability of the SBS market. SB SDRs also would serve as information disseminators [315] in a manner similar to plan processors in the equities and options markets that, under this proposal, would be subject to the requirements of proposed Regulation SCI. SB SEFs would function as trading markets, and in that respect could be viewed as analogous to national securities exchanges and SCI ATSs, both of which function as trading markets and are included in the proposed definition of SCI entity.[316] The Commission preliminarily believes that the same types of concerns and issues that have resulted in the Commission previously publishing its ARP policy statements,[317] developing its ARP Inspection Program,[318] adopting certain aspects of the ARP policy statements under Regulation ATS,[319] and, ultimately, proposing Regulation SCI,[320] may similarly apply to SB SDRs and SB SEFs. In proposing Rule 13n–6, the Commission noted that systems failures can limit access to data, call into question the integrity of data, and prevent market participants from being able to report transaction data, and thereby have a large impact on market confidence, risk exposure, and market efficiency.[321] Similarly, in proposing Rule 822, the Commission noted that the proposed system safeguard requirements for SB SEFs are designed to prevent and minimize the impact of systems failures that might negatively impact the stability of the SB swaps market.[322] At the same time, because the Commission recognizes that there may be differences between the markets for the types of securities that would be covered by proposed Regulation SCI and the SBS market, including differing levels of automation and stages of regulatory development, the Commission requests comment on whether it would be appropriate to propose to apply the requirements of proposed Regulation SCI to SB SDRs and/or SB SEFs. As discussed further below, the Commission also requests comment on whether, if commenters believe proposed Regulation SCI should apply to SB SDRs and/or SB SEFs, the system safeguard rules currently proposed for SB SDRs and SB SEFs in the SBS Releases should, if adopted, be replaced, at some point in the future, by the requirements proposed in this release and, if so, how.

170. Are the SBS markets sufficiently similar to the markets within which the proposed SCI entities operate such that it would be appropriate to apply the same system safeguard requirements to SB SDRs and/or SB SEFs that would be applicable to SCI entities? Why or why not? Do commenters believe that there are characteristics of the SBS markets that the Commission should consider to support its applying different system safeguard rules to SB SDRs and/or SB SEFs than to SCI entities? If so, what are those characteristics, and why should different rules apply to SB SDRs and/or SB SEFs? If not, why not?

171. If the Commission were to propose to apply some or all of the provisions of proposed Regulation SCI to SB SDRs and/or SB SEFs, should the Commission propose to apply the provisions of proposed Regulation SCI differently to SB SDRs versus SB SEFs? For example, should the Commission propose to apply some or all of the provisions of proposed Regulation SCI to SB SDRs but not SB SEFs or vice versa? Why or why not?

172. What effect, if any, would there be of having SB SDRs and/or SB SEFs subject to different system safeguard rules than those proposed for SCI entities? Would there be any short term and/or long term impact of SB SDRs and/or SB SEFs being subject to different system safeguard rules than those proposed for SCI entities? For example, if SB SEFs were subject to different system safeguard rules than those proposed for SCI entities, would there be an impact on competition between SB SEFs and national securities exchanges that trade SB swaps? Please describe any expected impact on competition. Are there any provisions in proposed Regulation SCI that, if applied to SB SEFs, would create barriers to entry that could preclude small SB SEFs (*e.g.,* those that do not exceed a specified volume or liquidity threshold) from entering the SBS market?

173. The Commission also requests comment on whether it should propose to apply all provisions of proposed Regulation SCI to SB SDRs and/or SB SEFs or just those provisions comparable to the proposed system safeguard rules for SB SDRs or SB SEFs.

174. Should the Commission, if it were to propose to apply some or all of the provisions of proposed Regulation SCI to SB SDRs and/or SB SEFs, propose that SB SEFs and/or SB SDRs have written policies and procedures reasonably designed to ensure that their SCI systems and, for purposes of security standards, SCI security systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain their operational capability and promote the maintenance of fair and orderly markets? Why or why not? If the Commission were to propose such a requirement for SB SDRs and/or SB SEFs, should SCI industry standards for SB SDRs and/or SB SEFs be different from those proposed for SCI entities? If so, please explain why. What are the industry standards that should apply to SB SEFs and/or SB SDRs? Please be as specific as possible and explain why a particular industry standard would be appropriate.

175. Do the characteristics of the SBS market support a need for a mandatory requirement that SB SDRs and/or SB SEFs maintain backup and recovery capabilities sufficiently resilient and geographically diverse to ensure next business day resumption of trading (for SB SEFs) or data repository services (for SB SDRs) following a wide scale disruption? Why or why not?

176. Should the Commission propose to require SB SEFs and/or SB SDRs to establish written policies and procedures regarding standards that result in systems designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data? Why or why not?

177. Should the Commission propose to require SB SEFs and/or SB SDRs to establish, maintain, and enforce policies and procedures reasonably designed to ensure that their SCI systems operate in the manner intended, including in a

[314] *See* SB SDR Proposing Release, *supra* note 297, at 77307.

[315] *See* Securities Exchange Act Release No. 63346 (November 19, 2010), 75 FR 75208, 75227 (December 2, 2010) (proposing Regulation SBSR).

[316] *See* SB SEF Proposing Release, *supra* note 297, at 10987, n.246 (''Because SB SEFs would be an integral part of the market for SB swaps, and therefore an integral part of the national market system, the Commission believes that it is appropriate to model a SB SEF's rules on system safeguards on ARP.'').

[317] *See supra* notes 1 and 12–18 and accompanying text.

[318] *See supra* notes 25–26 and accompanying text.

[319] *See supra* note 26 and accompanying text.

[320] *See supra* Section I.B.

[321] *See* SB SDR Proposing Release, *supra* note 297, at 77332.

[322] *See* SB SEF Proposing Release, *supra* note 297, at 10987.

manner that complies with federal securities laws and rules and regulations thereunder and, as applicable, the entity's rules and governing documents, as proposed for SCI entities in Rule 1000(b)(2)(i)? Why or why not? Should the Commission propose a safe harbor from liability for SB SEFs and/or SB SDRs and their respective employees if they satisfy the elements of a safe harbor, similar to those for SCI entities in proposed Rules 1000(b)(2)(ii) and (iii)? Why or why not?

178. Should the Commission propose to require SB SEFs and/or SB SDRs, with respect to their business continuity and disaster recovery plans, including their backup systems, to require participation by designated participants in scheduled functional and performance testing of the operation of such plans at specified intervals, and to coordinate such required testing with other SB SEFs and/or SB SDRs, as proposed for SCI entities in Rule 1000(b)(9)? Why or why not?

179. With regard to the reporting and information dissemination requirements in proposed Rules 1000(b)(4) and Rule 1000(b)(5) of Regulation SCI, would it be appropriate to propose that an SB SDR and/or SB SEF be required to report all SCI events to the Commission, and disseminate information relating to dissemination SCI events to their participants? Why, or why not? If not, on what basis should SB SDRs and/or SB SEFs be distinguished from other SCI entities?

180. Should SB SDRs and/or SB SEFs be required to provide notice of, and file semi-annual reports for, material systems changes with the Commission, as proposed for SCI entities in Rules 1000(b)(6) and (b)(8)? Why or why not?

181. Should SB SDRs and/or SB SEFs be required to undertake an annual SCI review of systems and submit to the Commission a report of such review, together with any response of senior management, as proposed for SCI entities in Rule 1000(b)(7) and (8)? Why or why not?

182. Should SB SDRs and/or SB SEFs be required to submit any required notices, reports, and other information to the Commission on proposed new Form SCI? Why, or why not?

183. If the Commission were to determine that it would be appropriate to propose to apply some or all of the requirements of proposed Regulation SCI to SB SDRs and/or SB SEFs, should the Commission propose to apply such requirements of proposed Regulation SCI to all SB SDRs? To all SB SEFs? Are there distinctions that should be made between different types of SB SDRs (or SB SEFs) such that some requirements of proposed Regulation SCI might be appropriate for some SB SDRs (or SB SEFs) but not others? If so, what are those distinctions and what are those requirements? For example, should any requirements be based on criteria such as number of transactions or notional volume reported to a SB SDR or executed on a SB SEF? If so, what would be an appropriate threshold for any such criteria, and why?

184. Alternatively, given the nascent stage of regulatory development of the SBS markets, would it be appropriate to create a category under proposed Regulation SCI such as ''new SB SCI entity'' that would, for example, be applicable to SB SDRs and/or SB SEFs for a certain period of time after such entities become registered with the Commission? If so, what period of time would be appropriate (*e.g.,* one year, three years, or some other period)? Should there be other criteria for an SB SEF (or SB SDR) to be considered a new SB SCI entity? If so, what should be the criteria for inclusion? Would market share, number of transactions, and/or notional volume be appropriate criteria? If so, at what level should the criteria thresholds be set, and why? If not, why not? How should the requirements of proposed Regulation SCI differ for such ''new SB SCI entities?''

185. The Commission notes that, if it were to adopt proposed Regulation SCI and proposed Rules 13n–6 and 822, the system safeguard rules applicable to SB SDRs and SB SEFs would diverge from those applicable to SCI entities, as well as from those the CFTC has adopted for SDRs and may adopt for SEFs.[323] What negative effects, if any, do commenters believe would result from disparity in the: (1) Commission's system safeguard rules applicable to SB SDRs and/or SB SEFs; (2) requirements of Regulation SCI applicable to SCI entities; and (3) CFTC's system safeguard rules applicable to SDRs and SEFs?

186. The Commission seeks commenters' views on all aspects of whether to propose to apply Regulation SCI to SB SDRs and/or SB SEFs, taking into account the possibility that any final Commission action on proposed Rules 13n–6 and 822 could occur prior to any final Commission action on proposed Regulation SCI. The Commission seeks commenters' views on whether a proposal to extend the requirements of proposed Regulation SCI to SB SDRs and/or SB SEFs would be beneficial to help to promote the integrity, capacity, resiliency, availability, and security of their systems. The Commission notes that having comparable system safeguard requirements may be appropriate for SB SDRs and/or SB SEFs if, as noted above, the same types of concerns and issues that have resulted in the Commission previously publishing its ARP policy statements, developing its ARP Inspection Program, adopting certain aspects of the ARP policy statements under Regulation ATS, and, ultimately, proposing Regulation SCI, also apply to SB SDRs and/or SB SEFs.

187. The Commission is particularly interested in commenters' views on the different benefits and costs associated with applying proposed Regulation SCI to SB SDRs and/or SB SEFs versus the costs and benefits of applying proposed Rules 13n–6 and 822 to SB SDRs and SB SEFs, respectively. In the SBS Proposing Releases, the Commission provided aggregate estimates of the costs of its proposed rules governing SB SDRs and SB SEFs. The SB SDR Proposing Release provided an aggregate initial cost estimate of approximately $214,913,592 to be incurred by prospective SB SDRs and an aggregate ongoing annualized cost estimate of approximately $140,302,120, both of which estimates took account of proposed Rule 13n–6.[324]

[323] As noted above, SDRs and SEFs, entities similar to SB SDRs and SB SEFs, respectively, are subject to the CFTC's jurisdiction. The CFTC's system safeguards rules for SDRs, and those proposed for SEFs differ from those rules that the Commission is proposing in Regulation SCI. *See* 76 FR 54538 (September 1, 2011) (adopting 17 CFR part 49, Swap Data Repositories: Registration Standards, Duties and Core Principles, Effective October 31, 2011); 76 FR 1214 (January 7, 2011) (proposing 17 CFR part 37, Core Principles and Other Requirements for Swap Execution Facilities). For example, for SDRs, the CFTC requires same day recovery for ''critical SDRs'' whereas proposed Regulation SCI would require next business day recovery for trading services (and two-hour recovery for clearing and settlement services). *See* CFTC Rule 49.24.

[324] *See* SB SDR Proposing Release, *supra* note 297, at 77364. In the SB SDR Proposing Release, the Commission estimated that the paperwork burden associated with proposed Rule 13n–6 would come from preparing and implementing policies associated with SB SDR duties, data collection and maintenance, automated systems and direct electronic access, and from preparing reports and reviews. *See id.* at 77345–46. The Commission estimated that there would be up to 10 SB SDRs subject to the proposed SB SDR rules. *See id.* at 77355. Based on the information in the SB SDR Proposing Release, the Commission estimated that the aggregate burden on an estimated 10 SB SDRs to prepare and implement the policies and procedures under Rule 13n–6 would be 2100 hours along with 500 hours of outside legal services at $400 an hour, and that the aggregate annual burden on such SB SDRs to maintain such policies would be an additional 600 hours. *See id.* at 77349. Based on the information in the SB SDR Proposing Release, the Commission estimated that the annual aggregate burden on SB SDRs to promptly notify the Commission and submit a written description and analysis of outages and any remedial measures would be 154 hours and the aggregate annual burden on SB SDRs to notify the Commission of planned material system changes would be 1200

Similarly, the SB SEF Proposing Release provided an aggregate initial cost estimate of approximately $41,692,900 and an aggregate ongoing annualized cost estimate of approximately $22,342,700 to be incurred by prospective SB SEFs, both of which estimates took account of proposed Rule 822.[325]

If the Commission were to propose to apply Regulation SCI to SB SDRs and/or SB SEFs, it preliminarily believes that the initial potential costs of such application could differ from the costs to be incurred by SCI entities that currently participate in the ARP Inspection Program on a per entity basis, as described in Sections IV and V below. This is because prospective SB SDRs and prospective SB SEFs, unlike those entities, are not now subject to the ARP Inspection Program and its standards.[326] However, the Commission preliminarily believes that the initial potential costs of such application to SB SDRs and SB SEFs, on a per entity basis, could be equivalent to those costs estimated below in Sections IV and V with respect to SCI entities that currently do not participate in the ARP Inspection Program. Further, as noted above, the SBS Releases have accounted for potential costs to be incurred by SB SDRs and SB SEFs in implementing the proposed system safeguard requirements in Rules 13n–6 and 822, respectively and, as discussed above, the requirements in proposed Regulation SCI could be incremental to those already proposed in Rules 13n–6 and 822. The Commission therefore preliminarily believes that, if it were to decide to propose to apply some or all of the requirements of proposed Regulation SCI to SB SDRs and/or SB SEFs, the costs of applying proposed Regulation SCI to SB SDRs and/or SB SEFs would be incremental to the costs associated with proposed Rules 13n–6 and 822.

188. The Commission seeks commenters' views regarding the prospective costs, as well as the potential benefits, of proposed Regulation SCI to SB SDRs and/or SB SEFs. Commenters should quantify the costs of applying proposed Regulation SCI to SB SDRs and/or SB SEFs, to the extent possible. As noted above, commenters are urged to address specifically each requirement of proposed Regulation SCI and note whether it would be reasonable to propose to apply each such requirement to SB SDRs and/or SB SEFs and what the benefits and costs of such application would be.

4. Timing and Implementation Considerations

As noted above, the Commission has proposed rules providing a regulatory framework for SB SDRs and SB SEFs, but has not yet adopted final rules governing these entities. To date, the Commission has not received any comments with respect to the timing of the implementation of proposed Rule 13n–6 [327] but has received one comment in connection with the timing of the implementation of proposed Rule 822.[328]

Although the Commission has issued a policy statement regarding the anticipated sequencing of the compliance dates of final rules to be adopted by the Commission for certain provisions of Title VII of the Dodd-Frank Act,[329] the precise timing for adoption of or compliance with any final rules relating to SB SDRs or SB SEFs, or for adoption of or compliance with proposed Regulation SCI, is not known at this time. In addition, as the Title VII Implementation Policy Statement notes, any final rules for SB SDRs and SB SEFs potentially would be considered by the Commission at different times.[330] As such, specifying the precise timing and ordering of the implementation of any requirements of proposed Regulation SCI, or Rules 13n–6 and 822, to SB SDRs and/or SB SEFs is difficult to predict, should the Commission determine to proposed to apply some or all of the requirements of proposed Regulation SCI to SB SDRs and/or SB SEFs, or adopt Rules 13n–6 and 822 to SB SDRs and SB SEFs, respectively.

189. Nonetheless, the Commission requests comment on what—if the Commission were to propose to apply some or all of the requirements of proposed Regulation SCI to SB SDRs and/or SB SEFs—would be the most appropriate way to implement such requirements for SB SDRs and/or SB SEFs. For example, should the Commission seek to implement such requirements for SB SDRs and/or SB SEFs within the same timeframe as those entities currently defined as SCI entities under the proposal? Alternatively, should the applicability of some or all of Regulation SCI to SB SDRs and/or SB SEFs be phased in over time? If so, what provisions of proposed Regulation SCI should be phased in and

hours. *See id.* at 77349–50. The Commission estimated that the aggregate annual burden on SB SDRs to submit an objective review would be 8250 hours and $900,000. *See id.* at 77350.

[325] *See* SB SEF Proposing Release, *supra* note 297, at 11034. In the SB SEF Proposing Release, the Commission estimated that the paperwork burden associated with Rule 822 would come from rule writing requirements under Rule 822(a)(1), and from reporting requirements under Rules 822(a)(2), 822(a)(3), and 822(a)(4). *See id.* at 11017–19. The Commission also estimated that there would be up to 20 SB SEFs subject to the proposed SB SEF rules. *See id.* at 11023. Based on the information in the SB SEF Proposing Release, the Commission estimated that the aggregate burden on an estimated 20 SB SEFs to draft rules to implement Rule 822 would be 200 hours, *see id.* at 11026, and that the aggregate annual burden on an estimated 20 SB SEFs to comply with the reporting requirements under Rule 822 would be 19,208 hours and $1,800,000. *See id.* at 11029.

[326] As stated in the SB SDR Proposing Release, ''[t]he Commission believes that persons currently operating as SDRs may have developed and implemented aspects of the proposed rules already,'' and that ''the Commission does not believe that the one-time cost of [enhancements to their information technology systems] will be significant.'' *See supra* note 297, at 77358.

[327] The Commission, however, has received comments that suggest a phase-in approach to the proposed SB SDR rules generally may be appropriate. These comments generally indicate that a phase-in approach would be necessary to enable existing swap data repositories and other market participants to make the necessary changes to their operations. *See, e.g.,* Letter in response to a joint public roundtable conducted by Commission and CFTC staff on implementation issues raised by Title VII of the Dodd-Frank Act on May 2 and 3, 2011, from The Financial Services Roundtable, available on the Commission's Web site at: *http://www.sec.gov/comments/4-625/4625-1.pdf* (stating that ''it may be prudent to have different portions of a single rulemaking proposal take effect at different times and with due consideration of steps that are preconditions to other steps,'' suggesting, as an example, that ''a requirement to designate a CCO should be implemented quickly, but that the CCO be given time to design, implement, and test the compliance system before any requirement to certify as to the compliance system becomes effective'' and supporting a phase-in approach ''that recognizes the varying levels of sophistication, resources and scale of operations within a particular category of market participant'').

[328] *See* ISDA SIFMA SB SEF Letter at 12 (''Many of the proposed rules will pose significant operational and administrative hurdles for market participants and SB SEFs. For example, the proposed rules have requirements for system safeguards that will require time and systems expertise to implement fully. We strongly suggest that SB SEFs be allowed to adopt the rules on a staged basis so that the basic functioning of the SB SEF and the market can be established before all requirements are imposed.''). As with the proposed SB SDR rules, the Commission has received general comments suggesting that a phase-in approach for all SB SEF Rules may be generally appropriate. *See, e.g.,* Thomson SB SEF Letter at 8 (stating that ''in order to ensure the proper operation of these markets, it may be necessary for the SEC to adopt a phased-in approach and we would urge avoiding over-hasty rulemaking which could result in unintended consequences for the markets and the broader economy'').

[329] *See* Securities Exchange Act Release No. 67177 (June 11, 2012), 77 FR 35625 (June 14, 2012) (Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act) (''Title VII Implementation Policy Statement'').

[330] *See id.* at 35629 (noting that the rules pertaining to the registration and regulation of SB SDRs are in the second category of rules, whereas the rules pertaining to the registration and regulation of SB SEFs are in the fifth category of rules).

what would be an appropriate phase-in period? Should there be different phase-in schedules for different SB SDRs and/or SB SEFs? Why or why not? If yes, how would the SB SDRs and/or SB SEFs be selected for different phase-in schedules? Please be specific.

190. Do commenters believe that, because the Commission's actions to implement the regulatory framework for the SB swaps market are still in progress, the Commission should not propose to apply the requirements of Regulation SCI to SB SDRs and/or SB SEFs at the same time as SCI entities, but instead should adopt the system safeguard provisions of proposed Rules 13n–6 and 822 and reconsider such requirements in the future after the SB swaps market and the Commission's regulation of such market and its participants has developed further? Why or why not? What would be the impact of this approach for SB SDRs and/or SB SEFs?

191. As discussed in the SBS Releases,[331] the system safeguards requirements in proposed Rules 13n–6 and 822 have their origins in the Commission's ARP standards. Though they differ in scope and detail, the provisions of proposed Regulation SCI likewise trace their origin to the Commission's ARP standards.[332] If the Commission were to adopt final rules for SB SDRs and/or SB SEFs before it were to adopt Regulation SCI, and if the Commission were to decide to propose to apply some or all of the requirements of proposed Regulation SCI to SB SDRs and/or SB SEFs, should the Commission require SB SDRs and/or SB SEFs to comply with the requirements of the system safeguards rules in proposed Rules 13n–6 and 822 [333] first, and apply the requirements of Regulation SCI to SB SDRs and/or SB SEFs at a specific date in the future? If the Commission were to adopt Rules 13n–6 and 822 prior to adoption of proposed Regulation SCI, and if the Commission were to decide to propose to apply some or all of the requirements of proposed Regulation SCI to SB SDRs and/or SB SEFs, should the Commission delay implementation of Rules 13n–6 and 822 and instead request that SB SDRs and/or SB SEFs comply with the Commission's voluntary ARP Inspection Program until such time as the Commission were to propose and adopt Regulation SCI for SB SDRs and SB SEFs?

G. Solicitation of Comment Regarding Potential Inclusion of Broker-Dealers, Other than SCI ATSs, and Other Types of Entities

1. Policy Considerations

As discussed above, the requirements of proposed Regulation SCI would apply to national securities exchanges, registered securities associations, registered clearing agencies, the MSRB, SCI ATSs, plan processors, and exempt clearing agencies subject to ARP. They would not apply to other types of market participants, such as market makers or other broker-dealers. This proposed scope of the definition of SCI entity in part reflects the historical reach of the ARP policy statements (which apply, for example, to national securities exchanges) and existing Rule 301 of Regulation ATS (which applies systems safeguard requirements to certain ATSs).

Recent events have highlighted the significance of systems integrity of a broader set of market participants than those proposed to be included within the definition of SCI entity.[334] Also, some broker-dealers have grown in size and importance to the market in recent years. For example, many orders are internalized by OTC market makers, one subset of broker-dealers, who handle a large portion of order flow in the market.[335] The Commission recognizes that systems disruptions, systems compliance issues, and systems intrusions at broker-dealers, including for example OTC market makers and clearing broker-dealers, could pose a significant risk to the market. Such an occurrence could impact all orders being handled by a broker-dealer, which can be significant for larger broker-dealers. If a given broker-dealer handles a large portion of order flow and suddenly experiences a systems disruption or systems intrusion, the disruption or intrusion could cause ripple effects. For example, a systems issue at one broker-dealer could result in confusion about whether orders are handled correctly or whether the systems issue at the broker-dealer could have caused capacity issues elsewhere.[336]

The Commission is not at this time proposing to include some classes of registered broker-dealers (other than SCI ATSs) in the definition of SCI entity. Were the Commission to decide to propose to apply the requirements of proposed Regulation SCI to such entities, the Commission would issue a separate release discussing such a proposal. Rule 15c3–5, requiring brokers or dealers with market access to implement risk management controls and supervisory procedures to limit risk, already seeks to address certain risks posed to the markets by broker-dealer systems. Specifically, in 2010 when the Commission adopted Rule 15c3–5 regarding risk management controls and supervisory procedures for brokers or dealers with market access,[337] the Commission stated that

[331] *See supra* note 299 and accompanying text.

[332] *See supra* notes 310–312 and accompanying text.

[333] *See supra* notes 298–302 and accompanying text.

[334] For example, on August 1, 2012, Knight Capital Group, Inc. (''Knight'') reported that it ''experienced a technology issue at the opening of trading at the NYSE * * * [which was] related to Knight's installation of trading software and resulted in Knight sending numerous erroneous orders in NYSE-listed securities into the market * * *. Knight has traded out of its entire erroneous trade position, which has resulted in a realized pre-tax loss of approximately $440 million.'' *See* Knight Capital Group Provides Update Regarding August 1st Disruption To Routing In NYSE-listed Securities (August 2, 2012), available at: *http://www.knight.com/investorRelations/pressReleases.asp?compid=105070&releaseID=1721599.*

Among other things, Knight provides market making services in U.S. equities and U.S. options; institutional sales and trading services; electronic execution services; and corporate and other services. *See* Knight Operating Subsidiaries, available at: *http://www.knight.com/ourFirm/operatingSubsidiaries.asp.* Knight also operates two registered ATSs, Knight Match and Knight Bond Point. *See* Knight Match, available at: *http://www.knight.com/electronicExecutionServices/knightMatch.asp;* Knight BondPoint, available at: *http://www.knight.com/electronicExecutionServices/knightBondpoint.asp;* and Alternative Trading Systems Active Filers as of April 30, 2012, available at: *http://www.sec.gov/foia/ats/atslist0412.pdf.*

[335] *See* Concept Release on Equity Market Structure, *supra* note 42, at 3600 (stating: ''OTC market makers, for example, appear to handle a very large percentage of marketable (immediately executable) order flow of individual investors that is routed by retail brokerage firms. A review of the order routing disclosures required by Rule 606 of Regulation NMS of eight broker-dealers with significant retail customer accounts reveals that nearly 100% of their customer market orders are routed to OTC market makers.'')

[336] For example, if an e-market-maker handling 20 percent of message traffic experiences a systems issue, the order flow could be diverted elsewhere, including to entities that are unable to handle the increase in message traffic, resulting in a disruption to that entity's systems as well. Similarly, a broker-dealer accidentally could run a test during live trading and flood markets with message traffic such that those markets hit their capacity limits, resulting in a disruption.

[337] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (''Market Access Release''). Rule 15c3–5(a)(1) defines ''market access'' to mean: (i) access to trading in securities on an exchange or ATS as a result of being a member or subscriber of the exchange or ATS, respectively; or (ii) access to trading in securities on an ATS provided by a broker-dealer operator of an ATS to a non-broker-dealer. *See* 17 CFR 240.15c3–5(a)(1). In adopting Rule 15c3–5(a)(1), the Commission stated that ''the risks associated with market access * * * are present whenever a broker-dealer trades as a member of an exchange or subscriber to an ATS, whether for its own proprietary account or as agent for its customers, including traditional agency brokerage and through direct market access or

''broker-dealers, as the entities through which access to markets is obtained, should implement effective controls reasonably designed to prevent errors or other inappropriate conduct from potentially causing a significant disruption to the markets'' and that ''risk management controls and supervisory procedures that are not applied on a pre-trade basis or that, with certain limited exceptions, are not under the exclusive control of the broker-dealer, are inadequate to effectively address the risks of market access arrangements, and pose a particularly significant vulnerability in the U.S. national market system.'' [338]

Pursuant to Rule 15c3–5, a broker or dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its market participant identifier or otherwise, must establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.[339] Rule 15c3–5 also specifies the baseline standards for financial and regulatory risk management controls and supervisory procedures.[340] The financial risk management controls and supervisory procedures must be reasonably designed to systematically limit the financial exposure of the broker or dealer that could arise as a result of market access.[341] The regulatory risk management controls and supervisory procedures must be reasonably designed to ensure compliance with all regulatory requirements.[342]

Under the approach set out by Rule 15c3–5, broker-dealers with market access are responsible in the first instance for establishing and maintaining appropriate risk management controls, including with respect to their systems. Although Rule 15c3–5 takes a different and more limited approach with broker-dealers than proposed Regulation SCI does with SCI entities, the requirements in Rule 15c3–5 are designed to address some of the same concerns regarding systems integrity discussed in this proposal. As an example of reasonable risk control under Rule 15c3–5, the Commission stated, ''a system-driven, pre-trade control designed to reject orders that are not reasonably related to the quoted price of the security would prevent erroneously entered orders from reaching the securities markets, * * * should lead to fewer broken trades and thereby enhance the integrity of trading on the securities markets.'' [343]

In light of recent events, however, the Commission believes that it is appropriate to consider whether some types or categories of broker-dealers other than SCI ATSs should also be subject to some or all of the additional system safeguard rules that are proposed for SCI entities. Such broker-dealers could include, for example, OTC market makers (either all or those that execute a significant volume of orders), exchange market makers (either all or those that trade a significant volume on exchanges), order entry firms that handle and route order flow for execution (either all or those that handle a significant volume of investor orders), clearing broker-dealers (either all or those that engage in a significant amount of clearing activities), and large multi-service broker-dealers that engage in a variety of order handling, trading, and clearing activities.

2. Request for Comment

192. As noted above, at this time, the Commission is not proposing to apply Regulation SCI to broker-dealers other than SCI ATSs or to other types of entities that are not covered by the definition of SCI entity. Were the Commission to decide to propose to apply the requirements of Regulation SCI to such entities, the Commission would issue a separate release discussing such a proposal. Nevertheless, the Commission is soliciting comment generally on whether it should apply the requirements of proposed Regulation SCI, in whole or in part, to such entities. Specifically:

193. What are the current practices of broker-dealers in relation to the requirements of proposed Regulation SCI? [344] Would the current practices of broker-dealers that provide market access and comply with Rule 15c3–5 change if they were also subject to proposed Regulation SCI? Why or why not? If so, how? Are there broker-dealers who do not provide the services that would require compliance with Rule 15c3–5? If so, how do the practices of those broker-dealers compare to the requirements of proposed Regulation SCI?

194. In Section VI.B.2 below, the Commission discusses potential market failures that may explain why market solutions cannot solve the problems that proposed Regulation SCI is intended to address. Does the market for broker-dealer services, including client services, market maker services, or market access services, suffer from market failures that limit the ability of the market to solve the issues that proposed Regulation SCI is intended to address? For example, are broker-dealers' clients able to easily switch broker-dealers, and how often do clients use more than one broker-dealer simultaneously (*e.g.,* for redundancy in case of a problem at a given broker-dealer)? Are broker-dealers subject to more market discipline than SCI entities? Please explain. Conversely, does a lack of transparency regarding events like SCI events limit this market discipline? Why or why not?

195. Given the stated goals and purpose of proposed Regulation SCI and its various provisions,[345] what are commenters' views on whether the scope of the proposed rules should be expanded to cover broker-dealers, or certain categories of broker-dealers? For example, what are commenters' views on the impact to overall market integrity or the protection of investors if an OTC market maker was no longer able to operate due to a systems disruption, systems compliance issue, or a systems intrusion? Or an exchange market maker? Or a clearing broker-dealer? What are commenters' views on the

sponsored access arrangements.'' *See* Market Access Release at 69798. As such, the Commission stated that ''to effectively address these risks, Rule 15c3–5 must apply broadly to all access to trading on an Exchange or ATS.'' *See id.*

[338] *Id.* at 69794.

[339] *See* 17 CFR 240.15c3–5(b). Certain broker-dealers are exempt from some of the requirements under Rule 15c3–5. *See id.*

[340] *See* 17 CFR 240.15c3–5(c).

[341] *See* 17 CFR 240.15c3–5(c)(1). Such financial risk management controls and supervisory procedures must be reasonably designed to: (i) Prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer, and where appropriate, more finely-tuned by sector, security or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds; and (ii) prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders. *See* 17 CFR 240.15c3–5(c)(1).

[342] *See* 17 CFR 240.15c3–5(c)(2). Such regulatory risk management controls and supervisory procedures must be reasonably designed to: (i) Prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis; (ii) prevent the entry of orders for securities for a broker or dealer, customer, or other person if such person is restricted from trading those securities; (iii) restrict access to trading systems and technology that provide market access to persons and accounts pre-approved and authorized by the broker or dealer; and (iv) assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. *See* 17 CFR 240.15c3–5(c)(2).

[343] *See* Market Access Release, *supra* note 337, at 69794.

[344] As noted above, one ATS currently voluntarily participates in the ARP Inspection Program. *See supra* note 91.

[345] *See supra* Section III.

importance of different categories of broker-dealers to the stability of the overall securities market infrastructure, in the context of requiring them to comply with the proposed rules, in light of the stated goals and purpose of Regulation SCI? What risks do the systems of broker-dealers pose on the securities markets?

196. If the Commission were to subsequently propose to apply some or all of the requirements of proposed Regulation SCI to some types or categories of broker-dealers (in addition to SCI ATSs), what types of broker-dealers should the requirements apply to and why? Are there distinctions that should be made between different types of broker-dealers (*e.g.,* OTC market makers, exchange market makers, order entry firms, clearing broker-dealers, and multi-service broker-dealers) for this purpose? If so, what are those distinctions and which requirements should apply?

197. The Commission notes that Roundtable panelists generally did not distinguish between national securities exchanges, ATSs, and different types of broker-dealers when addressing how to improve error prevention and error response strategies. Rather, Roundtable panelists and commenters referred more generally to ''entities with market access'' and/or ''execution venues.'' [346] In this regard, should the Commission consider expanding the application of Regulation SCI to all market centers, as that term is defined in Rule 600(b)(38) of Regulation NMS,[347] which means any exchange market maker, OTC market maker, ATS, national securities exchange, or national securities association? [348] Why or why not? Would an expansion of proposed Regulation SCI to include all market centers (*i.e.,* execution venues) inappropriately exclude the broader category of entities having market access? Why or why not? Alternatively, should the Commission consider applying the requirements of proposed Regulation SCI to (a) any registered market maker or (b) any broker-dealer that offers market access that, in either case, with respect to any NMS stock, has a specified percentage of average daily dollar volume? If so, what should such a percentage be? Would the levels applicable to SCI ATSs that trade NMS stocks under proposed Rule 1000(a) of Regulation SCI be appropriate for registered market makers, broker-dealers that offer market access, or other broker-dealers? Why or why not? If not, what should such a threshold be?

198. If the Commission were to propose to expand the scope of proposed Regulation SCI to a subset of broker-dealers, what are commenters' views on whether, and if so, how, the various different proposed requirements of Regulation SCI should or should not apply to such entities?

199. If the Commission were to propose to expand the scope of proposed Regulation SCI to include a subset of broker-dealers, should the Commission require such broker-dealers to have written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability, and promote the maintenance of fair and orderly markets, as proposed in Rule 1000(b)(1) for SCI entities? Why or why not? Should SCI industry standards for broker-dealers be different from those proposed for SCI entities? If so, what are the standards that should apply to broker-dealers? Please be as specific as possible and explain why a particular standard would be appropriate.

200. Should the Commission require such broker-dealers to establish, maintain, and enforce policies and procedures reasonably designed to ensure that their systems operate in the manner intended, including in a manner that complies with federal securities laws and rules and regulations thereunder, as proposed in Rule 1000(b)(2)(i) for SCI entities? Why or why not? Should the Commission establish a safe harbor from liability for such broker-dealers and their respective employees if they satisfy the elements of a safe harbor, similar to those in proposed Rules 1000(b)(2)(ii) and (iii) for SCI entities and their employees? Why or why not?

201. Should the Commission require such broker-dealers, upon any of their responsible SCI personnel becoming aware of an SCI event, to begin to take appropriate corrective action including, at a minimum, mitigating potential harm to investors and market integrity resulting from the SCI event and devoting adequate resources to remedy the SCI event as soon as reasonably practicable, as proposed in Rule 1000(b)(3) for SCI entities? Why or why not? Should such broker-dealers' corrective action be triggered by something other than awareness of an SCI event? If so, what would be an appropriate trigger?

202. With regard to the reporting and information dissemination requirements for SCI entities in proposed Rules 1000(b)(4) and 1000(b)(5), would it be appropriate to require such broker-dealers to report all SCI events to the Commission, and disclose dissemination SCI events to their customers?

203. Should such broker-dealers be required to notify the Commission of material systems changes, as proposed in Rule 1000(b)(6) for SCI entities? Why or why not?

204. Should such broker-dealers be required to undertake an annual SCI review of their systems, as proposed in Rule 1000(b)(7) for SCI entities? Should such broker-dealers also be required to provide the Commission with reports regarding the SCI review and material systems changes, as proposed in Rule 1000(b)(8) for SCI entities? Why or why not?

205. Should such broker-dealers be required to submit any required notices, reports, and other information to the Commission on proposed new Form SCI? Why or why not?

206. Alternatively, should the Commission propose to require that each SCI SRO establish rules requiring that its members adopt written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability, and promote the maintenance of fair and orderly markets? Why or why not? Similarly, should the Commission propose to require that each SCI SRO establish rules requiring that its members adopt written policies and procedures reasonably designed to ensure that the systems of such members operate in the manner intended, including in a manner that complies with applicable federal securities laws and rules and regulations thereunder and the SCI SRO's rules? Why or why not? In either case, would such a proposal raise any competitive issues, such as between

[346] *See, e.g.,* letter from Better Markets, *supra* note 74, arguing that regulators should encourage firms to adopt more robust software development practices and audit any firm with direct market access or require third-party certification and mandate minimum requirements for testing any application that has direct market access. In addition, the panelist from NYSE stated that common standards for technology deployment should apply across all execution venues.

[347] 17 CFR 242.600(b)(38).

[348] Rule 600(b)(24) defines exchange market maker to mean any member of a national securities exchange that is registered as a specialist or market maker pursuant to the rules of such exchange, and Rule 600(b)(52) defines OTC market maker to mean any dealer that holds itself out as being willing to buy from and sell to its customers, or others, in the U.S., an NMS stock for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size. *See* 17 CFR 242.600(b)(24) and 17 CFR 242.600(b)(52).

national securities exchanges and ATSs? [349]

207. In addition, should the Commission consider including other entities in the definition of SCI entity (*e.g.,* transfer agents), thus subjecting them to some or all of the requirements under proposed Regulation SCI? If yes, to which entities should some or all of proposed Regulation SCI apply and why? If not, why not? If commenters believe other types of entities should be included in the definition of SCI entity, should the Commission include all entities of a given type in the definition? Why or why not? If not, how should the Commission distinguish those entities that should be included (*e.g.,* size, volume, types of services performed, etc.)? Please describe and be as specific as possible.

208. If the Commission were to subsequently propose and adopt a rule applying Regulation SCI to all or certain categories of broker-dealers or other entities, what are commenters' views as to the type and scale of the costs of such application? Please explain. In addition, what are commenters' views as to the potential impact on efficiency, competition, and capital formation of such application? Please explain.

IV. Paperwork Reduction Act

Certain provisions of the proposal contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'') [350] and the Commission will submit them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The title of the new collection of information is Regulation Systems Compliance and Integrity. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

A. Summary of Collection of Information

Proposed Regulation SCI would include four categories of obligations that would require a collection of information within the meaning of the PRA. Specifically, an SCI entity would be required to: (1) Establish specified written policies and procedures, and mandate participation by designated members or participants in certain testing of the SCI entity's business continuity and disaster recovery plans; (2) provide certain notifications, disseminate certain information, and create reports; (3) take corrective actions, identify certain SCI events for which immediate Commission notification is required, and identify dissemination SCI events; and (4) comply with recordkeeping and access requirements relating to its compliance with proposed Regulation SCI.

1. Requirements To Establish Written Policies and Procedures and Mandate Participation in Certain Testing

Proposed Rules 1000(b)(1) and (b)(2) would require SCI entities to establish policies and procedures with respect to various matters. Proposed Rule 1000(b)(1) would require each SCI entity to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, SCI security systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets. Proposed Rule 1000(b)(1)(i) specifies that such policies and procedures would be required to include, at a minimum: (A) The establishment of reasonable current and future capacity planning estimates; (B) periodic capacity stress tests of such systems to determine their ability to process transactions in an accurate, timely, and efficient manner; (C) a program to review and keep current systems development and testing methodology for such systems; (D) regular reviews and testing of such systems, including backup systems, to identify vulnerabilities pertaining to internal and external threats, physical hazards, and natural or manmade disasters; (E) business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse to ensure next business day resumption of trading and two-hour resumption of clearance and settlement services following a wide-scale disruption; and (F) standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data. Proposed Rule 1000(b)(1)(ii) states that such policies and procedures would be deemed to be reasonably designed if they are consistent with current SCI industry standards, which would be required to be: (A) Comprised of information technology practices that are widely available for free to information technology professionals in the financial sector; and (B) issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or agencies, or widely recognized organization. The proposed SCI industry standards contained in the publications identified on Table A are intended to serve as standards that SCI entities could use, if they so choose, to comply with the requirements of proposed Rule 1000(b)(1), though compliance with such SCI industry standards would not be the exclusive means to comply with the requirements of proposed Rule 1000(b)(1).

Proposed Rule 1000(b)(2)(i) would require each SCI entity to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems operate in the manner intended, including in a manner that complies with the federal securities laws and rules and regulations thereunder and the entity's rules and governing documents, as applicable. An SCI entity would be deemed not to have violated proposed Rule 1000(b)(2)(i) if: (A) It has established and maintained policies and procedures reasonably designed to provide for: (*1*) testing of all such systems and any changes to such systems prior to implementation; (*2*) periodic testing of all such systems and any changes to such systems after their implementation; (*3*) a system of internal controls over changes to such systems; (*4*) ongoing monitoring of the functionality of such systems to detect whether they are operating in the manner intended; (*5*) assessments of SCI systems compliance performed by personnel familiar with applicable federal securities laws and rules and regulations thereunder and the SCI entity's rules and governing documents, as applicable; and (*6*) review by regulatory personnel of SCI systems design, changes, testing, and controls to prevent, detect, and address actions that do not comply with applicable federal securities laws and rules and regulations thereunder and the SCI entity's rules and governing documents, as applicable; (B) the SCI entity has established and maintained a system for applying such policies and procedures which would reasonably be expected to prevent and detect, insofar as practicable, any violation of such policies and procedures by the SCI entity or any person employed by the SCI entity; and (C) the SCI entity: has reasonably discharged the duties and obligations incumbent upon it by such

[349] The Commission notes that all broker-dealers are members of one or more SCI SROs (such as FINRA and/or a national securities exchange), while participants on ATSs may include non-broker-dealer market participants.

[350] 44 U.S.C. 3501 *et seq.*

policies and procedures; and was without reasonable cause to believe that such policies and procedures were not being complied with in any material respect. Further, pursuant to proposed Rule 1000(b)(2)(iii), a person employed by an SCI entity would be deemed not to have aided, abetted, counseled, commanded, caused, induced, or procured the violation by any other person of proposed Rule 1000(b)(2)(i) if the person employed by the SCI entity: (A) Has reasonably discharged the duties and obligations incumbent upon such person by such policies and procedures; and (B) was without reasonable cause to believe that such policies and procedures were not being complied with in any material respect.

Proposed Rule 1000(b)(9)(i) would require an SCI entity, with respect to its business continuity and disaster recovery plans, including its backup systems, to require participation by designated members or participants in scheduled functional and performance testing of the operation of such plans in the manner and frequency as specified by the SCI entity, at least once every 12 months (*e.g.,* for SCI SROs, by submitting proposed rule changes under Section 19(b) of the Exchange Act; for SCI ATSs, by revising membership or subscriber agreements and internal procedures; for plan processors, through an amendment to an SCI Plan under Rule 608 of Regulation NMS; and, for exempt clearing agencies subject to ARP, by revising participant agreements and internal procedures). Proposed Rule 1000(b)(9)(ii) would further require an SCI entity to coordinate such required testing on an industry- or sector-wide basis with other SCI entities. Proposed Rule 1000(b)(9)(iii) would require an SCI entity to designate members or participants it deems necessary, for the maintenance of fair and orderly markets in the event of the activation of its business continuity and disaster recovery plans, to participate in the testing of such plans. It would also require the SCI entity to notify and update the Commission of its designations and standards for designation, and promptly update such notification after any changes to its designations or standards.

2. Notice, Dissemination, and Reporting Requirements for SCI Entities

A number of proposed rules under Regulation SCI would require SCI entities to notify or report information to the Commission, or disseminate information to their members or participants. Proposed Rules 1000(b)(4), (b)(5), (b)(6), (b)(7), and (b)(8) each contain a notification, dissemination, or reporting requirement.

Proposed Rule 1000(b)(4) would require notice of SCI events to the Commission. Proposed Rule 1000(b)(4)(i) would require an SCI entity to notify the Commission upon any responsible SCI personnel becoming aware of a systems disruption that the SCI entity reasonably estimates would have a material impact on its operations or on market participants, any systems compliance issue, or any systems intrusion.

Proposed Rule 1000(b)(4)(ii) would require an SCI entity, within 24 hours of any responsible SCI personnel becoming aware of any SCI event, to submit a written notification to the Commission on Form SCI pertaining to such SCI event.[351] Proposed Rule 1000(b)(4)(iv)(A) would specify that, for a notification made pursuant to proposed Rule 1000(b)(4)(ii), an SCI entity must include all pertinent information known about the SCI event, including: a detailed description of the SCI event; the SCI entity's current assessment of the types and number of market participants potentially affected by the SCI event; the potential impact of the SCI event on the market; and the SCI entity's current assessment of the SCI event, including a discussion of the determination of whether the SCI event is a dissemination SCI event or not. In addition, to the extent available as of the time of the initial notification, the notification would be required to include: a description of the steps the SCI entity is taking, or plans to take, with respect to the SCI event; the time the SCI event was resolved or timeframe within which the SCI event is expected to be resolved; a description of the SCI entity's rule(s) and/or governing document(s), as applicable, that relate to the SCI event; and an analysis of the parties that may have experienced a loss, whether monetary or otherwise, due to the SCI event, the number of such parties, and an estimate of the aggregate amount of such loss. Further, for a written notification to the Commission of an SCI event under proposed Rule 1000(b)(4)(ii), an SCI entity would be required to attach a copy of any information disseminated to date regarding the SCI event to its members or participants or on the SCI entity's publicly available Web site.

Proposed Rule 1000(b)(4)(iii) would require an SCI entity to submit written updates on Form SCI pertaining to an SCI event to the Commission on a regular basis, or at such frequency as reasonably requested by a representative of the Commission, until such time as the SCI event is resolved. Proposed Rule 1000(b)(4)(iv)(B) specifies that, for a notification made pursuant to proposed Rule 1000(b)(4)(iii), the SCI entity would be required to update any information previously provided regarding an SCI event, including any information under proposed Rule 1000(b)(4)(iv)(A)(2) that was not available at the time of submission of a notification under proposed Rule 1000(b)(4)(ii). Further, for a written notification to the Commission of an SCI event under proposed Rule 1000(b)(4)(iii), an SCI entity would be required to attach a copy of any information disseminated to date regarding the SCI event to its members or participants or on the SCI entity's publicly available Web site.

Proposed Rule 1000(b)(5) would require dissemination to members or participants of dissemination SCI events and specify the nature and timing of such required dissemination, with limited exceptions for dissemination SCI events that are systems intrusions, as discussed further below.[352] Proposed Rule 1000(b)(5)(i)(A) would require that an SCI entity, promptly after any responsible SCI personnel becomes aware of a dissemination SCI event, disseminate to its members or participants the following information about such SCI event: (1) The systems affected by the SCI event; and (2) a summary description of the SCI event. In addition, proposed Rule 1000(b)(5)(i)(B) would require an SCI entity to, when known, further disseminate to its members or participants: (1) a detailed description of the SCI event; (2) the SCI entity's

[351] For a written notification to the Commission of an SCI event under proposed Rule 1000(b)(4)(ii), new proposed Form SCI would require that an SCI entity indicate that the filing is being made pursuant to Rule 1000(b)(4)(ii) and provide the following information in a short, standardized format: (i) Whether the filing is a Rule 1000(b)(4)(ii) notification or Rule 1000(b)(4)(iii) update of an SCI event; (ii) the SCI event type(s) (*i.e.,* systems compliance issue, systems intrusion, and/or systems disruption); (iii) whether the event is a systems disruption that the SCI entity reasonably estimates would have a material impact on its operations or on market participants; (iv) if so, whether the Commission has been notified of the SCI event; (v) whether the SCI event has been resolved; (vi) the date/time the SCI event started; (vii) the duration of the SCI event (viii) the date and time when responsible SCI personnel became aware of the SCI event; (ix) the estimated number of market participants impacted by the SCI event; (x) the type(s) of systems impacted; and (xi) if applicable, the type of systems disruption.

[352] As discussed above, the Commission proposes that the term ''dissemination SCI event'' be defined as ''an SCI event that is a: (1) Systems compliance issue; (2) systems intrusion; or (3) systems disruption that results, or the SCI entity reasonably estimates would result, in significant harm or loss to market participants.'' *See supra* Section III.B.4.d.

current assessment of the types and number of market participants potentially affected by the SCI event; and (3) a description of the progress of its corrective action for the SCI event and when the SCI event has been or is expected to be resolved. Proposed Rule 1000(b)(5)(i)(C) would further require that an SCI entity provide regular updates to members or participants on any of the information required to be disseminated under proposed Rules 1000(b)(5)(i)(A) and (i)(B).

Proposed Rule 1000(b)(5)(ii) would provide a limited exception to the proposed requirement of prompt dissemination to members or participants of information regarding dissemination SCI events for systems intrusion. Proposed Rule 1000(b)(5)(ii) would require an SCI entity, promptly after any responsible SCI personnel becomes aware of a systems intrusion, to disseminate to its members or participants a summary description of the systems intrusion, including a description of the corrective action taken by the SCI entity and when the systems intrusion has been or is expected to be resolved, unless the SCI entity determines that dissemination of such information would likely compromise the security of the SCI entity's SCI systems or SCI security systems, or an investigation of the systems intrusion, and documents the reasons for such determination.

Proposed Rule 1000(b)(6) would require an SCI entity, absent exigent circumstances, to notify the Commission on Form SCI at least 30 calendar days before implementation of any planned material systems change, including a description of the planned material systems change as well as the expected dates of commencement and completion of implementation of such change. If exigent circumstances exist, or if the information previously provided to the Commission regarding any material systems change has become materially inaccurate, an SCI entity would instead be required to notify the Commission, either orally or in writing on Form SCI, with any oral notification to be memorialized within 24 hours after such oral notification by a written notification, as early as reasonably practicable.[353]

Proposed Rule 1000(b)(7) would require an SCI entity to conduct an SCI review of the entity's compliance with Regulation SCI not less than once each calendar year, and to submit a report of the SCI review to senior management of the SCI entity for review no more than 30 calendar days after completion of such SCI review.

Proposed Rule 1000(b)(8) contains two reporting requirements. Specifically, proposed Rule 1000(b)(8) would require an SCI entity to submit as an attachment to Form SCI: (i) A report of the SCI review required by proposed Rule 1000(b)(7), together with any response by senior management, within 60 calendar days after its submission to senior management of the SCI entity; [354] and (ii) a report within 30 calendar days after the end of June and December of each year, containing a summary description of the progress of any material systems change during the six-month period ending on June 30 or December 31, as the case may be, and the date or expected date of completion of implementation of such change.[355]

3. Requirements To Take Corrective Actions, Identify Immediate Notification SCI Events, and Identify Dissemination SCI Events

Proposed Rule 1000(b)(3) would require an SCI entity, upon any responsible SCI personnel becoming aware of an SCI event, to begin to take appropriate corrective action which would be required to include, at a minimum, mitigating potential harm to investors and market integrity resulting from the SCI event and devoting adequate resources to remedy the SCI event as soon as reasonably practicable. Given these requirements of proposed Rule 1000(b)(3), SCI entities would likely work to develop a process for ensuring that they are prepared to comply with the corrective action requirement and would likely also periodically review this process.

In addition, proposed Rule 1000(a) would define a ''dissemination SCI event'' to mean an SCI event that is a: (1) Systems compliance issue; (2) systems intrusion; or (3) systems disruption that results, or the SCI entity reasonably estimates would result, in significant harm or loss to market participants.

Under the proposed Commission notification and member or participant dissemination requirements of proposed Rules 1000(b)(4) and (b)(5), when an SCI event occurs, an SCI entity must determine whether an SCI event is an immediate notification SCI event or a dissemination SCI event. As such, SCI entities would likely work to develop a process for ensuring that they are able to make determinations regarding the nature of the SCI event quickly and accurately, and periodically review this process.

4. Recordkeeping Requirements

Proposed Rule 1000(c) would set forth recordkeeping requirements for SCI entities. Under proposed Rule 1000(c)(1), SCI SROs would be required to make, keep, and preserve all documents relating to their compliance with Regulation SCI as prescribed in Rule 17a–1 under the Exchange Act. Under proposed Rule 1000(c)(2), each SCI entity that is not an SCI SRO would be required to make, keep, and preserve at least one copy of all documents, including correspondence, memoranda, papers, books, notices, accounts, and other such records, relating to its compliance with Regulation SCI including, but not limited to, records relating to any changes to its SCI systems and SCI security systems, for a period of not less than five years, the first two years in a place that is readily accessible to the Commission or its representatives for inspection and examination. Upon request of any representative of the Commission, such SCI entities would be required to promptly furnish to the possession of such representative copies of any documents required to be kept and preserved by it under proposed Rule 1000(c)(2). Under proposed Rule 1000(c)(3), upon or immediately prior to ceasing to do business or ceasing to be registered under the Exchange Act, an SCI entity must take all necessary action to ensure that the records required to be made, kept, and preserved by this section will be accessible to the Commission and its representatives in the manner required by proposed Rule 1000(c) and for the remainder of the period required by proposed Rule 1000(c).

In addition, proposed Rule 1000(e) would provide that, if the records required to be filed or kept by an SCI entity under proposed Regulation SCI are prepared or maintained by a service bureau or other recordkeeping service on behalf of the SCI entity, the SCI entity would be required to ensure that the records are available for review by the Commission and its representatives by submitting a written undertaking, in a form acceptable to the Commission, by such service bureau or other recordkeeping service and signed by a

[353] Form SCI would require an SCI entity to provide the date of the planned change. The SCI entity must also specify whether exigent circumstances exist, or if the information previously provided to the Commission regarding any material systems change has become materially inaccurate, and if so, whether the Commission has been orally notified. Further, the notification must include an Exhibit 4.

[354] This report would be required to be submitted as Exhibit 5 to Form SCI.

[355] This report would be required to be submitted as Exhibit 6 to Form SCI.

duly authorized person at such service bureau or other recordkeeping service.

B. Proposed Use of Information

1. Requirements To Establish Written Policies and Procedures and Mandate Participation in Certain Testing

The proposed requirements that SCI entities establish certain written policies and procedures with respect to their systems, and that they require designated members or participants to participate in the testing of their business continuity and disaster recovery plans, would further the goals of the national market system and reinforce Exchange Act obligations by requiring entities important to the functioning of the U.S. securities markets to carefully design, develop, test, maintain, and surveil systems integral to their operations, and operate them in compliance with relevant federal securities laws and the rules and regulations thereunder, as well as their own rules and policies.

2. Notification, Dissemination, and Reporting Requirements for SCI Entities

The information that would be collected pursuant to the proposed requirements for notifications, disseminations of information, and reports would assist the Commission in its oversight of SCI entities and the securities markets, help ensure the orderly operation of the U.S. securities markets, and help protect investors and the public interest. In particular, the proposed requirements that SCI entities notify the Commission of all SCI events, disseminate information to members or participants, undertake and submit to the Commission an SCI review not less than once each calendar year, and submit reports of material systems changes are designed to help ensure compliance with the other provisions of proposed Regulation SCI and accountability of SCI entities in the event of systems problems. Further, the Commission preliminarily believes that the member or participant information dissemination requirement for dissemination SCI events would make members or participants aware that their trading activity might have been or might be impacted by the occurrence of a dissemination SCI event, so that they could consider that information in making trading decisions, seeking corrective action, or pursuing remedies, among other things. The Commission also preliminarily believes that the prospect of disseminating information regarding dissemination SCI events to members or participants would provide an incentive for SCI entities to better focus on improving the integrity and compliance of their systems.

3. Requirements To Take Corrective Actions, Identify Immediate Notification Events, and Identify Dissemination SCI Events

The proposed requirement that SCI entities begin to take appropriate corrective action upon any responsible SCI personnel becoming aware of an SCI event would help ensure that SCI entities dedicate adequate resources to timely address an SCI event and place an emphasis on mitigating potential harm to investors and market integrity. The proposed threshold for notification of certain SCI events to the Commission under proposed Rule 1000(b)(4)(i) would help ensure that the Commission is made aware of significant SCI events when any responsible SCI personnel becomes aware of such events. The proposed definition of dissemination SCI event would help ensure potentially impacted members or participants have basic information about SCI events so that they might be able to better assess whether they should use the services of an SCI entity.[356]

5. Recordkeeping Requirements

The proposed recordkeeping requirements in Rules 1000(c) and (e) would assist Commission staff during an examination of an SCI entity to assess its compliance with the proposed rules. In addition, access to the records of SCI entities would help Commission staff to carry out its oversight responsibilities of SCI entities and the securities markets. Further, the proposed recordkeeping requirements would aid SCI entities and the Commission in documenting, reviewing, and correcting any SCI event, as well as in identifying market participants that may have been harmed by such an event.

C. Respondents

The ''collection of information'' requirements contained in proposed Regulation SCI would apply to SCI entities, as described below. Currently, there are 26 entities that would satisfy the proposed definition of SCI SRO,[357] 15 entities that would satisfy the proposed definition of SCI ATS,[358] 2 entities that would satisfy the definition of plan processor,[359] and 1 entity that would meet the definition of exempt clearing agency subject to ARP.[360] Accordingly, the Commission estimates that there are currently 44 entities that would meet the definition of SCI entity and be subject to the collection of information requirements of proposed Regulation SCI.

The Commission requests comment on the accuracy of these estimated figures.

D. Total Initial and Annual Reporting and Recordkeeping Burdens

As discussed above, all of the national securities exchanges, national securities associations, registered clearing agencies, and plan processors currently participate on a voluntary basis in the ARP Inspection Program.[361] Under the ARP Inspection Program, Commission staff conducts on-site inspections and attends periodic technology briefings by staff of these entities, generally covering systems capacity and testing, review of systems vulnerability, review of planned systems development, and business continuity planning.[362] In addition, Commission staff monitors systems failures and planned major systems changes at these entities.[363]

Under proposed Regulation SCI, many of the principles of the ARP policy statements with which SCI SROs are familiar would be codified. However, because the proposed regulation would have a broader scope than the current ARP Inspection Program and would impose mandatory recordkeeping obligations on entities subject to the rules,[364] proposed Regulation SCI would impose paperwork burdens on all SCI entities. The Commission's total burden estimates reflect the total burdens on all SCI entities, taking into account the extent to which some SCI entities already comply with some of the proposed requirements of Regulation SCI. As discussed below, the Commission preliminarily believes that the extent of these burdens will vary for different types of SCI entities. The Commission notes that the hour figures set forth in this section are the Commission's preliminary best estimate of the paperwork burden for compliance with proposed Regulation SCI based on a variety of sources, including the

[356] *See infra* Section III.B.3.d (discussing the threshold for dissemination SCI events).

[357] *See supra* notes 93–96 and accompanying text (listing 17 registered national securities exchanges, 7 registered clearing agencies, FINRA, and the MSRB).

[358] *See supra* Section III.B.1.

[359] *See supra* note 565.

[360] *See supra* note 133 and accompanying text.

[361] *See supra* Section I.A.

[362] *See id.*

[363] *See id.*

[364] As discussed more fully in *supra* Section III.D and *infra* Section IV.D.4, SCI SROs are already subject to existing recordkeeping and retention requirements under Rule 17a–1 and thus the Commission believes that the proposed recordkeeping obligations would not impose any new burden on SCI SROs that is not already accounted for in the burden estimates for Rule 17a–1.

Commission's experience with the current ARP Inspection Program and other similar estimated burdens for analogous rulemakings. However, the Commission recognizes that commenters may have other informed views of the actual burdens that would be imposed by these requirements and thus, the Commission solicits comment on the appropriateness and accuracy of each of the estimated burdens below.

1. Requirements To Establish Written Policies and Procedures and Mandate Participation in Certain Testing

The proposed rules that would require an SCI entity to establish policies and procedures and to mandate member or participant participation in business continuity and disaster recovery plans testing are discussed more fully in Section III.C above.

a. Policies and Procedures Required by Proposed Rule 1000(b)(1)

The Commission preliminarily estimates that an SCI entity that has not previously participated in the ARP Inspection Program would require an average of 210 burden hours to develop and draft policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, SCI security systems, have levels of capacity, integrity, resiliency, availability, and security adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets, as proposed to be required by Rule 1000(b)(1) of Regulation SCI (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data, which are addressed separately).[365] The estimated 210 hours required for such entities would include the time expended to draft relevant policies and procedures and the time expended for review of the draft policies and procedures by the SCI entity's management. The Commission preliminarily believes that all SCI entities [366] would conduct this work internally.[367]

For SCI entities that currently participate in the ARP Inspection Program (29 entities, nearly all of which are SCI SROs [368]), the Commission preliminarily believes that in developing their policies and procedures, these entities would be starting from a baseline of fifty percent, and therefore the average paperwork burden of developing the proposed policies and procedures would be 105 burden hours.[369] The Commission preliminarily believes that a fifty percent baseline for SCI entities that participate in the ARP Inspection Program is appropriate because, although these entities already have substantial policies and procedures in place, proposed Rule 1000(b)(1) would require these entities to devote substantial time to reviewing and revising their existing policies and procedures to ensure that they are sufficiently robust in the context of a new and expanded regulatory regime. The Commission preliminarily believes that these entities would conduct this work internally.[370]

With regard to the proposed requirement in Rule 1000(b)(1) that an SCI entity's policies and procedures include standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data, the Commission preliminarily estimates that each SCI entity would spend an average of 130 hours annually to comply with this requirement.[371] As this proposed requirement is not currently addressed by the ARP Inspection Program, the Commission preliminarily estimates that the total initial and ongoing burden would be the same for all SCI entities and SCI entities would conduct this work internally.[372]

As noted above, the Commission preliminarily believes that SCI entities would handle internally most of the work associated with establishing, maintaining, and enforcing written policies and procedures as proposed to be required by Rule 1000(b)(1). However, based on its experience with the ARP Inspection Program, the Commission preliminarily believes that SCI entities also would seek outside legal and/or consulting services in the initial preparation of such policies and procedures, and that the average cost of such outside legal and/or consulting advice would be $20,000 per respondent,[373] for a total of $880,000 for all respondents.[374]

As noted above, the Commission preliminarily estimates that the average initial number of burden hours per respondent to comply with proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data) would be 105 hours for SCI entities that are current ARP Inspection Program participants and 210 hours for SCI entities that are not current ARP

[365] This estimate is based on the Commission's experience with the ARP Inspection Program and its preliminary estimate in the SB SDR Proposing Release for a similar requirement. *See* SB SDR Proposing Release, *supra* note 297, at 77349 (estimating the number of hours it would take to draft policies and procedures reasonably designed to ensure that the SDR's systems provide adequate levels of capacity, resiliency, and security). This estimate is for the number of hours an SCI entity would require over and above the usual and customary amount of time it would devote to developing policies and procedures designed to ensure its systems' capacity, integrity, resiliency, availability, and security. These estimated burdens may vary depending on an SCI entity's business and regulatory responsibilities.

[366] The Commission estimates that there are 44 SCI entities. Of these, 29 entities currently participate in the ARP Inspection Program and 15 do not. Because the MSRB is not currently a participant in the ARP Inspection Program, the estimated burden hours for the MSRB to develop policies and procedures as required by proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data) is 210 hours, which is higher than the number estimated for all other SCI SROs that currently participate in the ARP Inspection Program, as discussed below.

[367] *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[368] 17 registered national securities exchanges + 7 registered clearing agencies + 1 national securities association + 2 plan processors + 1 exempt clearing agency subject to ARP + 1 ATS = 29 entities.

[369] In establishing this baseline estimate, the Commission has considered what the entities do today; that is, in the absence of the proposed rule.

[370] *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[371] This estimate is based on the Commission's experience with the ARP Inspection Program, and includes the time necessary to program systems to meet the proposed standard.

[372] *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[373] This estimate is based on the Commission's experience with the ARP Inspection Program, as well as industry sources. In addition, the Commission has considered its estimate of the cost burden under Regulation SDR in connection with the establishment of certain policies and procedures. *See* SB SDR Proposing Release, *supra* note 297, at 77349 (preliminarily estimating that it would cost $100,000 to establish, maintain, and enforce five sets of written policies and procedures, one of which requires policies and procedures reasonably designed to ensure that the SDR's systems provide adequate levels of capacity, resiliency, and security).

[374] ($20,000 outside legal cost) × (44 SCI entities) = $880,000.

Inspection Program participants, for a total of 6,195 hours.[375] In addition, the Commission preliminarily estimates that the average initial number of burden hours per respondent to comply with the requirement for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data would be 130 hours for a total of 5,720 hours for all respondents.[376]

The Commission preliminarily estimates that, once an SCI entity has drafted the policies and procedures proposed to be required by Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data), it would spend on average approximately 60 hours annually to review its written policies and procedures to ensure that they are up-to-date and to prepare any necessary new or amended policies and procedures.[377] Using a fifty percent baseline for SCI entities that participate in the ARP Inspection Program and therefore currently review and revise policies and procedures from time to time, the Commission preliminarily estimates that the total annual ongoing burden to comply with proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data) would be 30 hours per respondent for this group of respondents. The Commission therefore estimates the ongoing burden to comply with proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data) to be 870 hours[378] for SCI entities that are current ARP Inspection Program participants and 900 hours[379] for SCI entities that are not ARP Inspection Program participants, for a total of 1,770 hours for all respondents.[380] As noted above, the Commission preliminarily estimates that the average ongoing number of burden hours per respondent to comply with the proposed requirement for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data would be 130 hours for each respondent, for a total of 5,720 hours for all respondents.[381] The Commission preliminarily believes that the work associated with updating the policies and procedures proposed to be required by proposed Rule 1000(b)(1) would be done internally.[382]

b. Policies and Procedures Required by Proposed Rule 1000(b)(2)

With regard to proposed Rule 1000(b)(2)(i), which would require each SCI entity to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems operate in the manner intended, including in a manner that complies with the federal securities laws and rules and regulations thereunder and, as applicable, the entity's rules and governing documents, the Commission preliminarily believes that each SCI entity would elect to comply with the safe harbor provisions in proposed Rules 1000(b)(2)(ii) and (iii), and preliminarily estimates that each SCI entity would initially spend approximately 180 hours to design their policies and procedures accordingly. This estimate would include the time necessary to review and revise any existing policies and procedures to ensure that they satisfy the proposed safe harbor provisions, and the Commission preliminarily believes this estimate would be the same for all SCI entities.[383] Therefore, the Commission preliminarily estimates that proposed Rule 1000(b)(2) would carry an initial one-time burden of 180 hours per respondent, for a total initial one-time burden of 7,920 hours for all respondents.[384] The Commission also preliminarily estimates that each SCI entity that is an SRO would spend approximately 120 hours annually to review these written policies and procedures to ensure that they are up-to-date and to prepare any necessary new or amended policies and procedures, and that other types of SCI entities would spend approximately 60 hours to do this work.[385] Therefore, the

[375] The Commission preliminarily believes that an Attorney and a Compliance Manager working in collaboration would develop and draft the required policies and procedures, assisted by, and in consultation with, Senior Systems Analysts and Operational Specialists. Thus, the Commission estimates: (Compliance Manager (including Senior Management Review) at 80 hours + Attorney at 80 hours + Senior Systems Analyst at 25 hours + Operations Specialist at 25 hours) × (15 potential respondents) + (Compliance Manager (including Senior Management Review) at 40 hours + Attorney at 40 hours + Senior Systems Analyst at 12.5 hours + Operations Specialist at 12.5 hours) × (29 potential respondents) = 6,195 burden hours.

[376] Based on its experience with the ARP Inspection Program, the Commission estimates: (Compliance Attorney at 30 hours + Senior Systems Analyst at 100 hours) × (44 potential respondents) = 5,720 burden hours.

[377] This estimate is based on the Commission's experience with the ARP Inspection Program. The Commission has also considered its preliminary estimate in the SB SDR Proposing Release for a similar requirement. *See* SB SDR Proposing Release, *supra* note 297, at 77349 (estimating the ongoing burden associated with maintaining policies and procedures reasonably designed to ensure that the SDR's systems provide adequate levels of capacity, resiliency, and security). This estimate is for the number of hours an SCI entity would require over and above the usual and customary amount of time it would devote to maintaining policies and procedures designed to ensure its systems' capacity, integrity, resiliency, availability, and security.

[378] (Compliance Manager at 15 hours + Attorney at 15 hours) × (29 potential respondents currently participating in the ARP Inspection Program) = 870 hours.

[379] (Compliance Manager at 30 hours + Attorney at 30 hours) × (15 potential respondents not currently participating in the ARP inspection Program) = 900 hours.

[380] 870 hours for SCI entities that are current ARP Inspection Program participants + 900 hours for SCI entities that are not current ARP Inspection Program participants = 1,770 burden hours.

[381] (Compliance Attorney at 30 hours + Senior Systems Analyst at 100 hours) × (44 potential respondents) = 5,720 burden hours.

[382] *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[383] This estimate is based on the Commission's experience with the ARP Inspection Program and OCIE examinations, which review policies and procedures of registered entities in conjunction with examinations of such entities for compliance with the federal securities laws. Although not currently explicitly required under the existing ARP Inspection Program or other laws or regulations, the Commission expects that most, if not all, SCI entities already voluntarily have certain policies and procedures in place as part of good business management and oversight to ensure that their SCI systems operate in the manner intended. However, proposed Rule 1000(b)(2)(i) would set forth specific new requirements with respect to such policies and procedures, and proposed Rules 1000(b)(2)(ii) and (iii) would specify how an SCI entity and its employees could satisfy the new requirement through safe harbors. Because proposed Rule 1000(b)(2)(i) has no analogue in the ARP Inspection Program and would create a new requirement for all SCI entities, for purposes of the PRA, the Commission preliminarily estimates that all SCI entities would elect to comply with the proposed safe harbor of proposed Rule 1000(b)(2)(ii) and be subject to the same initial burden to ensure that their policies and procedures satisfy the requirements of the proposed safe harbor.

[384] Based on its experience with OCIE examinations and the ARP Inspection Program, the Commission estimates: (Compliance Attorney at 30 hours + Senior Systems Analyst at 150 hours) × (44 potential respondents) = 7,920 burden hours.

[385] These estimates are based on the Commission's experience with the ARP Inspection

Commission preliminarily estimates that proposed Rule 1000(b)(2) would carry an ongoing annual burden of 120 hours per SRO respondent and 60 hours per non-SRO respondent, for a total ongoing annual burden of 4,200 hours for all respondents.[386] These estimated burdens per respondent also would include the time expended for the review of the draft policies and procedures by the SCI entity's management.

As with proposed Rule 1000(b)(1), the Commission preliminarily believes that SCI entities would handle internally most of the work associated with establishing and maintaining written policies and procedures that are reasonably designed to ensure that their SCI systems operate in the manner intended, including in a manner that complies with the federal securities laws and rules and regulations thereunder and, as applicable, the entity's rules and governing documents, and that meet the requirements of the proposed safe harbor provisions of proposed Rule 1000(b)(2)(ii).[387] However, based on its experience with the ARP Inspection Program, the Commission preliminarily believes that SCI entities also would seek outside legal and/or consulting advice in the initial preparation of such policies and procedures, and that the average cost of outside legal/consulting advice would be $20,000 per respondent, for a total of $880,000 for all respondents.[388]

c. Mandate Participation in Certain Testing

Proposed Rule 1000(b)(9) would require each SCI entity, with respect to its business continuity and disaster recovery plans, including its backup systems, to require participation by designated members or participants in scheduled functional and performance testing of the operation of such plans at specified intervals, and coordinate such testing on an industry- or sector-wide basis with other SCI entities. The Commission preliminarily believes that all SCI entities would be subject to this proposed requirement, and that none of these entities currently require participation by members or participants in scheduled functional and performance testing of their business continuity and disaster recovery plans, as proposed Rule 1000(b)(9) would have them require.

Although SCI entities may seek to implement the proposed requirements in different ways (*e.g.,* for SCI SROs, by submitting proposed rule changes under Section 19(b) of the Exchange Act; for SCI ATSs, by revising membership or subscriber agreements and internal procedures; for plan processors, through an amendment to an SCI Plan under Rule 608 of Regulation NMS; and, for exempt clearing agencies subject to ARP, by revising participant agreements and internal procedures), the Commission preliminarily believes that the average paperwork burden associated with the proposed rule would be the same for all SCI entities because they would likely make similar changes to their rules, agreements, procedures, or SCI Plans, and would likely take similar actions to implement and coordinate mandatory testing. Based on its experience with SCI entities, the Commission preliminarily believes that SCI entities, other than plan processors, would handle this work internally.

The Commission preliminarily estimates that each SCI entity (other than plan processors) would spend approximately 130 hours initially to meet the requirements of proposed Rules 1000(b)(9)(i) and (ii). This estimate takes into consideration the requirement to mandate participation by designated members or participants in testing under proposed Rule 1000(b)(9)(i), as well as the requirement under proposed Rule 1000(b)(9)(ii) that an SCI entity coordinate required testing with other SCI entities. Specifically, the estimated 130 hours assumes that it would take an SCI entity 35 hours to write a proposed rule, or revise a membership/subscriber agreement or participant agreement, as the case may be, to establish the participation requirement for the SCI entity's designated members or participants,[389] and an additional 95 hours of follow-up work (*e.g.,* notice and schedule coordination) to ensure implementation. Therefore, the Commission preliminarily estimates that proposed Rules 1000(b)(9)(i) and (ii) would carry an initial burden of 130 hours per respondent, for a total initial burden of 5,460 hours for all respondents.[390] For plan processors, the Commission preliminarily estimates that proposed Rules 1000(b)(9)(i) and (ii) would carry an initial cost of $52,000 per respondent,[391] for a total initial cost of $104,000 hours for all plan processors.[392]

The Commission also preliminarily estimates that each SCI entity (other than plan processors) would spend approximately 95 hours annually to review the written rules or requirements to ensure that they remain up-to-date and to prepare any necessary amendments and undertake necessary coordination to ensure implementation and enforcement of the requirement.[393] Therefore, the Commission preliminarily estimates that proposed Rules 1000(b)(9)(i) and (ii) would carry an ongoing annual burden of 95 hours per respondent, for a total ongoing annual burden of 3,990 hours for all respondents.[394] For plan processors, the Commission preliminarily estimates that proposed Rules 1000(b)(9)(i) and (ii) would carry an ongoing annual cost of $38,000 hours per respondent,[395] for

Program and OCIE examinations. The Commission notes that its estimate of 120 hours for SCI SROs to annually review and update the written policies and procedures proposed to be required by Rule 1000(b)(2)(i), to satisfy the elements of the safe harbor provisions in proposed Rules 1000(b)(2)(ii) and (iii), is higher than its estimate for SCI SROs to review and update the policies and procedures proposed to be required by Rule 1000(b)(1) and its estimate for SCI entities that are not SCI SROs to review and update the policies and procedures proposed to be required by Rule 1000(b)(2)(i), to satisfy the elements of the safe harbor provisions in proposed Rules 1000(b)(2)(ii) and (iii). This higher estimate is based on the Commission's preliminary belief that the burden for SCI SROs would be greater because the rules of such entities generally change their rules with greater frequency. The Commission solicits comment on the accuracy of this information.

[386] Based on its experience with OCIE examinations and the ARP Inspection Program, the Commission estimates: (Compliance Attorney at 20 hours + Senior Systems Analyst at 100 hours) × (26 potential SCI SRO respondents) + (Compliance Attorney at 10 hours + Senior Systems Analyst at 50 hours) × (18 potential non-SCI SRO respondents) = 4,200 burden hours.

[387] *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[388] ($20,000 outside legal cost) × (44 entities) = $880,000.

[389] In establishing this estimate, the Commission considered its estimate of the burden for an SRO to file an average proposed rule change. *See* 2012 Rule 19b–4 collection of information revision Supporting Statement, Office of Management and Budget, available at: *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201207-3235-002.*

[390] Based on Commission staff experience in reviewing SRO proposed rule change filings and past estimates for Rule 19b–4 and Form 19b–4, the Commission estimates as follows: (Compliance Manager at 10 hours + Attorney at 15 hours + Compliance Clerk at 10 hours) × (42 potential respondents) + (Compliance Manager at 10 hours + Attorney at 15 hours + Operations Specialist at 70 hours) × (42 potential respondents) = 5,460 hours to comply with proposed Rules 1000(b)(9)(i) and (ii).

[391] 130 hours × $400 per hour for outside legal services = $52,000. *See infra* note 463.

[392] $52,000 × 2 plan processors = $104,000.

[393] As noted above, the initial burden includes 35 hours to write a proposed rule, revise an agreement, or amend an SCI Plan. The Commission does not believe this 35-hour burden would be applicable on an ongoing basis.

[394] (Compliance Manager at 10 hours + Attorney at 15 hours + Operations Specialist at 70 hours) × (42 potential respondents) = 3,990 hours. *See supra* note 390.

[395] 95 hours × $400 per hour for outside legal services = $38,000. *See infra* note 463.

a total ongoing annual cost of $76,000 for all plan processors.[396]

The Commission preliminarily estimates that each SCI entity (other than plan processors) would spend approximately 35 hours initially to meet the requirements of proposed Rule 1000(b)(9)(iii). This estimate takes into consideration the burden for an SCI entity to establish standards for designating members or participants who must participate in its business continuity and disaster recovery plans testing and file such standards with the Commission on Form SCI, as well as the burden for an SCI entity to determine, compile, and submit its list of designated members or participants on Form SCI. Specifically, the Commission estimates that each SCI entity would take 35 hours to write a proposed rule or an internal procedure, as the case may be, to establish standards for designating members or participants, to apply the standards to compile the list of designees, and to file such standards and the list of designees on Form SCI.[397] Therefore, the Commission preliminarily estimates that proposed Rule 1000(b)(9)(iii) would carry an initial burden of 35 hours per respondent, for a total initial burden of 1,470 hours for all respondents.[398] For plan processors, the Commission preliminarily estimates that proposed Rule 1000(b)(9)(iii) would carry an initial cost of $14,000 per respondent,[399] for a total initial cost of $28,000 hours for all plan processors.[400]

The Commission also preliminarily estimates that each SCI entity (other than plan processors) would spend approximately 3 hours annually to review the designation standards to ensure that they remain up-to-date and to prepare any necessary amendments, to review its list of designated members or participants, and to update prior Commission notifications with respect to the standards for designation and the list of designees.[401] Therefore, the Commission preliminarily estimates that proposed Rule 1000(b)(9)(iii) would carry an ongoing annual burden of 3 hours per respondent, for a total ongoing annual burden of 126 hours for all respondents.[402] For plan processors, the Commission preliminarily estimates that proposed Rule 1000(b)(9)(iii) would carry an ongoing annual cost of $1,200 hours per respondent,[403] for a total ongoing annual cost of $2,400 for all plan processors.[404]

2. Notice, Dissemination, and Reporting Requirements for SCI Entities

The proposed rules that would require an SCI entity to notify the Commission of SCI events, disseminate certain SCI events to members or participants, and submit specified reports are discussed more fully in Section III.C above.

a. Notices Required by Proposed Rule 1000(b)(4)

Proposed Rule 1000(b)(4) would require notice of SCI events to the Commission.[405] The burden estimates to comply with proposed Rule 1000(b)(4) include the burdens associated with Commission notification of immediate notification SCI events and the submission of Form SCI in accordance with the instructions thereto.

Proposed Rule 1000(b)(4)(i) would require an SCI entity, upon any responsible SCI personnel becoming aware of a systems disruption that the SCI entity reasonably estimates would have a material impact on its operations or on market participants, any systems compliance issue, or any systems intrusion, to notify the Commission of such SCI event. As noted above, notification required by proposed Rule 1000(b)(4)(i) may be done orally or in writing. The Commission preliminarily estimates that each SCI entity would experience an average of 40 immediate notification SCI events per year.[406] The Commission further preliminarily estimates that one-fourth of the notifications under proposed Rule 1000(b)(4)(i) would be in writing (*i.e.,* 10 written notifications and 30 oral notifications), and that each written notification would require an in-house attorney half an hour to prepare and submit to the Commission.[407] Thus, the Commission preliminarily estimates that the initial and ongoing burden to comply with the notification requirement of proposed Rule 1000(b)(4)(i) would be 5 hours annually per respondent, and 220 hours annually for all respondents.[408]

Proposed Rule 1000(b)(4)(ii) would require an SCI entity, within 24 hours of any responsible SCI personnel becoming aware of any SCI event, to submit a written notification to the Commission on Form SCI pertaining to such SCI event. The Commission preliminarily estimates that each SCI entity would experience an average of 65 SCI events per year.[409] Thus, the

[396] $38,000 × 2 plan processors = $76,000.

[397] In establishing this estimate, the Commission considered its estimate of the burden for an SRO to file an average proposed rule change. *See* 2012 Rule 19b–4 collection of information revision Supporting Statement, Office of Management and Budget, available at: *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201207-3235-002.*

[398] Based on Commission staff experience in reviewing SRO proposed rule change filings and past estimates for Rule 19b–4 and Form 19b–4, the Commission estimates as follows: (Compliance Manager at 10 hours + Attorney at 15 hours + Compliance Clerk at 10 hours) × (42 potential respondents) = 1,470 hours to comply with Rule 1000(b)(9)(iii).

[399] 35 hours × $400 per hour for outside legal services = $14,000. *See infra* note 463.

[400] $14,000 × 2 plan processors = $28,000.

[401] In establishing this estimate, the Commission has considered its estimate of the burden for an SRO to amend a Form 19b–4. Specifically, the Commission estimated that an amendment to Form 19b–4 would require approximately 3 hours to complete. *See* Securities Exchange Act Release No. 50486 (October 4, 2004), 69 FR 60287, 60294 (October 8, 2004).

[402] (Compliance Manager at 1.5 hours + Attorney at 1.5 hours) × (42 potential respondents) = 126 hours.

[403] 3 hours × $400 per hour for outside legal services = $1,200. *See infra* note 463.

[404] $1,200 × 2 plan processors = $2,400.

[405] *See supra* note 351 and accompanying text for details regarding the content of Form SCI. Currently, there is no law or rule specifically requiring SCI entities to notify the Commission of systems problems in writing or in a specific format. Nevertheless, voluntary communications of systems problems to Commission staff occur in a variety of ways, including by telephone and email. The Commission notes that proposed Rule 1000(b)(4) would impose a new reporting requirement on SCI entities, regardless of whether they currently voluntarily notify the Commission of SCI events on an ad hoc basis. As such, the Commission preliminarily believes that a history of voluntarily reporting such events to the Commission would not lessen the future burden of reporting such events to the Commission on Form SCI as required under proposed Rule 1000(b)(4).

[406] Because the threshold for immediate notification SCI events is lower than the threshold for dissemination SCI events, the estimate for the number of immediate notification SCI events is higher than the estimate for the number of dissemination SCI events (*i.e.,* 15 dissemination SCI events). *See infra* notes 414 and 424 and accompanying text.

[407] The Commission preliminarily believes this estimate is appropriate because the notification required by proposed Rule 1000(b)(4)(i) would not be submitted through Form SCI, and is intended to be an immediate initial notification when responsible SCI personnel becomes aware of an immediate notification SCI event which contains only information known to the SCI entity at that time.

[408] (Attorney at 0.5 hour for each notice) × (10 notices) = 5 hours. 5 hours × (44 potential respondents) = 220 burden hours. The Commission preliminarily believes that SCI entities would handle internally the work associated with the notification requirement of proposed Rule 1000(b)(4)(i). *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[409] This estimate is based on Commission's experience with the ARP Inspection Program. Approximately 175 ARP incidents were reported to the Commission in 2011 by entities that currently participate in the ARP Inspection Program. Of those entities, the Commission believes that 28 would fall under the proposed definition of SCI entity (since 2011, an additional entity has become part of the ARP Inspection Program, for a total of 29 SCI entities that participate in the ARP Inspection Program). Thus, each entity reported an average of

Commission preliminarily estimates that there would be an average of 65 SCI event notices per year for each respondent. The Commission preliminarily estimates that each notification under proposed Rule 1000(b)(4)(ii) would require an average of 20 burden hours,[410] with a compliance manager and in-house attorney each spending approximately 10 hours in collaboration to draft, review, and submit the report. Thus, the Commission preliminarily estimates that the initial and ongoing burden to comply with the reporting requirement of proposed Rule 1000(b)(4)(ii) would be 1,300 hours annually per respondent, and 57,200 hours annually for all respondents.[411]

Proposed Rule 1000(b)(4)(iii) would require an SCI entity to submit written updates to the Commission on Form SCI pertaining to SCI events on a regular basis, or at such frequency as reasonably requested by a representative of the Commission, until such time as the SCI event is resolved. Based on Commission staff's experience with the ARP Inspection Program, the Commission preliminarily estimates that, on average, each SCI entity would submit 5 updates per year under proposed Rule 1000(b)(4)(iii), and that each update would require an average of 3 burden hours,[412] with a compliance manager and in-house attorney each spending approximately 1.5 hours in collaboration to draft, review, and submit the update. Thus, the Commission preliminarily estimates that the initial and ongoing burden to comply with the continuous update requirement of proposed Rule 1000(b)(4)(iii) would be 15 hours annually per respondent, and 660 hours annually for all respondents.[413]

b. Disseminations Required by Proposed Rule 1000(b)(5)

Proposed Rule 1000(b)(5) would require disseminations of information to members or participants relating to dissemination SCI events. Based on the definition of dissemination SCI event, the Commission preliminarily estimates that each SCI entity would experience an average of 14 dissemination SCI events each year that are not systems intrusions, resulting in an average of 14 member or participant dissemination per respondent per year under proposed Rule 1000(b)(5)(i).[414]

Proposed Rule 1000(b)(5)(i)(A) would require an SCI entity, promptly after any responsible SCI personnel becomes aware of a dissemination SCI event other than a systems intrusion, to disseminate to its members or participants the following information about such SCI event: (1) The systems affected by the SCI event; and (2) a summary description of the SCI event.

In addition to the costs for outside legal advice discussed below,[415] the Commission estimates that each initial member or participant dissemination would require an average of 3 hours to prepare and make available to members or participants, with an in-house attorney spending approximately 2.67 hours in drafting and reviewing the dissemination, and a webmaster spending approximately 0.33 hours in making the dissemination available to members or participants.[416] Thus, the Commission preliminarily estimates that the initial and ongoing burden to comply with the initial member or participant dissemination requirement of proposed Rule 1000(b)(5)(i)(A) would be approximately 42 hours annually per respondent, and 1,848 hours annually for all respondents.[417]

Proposed Rule 1000(b)(5)(i)(B) would require the SCI entity to further disseminate, when known, the following information to its members or

approximately 6 incidents in 2011. Because the proposed definition of ''SCI event'' is broader than the types of events covered by the current ARP Inspection Program, and SCI entities are not currently required by law or rule to report systems issues to the Commission, the Commission preliminarily believes that the number of SCI events that would be reported to the Commission would be significantly more than the number of incidents reported in 2011. The Commission acknowledges that, because these types of incidents are not required to be reported under the current ARP Inspection Program, this figure is largely an estimate and is difficult to ascertain. As such, the Commission seeks comment on the accuracy of this estimate.

[410] This estimate includes the burden for attaching an Exhibit 3 (*i.e.,* a copy in pdf or html format of any information disseminated to date regarding the SCI event to its members or participants or on the SCI entity's publicly available Web site). This estimate is based on Commission staff experience with the ARP Inspection Program. The Commission has also considered its estimate of the burden to complete Form 19b–4. Specifically, the Commission has estimated that an SRO would spend approximately 39 hours to complete a Form 19b–4. *See* 2012 Rule 19b–4 collection of information revision Supporting Statement, Office of Management and Budget, available at: *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201207-3235-002.* However, the Commission notes that, unlike Form 19b–4, the information contained in Form SCI would only be factual. As such, the Commission preliminarily believes that the amount of time for an SCI entity to complete Form SCI would be less than the amount of time for an SRO to complete Form 19b–4.

[411] (Compliance Manager at 10 hours for each notice + Attorney at 10 hours for each notice) × (65 notices) = 1,300 hours. 1,300 hours × (44 potential respondents) = 57,200 burden hours. The Commission preliminarily believes that SCI entities would handle internally the work associated with the notification requirement of proposed Rule 1000(b)(4)(ii). *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[412] This estimate includes the burden for attaching an Exhibit 3 (*i.e.,* a copy in pdf or html format of any information disclosed to date regarding the SCI event to its members or participants or on the SCI entity's publicly available Web site). In determining this estimate, the Commission has considered its estimate of the burden for an SRO to amend a Form 19b–4. Specifically, the Commission estimated that an amendment to Form 19b–4 would require approximately 3 hours to complete. *See* Securities Exchange Act Release No. 50486 (October 4, 2004), 69 FR 60287, 60294 (October 8, 2004).

[413] (Compliance Manager at 1.5 hours for each update + Attorney at 1.5 hours for each update) × (5 updates) = 15 hours. 15 hours × (44 potential respondents) = 660 burden hours. The Commission preliminarily believes that SCI entities would handle internally the work associated with the reporting requirement of proposed Rule 1000(b)(4)(iii). *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[414] This estimate is based on the Commission's experience with the ARP Inspection Program. Specifically, as indicated in the Economic Analysis Section, approximately 175 ARP incidents were reported to the Commission in 2011 by entities that currently participate in the ARP Inspection Program. Of those entities, the Commission believes that 28 would fall under the proposed definition of SCI entity (since 2011, an additional entity has become part of the ARP Inspection Program, for a total of 29 SCI entities that participate in the ARP Inspection Program). Thus, each entity reported an average of approximately 6 incidents in 2011. Further, because proposed Rule 1000(a) would define an SCI event to mean a systems disruption, systems compliance issue, or systems intrusion, the scope of proposed Regulation SCI is broader than the scope of incidents reported to the ARP Inspection Program, which covers certain systems disruptions and intrusions. As such, the Commission preliminarily believes that an estimate of 14 dissemination SCI events per year per SCI entity (other than systems disruptions) is appropriate.

[415] *See infra* note 428.

[416] This estimate is based on Commission staff's experience with the ARP Inspection Program. The Commission estimates that each initial member or participant dissemination would require an average of 3 hours to prepare and make available the information to members or participants, instead of 20 hours as estimated for proposed Rule 1000(b)(4)(ii), because the information required to be disseminated to members or participants would have been used for the initial written notification on Form SCI. For the same reason, the Commission preliminarily believes that an in-house attorney will prepare the dissemination, which will be made available to members or participants by the webmaster.

[417] (Attorney at 2.67 hours for each notification + Webmaster at 0.33 hour for each notification) × (14 notifications per year) = 42 hours. 42 hours × (44 potential respondents) = 1,848 burden hours. The Commission preliminarily believes that SCI entities would handle internally most of the work associated with the notification requirement of proposed Rule 1000(b)(5)(i)(A). *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

participants: (1) A detailed description of the SCI event; (2) the SCI entity's current assessment of the types and number of market participants potentially affected by the SCI event; and (3) a description of the progress of its corrective action for the SCI event and when the SCI event has been or is expected to be resolved. In addition to the outside costs discussed below,[418] the Commission preliminarily estimates that each update under proposed Rule 1000(b)(5)(i)(B) would require an average of 5 hours to prepare and make available to members or participants,[419] with an in-house attorney spending approximately 4.67 hours in drafting and reviewing the update, and a webmaster spending approximately 0.33 hour in making the update available to members or participants. Thus, the Commission preliminarily estimates that the initial and ongoing burden to comply with the update requirement of proposed Rule 1000(b)(5)(i)(B) would be approximately 70 hours annually per respondent, and 3,080 hours annually for all respondents.[420]

Proposed Rule 1000(b)(5)(i)(C) would require an SCI entity to provide regular updates to members or participants of any information required to be disseminated under proposed Rule 1000(b)(5). As noted above, there were approximately 175 ARP incidents reported to the Commission in 2011. These incidents had durations ranging from under one minute to 24 hours, with most incidents having a duration of less than 2 hours. Based on the relatively short duration of the ARP incidents reported to the Commission in 2011, the Commission preliminarily estimates that, on average, each SCI entity would provide one regular update per year per dissemination SCI event under proposed Rule 1000(b)(5)(i)(C). In addition to the costs for outside legal advice discussed below,[421] the Commission preliminarily estimates that each update would require an average of 1 hour to prepare and make available to members or participants,[422] with an in-house attorney spending approximately 0.67 hour in drafting and reviewing the update, and a webmaster spending approximately 0.33 hour in making the update available to members or participants. Thus, the Commission preliminarily estimates that the initial and ongoing burden to comply with the regular update requirement of proposed Rule 1000(b)(5)(i)(C) would be approximately 14 hours annually per respondent, and 616 hours annually for all respondents.[423]

Under proposed Rule 1000(b)(5)(ii), promptly after any responsible SCI personnel becomes aware of a systems intrusion, the SCI entity would be required to disseminate to its members or participants a summary description of the systems intrusion, including a description of the corrective action taken by the SCI entity and when the systems intrusion has been or is expected to be resolved, unless the SCI entity determines that dissemination of such information would likely compromise the security of the SCI entity's SCI systems or SCI security systems, or an investigation of the systems intrusion, and documents the reasons for such determination. Based on the definition of dissemination SCI event, the Commission preliminarily estimates that each SCI entity would experience an average of 1 dissemination SCI event that is a systems intrusion each year, resulting in an average of 1 member or participant dissemination per respondent per year under proposed Rule 1000(b)(5)(ii).[424] In addition to the costs for outside legal advice discussed below,[425] the Commission estimates that each member or participant dissemination under proposed Rule 1000(b)(5)(ii) would require an average of 3 hours to prepare and make available to members or participants, with an in-house attorney spending approximately 2.67 hours in drafting and reviewing the dissemination, and a webmaster spending approximately 0.33 hours in making the dissemination available to members or participants.[426] Thus, the Commission preliminarily estimates that the initial and ongoing burden to comply with the member or participant dissemination requirement under proposed Rule 1000(b)(5)(ii) would be approximately 3 hours annually per respondent, and 132 hours annually for all respondents.[427]

The Commission preliminarily believes that SCI entities would internally handle most of the work associated with disseminating information on dissemination SCI events to members or participants. However, based on its experience with the ARP Inspection Program, the Commission preliminarily believes that SCI entities also would seek outside legal advice in the preparation of the disseminations required under proposed Rule 1000(b)(5), and that the average cost of outside legal advice would be

[418] *See infra* note 428.

[419] The Commission estimates that each update under proposed Rule 1000(b)(5)(i)(B) would require an average of 5 hours to prepare and make available to members or participants, instead of 20 hours as estimated for proposed Rule 1000(b)(4)(ii), because the information required to be disseminated to members or participants would have been used for the initial written notification on Form SCI.

[420] (Attorney at 4.67 hours for each update + Webmaster at 0.33 hour for each update) × (14 updates per year) = 70 hours. 70 hours × (44 potential respondents) = 3,080 burden hours. This estimate is based on Commission staff's experience with the ARP Inspection Program. The Commission preliminarily believes that SCI entities would handle internally most of the work associated with the update requirement of proposed Rule 1000(b)(5)(i)(B). *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[421] *See infra* note 428.

[422] This estimate is based on the estimated burden to complete and submit a written update for an SCI event on Form SCI. *See supra* note 412. The Commission estimates that each regular update to a member or participant dissemination would require an average of 1 hour to prepare and make available to members or participants, instead of 3 hours, because the information required to be provided to the Commission in the updates on Form SCI would also be used for updating the member or participation dissemination. For the same reason, the Commission preliminarily believes that an attorney will prepare the update, which will be made available by the webmaster.

[423] (Attorney at 0.67 hour for each update + Webmaster at 0.33 hour for each update) × (14 updates per year) = 14 hours. 14 hours × (44 potential respondents) = 616 burden hours. This estimate is based on Commission staff's experience with the ARP Inspection Program. The Commission preliminarily believes that SCI entities would handle internally most of the work associated with the update requirement of proposed Rule 1000(b)(5)(i)(C). *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[424] Based on Commission's experience with the ARP Inspection Program, the Commission preliminarily believes each SCI entity will experience on average less than one systems intrusion per year. However, for purposes of the PRA, the Commission preliminarily estimates one systems intrusion per respondent per year.

[425] *See infra* note 428.

[426] This estimate includes any burden for an SCI entity to document its reason for determining that dissemination of information regarding a systems intrusion would likely compromise the security of the SCI entity's SCI systems or SCI security systems, or an investigation of the systems intrusion. This estimate is based on Commission staff's experience with the ARP Inspection Program. In determining this estimate, the Commission considered its burden estimate for proposed Rule 1000(b)(5)(i)(A) because both rules would require the dissemination of certain basic information about a dissemination SCI event. For the same reason, the Commission preliminarily believes that an in-house attorney will prepare the dissemination, which will be made available by the webmaster.

[427] (Attorney at 2.67 hours for each notification + Webmaster at 0.33 hour for each notification) × (1 notification per year) = 3 hours. 3 hours × (44 potential respondents) = 132 burden hours. The Commission preliminarily believes that SCI entities would handle internally most of the work associated with the dissemination requirement of proposed Rule 1000(b)(5)(ii). *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

$15,000 per respondent per year, for a total of $660,000 for all respondents per year.[428]

c. Notices Required by Proposed Rules 1000(b)(6)

Proposed Rules 1000(b)(6) would require notification to the Commission on Form SCI of material systems changes. The Commission preliminarily believes this work would be conducted internally.[429] The burden estimates to comply with proposed Rule 1000(b)(6) include the burdens associated with submission of Form SCI in accordance with the instructions thereto.

Specifically, proposed Rule 1000(b)(6) would require the SCI entity, absent exigent circumstances, to notify the Commission on Form SCI at least 30 calendar days before the implementation of any planned material systems change, including a description of the planned material systems change as well as the expected dates of commencement and completion of the implementation of such change.[430] Based on its experience with the ARP Inspection Program, Commission preliminarily estimates that there would be an average of 60 planned material systems changes per respondent per year.[431] As such, the Commission preliminarily estimates that there would be an average of 60 notifications per respondent per year, and each notification would require an average of 2 hours to prepare and submit,[432] with an attorney spending approximately 0.33 hours and a senior systems analyst spending approximately 1.67 hours in drafting and reviewing the notification. For the 15 SCI entity respondents that do not currently participate in the ARP Inspection Program, the Commission preliminarily estimates that the initial and ongoing burden to comply with the notice requirement of proposed Rule 1000(b)(6) would be approximately 120 hours annually per respondent, and 1,800 hours annually for all respondents.[433] Because SCI entities that currently participate in the ARP Inspection Program already notify the Commission of planned material systems changes, the Commission preliminarily estimates that these entities would be starting from a baseline of fifty percent, and that the increased burden for these 30 SCI entities would be 60 hours annually per respondent.[434] The Commission preliminarily estimates that the total initial and ongoing burden for SCI entities that currently participate in the ARP Inspection Program would be 60 hours annually per respondent, for a total burden of 1,740 hours for all of these respondents.[435] Thus, the total estimated initial and ongoing burden to comply with proposed Rule 1000(b)(6) would be 3,540 for all respondents.[436]

d. SCI Review Required by Proposed Rule 1000(b)(7)

Proposed Rule 1000(b)(7) would require each SCI entity to conduct an SCI review of its compliance with Regulation SCI not less than once each calendar year, and submit a report of the SCI review to its senior management for review no more than 30 calendar days after completion of such SCI review. The Commission preliminarily estimates that the initial and ongoing burden of conducting an SCI review and submitting the SCI review to senior management of the SCI entity for review would be approximately 625 hours for each respondent[437] and 27,500 hours annually for all respondents.[438]

e. Reports Required by Proposed Rule 1000(b)(8)

Proposed Rule 1000(b)(8) would require each SCI entity to submit certain reports to the Commission. The burden estimates to comply with proposed Rule 1000(b)(8) include the burdens associated with submission of Form SCI in accordance with the instructions thereto.

Pursuant to proposed Rule 1000(b)(8)(i), each SCI entity would be required to submit to the Commission, as an attachment to Form SCI, a report of the SCI review required by proposed Rule 1000(b)(7), together with any response by senior management of the SCI entity, within 60 calendar days after its submission to senior management of the SCI entity. The Commission estimates that each SCI entity would require 1 hour to submit the SCI review using Form SCI, for a total annual initial and ongoing burden of 44 hours for all respondents.[439]

Proposed Rule 1000(b)(8)(ii) would require each SCI entity to submit, using Form SCI, a report within 30 calendar days after the end of June and December of each year, containing a summary description of the progress of any material systems changes during the six-month period ending on June 30 or December 31, as the case may be, and the date, or expected date, of completion of their implementation.

[428] ($15,000 outside legal cost) × (44 potential respondents) = $660,000.

[429] *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[430] If exigent circumstances exist, or if the information previously provided to the Commission regarding any planned material systems change becomes materially inaccurate, the SCI entity would be required to notify the Commission, either orally or in writing, with any oral notification to be memorialized within 24 hours after such oral notification by a written notification, as early as reasonably practicable.

[431] This estimate includes instances where the information previously provided to the Commission regarding any planned material systems change becomes materially inaccurate.

[432] In estimating the burden imposed by proposed Rule 1000(b)(6), the Commission also considered its burden estimate for the same reporting requirement that was proposed for SB SEFs. Specifically, proposed Rule 822(a)(4) in the SB SEF Proposing Release would require an SB SEF to notify the Commission in writing at least 30 calendar days before the implementation of material systems changes. The Commission estimated that there would be an average of 60 notifications per respondent per year, and that each notification would require an average of 2 internal burden hours. *See* SB SEF Proposing Release, *supra* note 297, at 11029.

[433] (Attorney at 0.33 hour for each notification + Senior Systems Analyst at 1.67 hours for each notification) × (60 notifications per year) = 120 hours. 120 hours × (15 potential respondents) = 1,800 burden hours.

[434] (Attorney at 0.33 hour for each notification + Senior Systems Analyst at 1.67 hours for each notification) × (30 additional notifications per year) = 60 hours. The Commission preliminarily believes that the burden would result from the proposed broadened definitions of ''SCI systems'' and ''SCI security systems'' in Regulation SCI, as well as the shift from a voluntary to a mandatory regulatory environment.

[435] (60 burden hours) × (29 potential respondents) = 1,740 burden hours.

[436] (1,800 burden hours for SCI entities that do not currently participate in the ARP Inspection Program + 1,740 burden hours for SCI entities that currently participate in the ARP Inspection Program) = 3,540 burden hours.

[437] This estimate is the Commission's preliminary best estimate and is based on Commission staff's experience with SCI entities participating in the ARP Inspection Program. This estimate also is the same as the Commission's burden estimate for internal audits of SB SEFs. *See* SB SEF Proposing Release, *supra* note 297, at 11028. Proposed Rule 822 in the SB SEF Proposing Release would require an SB SEF to submit to the Commission an annual objective review of the capability of its systems that support or are integrally related to the performance of its activities, provided that if a review is performed internally, an external firm shall report on the objectivity, competency, and work performance with respect to the internal review. The Commission recognizes that the annual review requirement proposed for SB SEFs is different, in certain respects, from the requirement under proposed Rule 1000(b)(7). Specifically, the scopes of the reviews are different because proposed Rule 1000(b)(7) would require an SCI review of an SCI entity's compliance with proposed Regulation SCI. Further, proposed Rule 1000(b)(7) would not require an external review of an internal SCI review. Nevertheless, the Commission preliminarily believes that these differences should not result in differences in the burden estimate for these similar internal audits.

[438] (Attorney at 80 hours + Manager Internal Auditor at 170 hours + Senior Systems Analyst at 375 hours) × (44 potential respondents) = 27,500 burden hours.

[439] (Attorney at 1 hour for each submission) × (1 submission per year) = 1 burden hour. (1 burden hour) × (44 potential respondents) = 44 burden hours.

The Commission preliminarily estimates that the initial and ongoing burden to comply with proposed Rule 1000(b)(8)(ii) would be approximately 60 hours per respondent per report or 120 hours annually,[440] and 5,280 hours annually for all respondents.[441]

3. Requirements To Take Corrective Actions, Identify Immediate Notification SCI Events, and Identify Dissemination SCI Events

The proposed rules that could result in SCI entities establishing additional processes for compliance with proposed Regulation SCI are discussed more fully in Section III.C above.

a. Requirement To Take Corrective Actions

Proposed Rule 1000(b)(3) would require an SCI entity, upon any responsible SCI personnel becoming aware of an SCI event, to begin to take corrective action which shall include, at a minimum, mitigating potential harm to investors and market integrity resulting from the SCI event and devoting adequate resources to remedy the SCI event as soon as reasonably practicable. Based on its experience with the ARP Inspection Program, the Commission believes that entities that participate in the ARP Inspection Program already take corrective actions in response to a systems issue, and believes that other SCI entities also take corrective actions in response to a systems issue. Nevertheless, the Commission preliminarily believes that proposed Rule 1000(b)(3) would likely result in SCI entities revising their policies in this regard, which would help to ensure that their information technology staff has the ability to access systems in order to take appropriate corrective actions. As such, proposed Rule 1000(b)(3) may impose a one-time implementation burden on SCI entities associated with developing a process for ensuring that they are prepared for the corrective action requirement. Proposed Rule 1000(b)(3) also may impose periodic burdens on SCI entities in reviewing that process. The Commission preliminarily estimates that the initial burden to implement such a process would be 42 hours per SCI entity[442] or 1,848 hours for all SCI entities.[443] The Commission also preliminarily estimates that the ongoing burden to review such a process would be 12 hours annually per SCI entity[444] or 528 hours annually for all SCI entities.[445]

b. Requirements To Identify Immediate Notification SCI Events and Dissemination SCI Events

Proposed Rule 1000(a) would define a ''dissemination SCI event'' to mean an SCI event that is a: (1) Systems compliance issue; (2) systems intrusion; or (3) systems disruption that results, or the SCI entity reasonably estimates would result, in significant harm or loss to market participants.

When an SCI event occurs, an SCI entity would need to determine whether the event is an immediate notification SCI event or a dissemination SCI event, because the proposed rules would impose different obligations on SCI entities for these types of SCI events. As such, immediate notification SCI events and dissemination SCI events may impose an initial one-time implementation burden on SCI entities in developing a process to ensure that they are able to quickly and correctly make a determination regarding whether the SCI event is subject to proposed Rule 1000(b)(4)(i) or (b)(5). The definition may also impose periodic burdens on SCI entities in reviewing that process.

[440] The Commission notes that SCI entities currently do not submit to the Commission written semi-annual notifications of material systems changes. This estimate is based on Commission staff's experience with various entities through the ARP Inspection Program.

[441] (Attorney at 10 hours for each report + Senior Systems Analyst at 50 hours for each report) × (2 reports per year) = 120 burden hours. (120 burden hours) × (43 potential respondents) = 5,280 burden hours. The Commission preliminarily believes that SCI entities would handle internally the work associated with the reporting requirement of proposed Rule 1000(b)(8)(ii). *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[442] This estimate is based on the Commission's burden estimate for proposed Rule 1000(b)(1) because both proposed Rule 1000(b)(1) and proposed Rule 1000(b)(3) would result in certain policies and procedures or processes. Because proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data) would require the establishment of five policies and procedures at a minimum, the Commission preliminarily estimates that the initial burden to establish the process to comply with proposed Rule 1000(b)(3) would be one-fifth of the initial burden to comply with proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data), or 42 hours (210 hours ÷ 5). Further, the Commission preliminarily estimates that the hourly breakdown between different staff of the SCI entity would be in the same ratio as the Commission's estimate for proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data)—Compliance Manager at 16 hours, Attorney at 16 hours, Senior Systems Analyst at 5 hours, and Operations Specialist at 5 hours. These estimates reflect the Commission's preliminary view that SCI entities would establish the process for compliance with proposed Rule 1000(b)(3) internally. *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[443] (42 hours) × (44 potential respondents) = 1,848 burden hours.

[444] This estimate is based on the Commission's burden estimate for proposed Rule 1000(b)(1) because both proposed Rule 1000(b)(1) and proposed Rule 1000(b)(3) would result in certain policies and procedures or processes. Because proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data) would require the establishment and review of five policies and procedures at a minimum, the Commission preliminarily estimates that the ongoing burden to review the process to comply with proposed Rule 1000(b)(3) would be one-fifth of the ongoing burden to comply with proposed Rule 1000(b)(1) (except for policies and procedures for Standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data), or 12 hours (60 hours ÷ 5). Further, the Commission preliminarily estimates that the hourly breakdown between different staff of the SCI entity would be in the same ratio as the Commission's estimate for proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data)—Compliance Manager at 6 hours and Attorney at 6 hours. These estimates reflect the Commission's preliminary view that SCI entities would review the process for compliance with proposed Rule 1000(b)(3) internally. *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[445] (12 hours) × (44 potential respondents) = 528 burden hours.

Because the ARP Inspection Program already provides for the reporting of ''significant system changes'' and ''significant system outages'' to Commission staff,[446] the Commission believes that, as compared to entities that do not participate in the ARP Inspection Program, entities that currently participate in the ARP Inspection Program would already have internal processes for determining the significance of a systems issue.[447] Therefore, the Commission preliminarily estimates that the proposed definition would impose half as much burden on entities that participate in the ARP Inspection Program as compared to entities that do not participate in the ARP Inspection Program.

For SCI entities that currently do not participate in the ARP Inspection Program, the Commission preliminarily believes that the initial burden would be 42 hours per entity[448] or 630 hours for all such entities.[449] For entities that currently participate in the ARP Inspection Program, the Commission preliminarily believes that the initial burden would be 21 hours[450] per entity or 609 hours for all such entities.[451] For SCI entities that currently do not participate in the ARP Inspection Program, the Commission preliminarily believes that ongoing burden would be 12 hours annually per entity[452] or 180 hours for all such entities.[453] For SCI entities that currently participate in the ARP Inspection Program, the Commission preliminarily believes that ongoing burden would be 6 hours annually[454] per entity or 174 hours for all such entities.[455]

4. Recordkeeping Requirements

As more fully discussed in Section III.D above, proposed Rule 1000(c) would specifically require SCI entities other than SCI SROs to make, keep, and preserve at least one copy of all documents relating to its compliance with proposed Regulation SCI. The Commission is not proposing a new recordkeeping requirement for SCI SROs because the documents relating to compliance with proposed Regulation SCI are subject to their existing recordkeeping and retention requirements under Rule 17a–1 under the Exchange Act.[456] Because Rule 17a–1 under the Exchange Act requires every SRO to keep on file for a period of not less than 5 years, the first 2 years in an easily accessible place, at least one copy of all documents that it makes or receives respecting its self-regulatory activities, and that all such documents be made available for examination by the Commission and its representatives, the Commission believes that proposed Rule 1000(c) would not result in any burden that is not already accounted for in the Commission's burden estimates for Rule 17a–1.

For SCI entities other than SCI SROs, Regulation SCI-related records would be required to be kept for a period of not less than five years, the first two years in a place that is readily accessible to the Commission or its representatives for inspection and examination.[457] Upon the request of any representative of the Commission, an SCI entity would be required to promptly furnish to the possession of such representative copies of any documents required to be kept and preserved by it pursuant to proposed Rule 1000(c).

[446] *See supra* notes 33 and 35 and accompanying text.

[447] The Commission recognizes that ''significant system changes'' and ''significant system outages'' differ from the proposed definitions of ''immediate notification SCI event'' and ''dissemination SCI event.''

[448] This estimate is based on the Commission's burden estimate for proposed Rule 1000(b)(1) because proposed Rule 1000(b)(1), the proposed definition of ''immediate notification SCI event,'' and the definition of ''dissemination SCI event'' would result in certain policies and procedures or processes. Because proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data) would require the establishment of five policies and procedures at a minimum, the Commission preliminarily estimates that the initial burden to establish the process regarding the SCI event determinations would be one-fifth of the initial burden to comply with proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data), or 42 hours (210 hours ÷ 5). Further, the Commission preliminarily estimates that the hourly breakdown between different staff of the SCI entity would be in the same ratio as the Commission's estimate for proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data)—Compliance Manager at 16 hours, Attorney at 16 hours, Senior Systems Analyst at 5 hours, and Operations Specialist at 5 hours. These estimates reflect the Commission's preliminary view that SCI entities would internally establish the process for determining whether an SCI event is an immediate notification SCI event or dissemination SCI event. *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[449] (42 hours) × (15 potential respondents) = 630 burden hours.

[450] 42 burden hours × 50% = 21 burden hours. These estimates reflect the Commission's preliminary view that SCI entities would internally establish the process for determining whether an SCI event is an immediate notification SCI event or dissemination SCI event. *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[451] (21 burden hours) × (29 potential respondents) = 609 burden hours.

[452] This estimate is based on the Commission's burden estimate for proposed Rule 1000(b)(1) because proposed Rule 1000(b)(1), the proposed definition of ''immediate notification SCI event,'' and the proposed definition of ''dissemination SCI event'' would result in certain policies and procedures or processes. Because proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data) would require the establishment and maintenance of five policies and procedures at a minimum, the Commission preliminarily estimates that the ongoing burden to review the process regarding the SCI event determinations would be one-fifth of the ongoing burden to comply with proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data), or 12 hours (60 hours ÷ 5). Further, the Commission preliminarily estimates that the hourly breakdown between different staff of the SCI entity would be in the same ratio as the Commission's estimate for proposed Rule 1000(b)(1) (except for policies and procedures for standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data)—Compliance Manager at 6 hours and Attorney at 6 hours. These estimates reflect the Commission's preliminary view that SCI entities would internally review the process for determining whether an SCI event is an immediate notification SCI event or dissemination SCI event. *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[453] (12 burden hours) × (15 potential respondents) = 180 burden hours.

[454] 12 burden hours × 50% = 6 burden hours. These estimates reflect the Commission's preliminary view that SCI entities would internally review the process for determining whether an SCI event is an immediate notification SCI event or dissemination SCI event. *But see infra* Section IV.D.6, requesting comment on whether some SCI entities, particularly those that do not currently participate in the ARP Inspection Program, would seek to outsource this work and what the cost to outsource this work would be.

[455] (6 burden hours) × (29 potential respondents) = 174 burden hours.

[456] *See* 17 CFR 240.17a–1.

[457] Under the proposal, upon or immediately prior to ceasing to do business or ceasing to be registered under the Exchange Act, an SCI entity would be required to take all necessary action to ensure that the records required to be made, kept, and preserved by Rule 1000(c) would be accessible to the Commission and its representatives in the manner required and for the remainder of the period required by proposed Rule 1000(c). *See* proposed Rule 1000(c)(3).

For SCI entities other than SCI SROs, the Commission preliminarily estimates that the initial and ongoing burden to make, keep, and preserve records relating to compliance with proposed Regulation SCI would be approximately 25 hours annually per respondent [458] for a total annual burden of 450 hours for all respondents.[459] In addition, the Commission estimates that each SCI entity other than an SCI SRO would incur a one-time burden to set up or modify an existing recordkeeping system to comply with proposed Rule 1000(c). Specifically, the Commission estimates that, for each SCI entity other than an SCI SRO, setting up or modifying a recordkeeping system would create an initial burden of 170 hours and $900 in information technology costs for purchasing recordkeeping software,[460] for a total initial burden of 3,060 hours [461] and a total initial cost of $16,200.[462]

The Commission preliminarily believes that proposed Rule 1000(c)(3), which would require an SCI entity, upon or immediately prior to ceasing to do business or ceasing to be registered under the Exchange Act, to take all necessary action to ensure that the records required to be made, kept, and preserved by Rule 1000(c)(1) and Rule (c)(2) remain accessible to the Commission and its representatives in the manner and for the remainder of the period required by Rule 1000(c), would not result in any additional paperwork burden that is not already accounted for in the Commission's burden estimates for proposed Rule 1000(c)(1) and Rule 1000(c)(2).

6. Request for Comment on Extent and Cost of Outsourcing

209. The Commission's estimates of the hourly burdens discussed above reflect the Commission's preliminary view that SCI entities would conduct the work proposed to be required by proposed Rules 1000(a), 1000(b)(1), 1000(b)(2), 1000(b)(3), 1000(b)(4), 1000(b)(5), 1000(b)(6), 1000(b)(7), 1000(b)(8), and 1000(b)(9) internally. The Commission acknowledges, however, that some SCI entities, particularly smaller SCI entities, and/or SCI entities that do not currently participate in the ARP Inspection Program, may elect to outsource the work if it would be more cost effective to so do. The Commission does not at this time have sufficient information to reasonably estimate the cost to outsource the work proposed to be required by proposed Rules 1000(a), 1000(b)(1), 1000(b)(2), 1000(b)(3), 1000(b)(4), 1000(b)(5), 1000(b)(6), 1000(b)(7), 1000(b)(8), and 1000(b)(9), or the number of entities that would choose to outsource this work, for purposes of the PRA. The Commission seeks comment, however, on its preliminary view that SCI entities would conduct such work internally. Further, the Commission seeks comment on whether some SCI entities would in fact find it more cost effective to outsource the work that would be required to comply with the proposed rules, and if so, how many of these SCI entities would therefore outsource this work and at what cost.

For purposes of facilitating such comment, presented below are certain preliminary assumptions and calculations regarding such potential outsourcing on which the Commission requests comment. Specifically, for purposes of soliciting comment, the Commission is assuming that it would take the same number of hours for a consultant and/or outside attorney to complete the work to be required by proposed Rules 1000(a), 1000(b)(1), 1000(b)(2), 1000(b)(3), 1000(b)(4), 1000(b)(5), 1000(b)(6), 1000(b)(7), 1000(b)(8), and 1000(b)(9), as it would take for an SCI entity to complete that work internally (using the Commission's preliminary estimates above). Further, the Commission is assuming that work would be conducted at a rate of $400 per hour.[463]

Based on the forgoing assumptions, the estimated cost to outsource the work that the Commission preliminarily assumed would be done internally would be as follows:

For identification of immediate notification SCI events and dissemination SCI events: The initial cost would be (a) for an SCI entity that has not participated in the ARP Inspection Program, $16,800; [464] and (b) for an SCI entity that currently participates in the ARP Inspection Program, $8,400.[465] The ongoing annual cost would be (a) for an SCI entity that has not participated in the ARP Inspection Program, $4,800; [466] and (b) for an SCI entity that currently participates in the ARP Inspection Program, $2,400.[467]

For proposed Rule 1000(b)(1) except proposed Rule 1000(b)(1)(i)(F): The initial cost would be (a) for an SCI entity that has not participated in the ARP Inspection Program, $84,000; [468] and (b) for an SCI entity that currently participates in the ARP Inspection Program, $42,000.[469] The ongoing annual costs would be (a) for an SCI entity that has not participated in the ARP Inspection Program, $24,000; [470] and (b) for an SCI entity that currently participates in the ARP Inspection Program, $12,000.[471]

For proposed Rule 1000(b)(1)(i)(F): The initial cost for each SCI entity would be $52,000.[472] The ongoing

[458] This estimate is based on the Commission's experience with examinations of registered entities, the Commission's estimated burden for an SRO to comply with Rule 17a–1, and the Commission's estimated burden for a SB SEF to keep and preserve documents made or received in the conduct of its business. Specifically, the Commission estimated 50 burden hours per respondent per year in connection with Rule 17a–1 and proposed Rule 818(a) and (b) in the SB SEF Proposing Release. *See* 2010 Extension of Rule 17a–1 Supporting Statement, Office of Management and Budget, available at: *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201007-3235-003* and SB SEF Proposing Release, *supra* note 297, at 11029. Because the recordkeeping requirements under Rule 17a–1 and under proposed Rule 818(a) and (b) are broader than the recordkeeping requirement under proposed Rule 1000(c), the Commission preliminarily believes that an estimate of 25 burden hours per year per SCI entity is appropriate. Further, the Commission notes that this burden estimate includes the burden imposed by proposed Rule 1000(e). Specifically, proposed Rule 1000(e) would provide that, if the records required to be filed or kept by an SCI entity under proposed Regulation SCI are prepared or maintained by a service bureau or other recordkeeping service on behalf of the SCI entity, the SCI entity would be required to ensure that the records are available for review by the Commission and its representatives by submitting a written undertaking, in a form acceptable to the Commission, by such service bureau or other recordkeeping service, which is signed by a duly authorized person at such service bureau or other recordkeeping service.

[459] (Compliance Clerk at 25 hours) × (18 potential respondents) = 450 burden hours.

[460] This estimate is based on the Commission's experience with examinations of registered entities and the Commission's estimated burden for an SB SEF to keep and preserve documents made or received in the conduct of its business. Specifically, the Commission estimated that setting up or modifying a recordkeeping system under proposed Rule 818 would create an initial burden of 345 hours and $1,800 in information technology costs per respondent. *See* SB SEF Proposing Release, *supra* note 297, at 11030. Because the recordkeeping requirements under proposed Rule 818 are broader than the recordkeeping requirement under proposed Rule 1000(c), the Commission preliminarily believes that the estimates of 170 initial burden hours and $900 in initial cost are appropriate.

[461] (170 burden hours) × (18 potential respondents) = 3,060 burden hours.

[462] ($900) × (18 potential respondents) = $16,200.

[463] This is based on an estimated $400 per hour cost for outside consulting and/or legal services. This is the same estimate used for the Commission's consolidated audit trail rule. *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012).

[464] 42 hours × $400 = $16,800.

[465] 21 hours × $400 = $8,400.

[466] 12 hours × $400 = $4,800.

[467] 6 hours × $400 = $2,400.

[468] 210 hours × $400 = $84,000.

[469] 105 hours × $400 = $42,000.

[470] 60 hours × $400 = $24,000.

[471] 30 hours × $400 = $12,000.

[472] 130 hours × $400 = 52,000.

annual cost for each SCI entity would be $52,000.[473]

For proposed Rule 1000(b)(2): The initial cost for each SCI entity would be $72,000.[474] The ongoing annual cost would be (a) for an SCI entity that is an SCI SRO, $48,000;[475] and (b) for an SCI entity that is not an SCI SRO, $24,000.[476]

For proposed Rule 1000(b)(3): The initial cost for each SCI entity would be $16,800.[477] The ongoing annual cost for each SCI entity would be $4,800.[478]

For proposed Rule 1000(b)(4): The initial and the ongoing annual cost for each SCI entity would be (a) for proposed Rule 1000(b)(4)(i), $2,000;[479] (b) for proposed Rule 1000(b)(4)(ii), $520,000;[480] and (c) for proposed Rule 1000(b)(4)(iii), $6,000.[481]

For proposed Rule 1000(b)(5): The initial and the ongoing annual cost for each SCI entity would be (a) for proposed Rule 1000(b)(5)(i)(A), $16,800;[482] (b) for proposed Rule 1000(b)(5)(i)(B), $28,000;[483] (c) for proposed Rule 1000(b)(5)(i)(C), $5,600;[484] and (d) for proposed Rule 1000(b)(5)(ii), $1,200.[485]

For proposed Rule 1000(b)(6): The initial and ongoing annual cost would be (a) for SCI entities that do not currently participate in the ARP Inspection Program, $48,000;[486] and (b) for SCI entities that currently participate in the ARP Inspection Program, $24,000.[487]

For proposed Rule 1000(b)(7): The initial and ongoing annual cost would be $250,000 for each SCI entity.[488]

For proposed Rule 1000(b)(8): The initial and ongoing annual cost for each SCI entity would be (a) for proposed Rule 1000(b)(8)(i), $400;[489] and (b) for proposed Rule 1000(b)(8)(ii), $48,000 for each SCI entity.[490]

For proposed Rule 1000(b)(9)(i) and (ii): The initial annual cost would be $52,000 for each SCI entity.[491] The ongoing annual cost would be $38,000 for each SCI entity.[492]

For proposed Rule 1000(b)(9)(iii): The initial annual cost would be $14,000 for each SCI entity.[493] The ongoing annual cost would be $1,200 for each SCI entity.[494]

210. As discussed above, the Commission requests comment on these preliminary estimates regarding potential outsourcing and the underlying assumptions. For example, is it reasonable to assume that the number of hours for a consultant and/or outside attorney to complete the work would be the same as the number of hours for internal staff to complete the work? If not, why not? Are there certain types of SCI entities (*e.g.,* those having relatively few employees or a smaller number of systems) that would be more likely to find it cost effective to outsource the work, either initially or an ongoing basis? Please explain. Would the cost to outsource vary depending on the extent and volume of the outsourcing, or the period of time over which such outsourcing took place? Please explain.

7. Total Paperwork Burden Under Regulation SCI

Based on the foregoing, the Commission preliminarily estimates that the total one-time initial burden for all SCI entities to comply with Regulation SCI would be 133,482 hours[495] and the total one-time initial cost would be $2.6 million.[496] The Commission preliminarily estimates that the total annual ongoing burden for all SCI entities to comply with Regulation SCI would be 117,258 hours[497] and the total annual ongoing cost would be $738,400.[498]

211. The Commission seeks comment on the collection of information burdens associated with proposed Regulation SCI. Specifically:

212. Do commenters agree with the Commission's estimate of the number of respondents required to comply with proposed Regulation SCI? Why or why not?

213. Do commenters agree with the Commission's estimate of the burden for SCI entities to comply proposed Regulation SCI? Why or why not?

214. Would there be additional burdens, beyond those described here, associated with the collection of information under proposed Regulation SCI? Please explain.

215. How much additional burden would proposed Regulation SCI impose upon those SCI entities that already are voluntarily in compliance with existing ARP Policy Statements?

216. Would SCI entities generally perform the work required by proposed Regulation SCI internally or outsource the work?

E. Collection of Information Is Mandatory

All collections of information pursuant to the proposed rules would be a mandatory collection of information.

F. Confidentiality

To the extent that the Commission receives confidential information pursuant to the reports and submissions that SCI entities would submit under proposed Form SCI, such information would be kept confidential, subject to the provisions of applicable law.[499]

G. Retention Period of Recordkeeping Requirements

SCI entities would be required to retain records and information under proposed Regulation SCI for a period of not less than five years, the first two years in a place that is readily accessible to the Commission or its representatives.[500]

H. Request for Comments

217. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of

[473] 130 hours × $400 = 52,000.
[474] 180 hours × $400 = $72,000.
[475] 120 hours × $400 = $48,000.
[476] 60 hours × $400 = $24,000.
[477] 42 hours × $400 = $16,800.
[478] 12 hours × $400 = $4,800.
[479] 5 hours × $400 = $2,000.
[480] 1,300 hours × $400 = $520,000.
[481] 15 hours × $400 = $6,000.
[482] 42 hours × $400 = $16,800.
[483] 70 hours × $400 = $28,000.
[484] 14 hours × $400 = $5,600.
[485] 3 hours × $400 = $1,200.
[486] 120 hours × $400 = $48,000.
[487] 60 hours × $400 = $24,000.
[488] 625 hours × $400 = $250,000.
[489] 1 hour × $400 = $400.
[490] 120 hours × $400 = 48,000.
[491] 130 hours × $400 = $52,000.
[492] 95 hours × $400 = $38,000.
[493] 35 hours × $400 = $14,000.
[494] 3 hours × $400 = $1,200.
[495] 133,482 hours = 26,765 (policies and procedures/mandatory testing requirements) + 100,120 (notification, dissemination, and reporting) + 3,087 (requirements to take corrective actions, identify immediate notification SCI events, and identify dissemination SCI events) + 3,510 (recordkeeping).
[496] $2.6 million = $1.9 million (policies and procedures/mandatory testing requirements) + $660,000 (notification, dissemination, and reporting) + $16,200 (recordkeeping).
[497] 117,258 hours = 15,806 (policies and procedures/mandatory testing requirements) + 100,120 (notification, dissemination, and reporting) + 882 (requirements to take corrective actions, identify immediate notification SCI events, and identify dissemination SCI events) + 450 (recordkeeping).
[498] $738,400 = $78,400 (policies and procedures/mandatory testing requirements) + $660,000 (notification, dissemination, and reporting).
[499] *See, e.g.,* 5 U.S.C. 552. Exemption 4 of the Freedom of Information Act provides an exemption for ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.'' 5 U.S.C. 552(b)(8)).
[500] *See* proposed Rule 1000(c).

the functions of the agency, including whether the information shall have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503; and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090 with reference to File No. S7–01–13. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 calendar days of publication. The Commission will submit the proposed collection of information to OMB for approval. Requests for the materials to be submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–01–13, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street NE., Washington, DC 20549–0213.

I. Reduced Burdens From Proposed Repeal of Rule 301(b)(6) (OMB Control Number 3235–0509)

The instant proposal also would amend Regulation ATS under the Exchange Act, by removing paragraph (b)(6) of Rule 301 thereunder.[501] Removal of Rule 301(b)(6) would eliminate certain ''collection of information'' requirements within the meaning of the PRA that the Commission has submitted to OMB in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, and that OMB has approved. The approved collection of information is titled ''Rule 301: Requirements for Alternative Trading Systems,'' and has a valid OMB control number of 3235–0509.[502] Some of the information collection burdens imposed by Regulation ATS would be reduced by the proposed repeal of Rule 301(b)(6). Specifically, the paperwork burdens that would be eliminated by the repeal of Rule 301(b)(6) would be: (i) Burdens on ATSs associated with the requirement to make records relating to any steps taken to comply with systems capacity, integrity and security requirements under Rule 301 (estimated to be 20 hours and $2,212);[503] and (ii) burdens on ATSs associated with the requirement to provide notices to the Commission to report systems outages (estimated to be 2.5 hours and $276.50).[504]

The Commission will submit the proposed amended collection of information to reflect these reductions to OMB for approval. Requests for the materials to be submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–01–13, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street NE., Washington, DC 20549–0213.

V. Economic Analysis

A. Background

As discussed more fully above, the Commission believes that the convergence of several developments—the evolution of the markets to become significantly more dependent upon sophisticated automated systems (driven by regulatory developments and the continual evolution of technologies for generating, routing, and executing orders), the limitations of the existing ARP Inspection Program, and the lessons of recent events (as discussed in Section I.D above)—highlight the need to consider an updated and formalized regulatory framework for ensuring that the U.S. securities trading markets develop and maintain systems with adequate capacity, integrity, resiliency, availability, and security, and reinforce the requirement that SCI systems operate in compliance with the Exchange Act. The Commission is also cognizant of the comments made at the Roundtable and the comment letters submitted in connection with the Roundtable.[505] Proposed Regulation SCI would codify and enhance the Commission's ARP Inspection Program, as well as establish specific requirements to help ensure that the SCI systems of SCI entities operate in compliance with the federal securities laws and rules.

Specifically, proposed Regulation SCI would require each SCI entity to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, SCI security systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets, as well as written policies and procedures reasonably designed to ensure that its SCI systems operate in the manner intended, including in a manner in compliance with the federal securities laws and rules, and its own rules or governing documents, as applicable. Proposed Regulation SCI also would require SCI entities to provide certain notices and reports to the Commission on Form SCI regarding, among other things, SCI events and material systems changes. Further, proposed Regulation SCI would require SCI entities to disseminate information to members or participants relating to dissemination SCI events and to begin taking appropriate corrective action upon any responsible SCI personnel becoming aware of an SCI event. Additionally, proposed Regulation SCI would require each SCI entity to conduct an SCI review at least annually, and submit a report of such review to the Commission, together with any response by senior management. Further, proposed Regulation SCI would require an SCI entity, with respect to its business continuity and disaster

[501] *See* 17 CFR 242.301(b)(6). *See also* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (''ATS Release'').

[502] *See* Rule 301: Requirements for Alternative Trading Systems OMB Control No: 3235–0509 (Rule 301 supporting statement), available at: *http://www.reginfo.gov*. This approval has an expiration date of February 28, 2014.

[503] The Commission estimated that two alternative trading systems that register as broker-dealers and comply with Regulation ATS would trigger this requirement, and that the average compliance burden for each response would be 10 hours of in-house professional work at $316 per hour. Thus, the total compliance burden per year was estimated to be 20 hours (2 respondents × 10 hours = 20 hours). The total annualized cost burden was estimated to be $2,212 ($316 × 20 hours × 35% = $2,212). *See* Rule 301: Requirements for Alternative Trading Systems OMB Control No: 3235–0509 (Rule 301 supporting statement), available at: *http://www.reginfo.gov*.

[504] The Commission estimated that two alternative trading systems that register as broker-dealers and comply with Regulation ATS would meet the volume thresholds that trigger systems outage notice obligations approximately 5 times a year, and that the average compliance burden for each response would be .25 hours of in-house professional work at $316 per hour. Thus, the total compliance burden per year was estimated to be 2.5 hours (2 respondents × 5 responses each × .25 hours = 2.5 hours). The total annualized cost burden was estimated to be $276.50 ($316 × .25 hours per response × 10 responses × 35% = $276.50). *See id.*

[505] *See supra* Section I.D.

recovery plans, to require participation by designated members or participants in scheduled functional and performance testing of the operation of such plans and coordinate such testing with other SCI entities. Proposed Regulation SCI would also require SCI entities to make, keep, and preserve books and records related to compliance with Regulation SCI.

The Commission is sensitive to the economic effects of proposed Regulation SCI, including its costs and benefits.[506] As discussed further below, the Commission requests comment on all aspects of the costs and benefits of the proposal, including any effects the proposed rules may have on efficiency, competition, and capital formation.

B. Economic Baseline

As noted in Section I.A above, all registered national securities exchanges, all active registered clearing agencies, FINRA, two plan processors, one ATS, and one exempt clearing agency participate in the current ARP Inspection Program, which covers their automated systems.[507] Under the ARP policy statements and through the ARP Inspection Program, these entities, among other things, are expected to establish current and future capacity estimates, conduct capacity stress tests, conduct annual reviews of whether affected systems can perform adequately in light of estimated capacity levels, and identify possible threats to the systems.[508] The ARP policy statements and Commission staff letters address, among other things, independent reviews, the reporting of certain systems changes, intrusions, and outages, and the need to comply with relevant laws and rules.[509]

Trading volume in the securities markets has become increasingly dispersed across a broader range of market centers in recent years,[510] with ATSs accounting for a significant portion of volume.[511] However, no ATSs currently meet or exceed the volume thresholds that would trigger compliance with the system safeguard requirements of Rule 301(b)(6) of Regulation ATS.[512] Thus, while ATSs comprise a significant portion of consolidated volume, only one ATS currently participates in the ARP Inspection Program.[513] Dark pools alone comprised approximately 13 percent of consolidated volume last spring,[514] but also are not part of the ARP Inspection Program. Further, ATSs that trade fixed income securities, including municipal and corporate debt securities, and non-NMS stocks (also referred to as OTC equities) are not represented in the ARP Inspection Program and do not meet the current thresholds in Regulation ATS for the application of systems safeguard rules.

Proposed Regulation SCI would apply to SROs (including national securities exchanges,[515] national securities associations, registered clearing agencies, and the MSRB [516]), SCI ATSs,[517] plan processors,[518] and exempt clearing agencies subject to ARP.[519] As such, proposed Regulation SCI would specifically cover the trading of NMS stocks, OTC equities, listed options, and debt securities. The proposed rules also would impact multiple markets for services, including the markets for trading services, listing services, regulation and surveillance services, clearing and settlement services, and market data.

As indicated above, many of the entities in these service markets are currently covered by the ARP Inspection Program. Therefore, the Commission recognizes that any economic effects, including costs and benefits, should be compared to a baseline of current practices that recognizes current practices pursuant to the ARP Inspection Program and the limitations of the ARP Inspection Program discussed in Section I.C above.[520] In addition to the ARP Inspection Program, Commission staff has provided guidance to ARP entities on certain aspects of the ARP Inspection Program (*e.g.,* in the 2001 Staff ARP Interpretive Letter).[521] Further, Commission staff has provided guidance on issues outside the current scope of the ARP Inspection Program (*e.g.,* in the 2009 Staff Systems Compliance Letter), but that are proposed to be addressed by Regulation SCI.[522] Below, the Commission provides information on the current practices related to the types of market events addressed by proposed Regulation SCI, including, where available, information the Commission may have on the frequency of such events. In addition, the Commission describes why each relevant service market may not be structured in a way as to create a competitive incentive to prevent the occurrence of these market events.[523]

1. SCI Events

a. Systems Disruptions

Currently, market participants employ a variety of measures to avoid systems disruptions for a variety of reasons, including to maintain competitive advantages, to provide optimal service to members with access to the trading and/or other services provided by the entity, to comply with legal obligations and, where applicable, to participate in the ARP Inspection Program. The range of such measures are possibly highly variable among SCI entities and within the systems employed by SCI entities. For example, matching engines are likely accorded high priority given the importance of low latency in trading. Industry standards are not codified for such entities and systems, except such as in an entity's rulebook or subscriber agreement. Typically, however, market participants follow industry standards and take measures that include weekend

[506] *See also supra* Section III.F (requesting comment on applying proposed Regulation SCI to SB SDRs and/or SB SEFs and discussing the potential costs and benefits of applying proposed Regulation SCI to SB SDRs and/or SB SEFs).

[507] As noted above, the Commission, in the ARP I Release, defined the term ''automated systems'' to refer ''collectively to computer systems for listed and OTC equities, as well as options, that electronically route orders to applicable market makers and systems that electronically route and execute orders, including the data networks that feed the systems * * * [and encompasses] systems that disseminate transaction and quotation information and conduct trade comparisons prior to settlement, including the associated communication networks.'' *See supra* note 12.

[508] A more complete description of the history of the ARP Inspection Program is discussed in *supra* Section I.A.

[509] The ARP policy statements and Commission staff letters are discussed in *supra* Section I.A.

[510] *See supra* notes 44, 47, and 51.

[511] *See supra* note 50 and accompanying text.

[512] *See supra* Section III.B.1.

[513] *See supra* note 25 and accompanying text.

[514] *See* Nina Mehta, *Dark Pools Capture Record U.S. Volume Share,* Bloomberg (March 1, 2012), available at: *http://rblt.com/news_details.aspx?id=187.*

[515] Proposed Regulation SCI would not apply to an exchange that lists or trades security futures products that is notice-registered with the Commission as a national securities exchange pursuant to Section 6(g) of the Exchange Act, including security futures exchanges. *See supra* note 97 and accompanying text.

[516] In 2011, the total par amount of municipal securities traded was approximately $3.3 trillion in approximately 10.4 million trades. *See* MSRB 2011 Fact Book at 8–9, available at: *http://www.msrb.org/msrb1/pdfs/MSRB2011FactBook.pdf.*

[517] *See supra* Section III.B.1 for the discussion of SCI ATSs.

[518] In addition, the Commission is soliciting comment on whether, and if so how, proposed Regulation SCI should apply to SB SDRs and/or SB SEFs. *See supra* Section III.F.

[519] *See supra* Section III.B.1 for the discussion of exempt clearing agencies subject to ARP.

[520] *See also supra* Section I.A for the discussion of the current scope of the ARP Inspection Program. The Commission acknowledges that, to the extent current practices of SCI entities have been informed by the ARP policy statements, such practices have not been subject to a cost-benefit analysis and that the discussion herein considers only the incremental costs and benefits (*i.e.,* compared to current practices).

[521] *See* 2001 Staff ARP Interpretive Letter, *supra* note 35.

[522] *See* 2009 Staff Systems Compliance Letter, *supra* note 36.

[523] The Commission compares current practices to each of the proposed rules in *infra* Section V.B.3.

system testing and internal performance monitoring.

When system disruptions do occur, market participants take corrective action in the interest of remaining competitive, to provide optimal service, and to comply with legal obligations. To place the effectiveness of the current ARP Inspection Program in perspective, there were approximately 175 ARP incidents reported to the Commission in 2011. These incidents had durations ranging from under one minute to 24 hours, with most incidents having a duration of less than 2 hours. As noted above, the Commission believes that clearing systems and matching engines generally are given greater priority than other systems at SCI entities with regard to corrective action. In addition, the Commission believes that SCI entities that currently participate in the ARP Inspection Program strive to adhere to the next business day resumption standard for trading and two-hour resumption standard for clearance and settlement services, standards which the proposed rule would codify for all SCI entities.

As discussed in Section I.A, participation in the ARP Inspection Program entails, among other things, conducting annual assessments of affected systems, providing notifications of significant system changes to the Commission, and reporting significant system outages to the Commission. Further, Commission staff has provided guidance to the SROs and other participants in the ARP Inspection Program on what should be considered a ''significant system change'' and a ''significant system outage'' for purposes of reporting systems changes and problems to Commission staff.[524] As such, the Commission believes that entities that currently participate in the ARP Inspection Program have certain processes for determining whether a systems change or outage is ''significant.'' Specifically, the 2001 Staff ARP Interpretive Letter sets forth the types of outages and changes that should be reported to the Commission and the timing of reporting. Also, as discussed below, the ARP policy statements are focused on automated systems. Specifically, entities that participate in the ARP Inspection Program follow the ARP policy statements with respect to systems that directly support trading, clearance and settlement, order routing, and market data. While generally only trading, clearance and settlement, order routing, and market data systems follow the guidelines in the ARP policy statements, ARP staff inspects all the categories of systems that are included in the proposed definition of ''SCI systems.'' [525] However, ARP staff generally inspects systems that are not directly related to trading, clearance and settlement, order routing, or market data only if they detect red flags.

As discussed above, the ARP Inspection Program has garnered participation by all active registered clearing agencies, all registered national securities exchanges, FINRA, plan processors, one ATS, and one exempt clearing agency.[526] Specifically, the Commission estimates that there are currently 29 SCI entities that are participants in the ARP Inspection Program.[527] As noted, there were approximately 175 ARP incidents reported to the Commission in 2011. Although some entities provide the public with notices of outages,[528] others may choose otherwise and are not required to do so.

Further, as discussed above, pursuant to Rule 301(b)(6) of Regulation ATS, certain aspects of the ARP policy statements apply to ATSs that meet the thresholds set forth in that rule.[529] Currently, no ATSs meet such thresholds and, as such, none are required by Commission rule to implement systems safeguard measures. The Commission recognizes that it is in the interest of every market participant that does not participate in the ARP Inspection Program to try to avoid systems disruptions. Specifically, the Commission understands that generally, ATSs, like entities that currently participate in the ARP Inspection Program, employ a variety of measures to avoid systems disruptions, including systems testing, performance monitoring, and the use of fail-over back-up systems. In fact, one ATS currently voluntarily participates in the ARP Inspection Program.[530] However, inasmuch as the ARP Inspection Program and the testing done and other measures taken by those entities that participate in the program have been beneficial to the industry, the systems of SCI entities could still be improved. For example, contingency planning in preparation of catastrophic events has not been fully adequate, as evidenced in the wake of Superstorm Sandy, when an extended shutdown of the equities and options markets resulted from, among other things, the exchanges' belief regarding the inability of some market participants to adequately operate from the backup facilities of all market centers.[531] Although testing protocols were in place and the chance to participate in such testing was available, not all members or participants participated in such testing.[532] Proposed Regulation SCI would require that designated members or participants of an SCI entity participate in scheduled functional and performance testing of the operation of the SCI entity's business continuity and disaster recovery plans, including its backup systems, and further require that SCI entities coordinate the testing of such plans on an industry- or sector-wide basis with other SCI entities. The Commission preliminarily believes that these proposed requirements would mitigate the chances of similar disruptions in the future.[533]

b. Systems Compliance Issues

Currently, systems compliance issues (as proposed to be defined in Rule 1000(a)) are not covered by the ARP Inspection Program. However, national securities exchanges are subject to Section 6(b) of the Exchange Act, which requires an exchange to be organized and to have the capacity to carry out the purposes of the Exchange Act and to comply with the provisions of the Exchange Act, the rules and regulations thereunder, and its own rules.[534] FINRA is subject to Section 15A(b) of the Exchange Act, which requires a national securities association to be organized and have the capacity to carry out the purposes of the Exchange Act and to comply with the provisions of the

[524] *See supra* note 35.

[525] *See supra* Section III.B.2.

[526] *See supra* Section I.A.

[527] *See supra* note 368.

[528] *See e.g.,* NYSE Market Status, available at: *http://usequities.nyx.com/nyse/market-status;* NYSE Amex Options Outage Update, available at: *http://www.nyse.com/pdfs/Trader_Update_Amex_Outage_0928.pdf;* and NYSE Arca, Recap: Exchange Outage on Monday Morning March 7, 2011, available at: *http://www.nyse.com/pdfs/2011037ExchangeOutageNotice.pdf.*

[529] Specifically, Rule 301(b)(6) of Regulation ATS applies to ATSs that, during at least four of the preceding six months, had: (A) With respect to any NMS stock, 20 percent or more of the average daily volume reported by an effective transaction reporting plan; (B) with respect to equity securities that are not NMS stocks and for which transactions are reported to a self-regulatory organization, 20 percent or more of the average daily volume as calculated by the self-regulatory organization to which such transactions are reported; (C) with respect to municipal securities, 20 percent or more of the average daily volume traded in the United States; or (D) with respect to corporate debt securities, 20 percent or more of the average daily volume traded in the United States. *See* 17 CFR 242.301(b)(6)(i).

[530] *See supra* note 91.

[531] *See supra* Section I.D; *see also supra* Section III.C.7.

[532] *See supra* Section I.D. In addition, the Commission understands that the scope of testing was limited.

[533] *See* proposed Rule 1000(b)(9); *see also supra* Section III.C.7.

[534] *See* 15 U.S.C. 78f(b).

Exchange Act, the rules and regulations thereunder, the MSRB rules, and its own rules.[535] Further, an ATS could face Commission sanctions if it fails to comply with relevant federal securities laws and rules and regulations thereunder. Events such as those described above have recently drawn attention to systems compliance issues.[536] In part due to the fact that systems compliance issues are not part of the ARP Inspection Program, the Commission does not receive comprehensive data regarding such issues and, thus, their incidence cannot be concretely quantified. However, based on Commission staff's experience with SROs and the rule filing process, the Commission estimates that there are likely approximately seven systems compliance issues per SCI entity per year.

c. Systems Intrusions

In ARP I, the Commission stated its view that SROs should promptly notify Commission staff of any instances in which unauthorized persons gained or attempted to gain access to SRO systems.[537] Market participants employ a wide variety of measures to prevent and respond to systems intrusions. Generally, market participants use measures such as firewalls to prevent systems intrusions, and use detection software to identify systems intrusions. Once an intrusion has been identified, the affected systems typically would be isolated and quarantined, and forensics would be performed. Several SCI entities have been the subject of security issues in recent years.[538] The Commission believes that, currently, these events are rarely revealed to the public or to the members or participants of SCI entities.

2. Potential for Market Solutions

This section discusses potential market solutions and their shortcomings. Various SCI and non-SCI entities offer and compete to provide services in markets for trading services, listing services, regulatory services, clearance and settlement services, and market data. The markets for each of these services are regulated and competitive, which may make it difficult to determine if markets are functioning well due to competitive pressure or regulation, and how much can be attributed to each. However, there are limitations to such competition and following is a discussion of some limitations that are common to all of these markets. Notwithstanding what may be the limitations to competition in each of these markets, the Commission is also mindful, in evaluating whether, and if so, how, to regulate in this space, of the need to craft rules that appropriately take into account the tradeoffs between the resulting costs and benefits, and the effects on efficiency, competition, and capital formation, that would accompany such regulation.

Market participants may be unaware when SCI events disrupt transactions due to, for example, a lack of timely and consistently disseminated information about SCI events. First, providers of services that experience SCI events may lack the incentive to disclose such events. Second, other providers of services may choose to not publicly comment on the identity of providers who experienced SCI events.[539] For example, providers of trading services may choose not to point to other providers because the next SCI event may occur on their own systems. In addition, a person or entity pointing at other providers may be exposed to litigation risks.

While some SCI events may not directly impact markets, they are still an indication of the risk of SCI events at a given SCI entity. It is likely that market participants assume that services operate as promised until an SCI event occurs. Reputation and good experiences with a trading venue may cause market participants to trust its effectiveness. In the absence of problems, however, a system may be assumed to be fully functional. Once a problem occurs, market participants will update their prior assumptions and should correctly infer that the system is not as robust as previously believed.

Moreover, in the case of SCI events that disrupt the entire market or large portions of it (*e.g.,* the data outages during the flash crash on May 6, 2010), all providers of trading services may be affected at the same time and, as a result, market participants may find it challenging to identify service providers with lower risks of such SCI events. In light of the foregoing, members and participants of SCI entities would be important recipients of information disseminated about SCI events because they are the parties who would most naturally need, want, and be able to act on the information and, where applicable, share such disseminated information to other interested market participants, as discussed further below.

a. Market for Trading Services

Trading services are offered by entities that would meet the definition of SCI entity, including equities exchanges, options exchanges, and SCI ATSs, as well as by entities that would not be included in the proposed definition of SCI entity, such as ATSs that are not SCI ATSs, OTC market makers, and broker-dealers. As discussed above in Section I.B, there are currently 13 national securities exchanges that trade equity securities, with none having an overall market share of greater than 20 percent.[540] There are currently 11 national securities exchanges that trade options.[541] Of these exchanges, CBOE, ISE, and Nasdaq OMX Phlx have the most significant market share.[542] ATSs—both ECNs and dark pools—as well as OTC market makers and broker-dealers also execute substantial volumes of stocks and bonds.[543]

With respect to the competitive nature of the market for trading services, as well as the limitations to the competitive effects, all providers of trading services compete and have incentives to avoid systems disruptions, systems compliance issues, and systems intrusions because, for example, brokers and other entities will be inclined to route orders away from trading venues

[535] *See* 15 U.S.C. 78*o*–3(b).

[536] *See, e.g., supra* notes 62–63 and accompanying text.

[537] *See* ARP I, *supra* note 1. *See also* text accompanying *supra* note 17.

[538] For example, as discussed above, in February 2011, NASDAQ OMX Group, Inc. announced that hackers had penetrated certain of its computer networks. *See supra* note 61 and accompanying text.

[539] The Commission notes, however, that certain providers of trading services do provide public disclosure of systems issues at another provider. For example, when one trading venue perceives that a second venue is non-responsive when orders are routed to that second venue, the first venue will declare self-help under Rule 611 of Regulation NMS, which permits the first venue to cease to route orders to the second venue in certain instances. Certain trading venues would provide public notification of self-help. *See, e.g.,* NASDAQ Market System Status, available at: *http://www.nasdaqtrader.com/Trader.aspx?id=MarketSystemStatus.*

[540] *See supra* note 47 and accompanying text. These national securities exchanges are: BATS; BATS–Y; CBOE; CHX; EDGA; EDGX; Nasdaq OMX BX; Nasdaq OMX Phlx; Nasdaq; NSX; NYSE; NYSE MKT; and NYSE Arca.

[541] These national securities exchanges are: BATS Exchange Options Market; BOX; C2; CBOE; ISE; MIAX; NASDAQ Options Market; Nasdaq OMX BX Options; Nasdaq OMX Phlx; NYSE Amex Options; and NYSE Arca.

[542] Specifically, during 2012, CBOE had 26.46% of the market share, Nasdaq OMX Phlx had 19.77%, and ISE had 15.78%. Calculated using data regarding number of contracts traded from Options Clearing Corporation, available at: *http://www.theocc.com/market-data/volume/.*

[543] As discussed above in Section III.B.1, the Commission estimates that the proposed definition of "SCI entity" would capture approximately 15 SCI ATSs (10 SCI ATSs in NMS stocks, two SCI ATSs in non-NMS stocks, and three SCI ATSs in municipal securities and corporate debt securities).

that have frequent systems problems. Indeed, trading service providers expend resources to provide quality services and attempt to mitigate systems disruptions, systems compliance issues, and systems intrusions; however, it is not clear how to distinguish between efforts attributable to competitive pressures, rather than existing legal requirements and regulatory programs such as the ARP Inspection Program.[544]

The Commission recognizes that there may be limits with respect to the extent to which competition ameliorates systems problems associated with trading services. However, the Commission remains mindful of the need to craft rules that appropriately take into account the tradeoffs between the costs and benefits, and the effects on efficiency, competition, and capital formation, associated with any such rules. The Commission preliminarily believes that it is important for SCI entity members or participants to know about risks for SCI events at a given service provider. As discussed above, if information about SCI events is not disseminated to members or participants of SCI entities or are not attributable to specific SCI entities, market participants may misjudge the quality of trading services or otherwise make decisions without fully accounting for such risks. Furthermore, as evidenced by the extended shutdown of the equities and options markets that resulted from, among other things, the exchanges' belief regarding the inability of some market participants to adequately operate from the backup facilities of all market centers, contingency planning has not been adequate to help prevent market-wide outages.[545] For example, as noted above, the NYSE offered its members the opportunity to participate in testing of its backup systems, but not all members chose to participate in such testing, and the Commission understands that the scope of the test was limited.[546]

In addition, even though there are multiple trading venues, suppliers of trading services may have limited ability to transact in particular securities (*e.g.,* certain index options may only trade on one options exchange). As a result, competition in the market for trading services may not sufficiently mitigate the occurrence of SCI events, and there may be insufficient disclosure of information regarding the quality of trading services offered by SCI entities.

b. Market for Listing Services

Certain SCI entities are in the market for listing services. In this market, exchanges compete to list issuers to collect listing fees and to provide ancillary services to listed companies. The NYSE and Nasdaq are the largest U.S. exchanges in terms of the number of equity securities listed, with the NYSE and Nasdaq serving as the listing market for 3,262 and 2,691 securities, respectively, as of February 4, 2013.[547] U.S. exchanges face competition from other U.S. exchanges and from non-U.S. exchanges.

Competition for listings may be limited by many factors. With respect to the limitations of competitive forces in the market for listing services, first, while a company can be listed on a certain exchange, trading does not necessarily occur on that exchange. In fact, the majority of trading occurs away from the listing exchange in today's U.S. equities markets.[548] Second, there are switching costs associated with moving a listing from one exchange to another, which may cause issuers to remain at their current exchange, even in response to the occurrence of some SCI events. Third, certain exchanges also may be considered more ''prestigious'' than others and, to this extent, they may wield market power over other exchanges when competing for issuers. As a result, these exchanges may not be properly incentivized to provide the level of service they otherwise might if they were subject to greater competition. Members and participants of SCI entities that serve as underwriters to issuers would be important recipients of information disseminated by SCI entities about dissemination SCI events, particularly if they share such information with issuers making listing decisions.

c. Market for Regulation and Surveillance Services

Regulation and surveillance are required by statutes and rules and, therefore, all regulated market participants (*e.g.,* exchanges or ATSs) have a demand for regulation and surveillance services. Suppliers in this market may be in-house or third parties, and potentially include all of the exchanges and FINRA. Because of regulatory services agreements (''RSAs'') between FINRA and several national securities exchanges, as of February 2011, FINRA's Market Regulation Department was responsible for surveillance of 80 percent of the trading volume in U.S. equity markets and 35 percent of the volume in U.S. options markets.[549] Also, in 2011, BATS and BATS–Y entered into RSAs with CBOE as the supplier.[550] On the other hand, some exchanges have not entered into RSAs.

There are other regulatory services arrangements in addition to RSAs. For example, in 2008, the Commission declared effective a plan for allocating regulatory responsibilities pursuant to Rule 17d–2,[551] which among other things, allocated regulatory responsibility for the surveillance, investigation, and enforcement of Common Rules [552] over Common NYSE Members,[553] with respect to NYSE–listed stocks and NYSE Arca–listed stocks, to NYSE and over Common FINRA Members,[554] with respect to NASDAQ–listed stocks, Amex–listed stocks, and any CHX solely–listed stock, to FINRA.[555]

[544] *See also supra* Section V.B.1, noting the various reasons why SCI entities currently take action to address systems problems.

[545] *See supra* Section I.D.

[546] *See supra* Section I.D. *See also supra* notes 83 and 532 and accompanying text.

[547] *See* NASDAQ Company List, available at: *http://www.nasdaq.com/screening/company-list.aspx,* for the list of companies listed on NYSE and NASDAQ.

[548] *See* BATS Market Volume Summary, available at: *http://www.batstrading.com/market_summary/* (displaying the dispersion of trading in equity securities, which indicates that trading occurs away from listing exchanges).

[549] *See* FINRA 2011 Annual Regulatory and Examination Priorities Letter (February 8, 2011), available at: *http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p122863.pdf.*

[550] *See* BATS Global Markets, Inc., Amendment No. 5 to Form S–1, dated March 21, 2012 (Registration No. 333–174166).

[551] *See* Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008). *See also* 17 CFR 240.17d–2 (permitting SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members).

[552] Such rules include federal securities laws and rules promulgated by the Commission pertaining to insider trading, and the rules of the plan participants that are related to insider trading as provided on Exhibit A to a Rule 17d–2 Plan. *See* Agreement for the Allocation of Regulatory Responsibility of Surveillance, Investigation and Enforcement for Insider Trading pursuant to § 17(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78q(d), and Rule 17d–2 thereunder.

[553] Common NYSE Members include those who are members of the NYSE and of at least one of the plan participants. *See id.*

[554] Common FINRA Members include those who are members of FINRA and of at least one of the plan participants. *See id.*

[555] Participants in this plan are: BATS, BATS–Y, CBOE, CHX, EDGA, EDGX, FINRA, Nasdaq OMX BX, Nasdaq OMX Phlx, Nasdaq, NSX, NYSE, NYSE Amex, and NYSE Arca. *See id.* In January 2011, this Rule 17d–2 plan was amended as a result of an agreement under which FINRA assumed the responsibility for performing the market surveillance and enforcement functions previously conducted by NYSE Regulation for its U.S. equities and options markets. Under the plan, FINRA charges participants a fee for the performance of regulatory responsibilities. *See* Securities Exchange Act Release No. 63750 (January 21, 2011), 76 FR 4948 (January 27, 2011). There are other types of Rule 17d–2 plans, including multilateral and bilateral plans. While other SROs perform some regulatory functions under the options-related

With respect to limitations of competition that are specific to the market for regulatory and surveillance services, if investors, issuers, or other market participants become aware of SCI events by virtue of the members or participants of SCI entities sharing information they have received about dissemination SCI events, and such information suggests that an SRO has low-quality regulation and surveillance, they may avoid such venues since they may feel that their interests are not being adequately protected. In the case of an RSA, there is competition among providers of such services because the user of the service can enter into a contract with a different provider. An SRO that purchases regulatory and surveillance services pursuant to an RSA retains the ultimate responsibility and liability for its self-regulatory obligations, and has an interest in seeking a service provider that would provide a high level of regulatory and surveillance services.[556] Since the purchaser of these services could face Commission sanctions and experience damages to their reputation for violations resulting from inadequate regulation and surveillance, providers of these services may have the incentive to ensure that they provide a high level of service.

A factor that limits competition in this market is that it is highly concentrated. As noted above, FINRA accounts for the surveillance of 80 percent of trading volume in U.S. equity markets and, although any SRO could potentially be a provider of such services, not all choose to do so, and thus there may not be many alternatives for RSAs. With respect to the market for Rule 17d–2 plans, the Commission recognizes that the level of competition may be limited, as Rule 17d–2 was intended to address regulatory duplication for broker-dealers that are members of more than one SRO, and one of which is usually FINRA.

d. Market for Clearance and Settlement Services

Certain SCI entities are in the market for clearance and settlement services. There are seven registered clearing agencies with active operations—DTC, FICC, NSCC, OCC, ICE Clear Credit, ICE Clear Europe, and CME[557]—as well as one exempt clearing agency.[558] An SCI event in this market could have very disruptive and widespread effects on the financial markets. Because each clearing agency has a critical role in the operation of a particular product market, clearing agencies may already have heightened incentives to ensure that their systems have adequate levels of capacity, integrity, resiliency, availability, and security.[559] At the same time, one of the major impediments to competition in this market is that it is highly concentrated in particular classes of securities (*e.g.,* equities or options). This may limit incentives for clearing agencies to have levels of capacity, integrity, resiliency, availability, and security that are appropriate for their role in the securities market. Thus, for the market for clearance and settlement services, it is especially important for the Commission and clearing agency participants to have current and accurate information about SCI events to help ensure that the clearing agencies are properly incentivized to provide high-quality service.

e. Market for Market Data

Finally, certain SCI entities provide market data. There are two different types of market data, namely consolidated data and proprietary data. As discussed above, when Congress mandated a national market system in 1975, it emphasized that the systems for collecting and distributing consolidated market data would ''form the heart of the national market system.'' [560] Moreover, the Commission has identified certain benefits of consolidated market data, including providing the public with access to a comprehensive, accurate, and reliable source of information for NMS stocks.[561] One of the Commission's primary concerns is that the market for consolidated data functions properly.

Market data is a critical part of the investment and trading process.[562] The data is needed for pre- and post-trade transparency and allows market participants to make well-informed investment and trading decisions.[563] Indeed, based on Commission staff experience, the Commission understands that many trading algorithms make trading decisions based primarily on market data and rely on that data being current and accurate. An SCI event in connection with market data could significantly disrupt markets.[564]

The process of collecting and disseminating consolidated quotation and transaction data is governed by the SCI plans. For securities listed on Nasdaq, data distribution is governed by the Nasdaq UTP Plan. For securities listed on NYSE, NYSE Amex, and several other exchanges, data distribution is governed by the CTA Plan and the CQS Plan. For options, data distribution is governed by the OPRA Plan. These SCI plans also oversee the collection of fees for access to the consolidated data network, and the allocation of the resulting revenue across the exchanges. Currently, there are two entities designated as plan processors by SCI plans—SIAC and Nasdaq.[565] Due to the extreme concentration in the market segment for consolidated data, there is virtually no competition between SCI plan processors which could lead to little incentive in ensuring a high-quality product with minimal disruptions.

3. Proposed Regulation SCI and Its Impact on Current Practices

Proposed Regulation SCI would be a codification and enhancement of the current ARP Inspection Program. As discussed further below with respect to each of the proposed rules, proposed Regulation SCI would: (A) Be mandatory and codify many aspects of the ARP policy statements; (B) expand the scope of the ARP policy statements to other types of systems and event types; and (C) expand the scope of the ARP Inspection Program to other types of entities.

market surveillance and Regulation NMS multiparty 17d–2 plans, FINRA provides the bulk of services under all other 17d–2 plans.

[556] In contrast to an RSA, under Rule 17d–2(d) under the Exchange Act, ''[u]pon the effectiveness of such a plan or part thereof, any self-regulatory organization which is a party to the plan shall be relieved of responsibility as to any person for whom such responsibility is allocated under the plan to another self-regulatory organization to the extent of such allocation.'' 17 CFR 240.17d–2(d).

[557] As noted above, active registered clearing agencies are part of the current ARP Inspection Program. *See supra* note 95 and accompanying text.

[558] As noted above, Omgeo is part of the current ARP Inspection Program. *See supra* notes 133–135 and accompanying text.

[559] *See generally* 2003 Interagency White Paper, *supra* note 31.

[560] *See* Concept Release on Equity Market Structure, *supra* note 42, at 3600 (quoting H.R. Rep. No. 94–229, 94th Cong., 1st Sess. 93 (1975)).

[561] *See supra* note 187 and accompanying text.

[562] *See supra* notes 187–189 and accompanying text.

[563] *See id.*

[564] For example, on January 3, 2013, Nasdaq reported that its securities information processor (which is the plan processor of the CQS Plan, an SCI plan) experienced ''an issue with stale data,'' which lasted approximately 10 to 15 minutes. *See http://www.nasdaq.com/article/update-traders-report-technical-issue-involving-nasdaq-listed-securities-20130103-01046#.URutFaVEHmd. See also http://www.reuters.com/article/2013/01/03/exchanges-data-outage-idUSL1E9C3DQL20130103.* As a result, last sale and quotation data was not available for Nasdaq-listed (''Tape C'') securities during that time. *See id.* Although proprietary data feeds were available, only subscribers receiving such feeds could continue trading with current market data during the outage. Market centers EDGA and EDGX temporarily suspended trading in all Tape C securities in response to the outage. *See id.*

[565] *See supra* note 131.

With respect to different types of systems, as discussed in more detail above, the ARP policy statements are focused on automated systems.[566] Specifically, entities that participate in the ARP Inspection Program follow the ARP policy statements with respect to systems that directly support trading, clearance and settlement, order routing, and market data.[567] Proposed Regulation SCI, on the other hand, would apply to more types of systems than the ARP policy statements. As discussed above, in addition to the systems covered by the ARP Inspection Program, the proposed definition of ''SCI systems'' would also include systems that directly support regulation and surveillance that are not currently part of the ARP Inspection Program. Further, the provisions of proposed Regulation SCI relating to security standards and systems intrusions would also apply to ''SCI security systems,'' which would be defined to mean any systems that share network resources with SCI systems that, if breached, would be reasonably likely to pose a security threat to SCI systems.

Additionally, while the ARP Inspection Program and proposed Regulation SCI both cover certain types of systems disruptions [568] and systems intrusions,[569] proposed Regulation SCI also would cover systems compliance issues. Finally, the ARP Inspection Program includes 29 participants that are SCI entities, consisting of 17 registered national securities exchanges, seven registered clearing agencies, FINRA, two plan processors, one ATS, and one exempt clearing agency. Because no ATSs currently satisfy the thresholds in Rule 306(b)(6)(i) of Regulation ATS, no ATSs currently are subject to the systems safeguard requirements of Regulation ATS [570] although, as noted above, one ATS voluntarily participates in the ARP Inspection Program. Proposed Regulation SCI would include all of the entities currently under the ARP Inspection Program. With respect to ATSs, proposed Regulation SCI would include an estimated 10 SCI ATSs in NMS stocks, an estimated two SCI ATSs in non-NMS stocks, an estimated three SCI ATSs in municipal securities and corporate debt securities, and one SRO (*i.e.,* the MSRB).

Proposed Rules 1000(b)(4) and (b)(5) would require, respectively, that all SCI events be reported to the Commission, and that information relating to dissemination SCI events be disseminated to members or participants of an SCI entity. Proposed Rule 1000(a) would define a dissemination SCI event to mean an SCI event that is a: (1) Systems compliance issue; (2) systems intrusion; or (3) systems disruption that results, or the SCI entity reasonably estimates would result, in significant harm or loss to market participants. Under the ARP Inspection Program, only ''significant'' outages should be reported to the Commission, and there are no quantitative standards to define ''significant'' outage. Similarly, proposed Regulation SCI would not specify a quantitative standard for immediate notification SCI events or dissemination SCI events. Instead, immediate notification SCI events would include any systems disruption that the SCI entity reasonably estimates would have a material impact on its operations or on market participants, any systems compliance issue, and any systems intrusion. With respect to dissemination SCI events, certain information about all systems compliance issues and systems intrusions would be required to be disseminated to members or participants, although information about systems intrusions in some cases could be delayed. Systems disruptions would also be dissemination SCI events, however, only if they result, or the SCI entity reasonably estimates would result, in significant harm or loss to market participants.

Proposed Rule 1000(b)(1) (Capacity, Integrity, Resiliency, Availability, and Security) addresses the capacity, integrity, resiliency, availability, and security of the systems of SCI entities. Rule 1000(b)(1) would require an SCI entity to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, SCI security systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets.

Proposed Rule 1000(b)(1)(i) would further require that an SCI entity's policies and procedures include the establishment of reasonable current and future capacity planning estimates, periodic capacity stress tests, a program to review and keep current systems development and testing methodology, regular reviews and testing of such systems, including backup systems, business continuity and disaster recovery plans, and standards that result in systems that facilitate the successful collection, processing, and dissemination of market data. The items in proposed Rule 1000(b)(1)(i)(A)–(E) are the same as those in the ARP Inspection Program and Rule 301(b)(6) of Regulation ATS.[571]

Proposed Rule 1000(b)(1)(ii) would further provide that an SCI entity's policies and procedures would be deemed to be reasonably designed if they are consistent with current SCI industry standards.[572] The Commission preliminarily believes that SCI entities would be familiar with such standards because they would be required to be widely available for free to information technology professionals in the financial sector, and must be issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or agencies, or widely recognized organization.[573] As noted above, compliance with the identified SCI industry standards would not be the exclusive means to comply with the

[566] *See supra* Section I.A for more discussion of the ARP policy statements and the ARP Inspection Program. According to ARP I, the term ''automated systems'' or ''automated trading systems'' means computer systems for listed and OTC equities, as well as options, that electronically route orders to applicable market makers and systems that electronically route and execute orders, including the data networks that feed the systems. The term ''automated systems'' also encompasses systems that disseminate transaction and quotation information and conduct trade comparisons prior to settlement, including the associated communication networks. Moreover, ARP I states that because lack of adequate communications capacity can be as damaging to the overall performance of an exchange during peak periods as poorly designed order processing, capacity tests of the data networks that feed the computer systems also should be conducted. *See* ARP I, *supra* note 1, at n.21.

[567] While generally only trading, clearance and settlement, order routing, and market data systems follow the guidelines in the ARP policy statements, ARP staff inspects all the categories of systems that are included in the proposed definition of ''SCI systems.'' However, ARP staff generally inspects systems that do not directly support trading, clearance and settlement, order routing, or market data only if staff detects red flags.

[568] *See* 2001 Staff ARP Interpretive Letter, *supra* note 35. *See also supra* Section III.B.3.a for a discussion of the differences between the definition of ''significant system outage'' as used currently in the ARP Inspection Program and the proposed definition of ''systems disruption.''

[569] *See* ARP I, *supra* note 1, at 48707 (referring to instances where unauthorized persons gained or attempted to gain access to systems). Proposed Rule 1000(a) would define ''systems intrusion'' to mean any unauthorized entry into the SCI systems or SCI security systems of the SCI entity.

[570] *See* 17 CFR 242.301(b)(6).

[571] *See supra* Section III.C.1 for a detailed discussion of proposed Rule 1000(b)(1), including comparisons to the provisions of the ARP Inspection Program.

[572] *See* proposed Rule 1000(b)(1)(ii).

[573] *See infra* text commencing at note 630, discussing examples of SCI industry standards that may originate from NIST publications and/or other publications listed in Table A, and the potential costs they may impose on SCI entities.

requirements of proposed Rule 1000(b)(1).

Proposed Rule 1000(b)(2)(i) (Systems Compliance) is not currently part of the ARP Inspection program and would require each SCI entity to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems operate in the manner intended, including in a manner that complies with the federal securities laws and rules and regulations thereunder and the entity's rules and governing documents, as applicable.[574]

Proposed Rule 1000(b)(3) (Corrective Action) would require that, upon any responsible SCI personnel becoming aware of an SCI event, an SCI entity begin to take appropriate corrective action. The Commission understands that market participants already take steps to address systems issues should they occur, but preliminarily believes that proposed Rule 1000(b)(3) may result in SCI entities incurring additional information technology costs, primarily because proposed Rule 1000(b)(3) requires each SCI entity, upon any responsible SCI personnel becoming aware of an SCI event, to begin to take appropriate corrective action. Thus, SCI entities would not be able to delay the start of taking corrective action, which in turn could result in some SCI entities potentially seeking to, for example, update their systems with newer technology earlier than they might have otherwise. As these increased costs would likely occur primarily as a result of SCI entities making usual and customary investments sooner than they would otherwise, these costs are difficult to quantify.

Proposed Rule 1000(b)(4) (Commission Notification) would require that an SCI entity notify the Commission of all SCI events. Proposed Rule 1000(b)(4) would apply to more entities, systems, and types of systems issues than the ARP policy statements (or the 2001 Staff ARP Interpretive Letter) and also require more detailed reporting to the Commission.[575]

Proposed Rule 1000(b)(5) (Dissemination of Information to Members or Participants) would require an SCI entity to disseminate information relating to dissemination SCI events to members or participants. Proposed Rule 1000(b)(5) would impose a new requirement that is not currently part of the ARP Inspection Program. As noted above in Section V.B.1.a, some entities provide their members or participants with notices of outages currently. However, although proposed Rule 1000(b)(5) would permit information regarding some systems intrusions to be delayed,[576] the Commission expects that dissemination of information to members or participants about dissemination SCI events would increase significantly.

With respect to proposed Rule 1000(b)(6) (Material Systems Changes), while entities may voluntarily submit similar material systems change notifications to the Commission under the ARP Inspection Program, proposed Regulation SCI would set forth more detailed requirements.[577] Proposed Rule 1000(b)(6) would require an SCI entity to notify the Commission of planned material systems changes on proposed Form SCI at least 30 calendar days in advance of such change, unless exigent circumstances exist or information previously provided to the Commission regarding a planned material systems change has become materially inaccurate, necessitating notice regarding a material systems change with less than 30 calendar days' notice.

Proposed Rule 1000(b)(7) (SCI Review) would require an SCI entity to conduct an SCI review of its compliance with Regulation SCI at least annually, and submit a report of the SCI review to senior management of the SCI entity for review no more than 30 calendar days after completion of the SCI review. Because systems reviews have always been part of the ARP Inspection Program, the Commission believes that most SCI entities currently undertake annual systems reviews, reports of which the Commission understands are reviewed by senior management. The Commission believes, however, that the scope of the systems review undertaken by ARP entities, and senior management involvement in in such reviews, varies among ARP entities. The Commission expects that proposed Regulation SCI, which defines the parameters of an SCI review, would foster greater consistency in the approach that SCI entities take with respect to systems reviews.

Proposed Rule 1000(b)(8) (Reports) would require an SCI entity to submit various reports to the Commission. Specifically, proposed Rule 1000(b)(8)(i) would require an SCI entity to submit a report of the SCI review required by proposed Rule 1000(b)(7), together with any response by senior management, within 60 calendar days after its submission to senior management of the SCI entity. Proposed Rule 1000(b)(8)(ii) would require an SCI entity to submit a report, within 30 calendar days after the end of June and December of each year, containing a summary description of the progress of any material systems change during the six-month period ending on June 30 or December 31, as the case may be, and the date, or expected date, of completion of implementation of such changes. Such reports to be filed with the Commission pursuant to proposed Rule 1000(b)(8) would be required to be filed electronically on Form SCI. Proposed Rule 1000(b)(8) would codify current practice under the ARP Inspection Program, in which ARP entities submit reports of systems reviews and report progress on material systems changes to ARP staff. However, proposed Rule 1000(8) would specify a more detailed process for submission of such reports.

Proposed Rule 1000(b)(9) (SCI Entity Business Continuity and Disaster Recovery Plans Testing Requirements for Members or Participants) is not part of the current ARP Inspection Program and would require an SCI entity, with respect to its business continuity and disaster recovery plans, including its backup systems, to require participation by designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency as specified by the SCI entity, at least once every 12 months. In addition, the proposed rule would require an SCI entity to coordinate such testing on an industry- or sector-wide basis with other SCI entities.[578] Further, the proposed rule would require each SCI entity to designate those members or participants it deems necessary, for the maintenance of fair and orderly markets in the event of the activation of its business continuity and disaster recovery plans, to participate in the testing of such plans. Each SCI entity would be required to notify the Commission of such designations and its standards for designation, and promptly update such notification after any changes to its designations or standards. Although nothing prevents SCI entities from doing so, the Commission currently does not mandate that members or participants of SCI entities test the business continuity and disaster recovery plans, including

[574] However, as noted above in Section V.B.1.b, SCI entities are already required to comply with relevant laws and rules.

[575] *See* discussion of proposed Rule 1000(b)(4) in *supra* Section III.C.4. In addition, proposed Rule 1000(d) would require, with limited exception, that any written notification, review, description, analysis, or report to the Commission be submitted electronically on Form SCI.

[576] *See* proposed Rule 1000(b)(5)(ii).

[577] *See supra* Sections III.C.4 and III.E.2 discussing the reporting requirements in proposed Rule 1000(b)(6).

[578] *See supra* note 269 and accompanying text.

backup systems, of SCI entities. This proposed rule would allow greater oversight by the Commission over the business continuity and disaster recovery capabilities of SCI entities. While the Commission believes that many SCI entities currently provide the opportunity for their members or participants to test their business continuity and disaster recovery plans, the Commission believes that few require participation by all or designated members or participants in such testing.[579] In addition, the Commission understands that, to the extent such participation occurs, it may in many cases be limited in nature (*e.g.,* testing for connectivity to backup systems). Finally, while the securities industry does coordinate certain testing, the Commission believes that the two-day closure of the equities and options markets in the wake of Superstorm Sandy has shown that more significant testing and better coordination of such testing could benefit market participants.[580]

Proposed Rules 1000(c) and (e) relate to the recordkeeping requirements under proposed Regulation SCI. As discussed above, SCI SROs already are subject to recordkeeping requirements that would apply to all documents relating to their compliance with proposed Regulation SCI.[581] Further, entities that participate in the ARP Inspection Program currently keep records related to the ARP Inspection Program, and the Commission recognizes that all SCI entities are subject to some recordkeeping requirement. Nevertheless, with respect to SCI entities other than SCI SROs, proposed Rules 1000(c) and (e) would impose specific recordkeeping requirements with respect to documents related to compliance with Regulation SCI and thus would impose a burden on such entities.

Lastly, proposed Rule 1000(f) would require SCI entities to provide Commission representatives reasonable access to its SCI systems and SCI security systems to allow Commission representatives to assess the entity's compliance with proposed Regulation SCI. As discussed above, although the Commission believes that Section 17(b) of the Exchange Act already provides the Commission with authority to access the systems of SCI entities, the Commission is proposing Rule 1000(f) to highlight such authority and help ensure that Commission representatives have ready access to systems of SCI entities.[582]

C. Consideration of Costs and Benefits, and the Effect on Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[583] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[584] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[585] In considering these matters, the Commission has been mindful of the history and background discussed above and has considered the impact proposed Regulation SCI would have on competition, and preliminarily believes that proposed Regulation SCI would promote efficiency, competition, and capital formation, and would not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

1. Summary of Benefits, Costs and Quantification

While the current practices of some SCI entities already satisfy some of the requirements of proposed Regulation SCI, the Commission preliminarily believes proposed Regulation SCI could benefit the U.S. financial markets in several ways. The Commission preliminarily believes that Regulation SCI should result in fewer systems disruptions, systems compliance issues, and systems intrusions. It should also increase the information available to the Commission regarding any systems disruptions, systems compliance issues, and systems intrusions that do occur. In addition, it should increase the information available to members or participants of SCI entities regarding dissemination SCI events. As explained further below, such disseminations of information could promote the ability of market participants to assess the operation of markets because events would be more transparent. The changes also could reduce market participants' search costs, ultimately improving the ability of competition to discourage SCI events and potentially improving the allocative efficiency of capital. To the extent that Regulation SCI promotes the allocation of capital to its most efficient uses, the Commission preliminarily believes that Regulation SCI may promote capital formation.[586] The potential economic costs of proposed Regulation SCI include compliance costs, which the Commission attempts to quantify, and other costs. Such other costs include costs associated with the increase in costs and time needed to make systems changes to comply with new and amended rules and regulations, the impact on innovation, and barriers to entry.[587]

The Commission discusses below a number of costs and benefits that are related to proposed Regulation SCI. Many of these costs and benefits are difficult to quantify with any degree of certainty, especially as the practices of market participants are expected to evolve and appropriately adapt to changes in technology and market developments. In addition, the extent to which the proposed rule's standards and the ability to enforce such standards will help reduce the frequency and severity of SCI events is unknown. Therefore, much of the discussion is qualitative in nature but, where possible, the Commission quantifies the costs.

Many, but not all, of the costs of the proposed rules involve a collection of information, and these costs and burdens are discussed in the Paperwork Reduction Act Section above.[588] When monetized, those estimated burdens and costs for SCI entities total approximately $44 million in initial costs and approximately $37 million in annual ongoing costs. In addition, in the Economic Cost Section below,[589] the

[579] *See infra* note 641.

[580] *See supra* Section I.D.

[581] *See supra* Section III.D.1.

[582] *See supra* Section III.D.3.

[583] 15 U.S.C. 78c(f).

[584] 15 U.S.C. 78w(a)(2).

[585] 15 U.S.C. 78w(a)(2).

[586] The Commission notes, however, that whether there is ultimately an effect on capital formation will depend, in part, on the degree of the potential effects on allocative efficiency.

[587] *See infra* Section V.C.3.b.

[588] *See supra* Section IV.

[589] *See infra* Section V.C.4.a (estimating the cost for: (i) Complying with the substantive requirements that are the subject of the policies and procedures required by proposed Rules 1000(b)(1) and (2), including consistency with SCI industry standards (which, solely for purposes of this Economic Analysis, would be the proposed SCI industry standards contained in the publications identified in Table A); (2) establishing and maintaining a methodology for ensuring that the SCI entity is prepared for the corrective action requirement under proposed Rule 1000(b)(3); and (iii) establishing and maintaining a methodology for determining whether an SCI event is an immediate

Commission has quantified other costs for SCI entities that total between approximately $17.6 million [590] and $132 million [591] in initial costs and between $11.7 million [592] and $88 million [593] in annual ongoing costs. When aggregated, the total quantified costs for SCI entities are estimated as between approximately $61.6 million [594] and $176 million [595] in initial costs and between $48.7 million [596] and $125 million [597] in annual ongoing costs. In addition to the costs to SCI entities, the Commission also preliminarily estimates the total costs to members or participants of SCI entities to participate in the business continuity and disaster recovery plans testing specified by proposed Rule 1000(b)(9) to be $66 million annually.[598] Thus, the total quantified costs for SCI entities and members or participants of SCI entities are estimated as between approximately $127.6 million [599] and $242 million [600] in initial costs and between $114.7 million [601] and $191 million [602] in annual ongoing costs. A detailed discussion of other potential economic costs of the proposal, such as potential costs to the Commission and potential burdens on competition, is provided below.

2. Economic Benefits

Broadly, although the current practices of some SCI entities already satisfy some of the requirements of proposed Regulation SCI, the Commission preliminarily believes that proposed Regulation SCI would bring several overarching benefits to the securities markets. First and most significantly, the Commission preliminarily believes that proposed Regulation SCI would promote more robust systems and hence fewer systems disruptions and market-wide closures, systems compliance issues, and systems intrusions. As a result, the Commission expects fewer interruptions to SCI systems, including systems that directly support execution facilities, matching engines, and the dissemination of market data, and fewer errors with the pricing of securities, which should promote price efficiency. The Commission also expects fewer interruptions to other SCI systems, including systems that directly support regulatory systems and surveillance systems, which should help ensure compliance with relevant laws and rules. In addition, the Commission would expect fewer interruptions to SCI security systems, which should help prevent problems that could lead to disruption of an SCI entity's general operations and, ultimately, its market-related activities.[603]

Second, the Commission preliminarily believes that proposed Regulation SCI would enhance the availability of relevant information to members or participants of SCI entities and promote dissemination of information to persons (*i.e.,* members or participants of SCI entities) who are most directly affected by dissemination SCI events and who would most naturally need, want, and be able to act on the information. The increased availability of information regarding SCI events should reduce the costs to members or participants of SCI entities when evaluating SCI entities and improve their ability to make more informed decisions about whether or not to avoid dealing with entities that experience significant systems issues. This enhanced information, as well as the improved price efficiency, should lead to greater allocative efficiency of capital. Moreover, it is expected that the increased awareness of dissemination SCI events would enhance competition among SCI entities with respect to the maintenance of robust systems.

Third, the Commission preliminarily believes that fewer market-wide, unscheduled shutdowns would have many of the same benefits as avoidance of temporary shutdowns, but on a greater scale. Fourth, the Commission preliminarily believes that its own ability to monitor the markets and ensure their smooth functioning would be significantly enhanced by proposed Regulation SCI. These potential benefits are discussed in more detail below in relation to each of the proposed rules.

a. Rule 1000(a) Definitions

In general, the definitions in Rule 1000(a) either clarify a provision or circumscribe the scope of a provision in proposed Regulation SCI. Therefore, many of the costs and benefits associated with the impacts of the definitions are incorporated in the discussion below on the costs and benefits of the substantive provisions where the definitions are used.

This section contains a discussion of the benefits of the expansion in scope that are not discussed above. In summary, the Commission preliminarily believes that the proposed definition of ''SCI entity'' and ''SCI event,'' although they would broaden the scope of Regulation SCI beyond the scope of the ARP Inspection Program, are essential parts of proposed Regulation SCI.

i. SCI Entities

As explained above, the difference between the entities that currently participate in the ARP Inspection Program and the entities covered by proposed Regulation SCI is the inclusion of additional ATSs and the MSRB. Because no ATSs currently meet the thresholds specified in Rule 301(b)(6) of Regulation ATS, other than the one ATS that currently participates in the ARP Inspection Program, none are subject to the systems safeguard requirements under that rule even though they comprise a significant portion of consolidated volume.[604] The Commission preliminarily believes that the inclusion of SCI ATSs under proposed Regulation SCI would help ensure that ATSs, which serve as markets to bring buyers and sellers together in the national market system, are subject to rules regarding systems capacity, integrity, resiliency, availability, security, and compliance, including those rules that could help prevent SCI events and that require Commission reporting and the dissemination of information to

notification SCI event or a dissemination SCI event).

[590] *See infra* note 634 (estimating cost for complying with the substantive requirements underlying policies and procedures required by proposed Rules 1000(b)(1) and (2)).

[591] *See infra* note 635 (estimating cost for complying with the substantive requirements underlying policies and procedures required by proposed Rules 1000(b)(1) and (2)).

[592] *See infra* note 639 (estimating cost for complying with the substantive requirements underlying policies and procedures required by proposed Rules 1000(b)(1) and (2)).

[593] *See infra* note 640 (estimating cost for complying with the substantive requirements underlying policies and procedures required by proposed Rules 1000(b)(1) and (2)).

[594] $61.6 million = $44 million (PRA cost) + $17.6 million (other costs for SCI entities).

[595] $176 million = $44 million (PRA cost) + $132 million (other costs for SCI entities).

[596] $48.7 million = $37 million (PRA cost) + $11.7 million (other costs for SCI entities).

[597] $125 million = $37 million (PRA cost) + $88 million (other costs for SCI entities).

[598] *See infra* note 643 and accompanying text.

[599] $127.6 million = $44 million (PRA cost) + $17.6 million (other costs for SCI entities) + $66 million (costs for members or participants of SCI entities).

[600] $242 million = $44 million (PRA cost) + $132 million (other costs for SCI entities) + $66 million (costs for members or participants of SCI entities).

[601] $114.7 million = $37 million (PRA cost) + $11.7 million (other costs for SCI entities) + $66 million (costs for members or participants of SCI entities).

[602] $191 million = $37 million (PRA cost) + $88 million (other costs for SCI entities) + $66 million (costs for members or participants of SCI entities).

[603] *See supra* Section III.B.2, discussing the Commission's proposed definitions of SCI systems and SCI security systems.

[604] As noted above, one ATS voluntarily participates in the ARP Inspection Program. *See supra* note 25.

members or participants of SCI entities.[605] The Commission preliminarily believes that the inclusion of the MSRB in proposed Regulation SCI would provide benefits to the market because, as noted above, the MSRB is the only SRO relating to municipal securities and the sole provider of consolidated market data for the municipal securities market.[606]

ii. Systems and SCI Events

As stated above, proposed Regulation SCI would expand on current practice, would apply a broader range of systems, and would include more event types. Specifically, entities that participate in the ARP Inspection Program follow the ARP policy statements with respect to systems that directly support trading, clearance and settlement, order routing, and market data. The proposed definition of ''SCI systems'' would include the foregoing systems as well as those that directly support regulation and surveillance. The Commission preliminarily believes that including regulation and surveillance systems could help ensure the SCI entity's ability to monitor its compliance with relevant laws, rules, and its own rules, and detect any violations of such laws or rules. Further, the provisions of proposed Regulation SCI regarding systems security and intrusions also would apply to ''SCI security systems.'' [607] Because SCI security systems may present potentially vulnerable entry points to an SCI entity's network, the Commission also preliminarily believes that it is important for proposed Regulation SCI to include those systems with respect to security standards and systems intrusions.[608]

By defining SCI events to include systems disruptions, systems compliance issues, and systems intrusions, proposed Regulation SCI would further assist the Commission in its oversight of SCI entities. As stated above, SCI entities already follow practices similar to parts of proposed Regulation SCI for certain systems disruptions and systems intrusions. The inclusion of systems compliance issues should help the Commission and market participants to become better informed of the efforts of the SCI entities to comply with relevant laws and rules, and their own rules as applicable, and could enhance the enforcement of such laws and rules. Further, by defining a dissemination SCI event to include a subset of SCI events (*i.e.,* a systems compliance issue, systems intrusion, or systems disruption that would result, or the SCI entity reasonably estimates would result in significant harm or loss to market participants), proposed Regulation SCI would further assist SCI entity members or participants in their decisions regarding whether or not to utilize the systems of a given SCI entity.

b. Rule 1000(b)(1)–(10) Requirements for SCI Entities

The development and growth of automated electronic trading have allowed increasing volumes of securities transactions across the multitude of trading centers that constitute the U.S. national market system. These securities transactions take place within an interconnected market where systems disruptions, systems compliance issues, and systems intrusions at one market center can impact or harm trading throughout the entire national market system. Thus, there is a need for operators of significant market systems, such as SCI entities, to have in place robust systems to prevent systems issues or, in the event that systems issues occur, to recover quickly.

Proposed Rule 1000(b)(1)–(2) would set forth requirements relating to written policies and procedures that SCI entities would be required to establish, maintain, and enforce. Proposed Rule 1000(b)(1) would require an SCI entity to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, SCI security systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets.

The rule would further provide that an SCI entity's policies and procedures must include the establishment of reasonable current and future capacity planning estimates, periodic capacity stress tests, a program to review and keep current systems development and testing methodology of such systems, regular reviews and testing of such systems, including backup systems, business continuity and disaster recovery plans, and standards that result in such systems facilitating the successful collection, processing, and dissemination of market data.[609] As discussed above, the Commission regards SCI entities as part of the critical infrastructure of the U.S. securities markets and therefore, although proposed Rule 1000(b)(1)(i)(A)–(E) would codify certain provisions of the ARP policy statements, the Commission preliminarily believes that specifically setting forth these requirements in a Commission rule would benefit the securities markets by helping to diminish the risks and incidences of systems intrusions, systems compliance issues, and systems disruptions. Such policies and procedures should also assist in speedy recoveries from systems intrusions, systems compliance issues, and systems disruptions. Proposed Rule 1000(b)(1)(i)(F) does not have precedent in Regulation ATS or the ARP policy statements, and would require SCI entities to have standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data. The Commission preliminarily believes that this proposal should help to ensure that timely and accurate market data is available to all market participants.

Proposed Rule 1000(b)(1)(ii) would deem an SCI entity's policies and procedures required by proposed Rule 1000(b)(1) to be reasonably designed if they are consistent with current SCI industry standards.[610] Thus, the SCI industry standards would provide flexibility to allow each SCI entity to determine how to best meet the requirements in proposed Rule 1000(b)(1), taking into account, for example, its nature, size, technology, business model, and other aspects of its business, because compliance with SCI

[605] Proposed Regulation SCI would not expand the types of securities currently covered by the ARP Inspection Program and Rule 301(b)(6) of Regulation ATS. The Commission recognizes that although currently no ATSs are subject to the systems safeguard requirements under Rule 301(b)(6) because they do not satisfy the thresholds in that rule, the Commission estimates that approximately 15 ATSs would be subject to proposed Regulation SCI.

[606] As discussed above, in 2008, the Commission amended Rule 15c2–12 to designate the MSRB as the single centralized disclosure repository for continuing municipal securities disclosure. In 2009, the MSRB established EMMA, which serves as the official repository of municipal securities disclosure, providing the public with free access to relevant municipal securities data, and is the central database for information about municipal securities offerings, issuers, and obligors. Additionally, the MSRB's RTRS, with limited exceptions, requires municipal bond dealers to submit transaction data to the MSRB within 15 minutes of trade execution, and such near real-time post-trade transaction data can be accessed through the MSRB's EMMA Web site. *See supra* note 96.

[607] *See supra* Section III.B.2, discussing the Commission's proposed definitions of SCI systems and SCI security systems.

[608] *See id.*

[609] *See* proposed Rule 1000(b)(1)(i)(A)–(F), discussed in *supra* Section III.C.1.a.

[610] Proposed SCI industry standards are contained in the publications that are set forth in Table A. *See supra* Section III.C.1.b.

industry standards would not be the exclusive means by which an SCI entity could satisfy the requirements of proposed Rule 1000(b)(1).

Proposed Rule 1000(b)(2)(i), which would require written policies and procedures reasonably designed to ensure that an SCI entity's SCI systems operate in the manner intended, should help to minimize instances where systems do not operate in compliance with the federal securities laws and rules and regulations thereunder and, as applicable, the entity's rules and governing documents. In particular, the elements of the safe harbor for SCI entities in proposed Rule 1000(b)(2)(ii)(A) relating to policies and procedures on testing and monitoring also should help to ensure, on an ongoing basis, that an SCI entity's SCI systems operate in the manner intended, including in a manner that complies with the federal securities laws and rules and regulations thereunder and, as applicable, the entity's rules and governing documents, thus minimizing systems compliance issues and consequently the total time needed to bring a system back into compliance.[611] In addition, the elements of the safe harbor in proposed Rule 1000(b)(2)(ii)(A) relating to policies and procedures for systems compliance assessments by personnel familiar with applicable laws and rules and systems reviews by regulatory personnel should help ensure the performance of effective compliance audits and reviews, and should help provide assurance that SCI entities are operating in compliance with applicable laws and rules.

Proposed Rule 1000(b)(3), which would require an SCI entity to begin taking appropriate corrective action upon any responsible SCI personnel becoming aware of an SCI event, should further help ensure that SCI entities invest sufficient resources as soon as reasonably practicable to address systems intrusions, systems compliance issues, and systems disruptions.[612]

Moreover, proposed Rules 1000(b)(1)–(3) should improve price efficiency by reducing the likelihood and duration of systems issues, thereby helping to avoid the price inefficiencies that occur during times when systems disruptions, systems compliance issues, or systems intrusions can make systems unavailable or unreliable. Specifically, systems issues that could impact the accuracy or the timeliness, and thus the reliability, of market data could lead to inaccuracies in pricing and slow-down pricing, and make data less reliable. Therefore, to the extent that proposed Rules 1000(b)(1)–(3) could reduce the likelihood or duration of systems issues, they may lead to more reliable market data (because there would be less inaccuracies and the market data would be more timely), which could help improve the quality of market data. This, in turn, could enhance price efficiency in the market for market data, which then could promote allocative efficiency of capital and capital formation.

Proposed Regulation SCI is intended, in part, to facilitate the Commission's ability to monitor the impact on the securities markets by SCI entities' systems that support the performance of the entities' activities. The Commission preliminarily believes that proposed Rules 1000(b)(1)–(3), as well as 1000(b)(4), would provide for more effective Commission oversight of the operation of the systems of SCI entities.

Specifically, while entities that participate in the ARP Inspection Program already notify Commission staff of certain systems issues, the Commission preliminarily believes that proposed Rule 1000(b)(4), relating to Commission notification of SCI events, should further enhance the effectiveness of Commission oversight of the operation of SCI entities. Under the proposed rule, upon any responsible SCI personnel becoming aware of an immediate notification SCI event,[613] an SCI entity would be required to notify the Commission of the SCI event. Within 24 hours of any responsible SCI personnel becoming aware of an SCI event, an SCI entity would be required to submit a written notification pertaining to such SCI event on Form SCI. Until such time as the SCI event is resolved, the SCI entity would be required to provide updates regularly, or at such frequency as requested by an authorized representative of the Commission. Although this process would represent costs to an SCI entity,[614] the documentation of SCI events will help prevent such systems failures from being dismissed or ignored as glitches or momentary issues because it would focus the SCI entity's attention on the issue and encourage allocation of SCI entity resources to resolve the issue as soon as reasonably practicable.

As noted above, the Commission is concerned that members or participants of SCI entities may be unaware of the occurrence of some SCI events, and therefore may make decisions without all relevant information. Proposed Rule 1000(b)(5) would require an SCI entity, upon any responsible SCI personnel becoming aware of a dissemination SCI event other than a systems intrusion, to disseminate certain information regarding the dissemination SCI event to its members or participants.[615] Such information would include the systems affected by the event and a summary description of the event. When known, the SCI entity would be required to further disseminate to its members or participants: a detailed description of the SCI event; its current assessment of the types and number of market participants potentially affected by the SCI event; and a description of the progress of its corrective action for the SCI event and when the SCI event has been or is expected to be resolved. An SCI entity also would be required to provide regular updates to members or participants regarding the disseminated information. The Commission preliminarily believes that proposed Rule 1000(b)(5) would help market participants—specifically the members or participants of SCI entities—to better evaluate the operations of SCI entities based on more readily available information.

As discussed above,[616] the Commission believes that the existing competition among the markets has not sufficiently mitigated the occurrence of certain systems problems, and thus preliminarily believes that requiring the dissemination of information about certain SCI events, as described above, to members or participants could potentially further incentivize SCI entities to create more robust systems. In addition, targeting this set of market participants (*i.e.,* an SCI entity's members or participants) to receive information about dissemination SCI events has the benefit of providing the information to those that are most likely to need, want, and act on the information, without imposing the additional costs associated with requiring broader public dissemination. Moreover, another benefit of increased dissemination of information about dissemination SCI events to SCI entity

[611] As noted above, the Commission recognizes that SCI entities are already required to comply with federal securities laws, rules and regulations thereunder, and their own rules.

[612] As noted above, the Commission believes that SCI entities already take corrective actions in response to systems issues.

[613] *See supra* Section III.C.3.b.

[614] *See supra* Section IV.D.2.a.

[615] For a dissemination SCI event that is a systems intrusion, an SCI entity must disseminate to members or participants a summary description of the systems intrusion, including a description of the corrective action taken by the SCI entity and when the systems intrusion has been or is expected to be resolved, unless it determines that dissemination of such information would likely compromise the security of the SCI entity's SCI systems or SCI security systems, or an investigation of the systems intrusion.

[616] *See supra* Section V.B.2.

members or participants would be the resultant reduction in search costs for market participants when they are gathering information to make a determination with respect to the use of an entity's services. Also, proposed Rule 1000(b)(5) would require SCI entities to disseminate specified information for dissemination SCI events, which would allow market participants to more easily compare the available information from all SCI entities for which they are members or participants. The foregoing benefits would be further enhanced to the extent information relating to dissemination SCI events is shared by members or participants of SCI entities with other market participants. Lastly, because an SCI entity would be permitted to delay dissemination of information regarding a systems intrusion to members or participants if it determines that such information would likely compromise the security of its SCI systems or SCI security systems, or an investigation of the systems intrusion, proposed Rule 1000(b)(5) would not undermine the need to maintain the non-public nature of certain systems intrusions for a temporary period (until the SCI entity determines that dissemination of such information would not likely compromise the security of the SCI entity's SCI systems or SCI security systems, or an investigation of the systems intrusion).

In summary, because proposed Regulation SCI would, among other things, require SCI entities to provide members and participants with more information regarding their operations, the Commission preliminarily believes that SCI entities would have additional incentives to establish and maintain more robust automated systems to minimize the occurrence of SCI events. Fewer systems issues could improve pricing efficiency which, in turn, could promote allocative efficiency of capital and thus, capital formation.

In addition to the Commission notification requirements under proposed Rule 1000(b)(4), the Commission preliminarily believes that proposed Rule 1000(b)(6) would enhance the Commission's oversight of the operation of SCI entities, even though entities participating in the ARP Inspection Program may already provide these types of notifications to Commission staff. Proposed Rule 1000(b)(6) would require an SCI entity to notify the Commission on Form SCI of material systems changes at least 30 calendar days before the implementation of any planned material systems change. In the case of exigent circumstances, or if the information previously provided regarding a planned material systems change becomes materially inaccurate, proposed Rule 1000(b)(6) would require oral or written notification as early as reasonably practicable. Any oral notification of planned material systems change must be memorialized within 24 hours by a written notification on Form SCI. The Commission preliminarily believes that this provision would provide the Commission and its staff advance notice and time to evaluate planned material systems changes by SCI entities, thus improving the Commission's ability to oversee SCI entities.

Proposed Rule 1000(b)(7) would require an SCI entity to conduct an SCI review of its compliance with Regulation SCI not less than once each calendar year, and submit a report of the SCI review to senior management of the SCI entity for review no more than 30 calendar days after completion of such SCI review. The Commission preliminarily believes that the proposal to require SCI entities to conduct an objective assessment of their systems at least annually would result in SCI entities having an improved awareness of the relative strengths and weaknesses of their systems independent of the assessment of ARP staff, which should in turn improve the value and efficiency of an ARP inspection.

Proposed Rule 1000(b)(8) would require each SCI entity to submit certain periodic reports to the Commission through Form SCI, including annual reports on the SCI reviews of its compliance with Regulation SCI and semi-annual reports on the progress of material systems changes. These reports should keep the Commission informed, on an ongoing basis, by providing information with which the Commission could evaluate each SCI entity's compliance with Regulation SCI and the progress of its material systems changes.

The Commission preliminarily believes that proposed Rules 1000(b)(1)–(8), taken together, should result in actual systems improvements as well as enhanced availability of relevant information regarding SCI events to the Commission and members or participants of SCI entities. This, in turn, could facilitate better decisions by market participants, which could promote allocative efficiency of capital and capital formation, potentially providing an overall benefit to the securities markets and promoting the protection of investors and the public interest. Additionally, the means by which trading is conducted may be altered as a result of Regulation SCI. For example, if an SCI entity member or participant submits orders to a particular market for execution, and subsequently learns that the execution venue's systems in use may be prone to failure, such member or participant may choose to favor another market in the future. This change would potentially enhance competition as SCI entity members or participants rely on information disseminated regarding dissemination SCI events to make more informed choices about the best venue for execution.

Proposed Rule 1000(b)(9)(i) would require an SCI entity, with respect to its business continuity and disaster recovery plans, including its backup systems, to require participation by designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency as specified by the SCI entity, at least once every 12 months. Proposed Rule 1000(b)(9)(ii) would further require an SCI entity to coordinate such testing on an industry- or sector-wide basis with other SCI entities. The Commission expects that this proposed requirement should help ensure that the securities markets will have improved backup infrastructure and fewer market-wide shutdowns, thus helping SCI entities and other market participants to avoid lost revenues and profits that would otherwise result from such shutdowns. Further, the notifications required by proposed Rule 1000(b)(9)(iii) should keep the Commission informed, on an ongoing basis, of an SCI entity's current standards for designating members or participants and current list of designees.

c. Rule 1000(c)–(f)—Recordkeeping, Electronic Filing, and Access

While all SCI entities already are subject to some recordkeeping and access requirements, the Commission preliminarily believes the proposed recordkeeping and access requirements specifically related to proposed Regulation SCI would enhance the ability of the Commission to evaluate SCI entities' compliance. Specifically, proposed Rule 1000(c) would require each SCI entity, other than an SCI SRO, to make, keep, and preserve at least one copy of all documents and records relating to its compliance with Regulation SCI for a period of not less than five years.[617] Each SCI entity also would be required to furnish such

[617] As discussed above in Section III.D.1, Regulation SCI-related documents would already be included in SCI SROs' comprehensive recordkeeping requirements under Rule 17a–1 under the Exchange Act.

documents to Commission representatives upon request. Further, according to proposed Rule 1000(e), if the records required to be filed or kept by an SCI entity under proposed Regulation SCI are prepared or maintained by a service bureau or other recordkeeping service on behalf of the SCI entity, the SCI entity must ensure that such records are available to review by the Commission and its representatives by submitting a written undertaking by such service bureau or recordkeeping service to that effect. The Commission preliminarily believes that these proposed rules should allow Commission staff to perform efficient inspections and examinations of SCI entities for their compliance with the proposed rules, and should increase the likelihood that Commission staff may identify conduct inconsistent with the proposed rules at earlier stages in the inspection and examination process.

Proposed Rule 1000(d) would require SCI entities to electronically submit all written information to the Commission through Form SCI (except any written notification submitted pursuant to proposed Rule 1000(b)(4)(i)). The Commission preliminarily believes that this provision would allow the Commission to receive information in a uniform electronic format with specified content, which would enhance Commission staff's ability to review and analyze submitted information.

Finally, proposed Rule 1000(f) would require each SCI entity to give Commission representatives reasonable access to its SCI systems and SCI security systems to allow Commission representatives to assess its compliance with proposed Regulation SCI. The Commission preliminarily believes that this provision would enhance Commission oversight by specifically highlighting the Commission's authority to have its representatives directly access and examine SCI entities' systems to confirm their compliance with proposed Regulation SCI.

The Commission preliminarily believes that these requirements would place the Commission in a stronger position to assess the risks relating to SCI entities' systems and, thus, would provide the Commission with greater ability to protect investors. The Commission also preliminarily believes that its oversight should help ensure that SCI entities are reasonably equipped to handle market demand and provide liquidity, including during periods of market distress.

3. Economic Costs

a. Direct Compliance Costs

The Commission recognizes that proposed Regulation SCI would impose costs on SCI entities, as well as costs on certain members or participants of SCI entities. The Commission preliminarily believes that the majority of these costs would be direct compliance costs. SCI entities would incur costs in establishing, maintaining, and enforcing policies and procedures related to systems capacity, integrity, resiliency, availability, security, and compliance.[618] SCI entities also would incur costs in taking appropriate corrective actions upon any responsible SCI personnel becoming aware of an SCI event,[619] notifying and updating the Commission with respect to the occurrence of SCI events,[620] disseminating information to members or participants regarding dissemination SCI events,[621] notifying the Commission of material systems changes,[622] conducting SCI reviews,[623] submitting to the Commission periodic reports,[624] requiring designated members to participate in testing of business continuity and disaster recovery plans and coordinating such testing,[625] and complying with recordkeeping and access requirements.[626]

As stated above in Section IV.D, proposed Regulation SCI would codify many of the ARP policy statement principles familiar and applicable to current participants in the ARP Inspection Program. The Commission recognizes, however, that the proposed rules would apply to entities that are not currently covered by the ARP Inspection Program, and would cover areas not currently within the scope of the ARP Inspection Program. Thus, those costs are incremental relative to the current compliance cost of the ARP Inspection Program.

While proposed Regulation SCI would codify the provisions of the ARP policy statements, the proposed definitions of ''SCI entity,'' ''SCI event,'' ''SCI systems,'' and ''SCI security systems'' are broader than the entities, events, and systems covered by the ARP Inspection Program and, as stated above, will include more entities, events, and systems. Specifically, proposed Rule 1000(b)(1)(i) would codify aspects of the ARP policy statements[627] with the exception of Rule 1000(b)(1)(i)(F), which would require policies and procedures regarding standards that result in systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data. In addition, because the ARP policy statements provide that SROs should promptly notify Commission staff of certain system outages and any instances in which unauthorized persons gained or attempted to gain access to their systems, proposed Rule 1000(b)(4), among other things, would codify parts of the ARP policy statements.[628] Further, because the ARP policy statements provide that SROs should notify Commission staff of certain changes to their automated systems, proposed Rule 1000(b)(6) would codify a part of the ARP policy statements.[629] Lastly, because the ARP policy statements provide that SROs should undertake reviews of their systems, proposed Rule 1000(b)(7), among other things, would reflect this part of the ARP policy statements. With respect to the proposed requirements that are not currently covered by the ARP Inspection Program, they include: policies and procedures in addition to those required by proposed Rule 1000(b)(1)(i)(A)–(E) that would be necessary to achieve policies and procedures reasonably designed to ensure that systems of an SCI entity have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets; policies and procedures reasonably designed to ensure the operation of SCI systems in the manner intended; the initiation of appropriate corrective actions upon any responsible SCI personnel becoming aware of an SCI event; the dissemination of information to members or participants;

[618] *See* proposed Rules 1000(b)(1) and (2). These proposed rules would also impose costs for outside legal and/or consulting advice, as set forth in the Paperwork Reduction Act Section above. *See supra* Section IV.

[619] *See* proposed Rule 1000(b)(3).

[620] *See* proposed Rule 1000(b)(4).

[621] *See* proposed Rule 1000(b)(5). This proposed rule would also impose costs for outside legal advice, as set forth in the Paperwork Reduction Act discussion above. *See supra* Section IV.

[622] *See* proposed Rule 1000(b)(6).

[623] *See* proposed Rule 1000(b)(7).

[624] *See* proposed Rule 1000(b)(8).

[625] *See* proposed Rule 1000(b)(9).

[626] *See* proposed Rules 1000(c), (e), and (f).

[627] Rule 301(b)(6) of Regulation ATS also contains similar requirements for ATSs that meet the thresholds in that rule.

[628] However, because of the proposed definition of ''SCI event,'' SCI entities must also report systems compliance issues to the Commission. Proposed Regulation SCI would also set forth detailed and specific requirements with respect to Commission notifications.

[629] Again, proposed Regulation SCI would also set forth more detailed and specific requirements with respect to such Commission notifications.

requirements regarding member or participant testing; and recordkeeping and access with respect to Regulation SCI-related documents.

Many of these incremental costs are calculated in detail in the Paperwork Reduction Act Section above, which estimates that the total one-time initial burden for all SCI entities to comply with Regulation SCI would be approximately 133,482 hours and $2.6 million, and that the total annual ongoing burden for all SCI entities to comply with Regulation SCI would be approximately 117,258 hours and $738,400.

In addition to the direct cost estimates derived from the Paperwork Reduction Act burdens, the Commission preliminarily believes that SCI entities could incur costs when enforcing the policies and procedures required under proposed Rules 1000(b)(1) and (2), taking corrective action to mitigate the potential harm resulting from an SCI event under proposed Rule 1000(b)(3), and in determining whether an SCI event is an immediate notification SCI event or meets the definition of a dissemination SCI event under proposed Rule 1000(a).

As discussed in detail in Section III.C.1 above, proposed Rule 1000(b)(1) would require SCI entities to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that their SCI systems and, for purposes of security standards, SCI security systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets. In addition to the burden of establishing and maintaining such policies and procedures as set forth in the Paperwork Reduction Act Section above, the Commission preliminarily believes that SCI entities would incur costs in enforcing the substantive requirements that are the subject of the policies and procedures.

Further, as discussed in detail in Section III.C.2 above, proposed Rule 1000(b)(2) would require SCI entities to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that their SCI systems operate in the manner intended, including in a manner that complies with federal securities laws and rules and regulations thereunder and the entity's rules and governing documents, as applicable. In addition to the burden of establishing and maintaining such policies and procedures as set forth in the Paperwork Reduction Act Section above, the Commission preliminarily believes that SCI entities would incur costs in enforcing the substantive requirements that are the subject of the policies and procedures.

As noted above,[630] NIST is an agency within the U.S. Department of Commerce that has issued numerous special publications regarding information technology systems. For example, one of the publications listed in Table A is the NIST Draft Security and Privacy Controls for Federal Information Systems and Organizations (Special Publication 800–53 Rev. 4) (February 2012) (''NIST 800–53'').[631] This publication is a security controls catalog providing guidance for selecting and specifying security controls for federal information systems and organizations. NIST 800–53 addresses how federal entities should achieve secure information systems, taking into account the fundamental elements of: (i) Multitiered risk management; (ii) the structure and organization of controls; (iii) security control baselines; (iv) the use of common controls and inheritance of security capabilities; (v) external environments and service providers; (vi) assurance and trustworthiness; and (vii) revisions and extensions to security controls and control baselines, among others. Although NIST 800–53 sets forth standards for federal agencies, it is also intended to serve a diverse audience of information system and information security professionals, including those having information system, security, and/or risk management and oversight responsibilities, information system development responsibilities, information security implementation and operational responsibilities, information security assessment and monitoring responsibilities, as well as commercial companies producing information technology products, systems, security-related technologies, and security services.[632]

The Commission preliminarily believes that many SCI entities will choose to establish, maintain, and enforce policies and procedures that are consistent with the proposed SCI industry standards contained in the publications set forth in Table A for purposes of satisfying the requirements of proposed Rule 1000(b)(1). However, as noted above, compliance with the identified SCI industry standards would not be the exclusive means to comply with the requirements of proposed Rule 1000(b)(1). The Commission understands that the Table A publications, including NIST 800–53, are familiar to information technology personnel employed by many SCI entities, and that some SCI entities, particularly the SCI SROs and plan processors that participate in the ARP Inspection Program, currently adhere to all or at least some of the standards in NIST 800–53, or similar standards set forth in publications issued by other standards setting bodies, with some entities fully or nearly fully implementing such standards, while other entities may not have implemented such standards as broadly. For SCI entities that are not part of the ARP Inspection Program, while such entities may be familiar with such publications and standards generally, the Commission is not certain as to the level of compliance with such standards, and believes that there may be some such entities that are fully or nearly fully complaint, while others may have little or no compliance with such standards.

With respect to the substantive systems requirements resulting from adherence to SCI industry standards (which, solely for purposes of this Economic Analysis Section, the Commission assumes to be the proposed SCI industry standards contained in the publications identified in Table A, or publications setting forth substantially similar standards) underlying proposed Rule 1000(b)(1), as noted above, the Commission believes that certain entities that would satisfy the definition of SCI entity, particularly some that currently participate in the ARP Inspection Program, already comply with some of the requirements. On the other hand, the Commission believes that some SCI entities, including some that currently participate in the ARP Inspection Program, do not currently comply with some or all of the proposed requirements. Further, although the Commission believes that each SCI entity would incur costs in complying with these requirements, the Commission believes that some entities already comply with SCI industry standards with respect to some of their systems. Moreover, the Commission acknowledges that certain SCI entities are larger or more complex than others, and that proposed Rule 1000(b)(1) would impose higher costs on larger and more complex systems.

Because the Commission does not at this time have sufficient information to reasonably estimate each SCI entity's current level of compliance with the proposed SCI industry standards contained in the publications set forth in Table A, the Commission estimates a

[630] *See supra* Section III.C.1.b.

[631] *See* NIST 800–53, available at: *http://csrc.nist.gov/publications/drafts/800-53-rev4/sp800-53-rev4-ipd.pdf.*

[632] *See id.* at 3.

range of average costs for each SCI entity to comply with such standards. The Commission acknowledges that some SCI entities would incur costs near the bottom of the range because their systems policies and procedures currently meet SCI industry standards (which, as noted above, solely for purposes of this Economic Analysis Section, the Commission assumes to be the proposed SCI industry standards contained in the publications identified in Table A or in substantially similar publications). On the other hand, some SCI entities would incur costs near the middle or top of the range because their systems policies and procedures do not currently meet such standards. Because the Commission lacks sufficient information regarding the current practices of all SCI entities, the Commission seeks comment on the extent to which SCI entities already have in place systems policies and procedures that would meet the proposed SCI industry standards (which, solely for purposes of this Economic Analysis Section, the Commission assumes to be the proposed SCI industry standards contained in the publications identified in Table A or in substantially similar publications).

Further, unlike the Paperwork Reduction Act Section where the Commission estimates a fifty-percent baseline with respect to proposed Rule 1000(b)(1)(i)(A)–(E) for entities that currently participate in the ARP Inspection Program, the Commission preliminarily estimates the same cost range for all SCI entities for compliance with the proposed substantive requirements that are the subject of the policies and procedures. On the one hand, the Commission believes that certain SCI entities (in particular, some entities that participate in the ARP Inspection Program) may already comply with some of the substantive requirements and thus would incur less incremental cost for complying with such requirements. On the other hand, the Commission believes that some SCI entities that currently participate in the ARP Inspection Program are larger and have more complex systems than those that do not participate in the ARP Inspection Program and, therefore, would incur more incremental cost for complying with the substantive requirements. As such, the Commission preliminarily believes it is unlikely that SCI entities that do not participate in the ARP Inspection Program would incur twice the cost as SCI entities that participate in the ARP Inspection Program to comply with the substantive systems requirements underlying the policies and procedures required by proposed Regulation SCI.

Based on discussion with industry participants, the Commission preliminarily estimates that, to comply with the substantive requirements that are the subject of the policies and procedures required by proposed Rules 1000(b)(1) and (2), including consistency with the SCI industry standards (which, solely for purposes of this Economic Analysis, the Commission assumes to be the proposed SCI industry standards contained in the publications identified in Table A or in substantially similar publications) in connection with proposed Rule 1000(b)(1), on average, each SCI entity would incur an initial cost of between approximately $400,000 and $3 million.[633] Based on this average, the Commission preliminarily estimates that SCI entities would incur a total initial cost of between approximately $17.6 million[634] and $132 million.[635] The Commission seeks comment on the estimated average initial cost range for SCI entities to comply with the substantive requirements underlying the policies and procedures required by proposed Rules 1000(b)(1) and (2).

The preliminary cost estimates described above represent an estimated average cost range per SCI entity, and the Commission acknowledges that some of the costs to comply with the substantive requirements of proposed Rules 1000(b)(1) and (2) may be significantly higher than the estimated average for some SCI entities, while some of the costs may be significantly lower for other SCI entities. In particular, the Commission preliminarily believes that the costs associated with the requirement in proposed Rule 1000(b)(1)(i)(E) that an SCI entity have policies and procedures that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse to ensure next business day resumption of trading and two-hour resumption of clearance and settlement services following a wide-scale disruption is an area in which different SCI entities may encounter significantly different compliance costs. For example, among national securities exchanges, the Commission understands that many, though not all, national securities exchanges already have or soon expect to have backup facilities that do not rely on the same infrastructure components used by their primary facility. For those national securities exchanges that do not have such backup facilities, the cost to build and maintain such facilities may result in their compliance costs being significantly higher than those of national securities exchanges that already satisfy the proposed requirement.[636] The application of the geographic diversity requirement to other entities, such as ATSs, under the proposed rule, would depend on the nature, size, technology, business model, and other aspects of their business.

218. The Commission requests commenters' views on how many SCI entities would not currently satisfy the proposed requirement relating to geographic diversity of backup sites. The Commission requests commenters' views on the costs of establishing backup sites to satisfy the proposed geographic diversity requirement, particularly for entities that currently would not satisfy the proposed requirement. In such a case, given the likely significant cost and time associated with building such backup sites, how long do commenters believe it would take for SCI entities to come into compliance with such a proposed requirement? Would it be appropriate for the Commission to allow an extended period prior to which compliance with this proposed requirement would be effective? Why or why not? If so, how long should such period be and why? Should such an extended period only be permitted for a subset of SCI entities. If so, how should such a subset be determined? Please describe.

As noted above, because the Commission does not at this time have sufficient information to reasonably estimate each SCI entity's current level

[633] The Commission preliminarily estimates a range of cost for complying with the substantive requirements that are the subject of the policies and procedures required by proposed Rules 1000(b)(1) and (2) because some SCI entities are already in compliance with some of these substantive requirements. For example, the Commission believes that many SCI SROs (*e.g.,* certain national securities exchanges and registered clearing agencies) already have or have begun implementation of business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse to ensure next business day resumption of trading and two-hour resumption of clearance and settlement services following a wide-scale disruption.

[634] $17.6 million = ($400,000) × (44 SCI entities).

[635] $132 million = ($3 million) × (44 SCI entities).

[636] As noted, solely for purposes of this Economic Analysis, the Commission has assumed that the SCI industry standards would be those contained in the publications identified in Table A or in substantially similar publications. However, as proposed Rule 1000(b)(1)(ii) makes clear, compliance with such current industry standards, including the geographic diversity requirements contained in the 2003 Interagency White Paper, *supra* note 31, is not the exclusive means to comply with the requirements of proposed Rule 1000(b)(1). *See also supra* note 182.

of compliance with the substantive requirements underlying the policies and procedures, the Commission preliminarily estimates a range of average initial costs for each SCI entity to comply with the substantive requirements underlying the policies and procedures required by proposed Rules 1000(b)(1) and (2). Based on the estimates of the initial costs, Commission estimates a range of average ongoing cost for each SCI entity to comply with the requirements using two-thirds of the initial cost. The Commission preliminarily believes that a two-thirds estimate is appropriate because although proposed Rules 1000(b)(1) and (2) would require SCI entities to comply with certain systems requirements including, for example, establishing reasonable current and future capacity planning estimates on an ongoing basis, as well as conducting tests and reviews of their systems on an going basis, the Commission preliminarily believes that SCI entities would incur an additional initial cost to, for example, revise the underlying software code of their systems to the extent needed to bring those systems into compliance with the requirements of the proposed rules. Therefore, the Commission preliminarily estimates that, to comply with the substantive requirements that are the subject of the policies and procedures required by proposed Rules 1000(b)(1) and (2), including consistency with SCI industry standards in connection with proposed Rule 1000(b)(1), on average, each SCI entity would incur an ongoing annual cost of between approximately $267,000 [637] and $2 million.[638] Based on this estimated range, the Commission preliminarily estimates that SCI entities would incur a total ongoing cost of between approximately $11.7 million [639] and $88 million.[640] The Commission seeks comment on the estimated average ongoing cost range for SCI entities to comply with the substantive requirements underlying the policies and procedures required by proposed Rules 1000(b)(1) and (2).

The mandatory testing of SCI entity business continuity and disaster recovery plans, including backup systems, as proposed to be required under proposed Rule 1000(b)(9), would place an additional burden on SCI entities. The Commission believes that some SCI entities require some or all of their members or participants to connect to their backup systems [641] and that most, if not all, SCI entities already offer their members or participants the opportunity to test such plans, although they do not currently mandate participation by all members or participants in such testing. In addition, market participants, including SCI entities, already coordinate certain business continuity plan testing to some extent. Thus, the Commission preliminarily believes that additional costs of proposed Rule 1000(b)(9) to SCI entities would be minimal. However, for SCI entity members or participants, additional costs could be significant, and highly variable depending on the business continuity and disaster recovery plans being tested. However, based on discussions with market participants, the Commission preliminarily estimates the cost of the testing of such plans to range from immaterial administrative costs (for SCI entity members and participants that currently maintain connections to SCI entity backup systems) to a range of $24,000 to $60,000 per year per member or participant in connection with each SCI entity. Costs at the higher end of this range would accrue for members or participants who would need to invest in additional infrastructure and to maintain connectivity with an SCI entity's backup systems in order to participate in testing.[642] The Commission is unable at this time to provide a precise cost estimate for the total aggregate cost to SCI entity members and participants of the requirements relating to proposed Rule 1000(b)(9), as it does not know how each SCI entity will determine its standards for designating members or participants that it would require to participate in the testing required by proposed Rule 1000(b)(9)(i), and thus does not know the number of members or participants at each SCI entity that would be designated as required to participate in testing, and whether such designated members and participants are those that already maintain connections to SCI entity backup systems. However, the Commission preliminarily believes that an aggregate annual cost of approximately $66 million to designated members and participants is a reasonable estimate.[643] The Commission requests comment on these estimates and the assumptions underlying them.

The Commission preliminarily believes that the corrective action to mitigate harm resulting from SCI events would impose modest incremental costs on SCI entities because in the usual course of business, SCI entities already take corrective actions in response to systems issues. Proposed Rule 1000(b)(3) supplements the existing incentives of SCI entities to correct an SCI event quickly by focusing on potential harm to investors and market integrity and by requiring SCI entities to devote adequate resources to begin to take corrective action as soon as reasonably practicable. Based on its experience with the ARP Inspection Program, the Commission believes that entities currently participating in the ARP Inspection Program already take

[637] $266,667 = $400,000 (estimated initial cost to comply with the substantive requirements) × (2/3).

[638] $2 million = $3 million (estimated initial cost to comply with the substantive requirements) × (2/3).

[639] $11.7 million = ($266,667) × (44 SCI entities).

[640] $88 million = ($2 million) × (44 SCI entities).

[641] *See, e.g.,* CBOE Rule 6.18 (requiring Trading Permit Holders to take appropriate actions as instructed by CBOE to accommodate CBOE's ability to trade options via the back-up data center); CBOE Regulatory Circular RG12–163 (stating that Trading Permit Holders are required to maintain connectivity with the back-up data center and have the ability to operate in the back-up data center should circumstances arise that require it to be used); NYSE Rule 49(b)(2)(iii) (requiring NYSE members to have contingency plans to accommodate the use of the systems and facilities of NYSE Arca, NYSE's designated backup facility). *See also* Securities Exchange Act Release No. 52446 (September 15, 2005), 70 FR 55435 (September 21, 2005) (approving a proposed rule change by each of DTC, FICC, and NSCC imposing fines on ''top tier'' members that fail to conduct required connectivity testing for business continuity purposes, as reflected, *e.g.,* in NSCC Rules and Procedures, Addendum P, available at: *http://www.dtcc.com/legal/rules_proc/nscc_rules.pdf). See also, e.g.,* BATS Rule 18.38, Nasdaq Options Rule 13, and BOX Rule 3180 (permitting each exchange to require members to participate in computer systems testing in the manner and frequency prescribed by such exchange).

[642] Based on industry sources, the Commission understands that most of the larger members or participants of SCI entities already maintain connectivity with the backup systems of SCI entities while, among smaller members or participants of SCI entities, there is a lower incidence of members or participants maintaining such connectivity. The Commission requests comment on the accuracy of this understanding.

[643] This estimate assumes that 44 SCI entities would each designate an average of 150 members or participants to participate in the necessary testing. Based on industry sources, the Commission understands that many SCI entities have between 200 and 400 members or participants, though some have more and some have fewer. In addition, the Commission preliminarily believes that is reasonable to estimate that the members or participants of SCI entities that are most likely to be designated to be required participate in testing are those that conduct a high level of activity with the SCI entity, or that play an important role for the SCI entity (such as market makers) and that such members or participants currently are likely to already maintain connectivity with an SCI entity's backup systems. Therefore, the Commission estimates the average cost for each member or participant of an SCI entity to be $10,000, which takes into account the fact that the Commission preliminarily believes that many members or participants of SCI entities that would be required to participate in such testing would already have such connectivity, and thus have minimal cost. Based on these assumptions, the Commission estimates that the total aggregate cost to all members or participants of all SCI entities to be approximately $66 million (44 SCI entities × 150 members or participants × $10,000 = $66 million).

corrective actions in response to a systems issue, and believes that other SCI entities also take corrective actions in response to a systems issue. Nevertheless, the Commission preliminarily believes that proposed Rule 1000(b)(3) could result in modestly increased costs for SCI entities per SCI event for corrective action relative to current practice for SCI entities, as a result of undertaking corrective action sooner than they might have otherwise and/or increasing investment in newer more updated systems earlier than they might have otherwise. If, however, proposed Regulation SCI reduces the frequency and severity of SCI events, the overall costs to SCI entities of corrective action may not increase significantly from the costs incurred without proposed Regulation SCI. However, the degree to which proposed Regulation SCI will reduce the frequency and severity of SCI events is unknown. Thus, the Commission is, at this time, unable to estimate the precise impact of proposed Regulation SCI due to an SCI entity's corrective action. Thus, the Commission requests comment regarding the costs associated with proposed Regulation SCI's corrective action requirements, including what such costs would be on an annualized basis.[644]

When an SCI event occurs, an SCI entity needs to determine whether the event is an immediate notification SCI event or dissemination SCI event because the proposed rule would impose different obligations on SCI entities for such events. Identifying these types of SCI events may impose one-time implementation costs on SCI entities associated with developing a process for ensuring that they are able to quickly and correctly make such determinations, as well as periodic costs in reviewing the adopted process.[645]

The Commission notes that proposed Rule 1000(d) would require that any written notification, review, description, analysis, or report to the Commission (except any written notification submitted pursuant to proposed Rule 1000(b)(4)(i)) be submitted electronically and contain an electronic signature. This proposed rule would require that every SCI entity have the ability to submit forms electronically with an electronic signature. The Commission believes that most, if not all, SCI entities currently have the ability to access and submit an electronic form such that the requirement to submit Form SCI electronically will not impose new implementation costs. The initial and ongoing costs associated with various electronic submissions of Form SCI are discussed in the Paperwork Reduction Act Section above.[646]

The Commission recognizes that some of the costs imposed by proposed Regulation SCI may ultimately be transferred to intermediaries, such as market participants that access national securities exchanges or clearing agencies, for example, in the form of higher fees. The Commission recognizes that, if costs relating to compliance with proposed Regulation SCI are passed on in the form of increased prices to users of SCI entities, there may be a loss of efficiency as a result of the net increase in costs to SCI entity customers. The Commission also preliminarily believes that, for some SCI entities, the cost estimates may be lower than the actual costs to be incurred, such as for entities that are not currently part of the ARP Inspection Program or that have complex automated systems. However, on balance, the Commission preliminarily believes that the incremental direct cost estimates above are appropriate.

b. Other Costs

The Commission recognizes that proposed Regulation SCI could have other potential costs that cannot be quantified at this time. For example, entities covered by the proposed rule frequently make systems changes to comply with new and amended rules and regulations such as rules and regulations under federal securities laws and SRO rules. The Commission recognizes that, for entities that meet the definition of SCI entities, because they must continue to comply with proposed Regulation SCI when they make systems changes, proposed Regulation SCI could increase the costs and time needed to make systems changes to comply with new and amended rules and regulations. The Commission requests comment on the nature of such additional costs and time.

The Commission also considered whether proposed Regulation SCI would impact innovation in ATSs or raise barriers to entry. The Commission recognizes that, if proposed Regulation SCI were to cause SCI entities, including ATSs, to allocate resources towards ensuring they have robust systems and the personnel necessary to comply with proposed Regulation SCI's requirements and away from new features for their systems, or investing in research and development, proposed Regulation SCI may have a negative impact on innovation among such entities and thus impact competition. Similarly, if the costs of proposed Regulation SCI were to be viewed by persons considering forming new ATSs to be so onerous so as to dissuade them from starting new ATSs, competition would also be negatively impacted. To balance any concern about discouraging innovation and raising barriers to entry against the need for regulation, the Commission proposes thresholds for SCI ATSs that are designed to include only the ATSs that are most likely to have a significant impact on markets due to an SCI event, and requests comment on the thresholds.[647] The tradeoffs associated with these thresholds are discussed in more detail below.

Finally, by specifying the timing, type, and format of information to be submitted to the Commission and by requiring electronic submission of Form SCI, Commission staff should be able to more efficiently review and analyze the information submitted. It is particularly important for the Commission to be able to review and analyze filings on Form SCI efficiently because proposed Regulation SCI would require all SCI events to be reported to the Commission. The Commission is not proposing at this time to require the data to be submitted in a tagged data format (*e.g.,* XML, XBRL, or another structured data format that may be tagged), although it has requested specific comment as to whether it should, and the costs and benefits of doing so.[648] The Commission recognizes that it could more readily analyze filings submitted in a tagged data format than in PDF format, and the subsequent potential benefits to investors may be greater. However, these benefits are balanced against the costs to the SCI entities of submitting filings in a tagged format.

c. Scaling

The Commission recognizes that the benefits of every provision of proposed Regulation SCI may not justify the costs

[644] *See also supra* Section IV.D.3 (estimating paperwork burdens associated with SCI entities developing a process for ensuring that they are prepared to take corrective action as required by proposed Rule 1000(b)(3), and reviewing that process on an ongoing basis).

[645] The initial and ongoing burden associated with making these determinations are discussed in the Paperwork Reduction Act Section above. *See supra* Section IV.D.3 (estimating burdens resulting from SCI entities determining whether an SCI event is an immediate notification SCI event or dissemination SCI event).

[646] *See supra* Section IV.D.2 (estimating burdens resulting from notice, dissemination, and reporting requirements for SCI entities).

[647] *See supra* Section III.B.1 and *supra* notes 100–123 and accompanying text.

[648] *See, e.g.,* request for comment in *supra* Section III.D.1.

of the provision if every requirement applied to every SCI entity and SCI event. In particular, the Commission recognizes that applying each requirement to every SCI entity and every SCI event could adversely affect competition and efficiency. Therefore, the Commission has proposed that not all SCI events be subject to the same requirements as immediate notification SCI events and dissemination SCI events and that ATSs that do not meet the definition of SCI ATS, and broker-dealers who are not ATSs, should not be subject to same requirements as SCI entities. The discussion that follows lays out the tradeoffs associated with determining the appropriate cutoffs for determining which events are immediate notification SCI events or dissemination SCI events, and which ATSs are SCI ATSs. In sum, the Commission believes that the requirements balance the need for regulation against the potential efficiency, competition, and capital formation concerns of the regulation. In the Commission's judgment, the cost of complying with the proposed rules would not be so large as to significantly raise barriers to entry or otherwise alter the competitive landscape of the entities involved.

As defined in proposed Rule 1000(a), a dissemination SCI event is an SCI event that is a: systems compliance issue; systems intrusion; or system disruption that results, or the SCI entity reasonably estimate would result, in a significant harm or loss to market participants. If the criteria for dissemination SCI events is set too low, the member or participant dissemination requirements under proposed Regulation SCI could be very costly.[649] Therefore, the Commission carefully considered tradeoffs in defining the term dissemination SCI event. On the one hand, the definition should ensure that SCI events that have significant impacts on the markets are captured as dissemination SCI events.[650] On the other hand, not every SCI event should be included. There are higher costs associated with dealing with dissemination SCI events as compared to SCI events that are not dissemination SCI events due to the additional requirements relating to dissemination of information to members or participants. Second, SCI entity members or participants may be provided with unnecessary information if information about too many SCI events that do not have significant impact on the markets is disseminated to members or participants. If there is excessive dissemination of insignificant events, truly important events may get hidden among others that do not have the same degree of significance or impact on the securities markets.[651] SCI entity members or participants also may not pay attention to disseminated SCI events if an excessive number of insignificant events are disseminated and notifications about SCI events may become routine. The proposed definition of dissemination SCI event is an attempt to balance these concerns.

Section III.B.1 discusses the definition of ''SCI ATS'' in proposed Rule 1000(a). The proposal would replace the threshold for NMS stocks of 20 percent or more of the average daily volume in any NMS stock. The proposal bases the definition of SCI ATS on average daily dollar volume and sets the threshold at five percent or more in any single NMS stock and one-quarter percent of more in all NMS stocks, or one percent or more in all NMS stocks. The proposal changes the threshold for non-NMS stocks to at least five percent of the aggregate average daily dollar volume from twenty percent of the average daily share volume. These proposed thresholds reflect developments in equities markets that resulted in a higher number of trading venues and less concentrated trading, and are designed to ensure that the proposed rule is applied to all ATSs that trade more than a limited amount of securities and for which SCI events may cause significant impact on the overall market. The main benefit of the proposed thresholds is to bring more ATSs into the SCI ATS definition than currently subject to the systems safeguard provisions of Rule 301(b)(6) of Regulation ATS, which in turn would make them SCI entities. This would help ensure that SCI ATSs that trade a certain amount of securities are covered by the proposed regulation. The Commission recognizes the potential for a low threshold to discourage automation and innovation but, as noted below, the Commission has balanced the concerns regarding discouraging automation and innovation against the need for regulation, and preliminarily believes that innovation is unlikely to be hampered and automation is likely to continue to increase. To that extent, the proposed rule uses a two-prong approach for NMS stocks. The threshold is based on market share in individual stocks. However, it is also required that the ATS has a certain market share of the overall market in all NMS stocks to prevent an ATS from being subject to proposed Regulation SCI for meeting the five percent threshold in any single NMS stock for a micro-cap stock, but not having significant market share in all NMS stocks. As discussed above, the Commission believes that approximately 10 NMS stock ATSs and two non-NMS stock ATSs would fall within the definition of SCI ATS.[652]

For municipal and corporate debt securities, the proposal would lower the threshold from 20 percent or more to five percent or more. However, the proposal contemplates a two-prong approach considering either average daily dollar volume or average daily transaction volume, and exceeding the threshold in either one would qualify an ATS as an SCI ATS. The use of the two metrics is intended to take into account the fact that ATSs in the debt securities markets may handle primarily retail trades (*i.e.,* large transaction volume but small dollar volume) or institutional-sized trades (*i.e.,* large dollar volume but small transaction volume).

The proposed thresholds for municipal and corporate debt securities are different from the proposed thresholds for NMS stocks. This difference reflects the fact that, in the debt securities markets (*i.e.,* municipal securities and corporate debt securities), the degree of automation and electronic trading is much lower than in the markets for NMS stocks, which the Commission preliminarily believes may reduce the need for more stringent rules and regulations. In addition, the Commission preliminarily believes that the imposition of a threshold lower than five percent on the current debt securities markets could have the unintended effect of discouraging automation in these markets and discouraging new entrants into these markets. Also, due to the large number of issues outstanding in these debt securities markets, trading volume may be extremely low in a given issue, but also may fluctuate significantly from

[649] As noted above, an immediate notification SCI event includes any systems disruption that the SCI entity reasonably estimates would have a material impact on its operations or on market participants, any systems compliance issue, or any systems intrusion. *See supra* Section III.C.3.b. As with dissemination SCI events, if the criteria for immediate notification SCI events is set too low, SCI entities would incur additional costs in providing immediate notification to the Commission.

[650] With respect to immediate Commission notification, the Commission should be immediately notified of any systems disruption that the SCI entity reasonably estimates would have a material impact on its operations or on market participants, any systems compliance issue, or any systems intrusion.

[651] Similarly, immediate Commission notification of only immediate notification SCI events should help the Commission focus its attention on SCI events that may potentially impact an SCI entity's operations or market participants.

[652] *See supra* Section III.B.1.

day to day and issue to issue. Therefore, the thresholds for debt securities consider aggregate volume instead of volume in an individual issue. As discussed above, the Commission preliminarily believes that three municipal securities and corporate debt securities ATSs would fall within the definition of SCI ATS.[653]

D. Request for Comment on Economic Analysis

219. The Commission is sensitive to the potential economic effects, including the costs and benefits, of proposed Regulation SCI. The Commission has identified above certain costs and benefits associated with the proposal and requests comment on all aspects of its preliminary economic analysis.[654] The Commission encourages commenters to identify, discuss, analyze, and supply relevant data, information, or statistics regarding any such costs or benefits. In particular, the Commission seeks comment on the following:

220. Do commenters agree that the release provides a fair representation of current practices and how those current practices would change under proposed Regulation SCI? Why or why not? Please be specific in your response regarding current practices and how they would change under proposed Regulation SCI.

221. Do commenters agree with the Commission's characterization of the relevant markets in which SCI entities participate, as well as the market failures identified with respect to each of the relevant markets? Why or why not? Specifically, do commenters agree with the identified level of competition in each of the relevant markets? Why or why not?

222. What is a typical market participant's general level of expectation of how well the market operates? Do market participants currently have all the information they need to make informed decisions that manage their exposure to SCI events? If not, would proposed Regulation SCI provide the needed information? Why or why not?

223. Do commenters agree with the Commission's analysis of the costs and benefits of each provision of proposed Regulation SCI, including the definitions under proposed Rule 1000(a)? Why or why not?

224. Do commenters believe that there are additional benefits or costs that could be quantified or otherwise monetized? If so, please identify these categories and, if possible, provide specific estimates or data.

225. Are there any additional benefits that may arise from proposed Regulation SCI? Or are there benefits described above that would not likely result from proposed Regulation SCI? If so, please explain these benefits or lack of benefits in detail.

226. Are there any additional costs that may arise from proposed Regulation SCI? Are there any potential unintended consequences of proposed Regulation SCI? Or are there costs described above that would not likely result from proposed Regulation SCI? If so, please explain these costs or lack of costs in detail.

227. Do the types or extent of any anticipated benefits or costs from proposed Regulation SCI differ between the different types of SCI entities? For example, do potential benefits or costs differ with respect to SCI SROs as compared to SCI ATSs? Please explain.

228. Are there methods (including any suggested by Roundtable panelists or commenters) by which the Commission could reduce the costs imposed by Regulation SCI while still achieving the goals? Please explain.

229. Does the release appropriately describe the potential impacts of proposed Regulation SCI on the promotion of efficiency, competition, and capital formation? Why or why not?

230. To the extent that there are reasonable alternatives to any of the rules under proposed Regulation SCI, what are the potential costs and benefits of those reasonable alternatives relative to the proposed rules? What are the potential impacts on the promotion of efficiency, competition, and capital formation of those reasonable alternatives? For example, what would be the effect on the economic analysis of requiring SCI entities to conduct an SCI review that requires penetration testing annually? What would be the effect on the economic analysis of requiring SCI entities to inform members and participants of all SCI events? What would be the effect on the economic analysis of requiring filing in a tagged data format (*e.g.,* XML, XBRL, or another structured data format that may be tagged)? What would be the effect on the economic analysis of including broker-dealers, or a subset thereof, in the definition of SCI entities?

231. In addition, as noted above, the proposed requirement that an SCI entity disseminate information relating to dissemination SCI events to its members or participants is focused on disseminating information to those who need, want, and can act on the information disseminated. The Commission also preliminarily believes that this proposed requirement could promote competition and capital formation. Are there alternative mechanisms for achieving the Commission's goals while promoting competition and capital formation? Are there costs associated with this proposed approach that have not been considered? For example, would the requirement to disseminate information to members or participants about dissemination SCI events increase an SCI entity's litigation costs, or cause an SCI entity to lose business (*e.g.,* if market participants misjudge the meaning of information disseminated about dissemination SCI events)? Would the benefits of the proposed information dissemination outweigh the costs? Why or why not? Please explain.

232. The Commission also generally requests comment on the competitive or anticompetitive effects, as well as the efficiency and capital formation effects, of proposed Regulation SCI on market participants if the proposed rules are adopted as proposed. Commenters should provide analysis and empirical data to support their views on the competitive or anticompetitive effects, as well as the efficiency and capital formation effects, of proposed Regulation SCI.

233. Finally, as stated above, proposed Rule 1000(b)(1) would require SCI entities to establish, maintain, and enforce written policies and procedures, reasonably designed to ensure that their SCI systems and, for purposes of security standards, SCI security systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets. As discussed above, the Commission is proposing that an SCI entity's policies and procedures required by proposed Rule 1000(b)(1) be deemed to be reasonably designed if they are consistent with current SCI industry standards.[655] However, the costs identified above may not fully incorporate all of the costs of adhering to initial or future SCI industry standards. For example, if a SCI industry standard is based on the standards of NIST (which issues a number of the publications listed in Table A), it could include additional requirements not otherwise required in proposed Regulation SCI such as establishment of assurance-related

[653] *See id.*

[654] The Commission has also considered the views expressed in comment letters submitted in connection with the Roundtable, as well as the views expressed by Roundtable participants. *See supra* Section I.C.

[655] Proposed SCI industry standards are contained in the publications identified in Table A. *See supra* Section III.C.1.b.

controls (including, for example, conduct of integrity checks on software and firmware components, or monitoring of established secure configuration settings). Any additional requirements would likely impose costs on SCI entities. Therefore, the Commission requests comment on what benefits or costs, quantifiable or otherwise, could potentially be imposed by the identification of SCI industry standards. What are market participants' current level of compliance with the industry standards contained in the publications listed in Table A? What would be the costs to SCI entities (in addition to the cost of adhering to current practice) of the Commission identifying examples of industry standards? What would be the benefits? Please explain.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [656] the Commission must advise OMB as to whether proposed Regulation SCI constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) a significant adverse effect on competition, investment or innovation.

234. The Commission requests comment on the potential impact of proposed Regulation SCI on the economy on an annual basis, on the costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') [657] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) [658] of the Administrative Procedure Act,[659] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.'' [660] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not have significant economic impact on a substantial number of small entities.

A. SCI Entities

Paragraph (a) of Rule 0–10 provides that for purposes of the RFA, a small entity when used with reference to a ''person'' other than an investment company means a person that, on the last day of its most recent fiscal year, had total assets of $5 million or less.[661] With regard to broker-dealers, small entity means a broker or dealer that had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act, or, if not required to file such statements, total capital of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter), and that is not affiliated with any person that is not a small business or small organization.[662] With regard to clearing agencies, small entity means a clearing agency that compared, cleared, and settled less than $500 million in securities transactions during the preceding fiscal year (or in the time that it has been in business, if shorter), had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or in the time that it has been in business, if shorter), and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[663] With regard to exchanges, a small entity is an exchange that has been exempt from the reporting requirements of Rule 601 under Regulation NMS, and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[664] With regard to securities information processors, a small entity is a securities information processor that had gross revenue of less than $10 million during the preceding year (or in the time it has been in business, if shorter), provided service to fewer than 100 interrogation devices or moving tickers at all times during the preceding fiscal year (or in the time it has been in business, if shorter), and is not affiliated with any person (that is not a natural person) that is not a small business or small organization.[665] Under the standards adopted by the Small Business Administration (''SBA''), entities engaged in financial investments and related activities are considered small entities if they have $7 million or less in annual receipts.[666]

Based on the Commission's existing information about the entities that will be subject to proposed Regulation SCI, the Commission preliminarily believes that SCI entities that are self-regulatory organizations (national securities exchanges, national securities associations, registered clearing agencies, and the MSRB) or exempt clearing agencies subject to ARP would not fall within the definition of ''small entity'' as described above. With regard to plan processors, which are defined under Rule 600(b)(55) of Regulation NMS to mean a self-regulatory organization or securities information processor acting as an exclusive processor in connection with the development, implementation and/or operation of any facility contemplated by an effective NMS plan,[667] the Commission's definition of ''small entity'' as it relates to self-regulatory organizations and securities information processors would apply. The Commission preliminarily does not believe that any plan processor would be a ''small entity'' as defined above. With regard to SCI ATSs, because they are registered as broker-dealers, the Commission's definition of ''small entity'' as it relates to broker-dealers would apply. As stated above, the Commission preliminarily believes that approximately 15 ATSs would satisfy the definition of SCI ATSs and would be impacted by proposed Regulation SCI.[668] The Commission preliminarily does not believe that any of these 15 SCI

[656] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[657] 5 U.S.C. 601 *et seq.*

[658] 5 U.S.C. 603(a).

[659] 5 U.S.C. 551 *et seq.*

[660] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[661] *See* 17 CFR 240.0–10(a).

[662] *See* 17 CFR 240.0–10(c).

[663] *See* 17 CFR 240.0–10(d).

[664] *See* 17 CFR 240.0–10(e).

[665] *See* 17 CFR 240.0–10(g).

[666] *See* SBA's Table of Small Business Size Standards, Subsector 523 and 13 CFR 121.201. Such entities include firms engaged in investment banking and securities dealing, securities brokerage, commodity contracts dealing, commodity contracts brokerage, securities and commodity exchanges, miscellaneous intermediation, portfolio management, investment advice, trust, fiduciary and custody activities, and miscellaneous financial investment activities.

[667] *See* 17 CFR 242.600(b)(55).

[668] *See supra* Section III.B.1, discussing the proposed definition of SCI entity.

ATSs would be a ''small entity'' as defined above.

B. Certification

For the foregoing reasons, the Commission certifies that proposed Regulation SCI would not have a significant economic impact on a substantial number of small entities for the purposes of the RFA.

235. The Commission requests comment regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate the extent of the impact.

VIII. Statutory Authority and Text of Proposed Amendments

Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly, Sections 2, 3, 5, 6, 11A, 15, 15A, 17, 17A, and 23(a) thereof, 15 U.S.C. 78b, 78c, 78e, 78f, 78k–1, 78*o,* 78*o*–3, 78q, 78q–1, and 78w(a), the Commission proposes to adopt Regulation SCI under the Exchange Act and Form SCI under the Exchange Act, and to amend Regulation ATS under the Exchange Act.

List of Subjects in 17 CFR Parts 242 and 249

Securities, brokers, reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 242—REGULATIONS M, SHO, ATS, AC, NMS AND SCI AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 1a. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l,* 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a23, 80a–29, and 80a–37.

■ 1b. The heading of part 242 is revised to read as set forth above.

§ 242.301—[Amended]

■ 2. In § 242.301, remove and reserve paragraph (b)(6).

■ 3. Add an undesignated center heading and § 242.1000 to read as follows:

Regulation SCI—Systems Compliance and Integrity

§ 242.1000 Definitions and requirements for SCI entities

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

Dissemination SCI event means an SCI event that is a:

(1) Systems compliance issue;

(2) Systems intrusion; or

(3) Systems disruption that results, or the SCI entity reasonably estimates would result, in significant harm or loss to market participants.

Electronic signature has the meaning set forth in § 240.19b–4(j) of this chapter.

Exempt clearing agency subject to ARP means an entity that has received from the Commission an exemption from registration as a clearing agency under Section 17A of the Act, and whose exemption contains conditions that relate to the Commission's Automation Review Policies (ARP), or any Commission regulation that supersedes or replaces such policies.

Material systems change means a change to one or more:

(1) SCI systems of an SCI entity that:

(i) Materially affects the existing capacity, integrity, resiliency, availability, or security of such systems;

(ii) Relies upon materially new or different technology;

(iii) Provides a new material service or material function; or

(iv) Otherwise materially affects the operations of the SCI entity; or

(2) SCI security systems of an SCI entity that materially affects the existing security of such systems.

Plan processor has the meaning set forth in § 242.600(b)(55).

Responsible SCI personnel means, for a particular SCI system or SCI security system impacted by an SCI event, any personnel, whether an employee or agent, of the SCI entity having responsibility for such system.

SCI alternative trading system or *SCI ATS* means an alternative trading system, as defined in § 242.300(a), which during at least four of the preceding six calendar months, had:

(1) With respect to NMS stocks:

(i) Five percent (5%) or more in any single NMS stock, and one-quarter percent (0.25%) or more in all NMS stocks, of the average daily dollar volume reported by an effective transaction reporting plan; or

(ii) One percent (1%) or more in all NMS stocks of the average daily dollar volume reported by an effective transaction reporting plan;

(2) With respect to equity securities that are not NMS stocks and for which transactions are reported to a self-regulatory organization, five percent (5%) or more of the average daily dollar volume as calculated by the self-regulatory organization to which such transactions are reported;

(3) With respect to municipal securities, five percent (5%) or more of either:

(i) The average daily dollar volume traded in the United States; or

(ii) The average daily transaction volume traded in the United States; or

(4) With respect to corporate debt securities, five percent (5%) or more of either:

(i) The average daily dollar volume traded in the United States; or

(ii) The average daily transaction volume traded in the United States.

SCI entity means an SCI self-regulatory organization, SCI alternative trading system, plan processor, or exempt clearing agency subject to ARP.

SCI event means an event at an SCI entity that constitutes:

(1) A systems disruption;

(2) A systems compliance issue; or

(3) A systems intrusion.

SCI review means a review, following established procedures and standards, that is performed by objective personnel having appropriate experience in conducting reviews of SCI systems and SCI security systems, and which review contains:

(1) A risk assessment with respect to such systems of an SCI entity; and

(2) An assessment of internal control design and effectiveness to include logical and physical security controls, development processes, and information technology governance, consistent with industry standards; *provided however,* that such review shall include penetration test reviews of the network, firewalls, development, testing, and production systems at a frequency of not less than once every three years.

SCI security systems means any systems that share network resources with SCI systems that, if breached, would be reasonably likely to pose a security threat to SCI systems.

SCI self-regulatory organization or *SCI SRO* means any national securities exchange, registered securities association, or registered clearing agency, or the Municipal Securities Rulemaking Board; *provided however,* that for purposes of this section, the term SCI self-regulatory organization shall not include an exchange that is notice registered with the Commission pursuant to 15 U.S.C. 78f(g) or a limited purpose national securities association registered with the Commission pursuant to 15 U.S.C. 78*o*–3(k).

SCI systems means all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity, whether in production, development, or testing, that directly support trading, clearance and

settlement, order routing, market data, regulation, or surveillance.

Systems compliance issue means an event at an SCI entity that has caused any SCI system of such entity to operate in a manner that does not comply with the federal securities laws and rules and regulations thereunder or the entity's rules or governing documents, as applicable.

Systems disruption means an event in an SCI entity's SCI systems that results in:

(1) A failure to maintain service level agreements or constraints;

(2) A disruption of normal operations, including switchover to back-up equipment with near-term recovery of primary hardware unlikely;

(3) A loss of use of any such system;

(4) A loss of transaction or clearance and settlement data;

(5) Significant back-ups or delays in processing;

(6) A significant diminution of ability to disseminate timely and accurate market data; or

(7) A queuing of data between system components or queuing of messages to or from customers of such duration that normal service delivery is affected.

Systems intrusion means any unauthorized entry into the SCI systems or SCI security systems of an SCI entity.

(b) *Requirements for SCI entities.* Each SCI entity shall:

(1) *Capacity, Integrity, Resiliency, Availability, and Security.* Establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, SCI security systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets.

(i) Such policies and procedures shall include, at a minimum:

(A) The establishment of reasonable current and future capacity planning estimates;

(B) Periodic capacity stress tests of such systems to determine their ability to process transactions in an accurate, timely, and efficient manner;

(C) A program to review and keep current systems development and testing methodology for such systems;

(D) Regular reviews and testing of such systems, including backup systems, to identify vulnerabilities pertaining to internal and external threats, physical hazards, and natural or manmade disasters;

(E) Business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse to ensure next business day resumption of trading and two-hour resumption of clearance and settlement services following a wide-scale disruption; and

(F) Standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data; and

(ii) For purposes of this paragraph (b)(1), such policies and procedures shall be deemed to be reasonably designed if they are consistent with current SCI industry standards, which shall be:

(A) Comprised of information technology practices that are widely available for free to information technology professionals in the financial sector; and

(B) Issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or agencies, or widely recognized organization. Compliance with such current SCI industry standards, however, shall not be the exclusive means to comply with the requirements of this paragraph (b)(1).

(2) *Systems Compliance.* (i) Establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems operate in the manner intended, including in a manner that complies with the federal securities laws and rules and regulations thereunder and the entity's rules and governing documents, as applicable.

(ii) Safe harbor from liability for SCI entities. An SCI entity shall be deemed not to have violated paragraph (b)(2)(i) of this section if:

(A) The SCI entity has established and maintained policies and procedures reasonably designed to provide for:

(*1*) Testing of all such systems and any changes to such systems prior to implementation;

(*2*) Periodic testing of all such systems and any changes to such systems after their implementation;

(*3*) A system of internal controls over changes to such systems;

(*4*) Ongoing monitoring of the functionality of such systems to detect whether they are operating in the manner intended;

(*5*) Assessments of SCI systems compliance performed by personnel familiar with applicable federal securities laws and rules and regulations thereunder and the SCI entity's rules and governing documents, as applicable; and

(*6*) Review by regulatory personnel of SCI systems design, changes, testing, and controls to prevent, detect, and address actions that do not comply with applicable federal securities laws and rules and regulations thereunder and the SCI entity's rules and governing documents, as applicable;

(B) The SCI entity has established and maintained a system for applying such policies and procedures which would reasonably be expected to prevent and detect, insofar as practicable, any violations of such policies and procedures by the SCI entity or any person employed by the SCI entity, and

(C) The SCI entity:

(*1*) Has reasonably discharged the duties and obligations incumbent upon the SCI entity by such policies and procedures; and

(*2*) Was without reasonable cause to believe that such policies and procedures were not being complied with in any material respect.

(iii) Safe harbor from liability for individuals. A person employed by an SCI entity shall be deemed not to have aided, abetted, counseled, commanded, caused, induced, or procured the violation by any other person of paragraph (b)(2)(i) of this section if the person employed by the SCI entity:

(A) Has reasonably discharged the duties and obligations incumbent upon such person by such policies and procedures; and

(B) Was without reasonable cause to believe that such policies and procedures were not being complied with in any material respect.

(3) *Corrective Action.* Upon any responsible SCI personnel becoming aware of an SCI event, begin to take appropriate corrective action which shall include, at a minimum, mitigating potential harm to investors and market integrity resulting from the SCI event and devoting adequate resources to remedy the SCI event as soon as reasonably practicable.

(4) *Commission Notification.* (i) Upon any responsible SCI personnel becoming aware of a systems disruption that the SCI entity reasonably estimates would have a material impact on its operations or on market participants, any systems compliance issue, or any systems intrusion, notify the Commission of such SCI event.

(ii) Within 24 hours of any responsible SCI personnel becoming aware of any SCI event, submit a written notification pertaining to such SCI event to the Commission.

(iii) Until such time as the SCI event is resolved, submit written updates pertaining to such SCI event to the Commission on a regular basis, or at

such frequency as reasonably requested by a representative of the Commission.

(iv) Any written notification to the Commission made pursuant to paragraphs (b)(4)(ii) or (b)(4)(iii) of this section shall be made electronically on Form SCI (§ 249.1900 of this chapter), and shall include all information as prescribed in Form SCI and the instructions thereto, including:

(A) For a notification made pursuant to paragraph (b)(4)(ii) of this section:

(*1*) All pertinent information known about an SCI event, including: a detailed description of the SCI event; the SCI entity's current assessment of the types and number of market participants potentially affected by the SCI event; the potential impact of the SCI event on the market; and the SCI entity's current assessment of the SCI event, including a discussion of the determination of whether the SCI event is a dissemination SCI event or not; and

(*2*) To the extent available as of the time of the notification: A description of the steps the SCI entity is taking, or plans to take, with respect to the SCI event; the time the SCI event was resolved or timeframe within which the SCI event is expected to be resolved; a description of the SCI entity's rule(s) and/or governing document(s), as applicable, that relate to the SCI event; and an analysis of parties that may have experienced a loss, whether monetary or otherwise, due to the SCI event, the number of such parties, and an estimate of the aggregate amount of such loss.

(B) For a notification made pursuant to paragraph (b)(4)(iii) of this section, an update of any information previously provided regarding the SCI event, including any information required by paragraph (b)(4)(iv)(A)(*2*) of this section which was not available at the time of submission of the notification made pursuant to paragraph (b)(4)(ii) of this section. Subsequent updates shall update any information provided regarding the SCI event until the SCI event is resolved.

(C) For notifications made pursuant to paragraphs (b)(4)(ii) or (b)(4)(iii) of this section, attach a copy of any information disseminated to date regarding the SCI event to its members or participants or on the SCI entity's publicly available Web site.

(5) *Dissemination of information to members or participants.* (i)(A) Promptly after any responsible SCI personnel becomes aware of a dissemination SCI event other than a systems intrusion, disseminate to its members or participants the following information about such SCI event:

(*1*) The systems affected by the SCI event; and

(*2*) A summary description of the SCI event; and

(B) When known, further disseminate to its members or participants:

(*1*) A detailed description of the SCI event;

(*2*) The SCI entity's current assessment of the types and number of market participants potentially affected by the SCI event; and

(*3*) A description of the progress of its corrective action for the SCI event and when the SCI event has been or is expected to be resolved; and

(C) Provide regular updates to members or participants of any information required to be disseminated under paragraphs (b)(5)(i)(A) and (b)(5)(i)(B) of this section.

(ii) Promptly after any responsible SCI personnel becomes aware of a systems intrusion, disseminate to its members or participants a summary description of the systems intrusion, including a description of the corrective action taken by the SCI entity and when the systems intrusion has been or is expected to be resolved, unless the SCI entity determines that dissemination of such information would likely compromise the security of the SCI entity's SCI systems or SCI security systems, or an investigation of the systems intrusion, and documents the reasons for such determination.

(6) *Material Systems Changes.* (i) Absent exigent circumstances, notify the Commission in writing at least 30 calendar days before implementation of any planned material systems change, including a description of the planned material systems change as well as the expected dates of commencement and completion of implementation of such changes.

(ii) If exigent circumstances exist, or if the information previously provided to the Commission regarding any planned material systems change has become materially inaccurate, notify the Commission, either orally or in writing, with any oral notification to be memorialized within 24 hours after such oral notification by a written notification, as early as reasonably practicable.

(iii) A written notification to the Commission made pursuant to this paragraph (b)(6) shall be made electronically on Form SCI (§ 249.1900 of this chapter), and shall include all information as prescribed in Form SCI and the instructions thereto.

(7) *SCI Review.* Conduct an SCI review of the SCI entity's compliance with Regulation SCI not less than once each calendar year, and submit a report of the SCI review to senior management of the SCI entity for review no more than 30 calendar days after completion of such SCI review.

(8) *Reports.* Submit to the Commission:

(i) A report of the SCI review required by paragraph (b)(7) of this section, together with any response by senior management, within 60 calendar days after its submission to senior management of the SCI entity;

(ii) A report, within 30 calendar days after the end of June and December of each year, containing a summary description of the progress of any material systems change during the six-month period ending on June 30 or December 31, as the case may be, and the date, or expected date, of completion of implementation of such changes; and

(iii) Any reports to be filed with the Commission pursuant to this paragraph (b)(8) shall be filed electronically on Form SCI (§ 249.1900 of this chapter), and shall include all information as prescribed in Form SCI and the instructions thereto.

(9) *SCI Entity Business Continuity and Disaster Recovery Plans Testing Requirements for Members or Participants.* With respect to an SCI entity's business continuity and disaster recovery plans, including its backup systems:

(i) Require participation by designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency as specified by the SCI entity, at least once every 12 months; and

(ii) Coordinate the testing of such plans on an industry- or sector-wide basis with other SCI entities.

(iii) Each SCI entity shall designate those members or participants it deems necessary, for the maintenance of fair and orderly markets in the event of the activation of its business continuity and disaster recovery plans, to participate in the testing of such plans pursuant to paragraph (i) of this section. Each SCI entity shall notify the Commission of such designations and its standards for designation, and promptly update such notification after any changes to its designations or standards. A written notification made pursuant to this paragraph (b)(9)(iii) shall be made electronically on Form SCI (§ 249.1900 of this chapter), and shall include all information as prescribed in Form SCI and the instructions thereto.

(c) *Recordkeeping Requirements Related to Compliance with Regulation SCI.* (1) An SCI SRO shall make, keep, and preserve all documents relating to its compliance with Regulation SCI as

prescribed in § 240.17a–1 of this chapter.

(2) An SCI entity that is not an SCI SRO shall:

(i) Make, keep, and preserve at least one copy of all documents, including correspondence, memoranda, papers, books, notices, accounts, and other such records, relating to its compliance with Regulation SCI, including, but not limited to, records relating to any changes to its SCI systems and SCI security systems;

(ii) Keep all such documents for a period of not less than five years, the first two years in a place that is readily accessible to the Commission or its representatives for inspection and examination; and

(iii) Upon request of any representative of the Commission, promptly furnish to the possession of such representative copies of any documents required to be kept and preserved by it pursuant to paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

(3) Upon or immediately prior to ceasing to do business or ceasing to be registered under the Securities Exchange Act of 1934, an SCI entity shall take all necessary action to ensure that the records required to be made, kept, and preserved by this section shall be accessible to the Commission and its representatives in the manner required by this section and for the remainder of the period required by this section.

(d) *Electronic Submission.* (1) Except with respect to notifications to the Commission made pursuant to paragraph (b)(4)(i) of this section or oral notifications to the Commission made pursuant to paragraph (b)(6)(ii) of this section, any notification, review, description, analysis, or report to the Commission required under this rule shall be submitted electronically on Form SCI (§ 249.1900 of this chapter) and shall contain an electronic signature; and

(2) The signatory to an electronically submitted Form SCI shall manually sign a signature page or document, in the manner prescribed by Form SCI, authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time Form SCI is electronically submitted and shall be retained by the SCI entity in accordance with paragraph (c) of this section.

(e) *Requirements for Service Bureaus.* If records required to be filed or kept by an SCI entity under this rule are prepared or maintained by a service bureau or other recordkeeping service on behalf of the SCI entity, the SCI entity shall ensure that the records are available for review by the Commission and its representatives by submitting a written undertaking, in a form acceptable to the Commission, by such service bureau or other recordkeeping service, signed by a duly authorized person at such service bureau or other recordkeeping service. Such a written undertaking shall include an agreement by the service bureau to permit the Commission and its representatives to examine such records at any time or from time to time during business hours, and to promptly furnish to the Commission and its representatives true, correct, and current electronic files in a form acceptable to the Commission or its representatives or hard copies of any or all or any part of such records, upon request, periodically, or continuously and, in any case, within the same time periods as would apply to the SCI entity for such records. The preparation or maintenance of records by a service bureau or other recordkeeping service shall not relieve an SCI entity from its obligation to prepare, maintain, and provide the Commission and its representatives access to such records.

(f) *Access.* Each SCI entity shall provide Commission representatives reasonable access to its SCI systems and SCI security systems to allow Commission representatives to assess the SCI entity's compliance with this rule.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 4. The general authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 5. Add subpart T, consisting of § 249.1900, to read as follows:

Subpart T—Form SCI, for filing notices and reports as required by Regulation SCI.

§ 249.1900 Form SCI, for filing notices and reports as required by Regulation SCI.

Form SCI shall be used to file notice and reports as required by § 242.1000 of this chapter.

Note: The text of Form SCI does not, and the amendments will not, appear in the Code of Federal Regulations.

General Instructions for Form SCI

A. Use of the Form

Except with respect to notifications to the Commission made pursuant to proposed Rule 1000(b)(4)(i) or oral notifications to the Commission made pursuant to proposed Rule 1000(b)(6)(ii), all notifications and reports required to be submitted pursuant to Rule 1000 of Regulation SCI under the Securities Exchange Act of 1934 (''Act'') shall be filed in an electronic format through an electronic form filing system (''EFFS''), a secure Web site operated by the Securities and Exchange Commission (''Commission'').

B. Need for Careful Preparation of the Completed Form, Including Exhibits

This form, including the exhibits, is intended to elicit information necessary for Commission staff to work with SCI self-regulatory organizations, SCI alternative trading systems, plan processors, and exempt clearing agencies subject to ARP (collectively, ''SCI entities'') to ensure the capacity, integrity, resiliency, availability, and security of their automated systems. An SCI entity must provide all the information required by the form, including the exhibits, and must present the information in a clear and comprehensible manner. Form SCI shall not be considered filed unless it complies with applicable requirements.

C. When To Use the Form

Form SCI is comprised of five distinct types of filings to the Commission required by Rule 1000(b). The first type of filings is ''(b)(4)'' filings for notifications regarding systems disruptions, systems compliance issues, or systems intrusions (collectively, ''SCI events''). The other four types of filings are: ''(b)(6)'' filings for notifications of planned material systems changes; ''(b)(8)(i)'' filings for reports of SCI reviews; ''(b)(8)(ii)'' filings for semi-annual reports of material systems changes; and ''(b)(9)(iii)'' filings for notifications of designations and standards under Rule 1000(b)(9). In filling out Form SCI, an SCI entity shall select the type of filing and provide all information required under Rule 1000(b) specific to that type of filing.

Notifications for SCI Events

For (b)(4) filings, an SCI entity must notify the Commission using Form SCI by selecting the appropriate box in Section 1 and filling out all information required by the form. Initial notifications of an SCI event require the inclusion of an Exhibit 1 and must be submitted no later than 24 hours after any responsible SCI personnel becomes aware of the SCI event. For the initial notification of an SCI event, the SCI entity must include the information required by each item under Part 1 of

Exhibit 1. To the extent available as of the time of the initial notification, the SCI entity must also include the information listed under the items under Part 2 of Exhibit 1.

If the SCI entity has not provided all the information required by Part 2 of Exhibit 1, any information required by Exhibit 1 requires updating, or the SCI event has not been resolved, the SCI entity must file one or more updates regarding the SCI event by attaching an Exhibit 2. Such updates must be submitted on a regular basis, or at such frequency as reasonably requested by a representative of the Commission. The notification to the Commission regarding an SCI event is not considered complete until all information required by Exhibit 1, including all information required by Part 2 of Exhibit 1, has been submitted to the Commission.

For each SCI event, an SCI entity must also attach an Exhibit 3 (which may be included with an Exhibit 1 or Exhibit 2, as the case may be) for any information disseminated regarding the SCI event to its members or participants or on the SCI entity's publicly available Web site.

Other Notifications and Reports

For (b)(6) filings, absent exigent circumstances, an SCI entity must notify the Commission using Form SCI at least 30 calendar days before implementation of any planned material systems change. If exigent circumstances exist, or if the information previously provided to the Commission regarding any planned material systems change has become materially inaccurate, an SCI entity must notify the Commission, either orally or in writing, with any oral notification to be memorialized within 24 hours after such oral notification by a written notification, as early as reasonably practicable. For (b)(6) filings, the SCI entity must select the appropriate box in Section 2 and fill out all information required by the form, including Exhibit 4. Exhibit 4 must include a description of the planned material systems change as well as the expected dates of commencement and completion of implementation of such change.

For (b)(8)(i) filings, an SCI entity must submit its report of its SCI review to the Commission using Form SCI. A (b)(8)(i) filing must be submitted to the Commission within 60 calendar days after the SCI review has been submitted to senior management of the SCI entity. The SCI entity must select the appropriate box in Section 2 and fill out all information required by the form, including Exhibit 5. Exhibit 5 must include the report of the SCI review, together with any response by senior management.

For (b)(8)(ii) filings, an SCI entity must submit its semi-annual report of material systems changes to the Commission using Form SCI. A (b)(8)(ii) filing must be submitted to the Commission within 30 calendar days after the end of June and December of each year. The SCI entity must select the appropriate box in Section 2 and fill out all information required by the form, including Exhibit 6. Exhibit 6 must include a report with a summary description of the progress of any material systems change during the six-month period ending on June 30 or December 31, as the case may be, and the date, or expected date, of completion of implementation of such changes.

For (b)(9) filings, an SCI entity must notify the Commission of its designations and standards under Rule 1000(b)(9). The SCI entity must select the appropriate box in Section 2 and fill out all information required by the form, including Exhibit 7. Exhibit 7 must include the SCI entity's standards for designating members or participants that it deems necessary, for the maintenance of fair and orderly markets in the event of activation of its business continuity and disaster recovery plans, to participate in the testing of such plans pursuant to Rule 1000(b)(9)(i), as well as the SCI entity's list of designated members or participants. If an SCI entity changes its designations or standards, it must promptly notify the Commission of such changes on Exhibit 7.

D. Documents Comprising the Completed Form

The completed form filed with the Commission shall consist of Form SCI, responses to all applicable items, and any exhibits required in connection with the filing. Each filing shall be marked on Form SCI with the initials of the SCI entity, the four-digit year, and the number of the filing for the year.

E. Contact Information; Signature; and Filing of the Completed Form

Each time an SCI entity submits a filing to the Commission on Form SCI, the SCI entity must provide the contact information required by Section 4 of Form SCI. The contact information for systems personnel, regulatory personnel, and a senior officer is required. Space for additional contact information, if appropriate, is also provided.

All notifications and reports required to be submitted through Form SCI shall be filed through the EFFS. In order to file Form SCI through the EFFS, SCI entities must request access to the Commission's External Application Server by completing a request for an external account user ID and password. Initial requests will be received by contacting (202) 551–5777. An email will be sent to the requestor that will provide a link to a secure Web site where basic profile information will be requested.

A duly authorized individual of the SCI entity shall electronically sign the completed Form SCI as indicated in Section 5 of the form. In addition, a duly authorized individual of the SCI entity shall manually sign one copy of the completed Form SCI, and the manually signed signature page shall be preserved pursuant to the requirements of Rule 1000(c).

F. Paperwork Reduction Act Disclosure

This collection of information will be reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The Commission estimates that the average burden to respond to Form SCI will be between one and sixty hours depending upon the purpose for which the form is being filed. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.

Except with respect to notifications to the Commission made pursuant to proposed Rule 1000(b)(4)(i) or oral notifications to the Commission made pursuant to proposed Rule 1000(b)(6)(ii), it is mandatory that an SCI entity file all notifications, updates, and reports required by Regulation SCI using Form SCI. The Commission will treat as confidential all information collected pursuant to Form SCI. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 (''FOIA''), and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

G. Exhibits

List of exhibits to be filed, as applicable:

Exhibit 1. Notification of SCI Event. The SCI entity shall include:

Part 1: All pertinent information known about the SCI event, including: (1) A detailed description of the SCI event; (2) the SCI entity's current assessment of the types and number of market participants potentially affected by the SCI event; (3) the potential impact of the SCI event on the market; and (4) the SCI entity's current assessment of the SCI event, including a discussion of the determination of whether the SCI event is a dissemination SCI event or not.

Part 2: To the extent available as of the time of the notification: (1) A description of the steps the SCI entity is taking, or plans to take, with respect to the SCI event; (2) the time the SCI event was resolved or timeframe within which the SCI event is expected to be resolved; (3) a description of the SCI entity's rule(s) and/or governing document(s), as applicable, that relate to the SCI event; and (4) an analysis of parties that may have experienced a loss, whether monetary or otherwise, due to the SCI event, the number of such parties, and an estimate of the aggregate amount of such loss.

Exhibit 2. Update Notification of SCI Event. The SCI entity shall provide an update of any information previously provided regarding an SCI event on Exhibit 1, including any information under Part 2 of Exhibit 1 which was not available at the time of submission of Exhibit 1. Subsequent updates shall update any information provided regarding the SCI event until the SCI event is resolved.

Exhibit 3. Information Disseminated. The SCI entity shall attach a copy in pdf or html format of any information disseminated to date regarding the SCI event to its members or participants or on the SCI entity's publicly available Web site.

Exhibit 4. Notification of Planned Material Systems Change. The SCI entity shall, absent exigent circumstances, notify the Commission in writing at least 30 calendar days before implementation of any planned material systems change, including a description of the planned material systems change as well as the expected dates of commencement and completion of implementation of such changes. If exigent circumstances exist, or if the information previously provided to the Commission regarding any planned material systems change has become materially inaccurate, the SCI entity shall notify the Commission, either orally or in writing, with any oral notification to be memorialized within 24 hours after such oral notification by a written notification on Form SCI, as early as reasonably practicable.

Exhibit 5. Report of SCI Review. Within 60 calendars days after its submission to senior management of the SCI entity, the SCI entity shall attach the report of the SCI review of the SCI entity's compliance with Regulation SCI, together with any response by senior management.

Exhibit 6. Semi-Annual Report of Material Systems Changes. Within 30 calendar days after the end June and December of each year, the SCI entity shall attach the report containing a summary description of the progress of any material systems change during the six-month period ending on June 30 or December 31, as the case may be, and the date, or expected date, of completion of implementation of such changes.

Exhibit 7. Notification of Designations and Standards under Rule 1000(b)(9). The SCI entity shall attach: (1) Its standards for designating members or participants it deems necessary, for the maintenance of fair and orderly markets in the event of the activation of its business continuity and disaster recovery plans, to participate in the testing of such plans pursuant to Rule 1000(b)(9)(i); and (2) a list of the designated members or participants, including the name and address of such members or participants.

H. Explanation of Terms

Dissemination SCI Event means an SCI event that is a: (1) Systems compliance issue; (2) systems intrusion; or (3) systems disruption that results, or the SCI entity reasonably estimates would result, in significant harm or loss to market participants.

Material Systems Change means a change to one or more: (1) SCI systems of an SCI entity that: (i) Materially affects the existing capacity, integrity, resiliency, availability, or security of such systems; (ii) relies upon materially new or different technology; (iii) provides a new material service or material function; or (iv) otherwise materially affects the operations of the SCI entity; or (2) SCI security systems of an SCI entity that materially affects the existing security of such systems.

Responsible SCI personnel means, for a particular SCI system or SCI security system impacted by an SCI event, any personnel, whether an employee or agent, of the SCI entity having responsibility for such system.

SCI entity means an SCI self-regulatory organization, SCI alternative trading system, plan processor, or exempt clearing agency subject to ARP.

SCI event means an event at an SCI entity that constitutes: (1) A systems disruption; (2) a systems compliance issue; or (3) a systems intrusion.

Systems Compliance Issue means an event at an SCI entity that has caused any SCI system of such entity to operate in a manner that does not comply with the federal securities laws and rules and regulations thereunder or the entity's rules or governing documents, as applicable.

Systems Disruption means an event in an SCI entity's SCI systems or procedures that results in: (1) A failure to maintain service level agreements or constraints; (2) a disruption of normal operations, including switchover to back-up equipment with near-term recovery of primary hardware unlikely; (3) a loss of use of any such system; (4) a loss of transaction or clearance and settlement data; (5) significant back-ups or delays in processing; (6) a significant diminution of ability to disseminate timely and accurate market data; or (7) a queuing of data between system components or queuing of messages to or from customers of such duration that normal service delivery is affected.

Systems Intrusion means any unauthorized entry into the SCI systems or SCI security systems of the SCI entity.

[See attachment—proposed Form SCI]

BILLING CODE P

Page 1 of ____

Securities and Exchange Commission
Washington, D.C. 20549
Form SCI

SCI-{ name }-YYYY-####
Update No.: _____

SCI Notification and Reporting by: {SCI entity name}
Pursuant to Rule 1000(b) of Regulation SCI under the Securities Exchange Act of 1934

Section 1

Commission Notification of SCI Event – Rule 1000(b)(4)

❑ (b)(4)(ii) Notification of SCI event ❑ (b)(4)(iii) Update notification of SCI event

SCI event type(s): ❑ Systems compliance issue ❑ Systems intrusion ❑ Systems disruption

Is the event a systems disruption that the SCI entity reasonably estimates would have a material impact on its operations or on market participants? Yes/No

If yes, has the Commission been notified of the SCI event? Yes/No

Has the SCI event been resolved? Yes/No

Date/time SCI event started: *mm/dd/yyyy* *hh:mm am/pm:*

Duration of SCI event: *hh:mm*, or *days*

Date/time responsible SCI personnel became aware of the SCI event: *mm/dd/yyyy* *hh:mm am/pm*

Estimated number of market participants impacted by the SCI event: (numeric field)

(Additional information for Section 1 continued on following page)

Section 2

Other Commission Notification and Reporting

❑ Rule 1000(b)(6) Notification of planned material systems change Date of planned change: mm/dd/yy

Do exigent circumstances exist, or has the information previously provided to the Commission regarding any planned material systems change become materially inaccurate? Yes/No

If yes, has the Commission been notified orally? Yes/No

❑ Rule 1000(b)(8)(i) Report of SCI review

Date of completion of SCI review: *mm/dd/yyyy*

Date of submission of SCI review to senior management: *mm/dd/yyyy*

❑ Rule 1000(b)(8)(ii) Semi-annual report of material systems changes

❑ Rule 1000(b)(9)(iii) Notification of designations and standards under Rule 1000(b)(9)

Section 1 (cont.)

Rule 1000(b)(4) (continued)

System Type Impacted	Production	Development	Testing
Trading	❑	❑	❑
Clearance and Settlement	❑	❑	❑
Order Routing	❑	❑	❑
Market Data	❑	❑	❑
Regulation	❑	❑	❑
Surveillance	❑	❑	❑
Any system that shares network resources with any system listed above that, if breached, would be reasonably likely to pose a security threat to such system	❑	❑	❑

Systems Disruption in SCI Systems Resulting in:	Check all that apply
Failure to maintain service level agreements or constraints	❑
Disruption of normal operations, including switchover to back-up equipment with near-term recovery of primary hardware unlikely	❑
Loss of use of any such system	❑
Loss of transaction or clearance and settlement data	❑
Significant back-ups or delays in processing	❑
Significant diminution of ability to disseminate timely and accurate market data	❑
Queuing of data between system components or queuing of messages to or from customers of such duration that normal service delivery is affected	❑

For complete Form SCI instructions please refer to [•]

Section 3

Exhibit 1: **Rule 1000(b)(4)(ii)** **Notification of SCI Event** Add/Remove/View	The SCI entity shall include: **Part 1:** All pertinent information known about the SCI event, including: (1) a detailed description of the SCI event; (2) the SCI entity's current assessment of the types and number of market participants potentially affected by the SCI event; (3) the potential impact of the SCI event on the market; and (4) the SCI entity's current assessment of the SCI event, including a discussion of the determination of whether the SCI event is a dissemination SCI event or not. **Part 2:** To the extent available as of the time of the notification: (1) a description of the steps the SCI entity is taking, or plans to take, with respect to the SCI event; (2) the time the SCI event was resolved or timeframe within which it is expected to be resolved; (3) a description of the SCI entity's rule(s) and/or governing document(s), as applicable, that relate to the SCI event; and (4) an analysis of parties that may have experienced a loss, whether monetary or otherwise, due to the SCI event, the number of such parties, and an estimate of the aggregate amount of such loss.
Exhibit 2: **Rule 1000(b)(4)(iii)** **Update Notification of SCI Event** Add/Remove/View	The SCI entity shall provide an update of any information previously provided regarding the SCI event on Exhibit 1, including any information under Part 2 of Exhibit 1 which was not available at the time of submission of Exhibit 1. Subsequent updates shall update any information provided regarding the SCI event until the SCI event is resolved.
Exhibit 3: **Information Disseminated** Add/Remove/View	The SCI entity shall attach a copy in pdf or html format of any information disseminated to date regarding the SCI event to its members or participants or on the SCI entity's publicly available website.
Exhibit 4: **Rule 1000(b)(6)** **Notification of Planned Material System Changes** Add/Remove/View	The SCI entity shall, absent exigent circumstances, notify the Commission in writing at least 30 calendar days before implementation of any planned material systems change, including a description of the planned material system changes as well as the expected dates of commencement and completion of implementation of such changes. If exigent circumstances exist, or if the information previously provided to the Commission regarding any planned material system change has become materially inaccurate, the SCI entity shall notify the Commission, either orally or in writing, with any oral notification to be memorialized within 24 hours after such oral notification by a written notification, as early as reasonably practicable.
Exhibit 5: **Rule 1000(b)(8)(i)** **Report of SCI Review** Add/Remove/View	Within 60 calendars days after its submission to senior management of the SCI entity, the SCI entity shall attach the report of the SCI review of the SCI entity's compliance with Regulation SCI, together with any response by senior management.
Exhibit 6: **Rule 1000(b)(8)(ii)** **Semi-Annual Report of Material Systems Changes** Add/Remove/View	Within 30 calendar days after the end of June and December of each year, the SCI entity shall attach the report containing a summary description of the progress of any material systems change during the six-month period ending on June 30 or December 31, as the case may be, and the date, or expected date, of completion of implementation of such changes.
Exhibit 7: **Rule 1000(b)(9)(iii)** **Notification of Designations and Standards under Rule 1000(b)(9)** Add/Remove/View	The SCI entity shall attach: (1) its standards for designating members or participants it deems necessary, for the maintenance of fair and orderly markets in the event of the activation of its business continuity and disaster recovery plans, to participate in the testing of such plans pursuant to Rule 1000(b)(9)(i); and (2) a list of the designated members or participants, including the name and address of such members or participants.

Section 4

Contact Information
Provide the following information for the persons responsible for addressing the SCI event:
Systems Personnel:
First Name: Last Name:
Title:
E-Mail:
Telephone: Fax:
Regulatory Personnel:
First Name: Last Name:
Title:
E-Mail:
Telephone: Fax:
Senior Officer:
First Name: Last Name:
Title:
E-Mail:
Telephone: Fax:

Additional Contacts (Optional)
Systems Personnel:
First Name: Last Name:
Title:
E-Mail:
Telephone: Fax:
Regulatory Personnel:
First Name: Last Name:
Title:
E-Mail:
Telephone: Fax:

Section 5

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934, { SCI Entity name} has duly caused this notification to be signed on its behalf by the undersigned duly authorized officer:
Date:
By (Name) Title (_____)

"Digitally Sign and Lock Form"

Dated: March 8, 2013.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05888 Filed 3–22–13; 8:45 am]

BILLING CODE C

FEDERAL REGISTER

Vol. 78 Monday,

No. 57 March 25, 2013

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 48; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120814336–3249–01]

RIN 0648–BC27

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 48

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes approval of, and regulations to implement, measures in Framework Adjustment 48 to the NE Multispecies Fishery Management Plan (FMP). Framework 48 is the first of two parallel actions developed by the New England Fishery Management Council (Council) as part of the biennial review process to respond to updated stock information and to adjust other management measures in the NE multispecies (groundfish) fishery. Framework 48 proposes new status determination criteria for Gulf of Maine (GOM) cod, Georges Bank (GB) cod, and Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder, based on new benchmark assessments completed for these stocks in 2012 and 2013. Framework 48 would also establish allocations of SNE/MA windowpane flounder and GB yellowtail flounder for exempted fisheries, and modify the allocation of GB yellowtail flounder to the scallop fishery, to address increased bycatch of these species. In addition, Framework 48 would amend existing accountability measures (AMs) for GOM/GB and SNE/MA windowpane flounders, ocean pout, and Atlantic halibut and establish new ''reactive'' AMs for Atlantic wolffish and SNE/MA winter flounder. These measures would make way for the other parallel action, Framework 50, which would set acceptable biological catches (ABCs) and annual catch limits (ACLs) for fishing years (FY) 2013–2015. Framework 48 also contains several measures intended to improve the administration of the fishery and enhance fishing opportunities for groundfish vessels to mitigate potential negative economic impacts from reductions in catch limits proposed by Framework 50. These measures include: Clarification of the goals and performance standard for sector monitoring programs; elimination of dockside monitoring requirements; cost-sharing of monitoring costs between the industry and NMFS; reduction of the minimum fish size for several stocks; and allowing groundfish sectors to petition the Regional Administrator for limited access to groundfish mortality closures. This rule also proposes several regulatory changes to correct inadvertent errors in the NE multispecies regulations.

DATES: Comments must be received by April 9, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0050, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0050,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.
- *Fax:* (978) 281–9135; Attn: Melissa Hooper.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of FW 48, its Regulatory Impact Review (RIR), a draft of the environmental assessment (EA) prepared for this action, and the Initial Regulatory Flexibility Analysis (IRFA) prepared by the Council are available from Thomas Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The IRFA assessing the impacts of the proposed measures on small entities and describing steps taken to minimize any significant economic impact on such entities is summarized in the Classification section of this proposed rule. The FW 48 EA/RIR/IRFA are also accessible via the Internet at *http://www.nefmc.org/nemulti/index.html* or *http://www.nero.noaa.gov.* Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to the Office of Management and Budget (OMB) by email at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Melissa Hooper, Fishery Policy Analyst, phone: 978–281–9166, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The FMP specifies management measures for 16 species of groundfish in Federal waters off the New England and Mid-Atlantic coasts, including both large-mesh and small-mesh species. Small-mesh species include silver hake (whiting), red hake, offshore hake, and ocean pout; and large-mesh species (also referred to as ''regulated species'') include Atlantic cod, haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, redfish, and Atlantic wolffish. Large-mesh species, which are referred to as ''regulated species,'' are divided into 19 fish stocks, and along with ocean pout, comprise the groundfish complex of 20 stocks managed under the NE Multispecies FMP.

Amendment 16 to the FMP (Amendment 16) established a process for setting ABCs and ACLs for regulated species and ocean pout, as well as distributing the available catch among the various components of the groundfish fishery. Amendment 16 also established AMs for these 20 groundfish stocks in order to prevent overfishing of these stocks and correct or mitigate any overages of the ACLs. Framework 44 to the FMP (Framework 44) set the ABCs and ACLs for FYs 2010–2012. In 2011, Framework 45 to the FMP (Framework 45) revised the ABCs and ACLs for five stocks for FYs 2011–2012. Framework 47 to the FMP (Framework 47) updated specifications for most stocks for FYs 2012–2014 and modified management measures in the fishery after more than 1 year under ACLs and AMs.

In June 2012, the Council initiated development of Framework 48 to respond to benchmark and assessment updates completed for all groundfish stocks in 2012. Updated information in these assessments requires revisions to the status determination criteria for GOM cod, GB cod, and SNE/MA yellowtail flounder and implementation of updated ABCs and ACLs for most stocks for FYs 2013–2015. These measures are necessary to prevent overfishing and facilitate the rebuilding of groundfish stocks as required by the FMP. Because of the need to end overfishing, substantial reductions in catch limits are being proposed for some stocks. To mitigate negative economic impacts anticipated for groundfish vessels and their communities, the Council developed several measures in Framework 48 intended to increase fishing opportunities and improve profitability in the groundfish fishery. Framework 48 also proposes AMs for Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder in response to a Court Order and remand in *Oceana* v. *Locke et al.* that held that so-called ''reactive'' AMs had not been developed for the 6 stocks not allocated to sectors (''non-allocated stocks'') in Amendment 16. Framework 48 recommends reactive AMs for 3 of these stocks, for which reactive AMs have not been established since Amendment 16.

At its December 2012 meeting, the Council voted to split the framework in order to provide more time to consider new catch limits. Proposed specifications for FY 2013–2015 were put into Framework 50, which was approved by the Council for submission at its January 2013 meeting. The Council took final action on all non-ACL measures in Framework 48 at its December meeting. As a result, the measures in Framework 48 and considered in this proposed rule would make administrative changes to the FMP to make way for Framework 50, which would specify ABCs and ACLs for all stocks for FY 2013–2015 in a separate proposed and final rule. Implementation of both actions is targeted for the start of the 2013 fishing year on May 1, 2013.

Proposed Measures

The measures proposed by Framework 48 are described below. The proposed regulations implementing measures in Framework 48 were deemed by the Council to be consistent with Framework 48, and necessary to implement such provisions pursuant to section 303(c) of the Magnuson-Stevens Act through a March 13, 2013, letter from the Council Chairman to the NMFS Regional Administrator.

1. Status Determination Criteria for GOM and GB Cod, and SNE/MA Yellowtail Flounder

Amendment 16 updated the status determination criteria for NE regulated species and ocean pout stocks based on the best available scientific information as determined by the 2008 Groundfish Assessment Review Meeting (GARM III). Framework 45 updated the status determination criteria for pollock to reflect the results of a new pollock stock assessment conducted in 2010, and Framework 47 updated the status determination criteria for the three winter flounder stocks and GOM cod based on assessments completed for those stocks in 2011.

An assessment for SNE/MA yellowtail flounder was completed in June 2012. New assessments were also completed for GOM and GB cod in December 2012 and for white hake in February 2013. Framework 48 proposes to update the status determination criteria for SNE/MA yellowtail flounder, GOM and GB cod, to incorporate the results of these recent stock assessments into the FMP. The proposed revisions are based on the best scientific information available.

The December 2011 assessment for GOM cod indicated that overfishing was occurring and the stock was overfished. In response to new information, including revised discard mortality rates and updated recreational data, another assessment for GOM cod was conducted in December 2012. Two population assessment models were accepted at the 55th Stock Assessment Review Committee (SARC) in December 2012. One assessment model assumes that the natural mortality rate (M) is 0.2 (M=0.2 model). The second assessment model assumes that M has increased from 0.2 to 0.4 in recent years (M_{ramp} model). The results of both of these models indicate that overfishing is occurring and the stock is overfished. In addition, the December 2012 stock assessment for GB cod indicates that overfishing is occurring and the stock is overfished.

The previous assessment conducted for SNE/MA yellowtail flounder in 2008 (GARM III) determined that this stock was experiencing overfishing and was overfished. A new benchmark assessment (SARC 54) was completed for this stock in June 2012. The SARC considered two stock recruitment scenarios used in the assessment, which would lead to very different conclusions about stock status. A ''recent recruitment'' scenario, which assumed that a possible change in productivity has reduced the size of incoming year classes since 1990, would lead to the conclusion that the stock is not experiencing overfishing, is not overfished, and is rebuilt to a new, much lower biomass target. Alternately, a ''two-stanza'' scenario assumed that recruitment over the entire time series was a function of spawning stock biomass (SSB), and would lead to the conclusion that the stock continues to experience overfishing, is overfished, and would not be expected to rebuild even if the fishing mortality were held to zero. While neither scenario could be ruled out, the SARC concluded that the evidence was 60:40 in favor of the ''recent recruitment'' scenario. Based on the new assessment results, the Council's Scientific and Statistical Committee (SSC) and the Northeast Fisheries Science Center support the ''recent recruitment'' scenario for use as the best available scientific information to manage the stock. Therefore, the new stock status determinations for the stock resulting from SARC 54 is that the stock is not experiencing overfishing, is not overfished, and is rebuilt.

The final results of the white hake assessment are not yet available. GARM III was the last benchmark assessment conducted for white hake. This assessment indicated that overfishing was occurring for white hake and the stock was overfished. Final results from the February 2013 benchmark assessment for white hake are scheduled to become available in mid-March, around the approximate time of the publication of this proposed rule. In anticipation of this new information, the Council recommended updating the status determination criteria for white hake among its preferred alternatives in Framework 48, with the actual updated status determination criteria to be determined pending the results of the assessment. As with GOM and GB cod, the Council anticipated that this information would be available in time for NMFS to propose the revised status determination criteria recommended by the assessment in this Framework 48 proposed rule. However, as the assessment results were not available in time for publication of this proposed rule, the Council's proposed changes to the status determination criteria for white hake are incomplete. Therefore, NMFS is not proposing any changes to the white hake status determination criteria through this rulemaking.

There is preliminary information from the February 2013 assessment for white hake, however, that may justify a higher ABC than is proposed in Framework 50. This stock is important for the commercial groundfish fishery, and any potential increase in the FY 2013 ABC for this stock would benefit groundfish vessels. If new stock information

becomes available this spring that shows the FY 2013 ABC for white hake could be increased, and the Council requests that NMFS take emergency action to incorporate this new information, NMFS could consider an emergency action for FY 2013.

The revised status determination criteria proposed in this rule are presented in Table 1. Numerical estimates of these criteria are presented in Table 2. There are two sets of status determination criteria for GOM cod because two models were accepted at the benchmark assessment in December 2012, as described above. Although two assessment models were approved, there is only one numerical estimate proposed for the maximum fishing mortality threshold for GOM cod. The SARC did not conclude that M would remain at 0.4 in perpetuity, and therefore, did not provide reference points for this scenario.

TABLE 1—PROPOSED STATUS DETERMINATION CRITERIA FOR SNE/MA YELLOWTAIL FLOUNDER, GOM AND GB COD

Stock	Biomass target	Minimum biomass threshold	Maximum fishing mortality threshold
SNE/MA yellowtail flounder	$SSB_{40\%MSP}$	½ B_{target}	$F_{40\%MSP}$
GOM cod	$SSB_{40\%MSP}$	½ B_{target}	$F_{40\%MSP}$
GB cod	$SSB_{40\%MSP}$	½ B_{target}	$F_{40\%MSP}$

SSB = spawning stock biomass; MSP = maximum spawning potential; B = biomass; F = fishing mortality rate; MSY = maximum sustainable yield

TABLE 2—NUMERICAL ESTIMATES OF THE PROPOSED STATUS DETERMINATION CRITERIA FOR SNE/MA YELLOWTAIL FLOUNDER, GOM AND GB COD

Stock	Biomass target (mt)	Maximum fishing mortality threshold	MSY (mt)
SNE/MA yellowtail flounder	2,995	0.31	773
GOM cod (M=0.2 model)	54,743	0.18	9,399
GOM cod (M_{ramp} model)	80,200		13,786
GB cod	186,535	0.18	30,622

2. SNE/MA Windowpane Flounder Sub-ACLs

The catch limit for each stock is divided among the various fishery components (e.g., commercial groundfish fishery, recreational groundfish fishery, scallop fishery, state waters). Components of the fishery that are allocated a sub-ACL for a particular stock are subject to AMs if the catch limit is exceeded. ''ACL sub-components'' represent the expected catch by components of the fishery that are not subject to AMs (e.g., state waters). Currently, only the common pool fishery has a sub-ACL for SNE/MA windowpane flounder. The stock is not allocated to sectors, and therefore, all sector and common pool catch is attributed to the common pool sub-ACL. Framework 48 proposes to allocate a sub-ACL of SNE/MA windowpane flounder to the scallop fishery and rename the other sub-component the ''other fisheries sub-ACL.''

Scallop Fishery Sub-ACL

The sub-ACL of SNE/MA windowpane flounder allocated to the scallop fishery would be 36 percent of the ABC. This allocation is based on the 90th percentile of the scallop fishery catches (as a percent of the total catch) for calendar years (CYs) 2001 through 2010. GARM III and the 2012 Assessment Update for SNE/MA windowpane flounder only included catches from limited access scallop dredge and trawl vessels. The 90th percentile of these catches (as a percent of the total catches) from CYs 2001–2010 is 32 percent. However, this does not account for catches of SNE/MA windowpane flounder by General Category scallop vessels. From 2001 to 2003, there was limited observer coverage of General Category scallop dredge and trawl vessels. From 2004–2011, the average General Category catch of this stock was 22 mt. As a result, 22 mt was added to the limited access scallop dredge and trawl vessel catch for each year (CYs 2001–2010). The combined total is 36 percent. The scallop fishery's sub-ACL would be calculated by reducing the portion of the ABC allocated to the scallop fishery (sub-ABC) to account for management uncertainty. The management uncertainty buffer is determined each time the groundfish specifications are set.

If this measure is approved, AMs for the scallop fishery would be developed in a future management action during 2013 through the Atlantic Sea Scallop FMP. AMs would be implemented in time to be effective by the start of scallop FY 2014 (i.e., March 1, 2014), and would be retroactively applied to FY 2013. If the scallop fishery exceeds its sub-ACL for SNE/MA windowpane in FY 2013, the AMs adopted in a future management action would be triggered. Also, similar to the measure adopted in Framework 47 for the scallop fishery's SNE/MA and GB yellowtail flounder sub-ACLs, the scallop fishery AM for SNE/MA windowpane flounder would only be triggered if the total ACL is exceeded and the scallop fishery's sub-ACL is also exceeded, or if the scallop fishery exceeds its sub-ACL by 50 percent or more.

The total ACL for SNE/MA windowpane was exceeded by more than 100 percent in FY 2010 and FY 2011. In both years, total catch by sector and common pool vessels was below the common pool sub-ACL for this stock, and scallop vessels accounted for more than 25 percent of the total catch in FY 2011, and almost 50 percent of the catch in FY 2010. However, because the scallop fishery is not currently allocated a sub-ACL, it was not subject to an AM. Instead, the AM that was triggered in both years as a result of the ACL overage only applied to common pool vessels. Scallop vessel catch of SNE/MA windowpane flounder is large enough to undermine the effectiveness of the ACL and AM for this stock. Therefore, a sub-ACL for the scallop fishery would help prevent overfishing and would ensure

catches of windowpane flounder by the scallop fishery are constrained. In addition, this measure would ensure equity and hold the component of the fishery responsible for an overage accountable for its catch.

Other Sub-Components Sub-ACL

In addition to large catches of SNE/MA windowpane flounder by the scallop fishery in recent years, other non-groundfish fisheries have accounted for approximately half of the total SNE/MA windowpane flounder catch in FY 2010 and FY 2011. Currently, any overages of the total ACL caused by this component of the fishery are applied to the commercial groundfish fishery (and only to common pool vessels prior to FY 2012), and the AM does not apply to non-groundfish vessels. As a result, there are no measures in place to constrain catches of SNE/MA windowpane flounder by these vessels, which could undermine the effectiveness of the ACL and AM for this stock.

This action proposes to make the ''other sub-component'' an ''other fisheries sub-ACL.'' Because ''sub-components'' of the fishery are not subject to AMs, this administrative measure makes it possible to adopt an AM that applies to those non-groundfish fisheries that fish with gear responsible for most of the catch of this stock in the ''other'' sub-component. The AM for SNE/MA windowpane flounder that would apply to commercial vessels is described in Item 6 of this preamble. This measure would prevent overfishing of SNE/MA windowpane flounder and ensure all components of the fishery are accountable for their catches of this stock.

3. Scallop Fishery Sub-ACL for GB Yellowtail Flounder Based on Estimated Catch

Currently, the scallop fishery's allocation of GB yellowtail flounder is determined each time groundfish specifications are set. There is no established allocation scheme, though in recent years, the scallop fishery's sub-ACL for this stock was based on the projected GB yellowtail flounder needed to fully harvest the scallop sub-ACL. The scallop fishery was allocated 100 percent of its projected need in FY 2010, and 90 percent of its projected need in FY 2011 and FY 2012.

This action proposes to allocate a fixed percentage of the U.S. ABC for GB yellowtail flounder to the scallop fishery. For FY 2013 only, 40 percent of the U.S. ABC for GB yellowtail flounder would be allocated to the scallop fishery. Beginning in FY 2014, 16 percent of the U.S. ABC for this stock would be allocated to the scallop fishery. The allocation to the scallop fishery would be 16 percent of the U.S. ABC each year from FY 2014 onward. The scallop fishery sub-ACL would be calculated by reducing the scallop fishery's portion of the ABC (sub-ABC) to account for management uncertainty.

The percentage allocation for the scallop fishery beginning in FY 2014 forward is based on recent catch history by the scallop fishery from CYs 2002 through 2011. This measure would simplify the specification of the scallop fishery's GB yellowtail flounder allocation each year. In addition, allocating a fixed percentage of the ABC to the scallop fishery would further incentivize avoiding yellowtail flounder while maximizing the catch of scallops.

Although the scallop fishery would be allocated a fixed percentage of GB yellowtail flounder, this action would not modify the existing regulation that requires NMFS to re-estimate the expected scallop fishery catch of GB yellowtail flounder for the current fishing year by January 15. If the scallop fishery is projected to catch less than 90 percent of its GB yellowtail flounder sub-ACL, the Regional Administrator may reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL by any amount up to the amount reduced from the scallop allocation. Overages will be calculated based on the revised sub-ACLs for the commercial groundfish fishery and the scallop fishery, and any applicable AMs would be triggered.

GB yellowtail flounder is managed jointly with Canada. In addition to the ACLs and AMs that the U.S. uses to manage the fishery, the Transboundary Resource Sharing Understanding (Understanding) also specifies that any overage of the U.S. total allowable catch (TAC) for GB yellowtail flounder would result in a pound-for-pound reduction of the U.S. TAC in the following fishing year. Therefore, if a component of the fishery exceeds its sub-ACL, which causes an overage of the U.S. TAC, the necessary reduction required by the Understanding would be taken from the sub-ACL of the fishery component that caused the overage.

4. Small-Mesh Fisheries Sub-ACL for GB Yellowtail Flounder

Currently, the quota for GB yellowtail flounder is only allocated to the commercial groundfish fishery and the scallop fishery. If catches by the ''other'' sub-component (non-groundfish fisheries) cause an overage of the ACL, any AMs that are triggered only apply to the commercial groundfish and scallop fisheries. Framework 48 proposes to allocate a sub-ACL of GB yellowtail flounder to the small-mesh bottom trawl fisheries, which are defined as vessels fishing with bottom otter trawl with a codend mesh size of less than 5 inches (12.7 cm). Small-mesh bottom trawl vessels fishing on GB typically target whiting and squid.

This action would allocate 2 percent of the U.S. ABC for GB yellowtail flounder to the small-mesh fisheries. This allocation is based on the median catch of GB yellowtail flounder by the small-mesh fisheries from CYs 2004 through 2011. Observer coverage of small-mesh fisheries was limited prior to 2004, which is why the time period (CYs 2004–2011) was selected. The small-mesh fishery sub-ACL would be calculated by reducing the portion of the ABC allocated to the small-mesh fisheries (2 percent) to account for management uncertainty. Each time the groundfish specifications are set, the management uncertainty buffer necessary for these small-mesh fisheries would be determined. If the small-mesh fisheries catch of GB yellowtail flounder exceeds the sub-ACL, the pertinent AMs would be triggered. If this measure is approved, AMs would need to be developed for those fisheries (e.g., Atlantic Mackerel, Squid, and Butterfish; Small-Mesh Multispecies) as soon as possible to be effective for any overage in FY 2014.

Although small-mesh fishery catches of GB yellowtail flounder have generally been less than 100 mt in recent years, the U.S. ABC for the stock has been declining. As a result, the small-mesh fishery catches account for an increasing percentage of the total U.S. catch. This measure would help ensure that small-mesh fishery catches would be constrained and prevent overages of the annual quota. In addition, because GB yellowtail flounder is jointly managed with Canada, keeping U.S. catches within the U.S. TAC is important to achieve the management and conservation objectives of the Understanding. A sub-ACL for small-mesh fisheries, and associated AMs, would help ensure the component of the fishery that causes an overage would be held accountable. This proposed measure would also likely prevent inequities that would occur if the commercial groundfish and scallop fisheries were held accountable for overages caused by the small-mesh fisheries.

5. Recreational Fishery AM

This action proposes to revise the recreational AM. The current

recreational AM is reactive and requires the Regional Administrator to modify recreational management measures in the year following an overage of a recreational sub-ACL to ensure that recreational catch does not exceed the sub-ACL again. The recreational fishery currently only has a sub-ACL for GOM cod and for GOM haddock. Framework 48 proposes to modify the recreational AM so that the Regional Administrator may proactively adjust recreational management measures to ensure the recreational fishery will achieve, but not exceed, its sub-ACL. To the extent possible, any changes to the recreational management measures would be made prior to the start of the fishing year and adopted through procedures consistent with the Administrative Procedure Act (APA). In addition, the Regional Administrator would consult with the Council, or the Council's designee, and would tell the Council, or its designee, what recreational measures are under consideration for the upcoming fishing year. If time allows, the Council would also provide its Recreational Advisory Panel (RAP) an opportunity to meet and discuss the proposed management measures.

The Council provided guidance on its preference of measures that NMFS should consider if additional recreational effort controls are necessary to reduce GOM cod or GOM haddock catches, though this guidance does not restrict NMFS's discretion in selecting management measures that would best achieve, but not exceed, the recreational sub-ACL. If additional effort controls are necessary to reduce cod catches, the Council's non-binding preference is that NMFS first consider increases to minimum fish sizes, then adjustments to seasons, followed by changes to bag limits. If additional effort controls are necessary to reduce haddock catches, the Council's non-binding preference is that NMFS first consider increases to minimum size limits, then changes to bag limits, and adjustments to seasons last.

The current recreational AM only allows management measures to be adjusted if the recreational sub-ACL is exceeded; however, there is no mechanism to adjust recreational measures for the upcoming fishing year if it is projected that the recreational fishery would exceed, or not fully harvest, its quota. This action would allow measures to be proactively adjusted, which would help prevent overages of the recreational sub-ACL, and prevent substantial underharvests of the recreational sub-ACL. In addition, the requirement for NMFS to consult with the Council while developing measures allows increased opportunity for public comment, and provides states more opportunity to coordinate their recreational measures with NMFS.

If this measure is adopted, any adjustments to recreational measures that are necessary for FY 2013 would be announced as soon as possible and implemented on or about the start of the fishing year. Due to timing constraints, development of recreational measures for FY 2013 began prior to this proposed rule. To expedite the consideration of recreational measures for FY 2013, the Council delegated the recommendation of adjustments to these measures to the RAP. The Council's RAP met in early February 2013 to discuss potential measures for FY 2013, and the Council forwarded the RAP's recommendations to NMFS. Recreational management measures for FY 2013 will be announced in a separate rulemaking.

6. Commercial Groundfish Fishery AMs

AMs are required to help prevent overfishing and ensure accountability in the fishery. Proactive AMs are intended to prevent ACLs from being exceeded, and reactive AMs are meant to correct or mitigate overages of ACLs if they occur. Amendment 16 implemented AMs for all of the groundfish stocks; however, upon approving Amendment 16, NMFS notified the Council that the AMs developed for the non-allocated stocks lacked sector-specific AMs. NMFS recommended that the Council develop appropriate AMs for these stocks in a future action, and as a result, Framework 47 modified the AMs for these stocks in 2012.

During development of Framework 47, there was ongoing litigation on Amendment 16. Oceana, an environmental organization, challenged Amendment 16 partially because it lacked sector-specific AMs for the non-allocated stocks. On December 20, 2011, the U.S. District Court for the District of Columbia upheld most of Amendment 16, but found that the Amendment's lack of sector-specific reactive AMs, that is AMs that are triggered after an ACL is exceeded, for non-allocated stocks (GOM/GB and SNE/MA windowpane flounders, ocean pout, Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder) violated the Magnuson-Stevens Act. The Court remanded the issue to NMFS and the Council for further action. Because the Council took final action on Framework 47 in November 2011, before the Court decided the case, it did not specifically or fully address the Court's remand in Framework 47.

Amendment 16 adopted a prohibition on possession for all of the non-allocated stocks, except for Atlantic halibut, which has a one-fish per trip possession limit. Framework 47 adopted reactive AMs for ocean pout, both stocks of windowpane flounder, and Atlantic halibut for sector and non-sector (''common pool'') vessels that would be triggered if the total ACL is exceeded. For ocean pout and both stocks of windowpane flounder, if the total ACL is exceeded in the fishing year, gear-restricted areas would apply to both sector and common pool vessels in the second year following the overage, and would remain in place for the entire fishing year. For Atlantic halibut, if the total ACL is exceeded the possession limit for sector and common pool vessels would be reduced to zero (from one fish per trip) in the second year following the overage. Framework 47 identified the prohibition on possession of SNE/MA winter flounder and Atlantic wolffish as AMs for these two stocks. The Court subsequently held that these AMs, which were described as ''proactive'' AMs, were not sufficient and that ''reactive'' AMs were needed as well.

Upon approval of Framework 47, in light of the Court's remand, NMFS notified the Council that the zero-possession reactive AM for Atlantic halibut was not, by itself, an adequate AM. Additionally, NMFS notified the Council that although prohibition on possession for SNE/MA winter flounder and Atlantic wolffish may act as a proactive AM, the Court found that to be inconsistent with the National Standard 1 guidelines, and reactive AMs are needed for all stocks. Despite these concerns, NMFS approved these AMs in Framework 47 even though the prescribed AMs for these stocks were not sufficient, because approval of the framework was preferable to disapproval and because it removed a potential inequity for common pool vessels. The AM implemented through Amendment 16 only applied to common pool vessels, although common pool vessels generally take less than 10 percent of the total commercial catch for these stocks. With respect to the delayed implementation of the reactive AMs (the second year following an overage), NMFS also recommended that these AMs be implemented as soon as possible after an overage occurs, when catch data, including final discard estimates, reliably show an overage of the ACL, and not be bound by an AM that can only be implemented in the second year following an overage. If reliable data indicate an overage of the total ACL, the AM should be implemented in the fishing year

immediately following the overage. As a result of Framework 47 approval, the Council developed revised AMs for Atlantic halibut, SNE/MA winter flounder, and Atlantic wolffish in Framework 48, as well as revisions to the timing of AM implementation for non-allocated stocks.

Change to AM Timing for Non-Allocated Stocks

To improve the effectiveness of AMs adopted through Framework 47 and 48 for the non-allocated stocks, this action proposes to change the timing of the AMs. As described above, the current AMs for these stocks are implemented in the second year following an overage of the total ACL. For example, if the total ACL for ocean pout is exceeded in Year 1, the AM would be implemented in Year 3 under the current regulations. Because this delay may not be needed in all cases, this action proposes that if reliable information is available during the fishing year that shows the total ACL has been exceeded, the respective AM for the stock would be implemented at the start of the next fishing year (Year 2). After the AM is implemented, if updated catch information shows that the total ACL was not exceeded, the AM would be rescinded consistent with the APA.

The Council has noted concerns that final catch data for the non-allocated stocks, which include catch from state waters and non-groundfish fisheries, could not be reliably available in time to trigger an AM in Year 2, or earlier. This action would modify the timing of the AMs so that should reliable information be available (e.g., the commercial groundfish fishery catches exceed the total ACL for a stock), the AM could be implemented more quickly. This increases the effectiveness of the AM and would help prevent overfishing in consecutive years. The need for greater effectiveness is balanced with the need for fishing businesses to plan for the upcoming fishing year, and therefore, any applicable AMs for the non-allocated stocks would only be implemented at the start of a fishing year. If this measure is approved, and implemented on or before May 1, 2013, and reliable information shows that the total ACL for a non-allocated stock is exceeded in FY 2012, then the respective AM would be implemented on May 1, 2013, for sector and common pool vessels.

Area-Based AMs for Atlantic Halibut, Atlantic Wolffish, and SNE/MA Winter Flounder

This action proposes area-based AMs for Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder. If the total ACL is exceeded for any of these stocks by an amount greater than the management uncertainty buffer, gear restrictions would be triggered in designated areas that have been identified as hotspots for catches of these stocks. For overages of the Atlantic halibut and Atlantic wolffish ACLs, trawl vessels would be required to use approved selective gear, and sink gillnet and longline vessels would not be allowed to fish in the applicable AM area. For overages of the SNE/MA winter flounder ACL, only trawl gear would be restricted in the applicable AM area. As previously adopted in Framework 47, possession of non-allocated stocks would also be prohibited at all times, except for Atlantic halibut would be reduced from one fish to zero if the total ACL is exceeded by an amount greater than the management uncertainty buffer. Approved selective trawl gears include the separator trawl, Ruhle trawl, mini-Ruhle trawl, rope trawl, and other gear authorized by the Council in a management action or approved for use consistent with the process defined in § 648.85(b)(6).

These area-based AMs, as well as the AMs implemented for ocean pout and the windowpane stocks by Framework 47, are triggered by an overage exceeding the amount of the management uncertainty buffer between the total ACL and the ABC for a non-allocated stock (i.e., when the ABC is exceeded). This is because the area-based AMs were designed to account for only overages of approximately 5–20 percent of the ACL. The Council's Groundfish Plan Development Team (PDT) was not able to design an effective area-based AM that would account for an overage of only a few percent. Any AM that would account for such a small amount of catch, could be easily undermined by a shift in effort to another hotspot. On the other hand, triggering an area-based AM that covers overages of up to 20 percent, for an overage of only a few percent, would be punitive. Currently, the management uncertainty buffer for these stocks is 7 percent at the sub-ACL level for the commercial groundfish fishery and ''other'' fisheries, and 3 percent for the scallop fishery. Because management uncertainty is not deducted from the state waters and other fisheries sub-components, this results in an effective management uncertainty buffer at the overall ACL level of 3–7 percent for non-allocated stocks, depending upon the stock. The management uncertainty buffer can be changed each time groundfish specifications are set. Because these AM areas are designed to account for an ACL overage of up to 20 percent, if the total ACL is exceeded by 20 percent or more for one of these stocks, the AM would still be implemented, but the measure would be reviewed in a future management action. In addition, should a sub-ACL be allocated to other fisheries in a future action, and AMs developed for those fisheries, the AM for any fishery would be implemented only if the total ACL for the stock is exceeded, and the fishery also exceeds its sub-ACL.

Framework 50 is proposing to allocate SNE/MA winter flounder to sectors and allow landings. If this measure is approved in Framework 50, sector-specific inseason AMs would be implemented, coupled with a pound-for-pound payback of any overage from a sector's allocation in the next fishing year. In this case, the area-based AM would apply only to common pool vessels if the common pool exceeds its sub-ACL for the stock.

Revised AM for SNE/MA Windowpane Flounder

Currently, the AM for SNE/MA windowpane flounder only applies to commercial groundfish vessels. However, the commercial groundfish fishery has typically accounted for less than 25 percent of the total SNE/MA windowpane flounder catch in recent years. A large portion of the total SNE/MA windowpane flounder catch is caught by trawl vessels in non-groundfish fisheries fishing with mesh size of 5 inches (12.7 cm) or greater. Thus, the current AM may not effectively restrict catches of this stock if the total ACL is exceeded, which increases the likelihood of consecutive overages in future fishing years.

As a result, this action proposes to modify the AM so that it would also apply to the other sub-component (see Item 2 in this preamble). If the total ACL for this stock is exceeded by an amount greater than the management uncertainty buffer, and the ''other sub-component'' sub-ACL is also exceeded, then the area-based AM, described above, would apply to all trawl vessels using a codend with a mesh size of 5 inches (12.7 cm) or larger. This measure would only be adopted if a SNE/MA windowpane flounder sub-ACL is allocated to the other sub-component of the fishery, as described above in this preamble. This revision would help ensure that, in the event of an overage, catches would be effectively restricted to prevent overfishing. In addition, this action would remove potential inequities that could occur if only the

commercial groundfish fishery was subject to an AM for SNE/MA windowpane flounder, even though its catches represent a small portion of the total catch for this stock.

As implemented in Framework 47, the area-based AM for commercial groundfish vessels would be implemented only if the commercial groundfish fishery exceeds its sub-ACL and the total ACL is also exceed by an amount greater than the management uncertainty buffer. Similarly, if a sub-ACL is allocated to the scallop fishery (see Item 2 in this preamble), the scallop fishery's AM would only be implemented if the total ACL is exceeded and the scallop fishery sub-ACL is also exceeded.

Revised Handgear Permit AMs

Amendment 16 implemented AMs for the common pool fishery that divide the annual common pool sub-ACL for allocated stocks into trimester TACs. When 90 percent of the trimester TAC for a stock is projected to be caught, the area where the stock is predominately caught will be closed, for the remainder of the trimester, to gear capable of catching that stock. Currently, hook gear is subject to the trimester TAC provisions for cod, haddock, white hake, and pollock. However, hook gear very rarely catches white hake, and makes up less than 1 percent of the total common pool catch of this stock each year. Therefore, this action proposes to exempt Handgear A and Handgear B permits from the white hake trimester TAC AM. This exemption would remain effective unless a future action modified this AM. Handgear A and B common pool vessels would still be subject to the trimester TAC for cod, haddock, and pollock.

Framework 48 also proposes to authorize the Regional Administrator to exempt Handgear A and Handgear B common pool vessels from the trimester TAC provisions for other stocks if catch by these vessels is less than 1 percent of the total common pool catch of that species or stock. This determination would be made prior to the start of the fishing year, and would be implemented through procedures consistent with the APA. The trimester TAC AMs were designed to apply only to gear types that caught the pertinent stock. Therefore, this measure would allow modifications to the trimester TAC AMs in the future, should new information become available that shows handgear vessels rarely catch a stock or species, or the combined catch of these vessels is less than 1 percent of the total common pool catch. This would increase the effectiveness of the common pool AMs, and would prevent potential inequities that may occur by applying an AM to vessels not responsible for catching, or exceeding, a trimester TAC.

7. Commercial Fishery Minimum Fish Sizes

Framework 48 also proposes to reduce the minimum fish sizes for several groundfish stocks to reduce regulatory discards and increase revenue from catch. In the groundfish fishery, all catch, including landings and discards, are counted against ACLs. In the sector fishery, sector vessels are required to land all legal-sized fish of allocated stocks, but discards of sub-legal-sized fish are extrapolated from observed fishing trips and are also debited from a sector's ACEs. Similarly, regulatory discards on common pool trips are extrapolated from observed trips and counted against common pool trimester and annual catch limits. Commercial discards for most stocks are assumed to have 100-percent mortality, so 100 percent of discards for these stocks are deducted from quota allocations; thus, discards are lost revenue for groundfish vessels. Framework 48 proposes to reduce the minimum fish size for several groundfish stocks to reduce waste and allow the commercial industry to recoup some revenue from fish that would otherwise be discarded. This is intended partly as a measure to mitigate expected reductions in catch limits. The minimum size limits proposed in Table 3 are based on an analysis conducted by the Groundfish PDT of the size of discarded fish in trawl gear in recent years and the length at 50-percent maturity. The proposed changes would be expected to reduce many discards associated with the current minimum size restrictions, while allowing many fish to reach spawning age before being caught.

TABLE 3—PROPOSED CHANGES TO MINIMUM FISH SIZES LIMITS FOR GROUNDFISH STOCKS

Species	Current size (inches)	Proposed FW 48 size (inches)
Cod	22 (55.9 cm)	19 (48.3 cm).
Haddock	18 (45.7 cm)	16 (40.6 cm).
Pollock	19 (48.3 cm)	No change.
Witch flounder (gray sole)	14 (35.6 cm)	13 (33 cm).
Yellowtail flounder	13 (33.0 cm)	12 (30.5 cm).
American plaice (dab)	14 (35.6 cm)	12 (30.5 cm).
Atlantic halibut	41 (104.1 cm)	No change.
Winter flounder (blackback)	12 (30.5 cm)	No change.
Redfish	9 (22.9 cm)	7 (17.8 cm).

Biological impacts that might result from reduced minimum fish sizes depend on whether selectivity in the fishery shifts to smaller fish. If small fish become a greater proportion of total catch, yield per recruit, and Maximum Sustainable Yield (MSY) could decline and rebuilding progress could slow. To discourage targeting of smaller fish, this measure only reduces minimum sizes, rather than eliminating them altogether, and would not change minimum mesh size requirements. If this measure is approved, it is not clear whether state agencies would follow suit. Commercial groundfish vessels would continue to be subject to the most restrictive measure of state and federal minimum fish size requirements.

8. Sector Monitoring Programs

Framework 48 proposes to revise the monitoring program requirements for groundfish sectors. Amendment 16 included requirements for sectors to design, implement, and pay for independent third-party monitoring programs to monitor sector catch at-sea and shoreside. Sectors were required to implement a dockside monitoring program to validate dealer-reported landings, with 50-percent coverage of sector trips in FY 2010, and 20-percent coverage each year thereafter. Dockside monitoring was also set to be implemented for common pool vessels

in FY 2012. Amendment 16 also required sectors to establish an at-sea monitoring program beginning in FY 2012 with a coverage level to be specified by NMFS, but less than 100 percent of sector trips.

To date, NMFS has voluntarily funded these programs for sectors. NMFS implemented its own at-sea monitoring program to monitor sectors and the common pool that has operated annually since FY 2010. In 2010, NMFS also reimbursed sectors for the costs of dockside monitoring. Shortly after the implementation of Amendment 16, the Council became concerned that the industry would not be able to support full responsibility for the costs of monitoring programs, beginning with dockside monitoring in 2011 and at-sea monitoring in 2012. Through Framework 45, the Council suspended the dockside monitoring requirements until FY 2013 and required dockside monitoring only to the extent that NMFS could fund it. In 2011, NMFS made the determination that dockside intercepts by enforcement personnel were sufficient to monitor sector landings and reprioritized financial support for dockside monitoring to alleviate general sector operating costs.

Delay Industry At-Sea Monitoring Cost Responsibility

Currently, sectors are responsible for implementing industry-funded at-sea monitoring programs to monitor their fishing activities beginning May 1, 2013. With the substantial catch reductions proposed in Framework 50, the Council is concerned that the industry will not be able to support this cost burden in FY 2013. Framework 48 proposes to delay the industry's responsibility for at-sea monitoring costs to FY 2014 to mitigate the expected negative economic impacts of lower catch limits in FY 2013. Coverage levels would instead be set at the level that NMFS can fund. This measure is being proposed for only 1 year so that the Council may further modify this requirement in the future as more information becomes available on the appropriate monitoring levels, costs of those programs, and implementation of electronic monitoring systems.

NMFS understands fishermen's concerns about their ability to endure this cost burden, in part or in full, particularly at catch levels proposed by Framework 50. NMFS is committed to assisting the industry through this difficult time to the extent that it is able and is working on a plan to cover as much of these costs as possible. NMFS cannot definitively commit to fully funding sector monitoring, because of the high degree of uncertainty around a fiscal year 2013 budget. NMFS projects that if effort levels go down next year, NMFS would be able to fund sector at-sea monitoring. If effort remains the same, NMFS would only be able to fund at-sea monitoring by using funds currently slated for research to develop electronic monitoring in the Northeast.

With respect to the proposed measure, however, NMFS has serious concerns that it does not meet the requirements of the FMP and the Magnuson-Stevens Act, as previously expressed in letters and at Council meetings. Relying on NMFS appropriations to determine an at-sea monitoring coverage rate does not ensure that coverage will be sufficient to monitor sector annual catch entitlements (ACEs) or to meet the purpose and goals for sector monitoring described in Amendment 16 and proposed by Framework 48. This same measure was proposed in Framework 45 and it was disapproved based on these same concerns. In a letter to the Council dated April 11, 2011, the Regional Administrator cited concerns that NMFS funding alone would not be sufficient to support coverage levels needed to monitor sector ACEs. NMFS did not have a 2012 budget at that time and sufficient NMFS appropriations could not be guaranteed. Without additional appropriations to support sector monitoring specifically, NMFS remains very concerned that relying solely on the Federal Government to provide sector at-sea monitoring coverage will undermine not only sector catch monitoring but also other programs. Inadequate coverage would also potentially affect the Standard Bycatch Reporting Methodology (SBRM) coverage requirements and information used to assess Northeast fish stocks by spreading existing resources too thin. Thus, NMFS has very serious concerns about the approvability of this measure. For that reason, NMFS has analyzed the needed at-sea monitoring coverage level for FY 2013 assuming that this measure is not approved.

At-Sea Monitoring Cost-Sharing

Framework 48 also proposes a mechanism for sharing of at-sea monitoring costs between sectors and NMFS. Framework 48 proposes that the industry would only ever be responsible for paying the direct costs of at-sea monitoring, specifically the daily salary of the at-sea monitor. All other programmatic costs would be the responsibility of NMFS, including, but not limited to: Briefing, debriefing, training and certification costs (salary and non-salary); sampling design development; data storage, management and security; data quality assurance and control; administrative costs; maintenance of monitoring equipment; at-sea monitor recruitment, benefits, insurance and taxes; logistical costs associated with deployment; and at-sea monitor travel and lodging. This measure would increase profitability for sectors and sector vessels by reducing the cost burden of at-sea monitoring.

This measure raises concerns about sharing payment of government obligations with private entities. Given this, the proposed at-sea monitoring cost sharing measure may not be sufficiently developed to approve at this time. NMFS believes that this approach to cost-sharing, however, could be viable if restructured and could be pursued through a future action. NMFS is currently working with the New England and Mid-Atlantic Councils' joint Herring-Mackerel PDT/Fishery Management Action Team (FMAT) to pursue cost-sharing options such as this one for those fisheries for FY 2014. The Council may want to consider including the NE Multispecies FMP in this joint effort to develop a workable and consistent cost-sharing mechanism for the Northeast region.

Eliminate Dockside Monitoring

Framework 48 also proposes to eliminate the dockside monitoring program for both the sectors and common pool. Like at-sea monitoring, the Council is concerned about the industry's ability to support this cost burden in FY 2013 and future years. Dealer-reported fish weights are used as the principle source to monitor commercial landings. Thus, dockside monitor reports may be redundant and not needed for landings information. Dealer reporting combined with dockside intercepts by enforcement personnel are potentially sufficient to monitor landings of sector catch at this time. Eliminating the program would reduce costs and increase profitability of the commercial industry in future years.

Framework 48 proposes eliminating the dockside monitoring program, but it is not clear if this includes removing the current dockside monitoring hail requirements. NMFS believes it is important to maintain the trip-start and trip-end hail requirements for sector vessels at this time to facilitate the monitoring and enforcement of sector operations and landings. Amendment 16 required vessels to issue hails to their dockside monitoring providers at the start and end of a trip in order to facilitate the deployment of dockside monitors. Since then, however, hails have become a useful tool for both NMFS and sector managers to monitor sector vessels' activities, including the

use of certain sector exemptions, and to facilitate dockside intercepts by enforcement personnel. Framework 45 maintained the trip-end hail requirement strictly for enforcement purposes, while suspending all other dockside monitoring requirements. It was not clear from Framework 45 whether trip-start hails may also be maintained when dockside monitoring requirements are eliminated. Trip-start hails are currently only required when using certain sector exemptions, as instructed by a vessel's sector operations plan or sector Letter of Authorization. If the dockside monitoring program is eliminated, NMFS intends to maintain this use of trip-start hails on an as-needed basis. Framework 45 also stipulated that NMFS is to reduce unnecessary duplication of hail reports with any other reporting requirements, to the extent possible. NMFS is clarifying the regulatory text of this proposed rule at § 648.10(k)(1), consistent with this provision, so that hails may be modified in the future to be streamlined with other reporting requirements that collect similar fishery data, such as Vessel Trip Reports (VTRs) and Vessel Monitoring System (VMS) catch reports.

Sector Monitoring Goals and Performance Standard

Framework 48 also proposes to clarify the goals and objectives, and performance standard, established for sector monitoring programs by Amendment 16. Amendment 16 did not lay out explicit goals for sector monitoring, but described several general purposes for the programs, including to provide accurate estimates of sector catch and to verify area and gear fished, to ensure sector allocations are not exceeded. Framework 48 proposes to clarify and elaborate the goals and objectives for existing and future groundfish monitoring programs, to help the Council and NMFS to implement monitoring requirements consistent with the goals of the FMP and to evaluate the program in the future. Framework 48 proposes that groundfish monitoring programs improve documentation of catch, determining total catch and effort of regulated species, and achieve a coverage level sufficient to minimize effects of potential monitoring bias to the extent possible, while enhancing fleet viability. Monitoring programs should also reduce the cost of monitoring, streamlining data management and eliminating redundancy, exploring options for cost-sharing, while recognizing the opportunity costs of insufficient monitoring. Other goals and objectives include incentivizing reducing discards, providing additional data streams for stock assessments, reducing management and/or biological uncertainty, and enhancing the safety of the monitoring program. It would also be an explicit goal of such programs to periodically evaluate them for effectiveness. A detailed list of all the objectives for groundfish monitoring programs is available in Section 4.2.2.2 of Framework 48.

Amendment 16 specified a performance standard that coverage levels must be sufficient to at least meet the coefficient of variation (CV) specified in SBRM (a CV of 30 percent). Since the implementation of the much expanded sector program in FY 2010, there have been questions raised about what level the CV standard is to be applied to—discard estimates at the stock level for all sectors, or for each combination of sector and stock. The former would result in lower coverage rates than the latter. Framework 48 proposes to clarify that the CV standard is intended to apply to discard estimates at the overall stock level for all sectors combined. The Council and NMFS believe this level is sufficient as a minimum standard for monitoring ACLs, consistent with the goals of Amendment 16 and the FMP. NMFS would use this standard to help determine the minimum coverage rates for sector at-sea monitoring programs in future fishing years. Note that, although the Framework 48 document discusses the clarified standard with respect to ''allocated stocks,'' the proposed regulatory text would apply the CV standard to all groundfish stocks, allocated and non-allocated. This error was identified at the December 20th Council meeting, when the Council selected its preferred alternative. It was not clear at that time why the description of the CV standard was limited to allocated stocks, and the Council and NMFS have since been unable to identify a Council motion or other reason that would suggest the Council intended the CV standard not to apply to non-allocated stocks. NMFS and the Council have concluded that this was a simple oversight in the document and, thus, the Council has deemed the corrected regulatory text as consistent with its intent.

Because Amendment 16 did not provide clear goals and objectives and a clear performance standard for sector monitoring programs, there is a lack of specific direction and specification about the appropriate level needed to ''accurately monitor sector operations.'' As described above, in addition to specifying the level to which the CV standard should be applied, Framework 48 proposes to clarify and specify what other factors should be taken into account in determining the appropriate level of coverage for groundfish monitoring programs. NMFS interprets these provisions as guidance based on a practicability standard for determining the level of at-sea monitoring coverage that is appropriate for monitoring sector operations to help ensure that overall catch by sector vessels does not exceed ACEs and ACLs. NMFS is proposing to revise the regulatory text with respect to sector monitoring requirements to reflect the clarified goals and performance standard for sector monitoring programs, and to take into account the National Standards and other requirements of the Magnuson-Stevens Act. NMFS is proposing to revise the regulatory text at § 648.87(b)(1)(v)(B) to read that coverage levels must at least meet the CV standard at the overall stock level and be sufficient to monitor sector operations, to the extent practicable, in order to reliably estimate overall catch by sector vessels.

In addition to the revised goals and objectives in Framework 48, NMFS will specifically take into account National Standards 2, 7, and 8 in making its determination of the appropriate level of at-sea monitoring coverage for sectors on an annual basis. These National Standards specifically speak to using the best scientific information available, minimizing costs and avoiding unnecessary duplication where practicable, taking into account impacts on fishing communities, and minimizing adverse economic impacts to the extent practicable. NMFS explains how it has made its determination of the at-sea monitoring coverage for FY 2013 in the proposed rule to approve sector operations plans (78 FR 16220; March 14, 2013) and in a summary document posted at *http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf.*

Reduce At-Sea Monitoring for Monkfish Trips

Lastly, Framework 48 proposes to implement a lower at-sea coverage rate for sector vessels fishing on a monkfish day-at-sea (DAS) in the SNE Broad Stock Area with extra-large mesh gillnets. Currently, sector monitoring requirements are defined to apply to any trip where groundfish catch counts against a sector's ACE. Because the Skate and Monkfish FMPs require the use of a DAS, including a groundfish

DAS, to target these species, sector vessels fishing for monkfish and skates are charged ACE for any landings or discards of groundfish and are subject to sector at-sea monitoring coverage on these trips. When truly targeting monkfish or skates, however, sector vessels often use gear that has little or no bycatch of groundfish. With limited resources for at-sea monitoring, covering trips targeting skate or monkfish is arguably a waste of resources and does not contribute to improving the overall precision and accuracy of discard estimates. Framework 48 proposes to exempt a subset of sector trips that are declared into the SNE Broad Stock Area on a monkfish DAS and using extra-large mesh gillnets from the standard at-sea monitoring coverage rate. NMFS would instead specify some lower coverage rate for these trips on an annual basis when determining coverage rates for all other sector trips. This measure would reduce at-sea monitoring costs to sectors, particularly to gillnet vessels that fall in this category. Lower coverage rates for this subset of trips could result in less precise discard estimates. The benefit of reducing at-sea monitoring coverage for these trips is that resources would be diverted to monitor trips that catch more groundfish, which could improve discard estimates for directed groundfish trips, and all other sector trips would still be required to meet the CV standard at a minimum.

At a minimum, these trips would get Northeast Fishery Observer Program (NEFOP) coverage. At this time, NMFS has determined that sampling by NEFOP observers should be sufficient to monitor this subset of sector trips in FY 2013. NMFS will not be requiring any additional at-sea monitoring coverage on this sub-set of sector trips. A review of the data analyzed by the Groundfish PDT and in Framework 48 showed little to no catch of groundfish on sector trips under a monkfish DAS in the SNE Broad Stock Area and using extra-large mesh gillnets. A total of 1,209 lb (548 kg) of all groundfish species were landed, and 16,670 lb (7,561 kg) discarded, across all sector trips using extra-large mesh gillnets in SNE in FY 2010 and 2011 combined. NMFS believes that the same level of coverage provided to vessels on monkfish trips not burning a groundfish DAS, which use the same gear in the same areas at the same time with little catch of groundfish, should be sufficient to monitor this exemption. It is possible that changes in stock size or fishing behavior on these trips could change the amount of groundfish bycatch in future fishing year. However, given the type of gear used on these trips, a large change is unlikely. NMFS would use the data collected from this first year of coverage in determining the appropriate coverage level for this subset of trips for future fishing years. Because this subset of trips would have a different coverage level than other sector trips in the SNE Broad Stock Area, NMFS is intending to create separate discard strata for each stock caught on trips meeting the exemption criteria in order to ensure the different coverage levels do not bias discard estimates.

To facilitate deploying appropriate coverage levels, a sector vessel would have to notify NEFOP as to whether it intends to fish on a monkfish DAS. Sector vessels already declare gear type and Broad Stock Area to be fished in the Pre-Trip Notification System (PTNS) and a modification to this system may be made to allow sector vessels to declare their DAS type. At this time, NMFS is still determining how the notification for this exemption would be made. If this measure is approved, NMFS will specify the method of notification in the final rule and in a Fishery Bulletin sent to all sector vessels. NMFS will make every effort to ensure it does not create duplicative reporting burdens for individual vessels. This measure would also require that NMFS develop a method for identifying these trips in the fishery dependent datasets in order to ensure they are appropriately stratified in stock assessments. The NMFS Northeast Regional Office is working with the Northeast Fisheries Science Center to identify the appropriate method to transmit this information to assessment scientists. To assist NMFS in identifying these trips for appropriate stratification in discard estimates, NMFS is proposing to require sector vessels intending to use this exemption to submit a trip-start hail declaring their intent to NMFS before departing port. If this measure is approved, detailed instructions for submitting hails would be specified in a Fishery Bulletin distributed to sector vessels.

To minimize the possibility that this measure would be used to avoid at-sea monitoring coverage, only vessels meeting the criteria and intending to fish exclusively in the SNE Broad Stock Area would be eligible for lower coverage. Vessels declaring multi-Broad Stock Area trips would not be eligible for the lower selection probability. In addition, a vessel is already prohibited from changing its fishing plan for a trip once a waiver from coverage has been issued. NMFS is proposing to revise the pre-trip notification regulations at § 648.11(k)(1) to make clear that a vessel's fishing plan includes the area to be fished, whether a monkfish DAS will be used, and gear type to be used.

9. GB Yellowtail Flounder Management Measures

Framework 48 proposes to change the stratification of discard estimates for sectors for GB yellowtail flounder. Both landings and discards are counted against sector ACEs, and once a sector reaches an ACE, it must cease fishing in the stock area for that particular stock until it can acquire more ACE through a transfer. Discards by sector vessels are estimated using an extrapolation from observed discards on observed trips. A discard rate is calculated for each ''stratum,'' or each combination of gear type and stock area for each sector. During the development of Framework 48, substantial quota reductions were being contemplated for GB yellowtail flounder and the Council became concerned that a low quota could be constraining on sectors. Even if some sector vessels were able to fish in deeper water, where little yellowtail flounder is caught, to reduce their GB yellowtail discards, GB yellowtail discards by vessels in the same sector fishing on other parts of GB would impact the discard rate for all vessels in the sector. Framework 48 proposes to split the GB yellowtail flounder discard strata between statistical area 522 and statistical areas 525/561/562, so that sector discard rates more accurately reflect fishing effort in these areas. Sector vessels fishing in deeper water in statistical area 522 to avoid GB yellowtail flounder would get a GB yellowtail flounder discard rate generated from observed discards of GB yellowtail flounder on other vessels in their sector fishing in area 522. This could extend the fishing season for sector vessels fishing this area, and thereby increase profits. On the other hand, change to stratification could increase GB yellowtail flounder discard rates for other parts of GB (statistical areas 525/561/562), reducing revenues for vessels fishing in these areas. There is a potential for this measure to create an incentive for sector vessels fishing inside and outside area 522 to misreport GB yellowtail catch from outside area 522 as from inside area 522, potentially inflating area 522 GB yellowtail discard estimates and, thereby, negating any benefit of this measure.

This measure proposes to make this change for all groundfish gears, although this is primarily an issue for trawl vessels. Framework 48 would allow the Regional Administrator to determine whether this stratification is

unnecessary for other gears. For FY 2013, NMFS has determined that this finer stratification would not be practical or analytically sound for other gear types in sectors and is proposing to continue to calculate discard rates for non-trawl gear types for the entire GB yellowtail flounder stock area. NMFS reviewed VTR and dealer data from sector trips in the GB yellowtail flounder stock area using gillnets, longlines, and handgear from FY 2010 to the present. NMFS found that all trips utilizing gillnet gears occurred in statistical area 522 and, therefore, a separate stratum for gillnets would not change the estimated discard rates for area 522. In FY 2009, some gillnet trips occurred in other parts of GB, but re-estimating the discard rate for the areas 525/561/562 using this data would be based on past performance of vessels, which is not representative of the current sector fishing behavior. There have been a small number of trips inside and outside of area 522 using handgear and longline gear and the amounts of GB yellowtail flounder discarded from those trips have been minimal. From FY 2010 to date, there have been between 3 and 92 trips with an estimated 0.2 to 34 lb (0.09–15.4 kg) GB yellowtail discards total across all trips. NMFS believes further stratifying these small trip counts and discard amounts would result in less precise estimates of discards than the current stratification scheme for non-trawl gears. Common pool discard rates for GB yellowtail flounder would also continue to be calculated for the entire GB yellowtail flounder stock area because the small number of these trips would likely not be sufficient to estimate an in-season discard rate. This change is only being proposed for inseason quota monitoring of sector allocations and would not affect discard estimates used for stock assessments.

10. List of Allowable Sector Exemption Requests

Amendment 16 allowed a sector to make requests to the Regional Administrator for exemption from some NE multispecies regulations as part of its annual sector operations plan. Exemption requests are considered in the review and approval of sector operations plans annually through a proposed and final rule. The proposed rule proposing approval of FY 2013 sector operations plans published in the **Federal Register** on March 14, 2013 (78 FR 16220). The rationale for allowing this, and typically for the approval of exemption requests by the Regional Administrator, is that sectors are subject to a hard TAC that limits overall fishing mortality resulting from sector operations, making certain other mortality or effort controls redundant. Removing redundant effort controls would provide operational flexibility and efficiency for sector vessels and possibly increase profitability. Amendment 16, and later Framework 47, identified a list of FMP measures that sectors could not request exemption from, including: Year-round closure areas; permitting restrictions (e.g., vessel upgrade limits, etc.); gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.); reporting requirements; and AMs for non-allocated stocks. Sectors were prohibited from requesting these exemptions because they serve multiple purposes and not necessarily act exclusively as mortality controls. Amendment 16 allowed for this list to be modified through framework action.

Framework 48 proposes a change to the FMP that would allow sectors to submit limited requests for exemption from portions of year-round closure areas. Specifically, sectors could request exemption from the year-round groundfish mortality closures, except for where they overlap current or proposed habitat closed areas. These areas are defined as the existing habitat closed areas specified at § 648.81(h) and the Fippennies Ledge area under consideration as a potential habitat management area in the Omnibus EFH Amendment currently under development by the Council. This limitation would maintain the purpose of existing habitat areas to minimize the adverse effects of fishing on EFH, and preserve the consideration of additional habitat areas, until such time as the Council chooses to modify them through implementation of the Omnibus EFH Amendment. Sectors also would not be exempt from the Western GOM Closed Area, where it overlaps with a GOM Rolling Closure Area in effect. At this time, the GOM Rolling Closure Area III overlaps the northeast corner of the Western GOM Closed Area, so sectors would not be allowed to request access to this portion of the Western GOM Closed Area during May. The Council further limited sector exemption requests to Closed Area I and II to February 16th through April 30th to protect spawning groundfish. This measure is proposed to help mitigate the expected reductions in FY 2013 catch limits by allowing sectors to potentially increase access to healthy groundfish stocks such as GB haddock, pollock, and redfish that may be more abundant in these areas.

Council members, members of the public, the fishing industry, and environmental groups expressed a number of concerns during the development of Framework 48 with allowing additional access to groundfish closed areas. Some comments concerned the potential for this measure and any proposed sector exemptions to undermine measures under consideration in the Omnibus EFH Amendment. Concerns were also raised about impacts to protected species, spawning groundfish, and to other commercial species, like lobsters, from opening these areas to additional fishing effort. Some commenters also raised concerns that allowing groundfish vessels into these areas, mainly Closed Area II could increase gear conflicts between mobile and lobster gear. To address some of these issues, the Council imposed the limitations described above, excluding existing and potential habitat closed areas to preserve the process under way to evaluate these areas in the Omnibus EFH Amendment. The Council also took steps to continue protections for spawning groundfish by including seasonal restrictions on any sector exemptions.

Framework 48 does not actually approve the exemptions needed to fish in these closed areas. The impacts of any actual fishing effort, including the concerns raised in public comments during the development of Framework 48, would be evaluated through the annual review and approval of sector operations plans and exemption requests for each fishing year. The Council has already asked that the specific issues raised during public comments be evaluated by NMFS in the consideration of any specific sector exemption requests. The sector exemption review and approval process also provides better opportunity to address specific concerns with the potential impact of actual sector proposals. The Regional Administrator may include stipulations and constraints on specific exemptions to facilitate the monitoring and enforcement of sector operations or as mitigation measures to address specific potential impacts.

The Council's Closed Area Technical Team (CATT), which has been charged with working on permanent changes to the groundfish mortality closures to be included in the Omnibus EFH Amendment, conducted a comprehensive literature and data review of groundfish closed areas, which was used as the basis for the analysis of this administrative change in Framework 48. Due to data limitations and the fact that sector fishing effort is driven more by Catch Per Unit of Effort

(CPUE) and market conditions than effort controls, the CATT was unable to quantitatively model potential changes in fishing effort. The CATT conducted a qualitative assessment of probable effects on species that are likely to be affected by the proposed action, using swept-area estimates of biomass and other data collected from literature. The analysis concluded that there could be neutral to low negative impacts to some groundfish stocks that have derived benefits from the closed areas (i.e., haddock, winter flounder, cod) or where stock biomass was low and a substantial fraction of the stock would become vulnerable to fishing (i.e., cod and yellowtail flounder). Impacts to habitat and protected species are difficult to quantify, but would be expected to be neutral. Potentially allowing sector vessels to access these areas could have positive economic impacts to sector vessels and their communities, particularly if haddock catch can increase and provide additional revenue. However, increasing fishing effort in the closed areas could negatively impact future productivity. The CATT concluded that the magnitude of any change in fishing effort or catch that might result from potential sector exemption requests is difficult to predict and, therefore, the benefits and costs are highly uncertain.

In anticipation of this change being approved for FY 2013, sectors submitted requests for exemptions from portions of the groundfish mortality closures in their FY 2013 operations plans this fall. Due to the need for additional time to analyze these new exemptions adequately, NMFS would be considering sector requests for exemption from closed areas in a separate rulemaking from the general approval of sector operations plans for FY 2013, if the proposed change in Framework 48 is approved. The closed area exemption requests would be considered as amendments to the sector operations plans through a proposed and final rule that would be available for public comment with an accompanying National Environmental Policy Act (NEPA) analysis. Any closed area exemption requests, if approved, would not be in place until after the start of the 2013 fishing year.

11. Requirement To Stow Trawl Gear While Transiting

The regulations currently specify that fishing gear must be stowed in a specific way, as described at § 648.23(b), when transiting closed areas to facilitate the enforcement of closed areas at sea. This measure proposes to remove this requirement for only trawl vessels on a groundfish trip. The Council believes that, with the use of VMS on all limited access multispecies vessels, the gear stowage requirements are no longer necessary for enforcement at sea. Groundfish vessels using non-trawl gear and vessels in other fisheries would still be required to stow their gear in accordance with § 648.23(b) when transiting closed areas. This requirement would also still apply for stowing gear smaller than the minimum mesh size when transiting the Regulated Mesh Areas.

The Groundfish Committee considered this measure after the Council's VMS/Enforcement Committee forwarded a recommendation to make modifications to the gear stowage requirements. What the Groundfish Committee put forward in Framework 48, however, was not the option that was proposed by the Council's VMS/Enforcement Committee and is in fact contrary to the VMS/Enforcement Committee's recommendations. The VMS/Enforcement Committee discussed removing gear stowage requirements entirely, among several other alternatives, at its October 20 and November 29, 2011 meetings and, with input from the U.S. Coast Guard and NMFS enforcement personnel and General Counsel for Enforcement, concluded that gear stowage requirements are still necessary to enforce closed areas at sea. Thus, the VMS/Enforcement Committee recommended only modifications to the gear stowage regulations to address safety concerns and improve their effectiveness. Furthermore, the Council recommended the VMS/Enforcement Committee's recommended modifications, and not the measure proposed here in Framework 48, to the Mid-Atlantic Council for consideration in Mid-Atlantic FMPs. If the Mid-Atlantic Council were to act on the New England Council's letter, it could also result in inconsistent gear stowage requirements across FMPs, regardless of whether the proposed measure in Framework 48 is approved or not, due to the overlapping jurisdiction of the two Councils.

NMFS has serious concerns about being able to enforce closed areas at sea without consistent and effective gear stowage provisions. Removing these requirements for only groundfish trawlers through Framework 48 would create inconsistent gear stowage requirements across FMPs, complicating enforcement and compliance. For example, it is not clear what requirements a vessel is supposed to follow when it is fishing under the regulations of multiple FMPs on the same trip, such as a joint monkfish/groundfish or scallop/groundfish DAS trip. The Coast Guard and NMFS enforcement personnel commented to the VMS/Enforcement Committee that VMS is not sufficient to enforce the prohibition on fishing in closed areas without the gear stowage provisions. Abuse of this exemption by groundfish vessels or vessels participating in other fisheries could undermine the conservation objectives of closed areas, calling into question whether this measure is consistent with the FMP and the National Standards. It is also not clear why the Council exempted only groundfish vessels from the trawl gear stowage requirements and did not extend this exemption to vessels participating in its other FMPs. Applying this change to only groundfish vessels without a clear rationale for doing so raises equity concerns. NMFS specifically seeks comment on whether it should approve the proposed removal of the gear stowage requirement for trawl vessels in closed areas.

12. Correction to Eastern U.S./Canada Quota Monitoring

Through this rule, NMFS is proposing a correction to the regulations governing fishing activity in the Eastern U.S./Canada Area. This change is only a regulatory correction and is unrelated to the measures proposed by Framework 48. The regulations at § 648.85(a)(3)(ii)(A) currently state that all catch of cod, haddock, and yellowtail flounder caught on a trip that fishes both inside and outside of the Eastern U.S./CA Area shall apply to the U.S./CA TACs (in the case of cod and haddock, the Eastern U.S./CA TACs). This method for quota monitoring was implemented through Framework 42 as a conservative way to estimate catch to ensure U.S./CA TACs would not be exceeded, while allowing vessels the flexibility to fish both inside and outside the Eastern U.S./CA Area on the same trip. Since the implementation of Framework 42, NMFS refined its quota monitoring methods to apportion catch inseason consistent with Framework 42 in order to determine when the Eastern U.S./CA Area should be closed, but then to re-apportion those catches of cod, haddock, and yellowtail flounder at the end of the fishing year using VTRs and VMS catch reports, when determining whether a U.S./CA TAC had been exceeded. With the implementation of Amendment 16, each sector and the common pool received allocations of Eastern U.S./CA stocks. Although Amendment 16 did not specifically address how allocations of Eastern U.S./Canada stocks should be monitored in

this new quota regime, NMFS' interpretation of Amendment 16 was that it intended statistical areas reported on VMS catch reports and VTRs to be used to apportion catch to specific stock allocations. Thus, NMFS began monitoring sector and common pool catch of GB cod, haddock, and yellowtail in this way beginning in FY 2010. Despite being clear about NMFS' interpretation in the Amendment 16 preamble, the original provision implemented by Framework 42 was inadvertently left in the regulations at § 648.85 by the Amendment 16 final rule. NMFS is proposing to revise the regulations to remove the text that states all cod, haddock, and yellowtail flounder on multi-area trips must be applied to Eastern U.S./CA allocations. NMFS has made the Council aware of its intent to correct the regulations (at a Groundfish Committee meeting and through this proposed rule), but the full Council has not had an opportunity to comment as to whether it believes this change is consistent with Amendment 16. Therefore, NMFS is specifically requesting comment from the public on this proposed correction to the regulations in this proposed rule.

13. Additional Corrections

In addition to the changes specified above, the following changes are being proposed to the regulations to correct incorrect references and to further clarify the intent of the Council.

In § 648.4(a)(1)(ii), this rule would correct a misspelling of the word ''multispecies.''

In § 648.80(a)(3)(vii), this rule would clarify that rockhopper and roller gear requirements of the GOM/GB Inshore Restricted Roller Gear Area apply only to groundfish vessels on a NE multispecies DAS or sector trip. This correction is being made at the request of the Council, in response to a letter sent April 30, 2012.

In § 648.82(k)(2), language prohibiting sector vessels from leasing DAS would be removed. This language is left over from Amendment 13 and should have been removed in the final rule implementing Amendment 16, which allowed sectors vessels to lease DAS among themselves.

In § 648.82(n)(2)(i), the rule would clarify that common pool trimester TAC area closures are intended to apply to common pool vessels using gear capable of catching groundfish only when on a NE multispecies DAS, and not when participating in exempted fisheries.

In § 648.82(n)(2)(ii)(A), this rule would correct the coordinates for the GB Cod Trimester TAC Area. Amendment 16 defined the area as being composed of statistical areas 521, 522, 525, and 561. However, the coordinates used to define the GB Cod Trimester TAC Area were incorrectly transposed in the Amendment 16 final rule and included statistical area 562; this would be rectified by this action.

In § 648.82(n)(2)(ii)(B), Points 4 and 5 incorrectly list the N. Lat. as 43°20′, and this action would correct them to read 43°10′.

In § 648.82(n)(2)(ii)(H) and (I), the original coordinate AP8 was unnecessary and would be removed by this action.

In § 648.82(n)(2)(ii)(J), this rule would correct the coordinates for the GB Winter Flounder Trimester TAC Area. Amendment 16 defined the area as being composed of statistical areas 522, 525, 561, and 562. However, the coordinates used to define the GB Winter Flounder Trimester TAC Area were incorrectly transposed in the Amendment 16 final rule and did not include statistical areas 525 and 561; this would be rectified by this action.

In § 648.84(e), this rule would add a regulatory definition for the rope separator trawl. The definition for the rope separator was inadvertently removed from the regulations by the Framework 47 final rule. This rule would add the regulatory definition back into the regulations.

In § 648.85(a)(3)(ii)(A), the requirement to apply all catch of cod and haddock from a trip both inside and outside the Eastern US/CA area against the Eastern US/CA TACs would be removed. This method for quota monitoring was implemented through Framework 42 to ensure Eastern US/CA TACs would not be exceeded. With the implementation of Amendment 16, sectors received individual allocations of Eastern US/CA stocks and catch was to be apportioned to specific stocks using statistical areas reported on VTRs. This measure was inadvertently left in the regulations by the Amendment 16 final rule and does not reflect the intent of Amendment 16 or how NMFS is currently monitoring Eastern US/CA TACs.

In 648.85(a)(3)(iv)(E), the regulations allow for the Regional Administrator to close the Eastern U.S./Canada Area to all vessels subject to a particular TAC allocation if that particular TAC allocation is projected to be caught. This proposed rule would clarify that this is only to apply to allocations to sectors and common pool vessels, and not the scallop fishery or other ACL components. Amendment 16 and Framework 48 clarified that inseason and reactive accountability measures for sub-ACLs for non-groundfish components of ACLs are to be developed and administered by those respective FMPs.

In § 648.85(b)(7)(iv)(H) and (b)(8)(v)(F), an explicit reference to possession limits for other groundfish stocks, including stocks prohibited from being landed, in § 648.86 would be added in the description of landings limits for the Closed Area I Hook Gear Haddock SAP and Eastern U.S./Canada Haddock SAP.

In § 648.85(b)(8)(v)(C), the timing of the pre-trip notification to the observer program for a US/CA trip would be revised from 72 hr to 48 hr. Prior to Amendment 16, vessels taking trips into the U.S./Canada were required to notify the observer program of their intent to take a trip 72 hr prior to departure. With the implementation of Amendment 16, NMFS established a standardized call-in requirement to the observer program that reduced this lead time to 48 hr.

In § 648.85(d), a period that was incorrectly inserted after ''NE'' would be removed.

In § 648.86(a)(3)(ii), periods that were incorrectly inserted after ''NE'' would be removed.

In § 648.86(a)(3)(ii)(A)(3), the table title for the GB Herring Haddock AM Area was incorrectly published as the GOM area. This rule would correct the table title.

In § 648.87(b)(1)(ii), sector stock area coordinates that were to be implemented by Framework 44 but were inadvertently left out of the regulations would added through this rule as paragraphs (A) through (F).

In § 648.90(a)(5)(iii), a period that was incorrectly inserted after ''NE'' would be removed.

In § 648.201(a)(2), the prohibition on landing of haddock is clarified to apply only to the haddock stock area for which the AM has been triggered. An explicit reference was added to the haddock possession restrictions in the NE multispecies regulations at § 648.86(a)(3)(ii)(A).

Classification

Except for those measures identified as being problematic, NMFS has made a preliminary determination that the measures this proposed rule would implement are consistent with the NE Multispecies FMP, Magnuson-Stevens Act and other applicable laws. In making the final determination, NMFS will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with Federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA, which includes this section of the preamble to this rule and analyses contained in FW 48 and its accompanying EA/RIR/IRFA, describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

The Small Business Administration (SBA) defines a small business as one that is: independently owned and operated; not dominant in its field of operation; has annual receipts not in excess of $4.0 million in the case of commercial harvesting entities, or $7.0 million in the case of for-hire fishing entities; or if it has fewer than 500 employees in the case of fish processors, or 100 employees in the case of fish dealers. This framework action impacts mainly commercial harvesting entities engaged in the limited access groundfish, as well as both the limited access general category and limited access scallop fisheries. Ownership data are available for the four primary sub-fisheries potentially impacted by the proposed action from 2010 onward. These are the sector and common pool segments in the groundfish fishery and the limited access general category and limited access scallop fisheries. However, current data do not support a common ownership entity data field across years. For this reason, only 1 year's gross receipts are reported, and calendar year 2011 serves as the baseline year for this analysis. Calendar year 2012 data are not yet available in a fully audited form.

In 2011 there were 1,370 distinct ownership entities identified. Of these, 1,312 are categorized as small and 58 are large entities as per SBA guidelines. These totals may mask some diversity among the entities. Many, if not most, of these ownership entities maintain diversified harvest portfolios, obtaining gross sales from many fisheries, and are not dependent on any one fishery. However, not all are equally diversified. Those that depend most heavily on sales from harvesting species impacted directly by the proposed action are most likely to be affected. A definition of dependence as deriving greater than 50 percent of gross sales from sales of either regulated groundfish or from scallops was used to identify those ownership groups most likely to be impacted by the proposed regulations. Using this threshold, 135 entities are groundfish-dependent, with 131 small and 4 large. Forty-seven entities are scallop-dependent, with 39 small and 8 large.

Measures Proposed To Mitigate Adverse Economic Impacts of the Proposed Action and Economic Impacts of Alternatives to the Proposed Action

The measures proposed by Framework 48 include revision of status determination criteria, modification of management measures for GB yellowtail flounder, modification of management measures for at-sea monitoring, allowance of exemption requests from sectors to year-round closures, changes to minimum size restrictions for allocated fish, and modifications to AMs. Assuming all impacts to vessels are also applicable to ownership entities, all of the alternatives have the potential to impact a large number of small entities, and while some of the options may significantly alter profitability, none of them would have a disproportionate impact on small entities.

The alternative to adopt new status determination criteria would impact the catch limits set for each species. If the revised status determination criteria result in much lower catch limits than under the no action alternative, then this alternative would likely significantly reduce fishing revenues. In order to be consistent with the Magnuson-Stevens Act, however, it is necessary to incorporate the best available scientific information. The no action alternative would be inconsistent with the Magnuson-Stevens Act because it would continue to use outdated stock assessment data; therefore, it is not the preferred alternative.

Establishing sub-ACLs for SNE/MA windowpane flounder and for GB yellowtail flounder would impact both the groundfish and scallop fisheries by shifting accountability for overages or changing the method of sub-ACL calculation. SNE/MA windowpane sub-ACLs for the scallop and other sub-components fisheries would reduce the likelihood of an overage and overfishing, leading to lower operating costs and higher future revenues. The specific economic impacts to each respective fishery are dependent on the allocation received and details of the associated AMs, which have not been determined for the scallop fishery. If sub-ACLs are set below average yearly landings for a given fishery, and if AMs are severely restrictive, the impacted vessels could experience a substantial reduction in their profitability.

The proposed modifications to the scallop fishery GB yellowtail flounder sub-ACL would use a fixed percentage to determine the scallop fishery allocation of the GB yellowtail—40 percent in FY 2013 and 16 percent in each subsequent year. The economic impacts to fishing businesses would depend on the overall GB yellowtail flounder ABC and the probability of an overage, both of which are currently unquantifiable. The 16-percent fixed rate may be prohibitive to maximizing the value from scallop landings. In the worst-case scenario, if an overage occurred that closed a valuable access area to the scallop fishery, the scallop industry could suffer a $16.9 million dollar loss in economic benefits. An alternative to the proposed action would use a set 90 percent of estimated scallop catch as the determinant of the scallop sub-ACL. Since the allocation method of the alternative does not adjust for changes in the ABC, it could lead to a very low groundfish fishery sub-ACL for GB yellowtail flounder.

The proposed measure to establish a small-mesh fishery sub-ACL for GB yellowtail flounder would use a fixed percentage, based on previous catch history, to set the allocation. This measure is expected to have similar impacts and unknowns as the other sub-ACLs, but with respect to the small-mesh groundfish vessels.

Modifying the groundfish sector monitoring requirements would impact all sector vessels. The no action alternative would have a significant impact on sector vessels because they would be responsible for the full costs of operating at-sea and dockside monitoring programs in FY 2013, absent any additional funding assistance from NMFS. As discussed in Section 7.4.3.2 of the Framework 48 EA, had sector vessels been responsible for full monitoring costs in FY 2011, they would have seen aggregate vessel owners' shares of net revenue decrease by a range of 2 to 12 percent, and average net revenue per vessel decrease by a range of 1 to 12 percent. The highest percent reductions in net revenue were expected to occur in the 30 to 50 ft (9.1–15.2 m) vessel category. Since profitability of individual vessels is unknown, the effects of this option on participation levels could not be estimated, but it is likely that vessels

operating close to the margin would be forced to exit the industry or lease their quota. The proposed measures are designed to minimize the economic impact of monitoring requirements to sector vessels. The alternative to delay industry at-sea monitoring requirements for 1 year would provide short-term relief to sector vessels until FY 2014. The measure to reduce at-sea monitoring coverage for a subset of trips that catch little groundfish would be expected to lower the costs of those trips, and thus increase net revenues. The proposed cost-sharing provision is intended to reduce the overall cost of at-sea monitoring paid for by the industry. In FY 2010, the direct at-sea costs accounted for approximately 75 percent of the total per day costs for at-sea monitoring. Finally, removing dockside monitoring entirely in FY 2013 is expected to have a substantial positive economic impact on sector vessels by lowering operating costs and thus increasing profitability. The magnitude of this impact would vary with coverage rates and labor costs.

Modifying the minimum size limits for commercially allocated groundfish species would be expected to significantly impact sector vessels. The preferred alternative will lower the minimum size restrictions allowing a portion of previously wasted regulated discards to become landings. This alternative would be expected to a positive economic impact on net trip revenues, as more fish will be landed for the same amount of expended quota as under the no action alternative. The proposed action is preferred because it allows for increased revenues from slightly smaller fish, while minimizing the likelihood that vessels will target smaller fish when compared to the full retention option. Under either the reduced minimum sizes or full-retention alternative, there could potentially be unforeseen consequences from targeting smaller fish that could have long-term negative impacts on future landings and revenue. Maintaining minimum mesh sizes may help to mitigate some of this effect. Modifying sector discard strata for GB yellowtail flounder in Federal statistical area 522 has potential positive impacts on revenue for large trawl vessels that predominantly fish this area. Conversely, vessels that fish in the remaining areas of GB may experience reduced profitability because of higher discard rates.

The proposed measure that would modify the timing of AMs for stocks not allocated to sectors would help to prevent overfishing, which could create long-term positive impacts. Under this option, AMs would not be implemented mid-season, which would be beneficial to business planning. There is, however, the potential for short-term decreases in revenue based on faster implementation of AMs. The proposed action would also create area–based AMs for Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder. In the event these AMs are triggered, trawl vessels would be forced to use selective gears within designated closure areas and fixed-gear vessels would be forced to cease fishing entirely inside designated closure areas. There is a detailed analysis provided in Section 7.5.3.7 of the draft Framework 48 EA. To summarize, the closed areas for halibut and wolffish generated estimated revenues in the range of $4 million to $5 million dollars in FY 2010 for trawl vessels, and around $1 million for fixed-gear vessels. However, given the uncertainty of VTR data used to conduct this analysis and the number of factors that affect effort re-distribution, it is not possible to quantify the net economic impact of this option currently. The proposed action would also exempt common pool vessels using handgear or tub trawls from inseason trimester closures for white hake, allowing them to continue fishing in closed areas. Depending on catch rates in the closed areas, the cost of fishing elsewhere, and the likelihood of AMs being triggered, this could increase revenues for these common pool vessels over the no action alternative.

The proposed action and alternatives are described in detail in Framework 48, which includes an EA, RIR, and IRFA (See **ADDRESSES**).

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed action contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement will be submitted to OMB for approval. The proposed action does not duplicate, overlap, or conflict with any other Federal rules.

This action proposes to adjust the sector at-sea monitoring pre-trip notification and NEFOP notification implemented through Amendment 16. This rule would add a question to allow fishermen to indicate what fishery they intend to participate in. This change is necessary to identify monkfish trips in Southern New England that may qualify for the exemption from sector at-sea monitoring coverage, in order to deploy at-sea monitors appropriately to achieve the coverage levels required by the FMP. Currently, all groundfish vessels make these notifications to the NEFOP through the PTNS or via an online form, a telephone call, or email to NEFOP. When sector at-sea monitoring programs become established, the pre-trip notification may be made to NEFOP or other at-sea monitoring provider, via a telephone call or email or through a secure database. The proposed change would only add a question to these notifications and would not affect the number of entities required to comply with these notification. Therefore, the proposed change would not be expected to increase the time or cost burden associated with either requirement.

Public reporting burden for these requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 20, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 1. In § 648.4, revise paragraph (a)(1)(ii) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(1) * * *

(ii) *Open access permits.* A vessel of the United States that has not been issued and is not eligible to be issued a limited access multispecies permit is eligible for and may be issued an ''open access multispecies'', ''handgear'', or ''charter/party'' permit, and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a

vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

* * * * *

■ 2. In § 648.7, remove and reserve paragraph (a)(4), remove paragraph (h); and redesignate paragraph (i) as paragraph (h), and revise paragraph (e)(3) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(e) * * *

(3) *At-sea monitor reports.* Any record, as defined in § 648.2, related to fish observed by an at-sea monitor, including any reports provided to NMFS, sector managers, or another third-party service provider specified in paragraph (h) of this section, must be retained and made available for immediate review for a total of 3 years after the date the fish were first observed. At-sea monitor providers must retain the required records and reports at their principal place of business.

* * * * *

■ 3. In § 648.10, revise paragraph (k)(1)(iii) and add paragraph (k)(1)(iv) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(k) * * *

(1) * * *

(iii) *Trip-start hail report.* If instructed by the Regional Administrator or required by a sector operations plan approved pursuant to § 648.87(b)(2) and (c), the operator of a vessel must submit a trip-start hail report prior to departing port at the beginning of each trip notifying the sector manager and/or NMFS of the vessel permit number; trip ID number in the form of the VTR serial number of the first VTR page for that trip, or another trip identifier specified by NMFS; an estimate of the date and time of arrival to port; and any other information as instructed by the Regional Administrator. Trip-start hail reports by vessels operating less than 6 hr or within 6 hr of port must also include estimated date and time of offload. The trip-start hail report may be submitted via VMS or some other method, as instructed by the Regional Administrator or required by a sector operations plan approved pursuant to § 648.87(b)(2) and (c). If the vessel operator does not receive confirmation of the receipt of the trip-start hail report from the sector manager or NMFS, the operator must contact the intended receiver to confirm the trip-start hail report via an independent back-up system, as instructed by the Regional Administrator. To the extent possible, NMFS shall reduce unnecessary duplication of the trip-start hail report with any other applicable reporting requirements.

(iv) *Trip-end hail report.* Upon its return to port and prior to crossing the VMS demarcation line as defined in § 648.10, the owner or operator of any vessel issued a limited access NE multispecies permit that is subject to the VMS requirements specified in paragraph (b)(4) of this section must submit a trip-end hail report to NMFS via VMS, as instructed by the Regional Administrator. The trip-end hail report must include at least the following information, as instructed by the Regional Administrator: The vessel permit number; VTR serial number, or other applicable trip ID specified by NMFS; intended offloading location(s), including the dealer name/offload location, port/harbor, and state for the first dealer/facility where the vessel intends to offload catch and the port/harbor, and state for the second dealer/facility where the vessel intends to offload catch; estimated date/time of arrival; estimated date/time of offload; and the estimated total amount of all species retained, including species managed by other FMPs (in pounds, landed weight), on board at the time the vessel first offloads its catch from a particular trip. The trip-end hail report must be submitted at least 6 hr in advance of landing for all trips of at least 6 hr in duration or occurring more than 6 hr from port. For shorter trips, the trip-end hail reports must be submitted upon the completion of the last tow or hauling of gear, as instructed by the Regional Administrator. To the extent possible, NMFS shall reduce unnecessary duplication of the trip-end hail reports with any other applicable reporting requirements.

* * * * *

■ 4. In § 648.11, revise paragraphs (k)(1) and (2), and add paragraph (l) to read as follows:

§ 648.11 At-sea sampler/observer coverage.

* * * * *

(k) * * *

(1) *Pre-trip notification.* Unless otherwise specified in this paragraph (k), or notified by the Regional Administrator, the owner, operator, or manager of a vessel (i.e., vessel manager or sector manager) issued a limited access NE multispecies permit that is fishing under a NE multispecies DAS or on a sector trip, as defined in this part, must provide advanced notice to NMFS of the vessel name, permit number, and sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; and the vessel's trip plan, including area to be fished, whether a monkfish DAS will be used, and gear type to be used at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery pursuant to § 648.10 or § 648.85, as instructed by the Regional Administrator, for the purposes of selecting vessels for observer deployment. For trips lasting 48 hr or less in duration from the time the vessel leaves port to begin a fishing trip until the time the vessel returns to port upon the completion of the fishing trip, the vessel owner, operator, or manager may make a weekly notification rather than trip-by-trip calls. For weekly notifications, a vessel must notify NMFS by 0001 hr of the Friday preceding the week (Sunday through Saturday) that it intends to complete at least one NE multispecies DAS or sector trip during the following week and provide the date, time, port of departure, area to be fished, whether a monkfish DAS will be used, and gear type to be used for each trip during that week. Trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 24 hr prior to vessel departure from port. A vessel may not begin the trip without being issued an observer notification or a waiver by NMFS.

(2) *Vessel selection for observer coverage.* NMFS shall notify the vessel owner, operator, or manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified trip within 24 hr of the vessel owner's, operator's or manager's notification of the prospective trip, as specified in paragraph (k)(1) of this section. All trip notifications shall be issued a unique confirmation number. A vessel may not fish on a NE multispecies DAS or sector trip with an observer waiver confirmation number that does not match the trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are valid for 48 hr from the intended sail date. If a trip is interrupted and returns to port due to bad weather or other circumstance beyond the operator's control, and goes back out within 48 hr, the same confirmation number and observer status remains. If the layover time is greater than 48 hr, a new trip notification must be made by the

operator, owner, or manager of the vessel.

(l) *NE multispecies monitoring program goals and objectives.* Monitoring programs established for the NE multispecies are to be designed and evaluated consistent with the following goals and objectives:

(1) Improve documentation of catch:

(i) Determine total catch and effort, for each sector and common pool, of target or regulated species; and

(ii) Achieve coverage level sufficient to minimize effects of potential monitoring bias to the extent possible while maintaining as much flexibility as possible to enhance fleet viability.

(2) Reduce the cost of monitoring:

(i) Streamline data management and eliminate redundancy;

(ii) Explore options for cost-sharing and deferment of cost to industry; and

(iii) Recognize opportunity costs of insufficient monitoring.

(3) Incentivize reducing discards:

(i) Determine discard rate by smallest possible strata while maintaining cost-effectiveness; and

(ii) Collect information by gear type to accurately calculate discard rates.

(4) Provide additional data streams for stock assessments:

(i) Reduce management and/or biological uncertainty; and

(ii) Perform biological sampling if it may be used to enhance accuracy of mortality or recruitment calculations.

(5) Enhance safety of monitoring program.

(6) Perform periodic review of monitoring program for effectiveness.

■ 5. In § 648.14, revise paragraph (e)(1); remove paragraph (k)(14)(x); redesignate paragraphs (k)(14)(xi) and (xii) as paragraphs (k)(14)(x) and (xi), respectively; revise the newly redesignated paragraphs, remove and reserve paragraphs (k)(18)(i)(B) through (D); and revise paragraphs (k)(19) introductory text, (k)(19)(i), and (k)(20), to read as follows:

§ 648.14 Prohibitions.

* * * * *

(e) * * *

(1) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved observer or sea sampler conducting his or her duties; any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part; any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in § 648.7(g).

* * * * *

(k) * * *

(14) * * *

(x) Leave port to begin a trip before an at-sea monitor has arrived and boarded the vessel or before electronic monitoring equipment has been properly installed if assigned to carry either an at-sea monitor or electronic monitoring equipment for that trip, as prohibited by § 648.87(b)(5)(iii)(A).

(xi) Leave port to begin a trip if a vessel has failed a review of safety issues by an at-sea monitor and has not successfully resolved any identified safety deficiencies, as prohibited by § 648.87(b)(5)(iv)(A).

* * * * *

(19) *At-sea/electronic monitoring service providers.* It is unlawful for any at-sea/electronic monitoring service provider, including individual at-sea monitors, to do any of the following:

(i) Fail to comply with the operational requirements, including the recordkeeping and reporting requirements, specified in § 648.87(b)(5).

* * * * *

(20) *AMs for both stocks of windowpane flounder, ocean pout, Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder.* It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to fail to comply with the restrictions on fishing and gear specified in § 648.90(a)(5)(i)(D).

* * * * *

■ 6. In § 648.80, revise paragraph (a)(3)(vii) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(vii) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing on a NE multispecies DAS or sector trip in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.5 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. latitude	W. longitude
1	42°00′	(1)
2	42°00′	(2)
3	42°00′	(3)
4	42°00′	69°50′
5	43°00′	69°50′
6	43°00′	70°00′
7	43°30′	70°00′
8	43°30′	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] Maine shoreline.

* * * * *

■ 7. In § 648.81, revise paragraphs (b)(2)(iv), (h)(2)(i), (j)(2)(i), (k)(2)(i), (l)(2)(i), and (m)(2)(i) to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(b) * * *

(2) * * *

(iv) Transiting the area on a NE multispecies DAS or sector trip with only trawl gear onboard, or with its gear stowed in accordance with the provisions of § 648.23(b); and

(A) The operator has determined, and a preponderance of available evidence indicates, that there is a compelling safety reason; or

(B) The vessel has declared into the Eastern U.S./Canada Area as specified in § 648.85(a)(3)(ii) and is transiting CA II in accordance with the provisions of § 648.85(a)(3)(vii).

* * * * *

(h) * * *

(2) * * *

(i) *Transiting.*—(A) Unless otherwise restricted or specified in this paragraph (h)(2)(i)(A) or (h)(2)(i)(B), a vessel may transit CA I, the Nantucket Lightship Closed Area, the Cashes Ledge Closed Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal Closure Area, the EFH Closure Areas, and the GOM Cod Spawning Protection Area, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), and (o)(1) of this section, respectively, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit CA II, as defined in paragraph (b)(1) of this section, in accordance with paragraph (b)(2)(iv) of this section. Private recreational or charter/party vessels fishing under the Northeast multispecies provisions specified at § 648.89 may transit the GOM Cod Spawning Protection Area, as defined in paragraph (o)(1) of this section, provided all bait and hooks are removed from fishing rods, and any regulated species on board have been caught outside the GOM Cod Spawning

Protection Area and has been gutted and stored.

(B) A trawl vessel on a NE multispecies DAS or sector trip may transit these areas without stowing its gear.

* * * * *

(j) * * *

(2) * * *

(i) *Mobile gear.* From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish or be in Restricted Gear Area I, unless transiting. A vessel with mobile gear on board may transit this area, provided that it is on a NE multispecies DAS or sector trip or its gear is stowed in accordance with the provisions of § 648.23(b).

* * * * *

(k) * * *

(2) * * *

(i) *Mobile gear.* From November 27 through June 15, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area II, unless transiting. A vessel with mobile gear on board may transit this area, provided that it is on a NE multispecies DAS or sector trip or its gear is stowed in accordance with the provisions of § 648.23(b).

* * * * *

(l) * * *

(2) * * *

(i) *Mobile gear.* From June 16 through November 26, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area III, unless transiting. A vessel with mobile gear on board may transit this area, provided that it is on a NE multispecies DAS or sector trip or its gear is stowed in accordance with the provisions of § 648.23(b).

* * * * *

(m) * * *

(2) * * *

(i) *Mobile gear.* From June 16 through September 30, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard may fish or be in Restricted Gear Area IV, unless transiting. A vessel with mobile gear on board may transit this area, provided that it is on a NE multispecies DAS or sector trip or its gear is stowed in accordance with the provisions of § 648.23(b).

* * * * *

■ 8. Section 648.82 is amended as follows:

■ A. Remove paragraph (n)(2)(iv);

■ B. Redesignate paragraphs (n)(2)(v) and (n)(2)(vi) as paragraphs (n)(2)(iv) and (n)(2)(v);

■ C. Revise paragraphs (k)(2)(i), (n)(1) introductory text, (n)(2)(ii) introductory text, (n)(2)(ii)(A) and (B), (n)(2)(ii)(H) through (J), and (n)(2)(ii)(M); and

■ D. Revise newly redesignated paragraph (n)(2)(v).

The revised text read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(k) * * *

(2) * * *

(i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel, subject to the conditions and requirements of this part, unless the vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (b)(5) and (6) of this section, respectively.

* * * * *

(n) * * *

(1) *Differential DAS counting AM for fishing years 2010 and 2011.* Unless otherwise specified pursuant to § 648.90(a)(5), based upon catch and other information available to NMFS by February of each year, the Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels for the fishing year ending on April 30 to determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4)(iii). This initial projection of common pool catch shall be updated shortly after the end of each fishing year, once information becomes available regarding the catch of regulated species and ocean pout by vessels fishing for groundfish in state waters outside of the FMP, vessels fishing in exempted fisheries, and vessels fishing in the Atlantic sea scallop fishery; and the catch of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish by sector vessels to determine if excessive catch by such vessels resulted in the overall ACL for a particular stock to be exceeded. If such catch resulted in the overall ACL for a particular stock being exceeded, the common pool's catch of that stock shall be increased by an amount equal to the amount of the overage of the overall ACL for that stock multiplied by the common pool's share of the overall ACL for that stock calculated pursuant to § 648.90(a)(4)(iii)(H)(*2*). For example, if the 2010 overall ACL for GOM cod was exceeded by 10,000 lb (4,536 kg) due to excessive catch of that stock by vessels fishing in state waters outside the FMP, and the common pool's share of the 2010 overall GOM cod ACL was 5 percent, then the common pool's 2010 catch of GOM cod shall be increased by 500 lb (226.8 kg) (10,000 lb (4,536 kg) × 0.05 of the overall GOM cod ACL). If, based on the initial projection completed in February, the Regional Administrator projects that any of the sub-ACLs specified for common pool vessels will be exceeded or underharvested, the Regional Administrator shall implement a differential DAS counting factor to all Category A DAS used within the stock area in which the sub-ACL was exceeded or underharvested, as specified in paragraph (n)(1)(i) of this section, during the following fishing year, in a manner consistent with the Administrative Procedure Act. Any differential DAS counting implemented at the start of the fishing year will be reevaluated and recalculated, if necessary, once updated information is obtained. The differential DAS counting factor shall be based upon the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified pursuant to § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod during fishing year 2010, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels only within the Inshore GOM Differential DAS Area during fishing year 2011 (i.e., Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 times 24-hr DAS counting). If it is projected that catch in a particular fishing year will exceed or underharvest the sub-ACLs for several regulated species stocks within a particular stock area, including both exceeding and underharvesting several sub-ACLs within a particular stock area, the Regional Administrator shall implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or underharvested to any Category A DAS used by common pool vessels within that particular stock area. For example, if it is projected that common pool vessels will be responsible for 1.2 times the GOM cod sub-ACL and 1.1 times the CC/GOM yellowtail flounder sub-ACL, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels only within the Inshore GOM Differential

DAS Area during the following fishing year. For any differential DAS counting factor implemented in fishing year 2011, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section for the time spent fishing in the applicable differential DAS counting area based upon the first VMS position into the applicable differential DAS counting area and the first VMS position outside of the applicable differential DAS counting area, pursuant to § 648.10. For example, if a vessel fished 12 hr inside a differential DAS counting area where a differential DAS counting factor of 1.2 would be applied, and 12 hr outside of the differential DAS counting area, the vessel would be charged 48 hr of DAS use because DAS would be charged in 24-hr increments ((12 hr inside the area × 1.2 = 14.4 hr) + 12 hr outside the area, rounded up to the next 24-hr increment to determine DAS charged). For any differential DAS counting factor implemented in fishing year 2012, the differential DAS counting factor shall be applied against the DAS accrual provisions in paragraph (e)(1)(i) of this section, or if a differential DAS counting factor was implemented for that stock area during fishing year 2011, against the DAS accrual rate applied in fishing year 2011. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011 due to a 20-percent overage of the GOM cod sub-ACL, yet the GOM cod sub-ACL was exceeded again, but by 50 percent during fishing year 2011, an additional differential DAS factor of 1.5 would be applied to the DAS accrual rate applied during fishing year 2012 (i.e., the DAS accrual rate in the Inshore GOM Differential DAS Counting Area during fishing year 2012 would be 43.2 hr charged for every 24-hr fished—1.2 × 1.5 × 24-hr DAS charge). If the Regional Administrator determines that similar DAS adjustments are necessary in all stock areas, the Regional Administrator will adjust the ratio of Category A:Category B DAS specified in paragraph (d)(1) of this section to reduce the number of available Category A DAS available based upon the amount of the overage, rather than apply a differential DAS counting factor to all Category A DAS used in all stock areas.

* * * * *

(2) * * *

(ii) *Stock area closures.* Unless otherwise specified in this paragraph (n)(2)(ii), if the Regional Administrator projects that 90 percent of the trimester TACs specified in paragraph (n)(2)(i) of this section will be caught based upon available information, the Regional Administrator shall close the area where 90 percent of the catch for each such stock occurred to all common pool vessels on a NE multispecies DAS using gear capable of catching such stocks for the remainder of that trimester, as specified in paragraphs (n)(2)(ii)(A) through (N) of this section, in a manner consistent with the Administrative Procedure Act. For example, if the Regional Administrator projects that 90 percent of the CC/GOM yellowtail flounder Trimester 1 TAC will be caught, common pool vessels using trawl and gillnet gear shall be prohibited from fishing in the CC/GOM Yellowtail Flounder Closure Area specified in paragraph (n)(2)(ii)(G) of this section until the beginning of Trimester 2 on September 1 of that fishing year. Based upon all available information, the Regional Administrator is authorized to expand or narrow the areas closed under this paragraph (n)(2)(ii) in a manner consistent with the Administrative Procedure Act. If it is not possible to identify an area where only 90 percent of the catch occurred, the Regional Administrator shall close the smallest area possible where greater than 90 percent of the catch occurred. Common pool vessels holding either a Handgear A or B permit and fishing with handgear or tub trawls are exempt from stock area closures for white hake. The Regional Administrator may exempt Handgear A and B permitted vessels from stock area closures for other stocks pursuant to this paragraph (n)(2)(ii) if it is determined that catches of the respective species or stock by these vessels are less than 1 percent of the common pool catch of that species or stock. The Regional Administrator shall make such determination prior to the start of the fishing year through a notice published in the **Federal Register**, consistent with the Administrative Procedure Act, and any such determination shall remain in effect until modified.

(A) *GB Cod Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Cod Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

GB COD TRIMESTER TAC AREA

Point	N. latitude	W. longitude
1	42°20′	70°00′
2	42°20′	(1)
3	41°50′	(1)
4	41°50′	67°40′
5	41°10′	67°40′
6	41°10′	67°10′
7	41°00′	67°10′
8	41°00′	67°00′
9	40°50′	67°00′
10	40°50′	66°50′
11	40°40′	66°50′
12	40°40′	66°40′
13	39°50′	66°40′
14	39°50′	68°50′
15	41°00′	68°50′
16	41°00′	69°30′
17	41°10′	69°30′
18	41°10′	69°50′
19	41°20′	69°50′
20	41°20′	(2)
21	(3)	70°00′
22	(4)	70°00′
23	(5)	70°00′

[1] U.S./Canada maritime boundary.
[2] East-facing shoreline of Nantucket, MA.
[3] North-facing shoreline of Nantucket, MA.
[4] South-facing shoreline of Cape Cod, MA.
[5] North-facing shoreline of Cape Cod, MA.

(B) *GOM Cod Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GOM Cod Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded on the south, west, and north by the shoreline of the United States and bounded on the east by straight lines connecting the following points in the order stated:

GOM COD TRIMESTER TAC AREA

Point	N. latitude	W. longitude
1	(1)	69°20′
2	43°40′	69°20′
3	43°40′	69°00′
4	43°10′	69°00′
5	43°10′	69°10′
6	43°00′	69°10′
7	43°00′	69°20′
8	42°50′	69°20′
9	42°50′	69°40′
10	42°20′	69°40′
11	42°20′	70°00′
12	(2)	70°00′

[1] Intersection with ME shoreline.
[2] North-facing shoreline of Cape Cod, MA.

* * * * *

(H) *American Plaice Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the American Plaice Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight

lines connecting the following points in the order stated:

AMERICAN PLAICE TRIMESTER TAC AREA

Point	N. latitude	W. longitude
1	(1)	68°00′
2	44°10′	67°50′
3	44°00′	67°50′
4	44°00′	67°40′
5	(2)	67°40′
6	42°53.1′	67°44.4′
7	(2)	67°40′
8	41°10′	67°40′
9	41°10′	67°10′
10	41°00′	67°10′
11	41°00′	67°00′
12	40°50′	67°00′
13	40°50′	66°50′
14	40°40′	66°50′
15	40°40′	66°40′
16	39°50′	66°40′
17	39°50′	68°50′
18	41°00′	68°50′
19	41°00′	69°30′
20	41°10′	69°30′
21	41°10′	69°50′
22	41°20′	69°50′
23	41°20′	(3)
24	(4)	70°00′
25	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(I) *Witch Flounder Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Witch Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

WITCH FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
1	(1)	68°00′
2	44°10′	67°50′
3	44°00′	67°50′
4	44°00′	67°40′
5	(2)	67°40′
6	42°53.1′	67°44.4′
7	(2)	67°40′
8	41°10′	67°40′
9	41°10′	67°10′
10	41°00′	67°10′
11	41°00′	67°00′
12	40°50′	67°00′
13	40°50′	66°50′
14	40°40′	66°50′
15	40°40′	66°40′
16	39°50′	66°40′
17	39°50′	68°50′
18	41°00′	68°50′
19	41°00′	69°30′
20	41°10′	69°30′

WITCH FLOUNDER TRIMESTER TAC AREA—Continued

Point	N. latitude	W. longitude
21	41°10′	69°50′
22	41°20′	69°50′
23	41°20′	(3)
24	(4)	70°00′
25	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(J) *GB Winter Flounder Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Winter Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

GB WINTER FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
1	42°20′	68°50′
2	42°20′	(1)
3	40°30′	(1)
4	40°30′	66°40′
5	39°50′	66°40′
6	39°50′	68°50′

[1] U.S./Canada maritime boundary.

* * * * *

(M) *White Hake Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the White Hake Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear, except for Handgear A and B permitted vessels using handgear or tub trawls, within the area bounded by straight lines connecting the following points in the order stated:

WHITE HAKE TRIMESTER TAC AREA

Point	N. latitude	W. longitude
1	(1)	69°20′
2	43°40′	69°20′
3	43°40′	69°00′
4	43°20′	69°00′
5	43°20′	67°40′
6	(2)	67°40′
7	42°53.1′	67°44.4′
8	(2)	67°40′
9	41°20′	67°40′
10	41°20′	68°10′
11	41°10′	68°10′
12	41°10′	68°20′
13	41°00′	68°20′
14	41°00′	69°30′
15	41°10′	69°30′
16	41°10′	69°50′

WHITE HAKE TRIMESTER TAC AREA—Continued

Point	N. latitude	W. longitude
17	41°20′	69°50′
18	41°20′	(3)
19	(4)	70°00′
20	(5)	70°00′

(1) Intersection with ME shoreline.
(2) U.S./Canada maritime boundary.
(3) East-facing shoreline of Nantucket, MA.
(4) North-facing shoreline of Nantucket, MA.
(5) South-facing shoreline of Cape Cod, MA.

* * * * *

(v) *Trip limit adjustment.* When 60 percent of the northern or southern windowpane flounder, ocean pout, or Atlantic halibut sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4)(iii)(H)(*2*) is projected to be caught, the Regional Administrator may specify, consistent with the APA, a possession limit for these stocks that is calculated to prevent the yearly sub-ACL from being exceeded prior to the end of the fishing year.

* * * * *

■ 9. In § 648.83, revise paragraph (a)(1) to read as follows:

§ 648.83 Multispecies minimum fish sizes.

(a) * * *

(1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Size (inches)
Cod	19 (48.3 cm)
Haddock	16 (40.6 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	13 (33 cm)
Yellowtail flounder	12 (30.5 cm)
American plaice (dab)	12 (30.5 cm)
Atlantic halibut	41 (104.1 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	7 (17.8 cm)

* * * * *

■ 10. In § 648.84, add paragraph (e) to read as follows:

§ 648.84 Gear-marking requirements and gear restrictions.

* * * * *

(e) *Rope separator trawl.* A rope separator trawl is defined as a four-seam bottom trawl net (i.e., a net with a top and bottom panel and two side panels) modified to include both a horizontal separator panel and an escape opening

in the bottom belly of the net below the separator panel, as further specified in paragraphs (e)(1) through (3) of this section.

(1) *Mesh size.* The minimum mesh size applied throughout the body and extension of a rope separator trawl must be 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, or any combination thereof. Mesh in the bottom belly of the net must be 13-inch (33-cm) diamond mesh. Unless otherwise specified in this part, the codend mesh size must be consistent with mesh size requirements specified in § 648.80. The mesh size of a particular section of the rope separator trawl is measured in accordance with § 648.80(f)(2), unless insufficient numbers of mesh exist, in which case the maximum total number of meshes in the section will be measured (between 2 and 20 meshes).

(2) *Separator panel.* The separator panel must consist of parallel lines made of fiber rope, the ends of which are attached to each side of the net starting at the forward edge of the square of the net and running aft toward the extension of the net. The leading rope must be attached to the side panel at a point at least ⅓ of the number of meshes of the side panel above the lower gore, and the panel of ropes shall slope downward toward the extension of the net. For example, if the side panel of the net is 42 meshes tall, the leading rope must be attached at least 14 meshes above the lower gore. The forward ⅔ of the separator ropes that comprise the separator panel must be no farther than 26 inches (66 cm) apart, with the after ⅓ of the separator ropes that comprise the separator panel being no farther than 13 inches (33 cm) apart. The ends of the aftermost rope shall be attached to the bottom belly at a point ⅙ of the number of meshes of the after end of the bottom belly below the lower gore. The separator ropes should be of sufficient length not to impinge upon the overall shape of the net without being too long to compromise the selectivity of the net. The separator ropes may not be manipulated in any way that would inhibit the selectivity of the net by causing the separator ropes to dip toward the bottom belly of the net and obscure the escape opening, as defined in paragraph (e)(3) of this section.

(3) *Escape opening.* The escape opening must be positioned in the bottom belly of the net behind the sweep and terminate under the separator panel, as described in paragraph (e)(2) of this section. Longitudinal lines may be used to maintain the shape of the escape opening, as necessary. The escape opening shall be at least 18 meshes in both length and width.

■ 11. In § 648.85, revise paragraphs (a)(2)(ii) and (iii), (a)(3)(ii)(A), (a)(3)(iv)(E), and (a)(3)(vii), (b)(8)(v)(C), (b)(8)(v)(F), and (d) to read as follows:

§ 648.85 Special management programs.

(a) * * *

(2) * * *

(ii) *Adjustments to TACs.* Any overages of the overall Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder U.S. TACs caused by an overage of the component of the U.S. TAC specified for either the common pool, individual sectors, the scallop fishery, or any other fishery, pursuant to this paragraph (a)(2) and § 648.90(a)(4), that occur in a given fishing year shall be subtracted from the respective TAC component responsible for the overage in the following fishing year and may be subject to the overall groundfish AM provisions as specified in § 648.90(a)(5)(ii) if the overall ACL for a particular stock in a given fishing year, specified pursuant to § 648.90(a)(4), is exceeded.

(iii) *Distribution of TACs.* For stocks managed by the U.S./Canada Resource Sharing Understanding, as specified in paragraph (a)(1) of this section, the TAC allocation determined pursuant to this paragraph (a)(2) shall be distributed between sectors approved pursuant to § 648.87(c), common pool vessels, scallop vessels, and other applicable fisheries, as specified in § 648.90(a)(4). Approved sectors will be allocated ACE for Eastern GB cod and Eastern GB haddock proportional to the sector's allocation of the overall ACL for these stocks, based upon the fishing histories of sector vessels, as specified in § 648.87(b)(1)(i). Any ACE for Eastern GB cod and Eastern GB haddock allocated to an individual sector is considered a subset of the overall GB cod and GB haddock ACE allocated to that sector and may only be harvested from the Eastern U.S./Canada Area, while the remaining ACE for GB cod and GB haddock available to that sector may only be harvested outside of the Eastern U.S./Canada Area. For example, if a sector is allocated 10 percent of the GB haddock ACL, it will also be allocated 10 percent of the Eastern GB haddock TAC for that particular fishing year.

(3) * * *

(ii) * * *

(A) A common pool vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements for the areas fished for the entire trip, and the restrictions specified in paragraphs (a)(3)(ii)(A)(*1*) through (*4*) of this section. A vessel on a sector trip may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the restrictions specified in paragraphs (a)(3)(ii)(A)(*1*) through (*3*) of this section.

* * * * *

(iv) * * *

(E) *Closure of Eastern U.S./Canada Area.* Based upon available information, when the Regional Administrator projects that any individual TAC allocation for NE multispecies common pool or sectors specified in paragraph (a)(2)(iii) of this section will be caught, NMFS shall close, in a manner consistent with the Administrative Procedure Act, the Eastern U.S./Canada Area to all vessels subject to that particular TAC allocation, unless otherwise allowed under this paragraph (a)(3)(iv)(E). For example, if the Eastern GB cod TAC specified for common pool vessels is projected to be caught, NMFS shall close the Eastern U.S./Canada Area to all common pool vessels operating under a NE multispecies DAS. Should the Eastern U.S./Canada Area close as described in this paragraph (a)(3)(iv)(E), common pool vessels fishing under a DAS may continue to fish in a SAP within the Eastern U.S./Canada Area, provided that the TAC for the target stock identified for that particular SAP (i.e., haddock for the Eastern U.S./Canada Haddock SAP or haddock or yellowtail flounder for the CA II Yellowtail Flounder/Haddock SAP) has not been fully harvested. A vessel fishing on a sector trip may only fish in a SAP if that vessel's sector has ACE available for all stocks caught in that SAP. For example, should the GB cod TAC allocation specified for common pool vessels in paragraph (a)(2)(iii) of this section be attained, and the Eastern U.S./Canada Area closure implemented for common pool vessels, common pool vessels could continue to fish for yellowtail flounder within the SAP identified as the Closed Area II Yellowtail Flounder/Haddock SAP, described in paragraph (b)(3) of this section, in accordance with the requirements of that program. Upon closure of the Eastern U.S./Canada Area, trawl vessels on a NE multispecies DAS or sector trip may transit through this area as described in paragraph (a)(1)(ii) of this section. All other vessels may transit through this area, provided that its gear is stowed in accordance with the

provisions of § 648.23(b), unless otherwise restricted under this part.

* * * * *

(vii) *Transiting.* A NE multispecies vessel that has declared into the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section, and that is not fishing in the CA II Yellowtail Flounder/Haddock SAP described in paragraph (b)(3) of this section, may transit the CA II Yellowtail Flounder/Haddock SAP Area, as described in paragraph (b)(3)(ii) of this section, provided all fishing gear is stowed in accordance with the regulations in § 648.23(b), unless otherwise specified under this part.

(b) * * *

(8) * * *

(v) * * *

(C) *Observer notifications.* For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 48 hours prior to the beginning of any trip that it declares into the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(i) of this section, as required under paragraph (b)(8)(v)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

* * * * *

(F) *Landing limits.* Unless otherwise restricted under this part, a vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS is subject to the haddock requirements described in § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder and 100 lb (45.5 kg) of GB winter flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight) and skates (whole weight) is limited to 500 lb (227 kg) each, unless otherwise restricted by § 648.94(b)(3), and possession of lobsters is prohibited. Possession limits for all other stocks are as specified in § 648.86.

* * * * *

(d) *Haddock incidental catch allowance for some Atlantic herring vessels.* The haddock incidental catch allowance for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), is 1 percent of each of the ABCs for GOM haddock and GB haddock (U.S. catch only) specified according to § 648.90(a)(4) for a particular NE multispecies fishing year. Such haddock catch will be determined as specified in § 648.86(a)(3)(ii).

* * * * *

12. In § 648.86, revise paragraphs (a)(3)(ii)(A)(*1*), (a)(3)(ii)(A)(*3*) and (*4*), to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(a) * * *

(3) * * *

(ii) * * *

(A) * * *

(*1*) When the Regional Administrator has determined that the incidental catch allowance for a given haddock stock, as specified in § 648.85(d), has been caught, no vessel issued an Atlantic herring permit and fishing with midwater trawl gear in the applicable stock area, i.e., the Herring GOM Haddock Accountability Measure (AM) Area or Herring GB Haddock AM Area, as defined in paragraphs (a)(3)(ii)(A)(*2*) and (*3*) of this section, may fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from that area, unless all herring possessed and landed by the vessel were caught outside the applicable AM Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a NE multispecies permit and is operating on a declared (consistent with § 648.10(g)) NE multispecies trip. In making this determination, the Regional Administrator shall use haddock catches observed by NMFS-approved observers by herring vessel trips using midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), expanded to an estimate of total haddock catch for all such trips in a given haddock stock area.

* * * * *

(*3*) *The Herring GB Haddock Accountability Measure Area.* The Herring GB Haddock AM Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

HERRING GB HADDOCK ACCOUNTABILITY MEASURE AREA

Point	N. latitude	W. longitude
1	42°20′	70°00′
2	42°20′	([1])
3	40°30′	([1])
4	40°30′	66°40′
5	39°50′	66°40′
6	39°50′	68°50′
7	([2])	68°50′
8	41°00′	([3])
9	41°00′	69°30′
10	41°10′	69°30′
11	41°10′	69°50′
12	41°20′	69°50′
13	41°20′	([4])
14	([5])	70°00′
15	([6])	70°00′
16	([7])	70°00′

[1] The intersection of the U.S./Canada maritime boundary.

[2] The intersection of the boundary of Closed Area I and 68°50′ W. long.

[3] The intersection of the boundary of Closed Area I and 41°00′ N. lat.

[4] The intersection of the east-facing shoreline of Nantucket, MA, and 41°20′ N. lat.

[5] The intersection of the north-facing shoreline of Nantucket, MA, and 70°00′ W. long.

[6] The intersection of the south-facing shoreline of Cape Cod, MA, and 70°00′ W. long.

[7] The intersection of the north-facing shoreline of Cape Cod, MA, and 70°00′ W. long.

(*4*) The haddock incidental catch caps specified are for the NE multispecies fishing year (May 1-April 30), which differs from the herring fishing year (January 1-December 31). If the haddock incidental catch allowance is attained by the herring midwater trawl fishery for the GOM or GB, as specified in § 648.85(d), the 2,000-lb (907.2-kg) limit on herring possession in the applicable AM Area, as described in paragraph (a)(3)(ii)(A)(*2*) or (*3*) of this section, shall be in effect until the end of the NE multispecies fishing year. For example, the 2011 haddock incidental catch cap is specified for the period May 1, 2011-April 30, 2012, and the 2012 haddock catch cap would be specified for the period May 1, 2012-April 30, 2013. If the catch of haddock by herring midwater trawl vessels reached the 2011 incidental catch cap at any time prior to the end of the NE multispecies fishing year (April 30, 2012), the 2,000-lb (907.2-kg) limit on possession of herring

in the applicable AM Area would extend through April 30, 2012. Beginning May 1, 2012, the 2012 catch cap would go into effect.

* * * * *

■ 13. Section 648.87 is amended as follows:

■ A. Remove paragraph (b)(4)(iii) and (b)(5);

■ B. Redesignate paragraph (b)(4)(iv) as paragraphs (b)(4)(iii);

■ C. Redesignate paragraph (b)(6) as paragraph (b)(5);

■ D. Revise paragraph (b)(1)(v)(B), (b)(1)(vi)(B), (b)(2)(xi), (b)(4) introductory text, (b)(4)(i)(F) and (G), (b)(4)(i)(I) and (J); (b)(4)(ii), and (c)(2)(i);

■ E. Revise newly redesignated paragraph (b)(5); and

■ F. Add paragraphs (b)(1)(ii)(A) through (F), (b)(1)(v)(A)(*1*) and (*2*), and (c)(2)(i)(A) and (B).

The added and revised text reads as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *CC/GOM Yellowtail Flounder Stock Area.* The CC/GOM Yellowtail Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86, and for determining areas applicable to sector allocations of CC/GOM yellowtail flounder ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by rhumb lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
1	(1)	70°00′
2	(2)	70°00′
3	41°20′	(3)
4	41°20′	69°50′
5	41°10′	69°50′
6	41°10′	69°30′
7	41°00′	69°30′
8	41°00′	68°50′
9	42°20′	68°50′
10	42°20′	(4)

[1] Intersection of south-facing coastline of Cape Cod, MA, and 70°00′ W. long.
[2] Intersection of north-facing coastline of Nantucket, MA, and 70°00′ W. long.
[3] Intersection of east-facing coastline of Nantucket, MA, and 41°20′ N. lat.
[4] U.S./Canada maritime boundary.

(B) *SNE/MA Yellowtail Flounder Stock Area.* The SNE/MA Yellowtail Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86, and for determining areas applicable to sector allocations of SNE/MA yellowtail flounder ACE pursuant to paragraph (b) of this section, is the area bounded by rhumb lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
1	35°00’	(1)
2	35°00′	(2)
3	39°00′	(2)
4	39°00′	69°00′
5	39°50′	69°00′
7	39°50′	68°50′
8	41°00′	68°50′
9	41°00′	69°30′
10	41°10′	69°30′
11	41°10′	69°50′
12	41°20′	69°50′
13	41°20′	(3)
14	(4)	70°00′
15	(5)	70°00′

[1] Intersection of east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.
[2] U.S./Canada maritime boundary.
[3] Intersection of east-facing coastline of Nantucket, MA, and 41°20′ N. lat.
[4] Intersection of north-facing coastline of Nantucket, MA, and 70°00′ W. long.
[5] Intersection of south-facing coastline of Cape Cod, MA, and 70°00′ W. long.

(C) *GOM Haddock Stock Area.* The GOM Haddock Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GOM haddock ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by straight lines connecting the following points in the order stated:

GOM HADDOCK STOCK AREA

Point	N. latitude	W. longitude
1	(1)	70°00′
2	42°20′	70°00′
3	42°20′	67°40′
4	(2)	67°40′
5	(3)	67°40′
6	43°50′	67°40′
7	43°50′	(4)
8	(4)	67°00′
9	(5)	67°00′

[1] Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.
[2] U.S./Canada maritime boundary (southern intersection with 67°40′ W. long.).
[3] U.S./Canada maritime boundary (northern intersection with 67°40′ W. long.).
[4] U.S./Canada maritime boundary.
[5] Intersection of the south-facing ME coastline and 67°00′ W. long.

(D) *GB Haddock Stock Area.* The GB Haddock Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GB haddock ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the west by the coastline of the United States, on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ, on the east by the U.S./Canadian maritime boundary, and bounded on the north by straight lines connecting the following points in the order stated:

GB Haddock Stock Area

Point	N. latitude	W. longitude
1	(1)	70°00′
2	42°20′	70°00′
3	42°20′	(2)

[1] Intersection of the north-facing coastline of Cape Cod, MA, and 70°00’ W. long.
[2] U.S./Canada maritime boundary.

(E) *Redfish Stock Area.* The Redfish Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of redfish ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and bounded on the south by a rhumb line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ.

(F) *GOM Winter Flounder Stock Area.* The GOM Winter Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GOM winter flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

GOM WINTER FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
1	(1)	70°00′
2	42°20′	70°00′
3	42°20′	67°40′
4	(2)	67°40′
5	(3)	67°40′
6	43°50′	67°40′
7	43°50′	(4)
8	(4)	67°00′
9	(5)	67°00′

[1] Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.

[2] U.S./Canada maritime boundary (southern intersection with 67°40′ N. lat.)
[3] U.S./Canada maritime boundary (northern intersection with 67°40′ N. lat.)
[4] U.S./Canada maritime boundary
[5] Intersection of the south-facing ME coastline and 67°00′ W. long.

* * * * *

(v) * * *

(A) * * *

(*1*) *GB yellowtail flounder discards.* For the purpose of counting discards of GB yellowtail flounder against a sector's ACE pursuant to paragraph (b)(1)(v)(A), GB yellowtail flounder discards shall be calculated for two separate GB areas for each gear type, unless otherwise specified in this paragraph (b)(1)(v)(A)(*1*): Statistical area 522, and statistical areas 525/561/562. This provision does not change the methods used to estimate discards of other groundfish stocks or to estimate discards used in the GB yellowtail stock assessment. If the Regional Administrator determines this finer stratification is only appropriate for trawl gear, then the Regional Administrator may exclude other, non-trawl gears from this stratification method in a manner consistent with the Administrative Procedure Act.

(*2*) [Reserved].

(B) *Independent third-party monitoring program.* A sector must comply with any at-sea monitoring program specified by NMFS beginning in fishing year 2013. By fishing year 2014 (May 1, 2014), a sector must develop and implement an at-sea or electronic monitoring program to verify area fished, as well as catch and discards by species and gear type, and that is consistent with the goals and objectives of groundfish monitoring programs at § 648.11(l). A sector may elect to develop an at-sea/electronic monitoring program before fishing year 2014. The details of any at-sea or electronic monitoring program must be specified in the sector's operations plan, pursuant to paragraph (b)(2)(xi) of this section, and must meet the operational standards specified in paragraph (b)(5) of this section. Electronic monitoring may be used in place of actual observers if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act. The level of coverage for trips by sector vessels is specified in paragraph (b)(1)(v)(B)(*1*) of this section. The at-sea/electronic monitoring program shall be reviewed and approved by the Regional Administrator as part of a sector's operations plans in a manner consistent with the Administrative Procedure Act. A service provider providing at-sea or electronic monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and be approved by NMFS in a manner consistent with the Administrative Procedure Act.

(*1*) *Coverage levels.* Except as specified in paragraph (b)(1)(v)(B)(*1*)(*i*) of this section, any service provider providing at-sea or electronic monitoring services required under this paragraph (b)(1)(v)(B)(*1*) must provide coverage that is fair and equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within each sector and by all operations of vessels operating in each sector throughout the fishing year. Coverage levels for an at-sea monitoring program shall be specified by NMFS, pursuant to paragraph (b)(1)(v)(B)(*1*)(*i*) of this section, but shall be less than 100 percent of all sector trips. In the event that a NMFS-sponsored observer and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer must observe that trip. If either an at-sea monitor or electronic monitoring is assigned to a particular trip, a vessel may not leave port without the appropriate at-sea monitor or electronic monitoring equipment on board.

(*i*) *At-sea/electronic monitoring.* For fishing year 2013, NMFS shall determine the level of coverage for any NMFS-sponsored at-sea monitoring program specified pursuant to paragraph (b)(1)(v)(B)(*1*) of this section, based on available funding. Unless otherwise specified in this paragraph (b)(1)(v)(B)(*1*)(i), beginning in fishing year 2014, coverage levels must be sufficient to at least meet the coefficient of variation specified in the Standardized Bycatch Reporting Methodology at the overall stock level for each stock of regulated species and ocean pout, and to monitor sector operations, to the extent practicable, in order to reliably estimate overall catch by sector vessels. In making its determination, NMFS shall take into account the goals and objective of groundfish monitoring programs at § 648.11(l), the National Standards and requirements of the Magnuson-Stevens Act, including but not limited to the costs to sector vessels and NMFS, and any other relevant factors. For FYs 2013 and beyond, NMFS shall specify a separate coverage rate, lower than the coverage rate for all other sector trips, for sector trips fishing with 10-inch (25.4-cm) mesh or larger gillnets on a monkfish DAS, pursuant to § 648.91(c)(1)(iii), and only in the SNE Broad Stock Area, as defined at § 648.10(k)(3)(iv).

(*2*) *Hail reports.* For the purposes of the at-sea monitoring requirements specified in paragraph (b)(1)(v)(B) of this section, sector vessels must submit all hail reports for a sector trip in which the NE multispecies catch applies against the ACE allocated to a sector, as specified in this part, to service providers offering at-sea monitoring services. The mechanism and timing of the transmission of such hail reports must be consistent with instructions provided by the Regional Administrator for any at-sea or electronic monitoring program required by paragraph (b)(1)(v)(B) of this section, or specified in the annual sector operations plan, consistent with paragraph (b)(5) of this section.

(*3*) *Notification of service provider change.* If, for any reason, a sector decides to change approved service providers used to provide at-sea or electronic monitoring services required in this paragraph (b)(1)(v), the sector manager must first inform NMFS in writing in advance of the effective date of the change in approved service providers in conjunction with the submission of the next weekly sector catch report specified in paragraph (b)(1)(vi)(B) of this section. A sector may employ more than one service provider at any time, provided any service provider employed by a sector meets the standards specified in paragraph (b)(4) of this section.

(*4*) *At-sea monitoring cost responsibility.* During fishing year 2013, none of the costs associated with any NMFS-sponsored at-sea monitoring program specified pursuant to paragraph (b)(1)(v)(B) of this section shall be paid by the owner or operator of a vessel subject to these requirements. Starting in fishing year 2014, a sector shall be responsible for paying the direct costs of at-sea monitoring coverage implemented pursuant to paragraph (b)(1)(v)(B) of this section, specifically the daily salary of the at-sea monitor. NMFS shall be responsible for all other costs associated with a sector's at-sea monitoring program, including, but not limited to: Briefing, debriefing, training and certification costs (salary and non-salary); sampling design development; data storage, management, and security; data quality assurance and control; administrative costs; maintenance of monitoring equipment; monitor recruitment, benefits, insurance, and taxes; logistical costs associated with deployment; and monitor travel and lodging.

(vi) * * *

(B) *Weekly catch report.* Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector based upon regulated species and ocean pout landings and discards of vessels participating in that sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of sector catch for each NE multispecies stock allocated to that particular sector; sector enforcement issues; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 0700 hr on the second Monday after the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as specified in the sector operations plan and approved by NMFS. If requested, sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.

* * * * *

(2) * * *

(xi) Detailed plans for the monitoring and reporting of landings and discards by sector participants, including, but not limited to, detailed information describing the sector's at-sea/electronic monitoring program for monitoring utilization of ACE allocated to that sector; identification of the independent third-party service providers employed by the sector to provide at-sea/electronic monitoring services; the mechanism and timing of any hail reports; a list of specific ports where participating vessels will land fish, with specific exemptions noted for safety, weather, etc., allowed, provided the sector provides reasonable notification to NMFS concerning a deviation from the listed ports; and any other information about such a program required by NMFS;

* * * * *

(4) *Independent third-party monitoring provider standards.* Any service provider intending to provide at-sea/electronic monitoring services described in paragraph (b)(1)(v) of this section must apply to and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act. NMFS shall approve/certify service providers and/or at-sea monitors as eligible to provide sector monitoring services specified in this part and can disapprove/decertify service providers and/or individual monitors through notice in writing to individual service providers/monitors if the following criteria are no longer being met:

(i) * * *

(F) A description of the applicant's ability to carry out the responsibilities and duties of a sector monitoring/reporting service provider and the arrangements to be used, including whether the service provider is able to offer at-sea monitoring services;

(G) Evidence of adequate insurance (copies of which shall be provided to the vessel owner, operator, or vessel manager, when requested) to cover injury, liability, and accidental death to cover at-sea monitors (including during training); vessel owner; and service provider;

* * * * *

(I) Proof that the service provider's at-sea monitors have passed an adequate training course sponsored by the service providers to the extent not funded by NMFS that is consistent with the curriculum used in the current yearly NEFOP training course, unless otherwise specified by NMFS;

(J) An Emergency Action Plan describing the provider's response to an emergency with an at-sea monitor, including, but not limited to, personal injury, death, harassment, or intimidation; and

* * * * *

(ii) *Service provider performance requirements.* At-sea monitoring service providers must be able to document compliance with the following criteria and requirements:

(A) A service provider must establish and carry out a comprehensive plan to deploy NMFS-certified at-sea monitors, or other at-sea monitoring mechanism, such as electronic monitoring equipment that is approved by NMFS, according to a prescribed coverage level (or level of precision for catch estimation), as specified by NMFS, including all of the necessary vessel reporting/notice requirements to facilitate such deployment, as follows:

(*1*) A service provider must be available to industry 24 hr per day, 7 days per week, with the telephone system monitored a minimum of four times daily to ensure rapid response to industry requests;

(*2*) A service provider must be able to deploy at-sea monitors, or other approved at-sea monitoring mechanism to all ports in which service is required by sectors, or a subset of ports as part of a contract with a particular sector;

(*3*) A service provider must report at-sea monitors and other approved at-sea monitoring mechanism deployments to NMFS and the sector manager in a timely manner to determine whether the predetermined coverage levels are being achieved for the appropriate sector;

(*4*) A service provider must assign at-sea monitors and other approved at-sea monitoring mechanisms without regard to any preference by the sector manager or representatives of vessels other than when the service is needed and the availability of approved/certified monitors and other at-sea monitoring mechanisms;

(*5*) A service provider's at-sea monitor assignment must be fair, equitable, representative of fishing activities within each sector, and able to monitor fishing activity throughout the fishing year;

(*6*) For service providers offering catch estimation or at-sea monitoring services, a service provider must be able to determine an estimate of discards for each trip and provide such information to the sector manager and NMFS, as appropriate and as required by this section;

(B) The service provider must ensure that at-sea monitors remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload;

(C) The service provider must report possible at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding at-sea monitor conflict of interest or breach of the standards of behavior to NMFS and/or the sector manager, as specified by NMFS;

(D) The service provider must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (i.e., sectors and participating vessels) and between the service provider and specific dockside, roving, or at-sea monitors;

(E) The service provider must submit to NMFS, if requested, copies of any information developed and used by the service providers distributed to vessels, such as informational pamphlets, payment notification, description of duties, etc.;

(F) A service provider may refuse to deploy an at-sea monitor or other

approved at-sea monitoring mechanism on a requesting fishing vessel for any reason including, but not limited to, the following:

(*1*) If the service provider does not have an available at-sea monitor or other at-sea monitoring mechanism approved by NMFS within the advanced notice requirements established by the service provider;

(*2*) If the service provider is not given adequate notice of vessel departure or landing from the sector manager or participating vessels, as specified by the service provider;

(*3*) For the purposes of at-sea monitoring, if the service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described in § 600.746; and

(*4*) Failure to pay for previous deployments of at-sea monitors, or other approved at-sea monitoring mechanism.

(G) With the exception of a service provider offering reporting, dockside, and/or at-sea monitoring services to participants of another fishery managed under Federal regulations, a service provider must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing-related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of service providers;

(H) A system to record, retain, and distribute the following information to NMFS, as requested, for a period specified by NMFS, including:

(*1*) At-sea monitor and other approved monitoring equipment deployment levels, including the number of refusals and reasons for such refusals;

(*2*) Incident/non-compliance reports (e.g., failure to offload catch); and

(*3*) Hail reports, landings records, and other associated interactions with vessels and dealers.

(I) A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act; and

(J) A service provider must be able to supply at-sea monitors with sufficient safety and data-gathering equipment, as specified by NMFS.

* * * * *

(5) *At-sea/electronic monitoring operational standards.* In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any at-sea/electronic monitoring program developed as part of a sector's yearly operations plan pursuant to paragraph (b)(1)(v)(B) of this section must meet the following operational standards to be approved by NMFS:

(i) *Gear.* Each at-sea monitor must be provided with all of the equipment specified by the Northeast Fisheries At-sea Monitoring Program. A list of such equipment is available from the Northeast Fisheries Science Center upon request. At-sea/electronic monitoring service providers are responsible for the cost of providing such gear to at-sea monitors to the extent not funded by NMFS. This gear shall be inspected by NMFS upon the completion of training required pursuant to paragraph (b)(4)(i)(I) of this section.

(ii) *Vessel selection protocol.* An at-sea/electronic monitoring program service provider must develop a formal vessel-selection protocol to deploy at-sea monitors and electronic monitoring equipment in a statistically random manner consistent with the coverage levels required pursuant to paragraph (b)(1)(v)(B)(*1*) of this section. This protocol must include a method to allow for waivers in specific circumstances, including how waivers would be requested, assessed, and recorded.

(iii) *Reporting/recordkeeping requirements*—(A) *Vessel requirements.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of at-sea monitors and electronic monitoring equipment pursuant to paragraph (b)(1)(v)(B)(*1*) of this section, the operator of a vessel fishing on a sector trip must provide at-sea/electronic monitoring service providers with at least the following information: The vessel name, permit number, trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS, whether a monkfish DAS will be used, and an estimate of the date/time of departure in advance of each trip. The timing of such notice shall be sufficient to allow ample time for the service provider to determine whether an at-sea monitor or electronic monitoring equipment will be deployed on each trip and allow the at-sea monitor or electronic monitoring equipment to prepare for the trip and get to port, or to be installed on the vessel, respectively. The details of the timing, method (e.g., phone, email, etc.), and information needed for such pre-trip notifications shall be included as part of a sector's yearly operations plan. If a vessel has been informed by a service provider that an at-sea monitor or electronic monitoring equipment has been assigned to a particular trip pursuant to paragraph (b)(6)(iii)(B)(*1*) of this section, the vessel may not leave port to begin that trip until the at-sea monitor has arrived and boarded the vessel, or the electronic monitoring equipment has been properly installed.

(B) *At-sea/electronic monitoring service provider requirements*—(*1*) *Confirmation of pre-trip notification.* Upon receipt of a pre-trip notification pursuant to paragraph (b)(5)(iii)(A) of this section, the service provider shall inform the vessel operator whether the vessel will be monitored by an at-sea observer or electronic monitoring equipment for that trip, or will be issued an at-sea/electronic monitoring waiver for that trip based upon the vessel selection protocol specified in paragraph (b)(5)(ii) of this section.

(*2*) *At-sea/electronic monitoring report.* A report detailing area fished and the amount of each species kept and discarded shall be submitted electronically in a standard acceptable form to the appropriate sector and NMFS within 48 hr of the completion of the trip, as instructed by the Regional Administrator. The data elements to be collected and the format for submission shall be specified by NMFS and distributed to all approved at-sea/electronic monitoring service providers and sectors. At-sea/electronic monitoring data shall not be accepted until such data pass automated NMFS data quality checks.

(iv) *Safety hazards*—(A) *Vessel requirements.* The operator of a sector vessel must detail and identify any safety hazards to any at-sea monitor assigned pursuant to paragraph (b)(5)(iii)(B)(*1*) of this section prior to leaving port. A vessel cannot begin a trip if it has failed a review of safety issues pursuant to paragraph (b)(5)(iv)(B) of this section, until the identified safety deficiency has been resolved, pursuant to § 600.746(i).

(B) *At-sea/electronic monitoring service provider requirements.* An at-sea monitor must complete a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (b)(5)(iv)(B), an at-sea monitor cannot be deployed on that vessel for that trip.

(v) *Adjustment to operational standards.* The at-sea/electronic monitoring operational standards specified in paragraph (b)(5) of this section may be revised by the Regional

Administrator in a manner consistent with the Administrative Procedure Act.

(c) * * *

(2) * * *

(i) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: Specific time and areas within the NE multispecies year-round closure areas; permitting restrictions (e.g., vessel upgrades, etc.); gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.); reporting requirements; and AMs specified at § 648.90(a)(5)(i)(D). For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified at § 648.82; the SAP-specific reporting requirements specified at § 648.85; and the reporting requirements associated with a dockside monitoring program specified in paragraph (b)(5)(i) of this section are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. For the purpose of this paragraph (c)(2)(i), the Regional Administrator may not grant sector participants exemptions from the NE multispecies year-round closures areas defined as Essential Fish Habitat Closure Areas as defined at § 648.81(h); the Fippennies Ledge Area as defined in paragraph (c)(2)(i)(A) of this section; Closed Area I and Closed Area II, as defined at § 648.81(a) and (b), respectively, during the period February 16 through April 30; and the Western GOM Closure Area, as defined at § 648.81(e), where it overlaps with any Sector Rolling Closure Areas, as defined at § 648.81(f)(2)(vi). This list may be modified through a framework adjustment, as specified in § 648.90.

(A) *Fippennies Ledge Area.* The Fippennies Ledge Area is bounded by the following coordinates, connected by straight lines in the order listed:

FIPPENNIES LEDGE AREA

Point	N. latitude	W. longitude
1	42°50.0′	69°17.0′
2	42°44.0′	69°14.0′
3	42°44.0′	69°18.0′
4	42°50.0′	69°21.0′

(B) [Reserved].

* * * * *

■ 14. In § 648.89, revise paragraph (f)(2), and add paragraph (f)(3) to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(f) * * *

(2) *Reactive AM adjustment.* If it is determined that any recreational sub-ACL was exceeded, as specified in paragraph (f)(1) of this section, the Regional Administrator, after consultation with the New England Fishery Management Council, shall develop measures necessary to prevent the recreational fishery from exceeding the appropriate sub-ACL in future years. Appropriate AMs for the recreational fishery, including adjustments to fishing season, minimum fish size, or possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with final measures published in the **Federal Register** no later than January when possible. Separate AMs shall be developed for the private and charter/party components of the recreational fishery.

(3) *Proactive AM adjustment.* When necessary, the Regional Administrator, after consultation with the New England Fishery Management Council, may adjust recreational measures to ensure the recreational fishery achieves, but does not exceed any recreational fishery sub-ACL in a future fishing year. Appropriate AMs for the recreational fishery, including adjustments to fishing season, minimum fish size, or possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with final measures published in the **Federal Register** prior to the start of the fishing year where possible. In specifying these AMs, the Regional Administrator shall take into account the non-binding prioritization of possible measures recommended by the Council: for cod, first increases to minimum fish sizes, then adjustments to seasons, followed by changes to bag limits; and for haddock, first increases to minimum size limits, then changes to bag limits, and then adjustments to seasons.

■ 15. Section 648.90 is amended as follows:

■ A. Revise paragraphs (a)(4)(iii) introductory text, (a)(4)(iii)(B), (C) and (E), (a)(4)(iv)(B) and (a)(5); and

■ B. Add paragraphs (a)(4)(iii)(F) through (H).

The added and revised text reads as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(4) * * *

(iii) *ABC/ACL distribution.* The ABCs/ACLs adopted by the Council for each regulated species or ocean pout stock pursuant to this paragraph (a)(4) shall be subdivided among the various sub-components of the fishery, as specified in paragraphs (a)(4)(iii)(A) through (H) of this section. For transboundary stocks managed by the Understanding, pursuant to § 648.85(a), the distribution of ABC/ACLs described in paragraphs (a)(4)(iii)(A) through (H) of this section shall be based upon the catch available to U.S. fishermen. The Council may revise its recommendations for the distribution of ABCs and ACLs among these and other sub-components through the process to specify ABCs and ACLs, as described in this paragraph (a)(4).

* * * * *

(B) *Regulated species or ocean pout catch by exempted fisheries.* Unless otherwise specified in paragraphs (a)(4)(iii)(F) or (G) of this section, regulated species or ocean pout catch by other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3) shall be deducted from the ABC/ACL of each regulated species or ocean pout stock, pursuant to the process to specify ABCs and ACLs described in this paragraph (a)(4). The catch of these non-specified sub-components of the ACL shall be monitored using data collected pursuant to this part. If catch from such fisheries exceeds the amount specified in this paragraph (a)(4)(iii)(B), AMs shall be developed to prevent the overall ACL for each stock from being exceeded, pursuant to the framework adjustment process specified in this section.

(C) *Yellowtail flounder catch by the Atlantic sea scallop fishery.* Yellowtail flounder catch in the Atlantic sea scallop fishery, as defined in subpart D of this part, shall be deducted from the ABC/ACL for each yellowtail flounder stock pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. Unless otherwise specified in this paragraph (a)(4)(iii)(C), or subpart D of this part, the specific value of the sub-components of the ABC/ACL for each stock of yellowtail flounder distributed to the Atlantic sea scallop fishery shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section. The Atlantic sea scallop fishery shall be allocated 40 percent of the GB yellowtail ABC (U.S. share only) in fishing year 2013, and 16 percent in fishing year 2014 and each fishing year thereafter, pursuant to the process for

specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section. Based on information available, NMFS shall project the expected scallop fishery catch of GB yellowtail flounder for the current fishing year by January 15. If NMFS determines that the scallop fishery will catch less than 90 percent of its GB yellowtail flounder sub-ACL, the Regional Administrator may reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL by any amount up to the amount reduced from the scallop fishery sub-ACL. The revised groundfish fishery sub-ACL shall be distributed to the common pool and sectors based on the process specified in paragraph (a)(4)(iii)(H)(*1*) of this section.

* * * * *

(E) *SNE/MA windowpane flounder catch by the Atlantic sea scallop fishery.* SNE/MA windowpane flounder catch in the Atlantic sea scallop fishery, as defined in subpart D of this part, shall be deducted from the ABC/ACL for SNE/MA windowpane flounder pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. The Atlantic sea scallop fishery shall be allocated 36 percent of the GB yellowtail ABC (U.S. share only) in fishing year 2013 and each fishing year after, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

(F) *SNE/MA windowpane flounder catch by exempted fisheries.* SNE/MA windowpane flounder catch by other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3), shall be deducted from the ABC/ACL for SNE/MA windowpane flounder pursuant to the process to specify ABCs and ACLs, as described in this paragraph (a)(4). The specific value of the sub-components of the ABC/ACL for SNE/MA windowpane flounder distributed to these other fisheries shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section.

(G) *GB yellowtail flounder catch by small mesh fisheries.* GB yellowtail flounder catch by bottom trawl vessels fishing with a codend mesh size of less than 5-inch (12.7-cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3), shall be deducted from the ABC/ACL for GB yellowtail flounder pursuant to the process to specify ABCs and ACLs, as described in this paragraph (a)(4). This small mesh fishery shall be allocated 2 percent of the GB yellowtail ABC (U.S. share only) in fishing year 2013 and each fishing year after, pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4). An ACL based on this ABC shall be determined using the process described in paragraph (a)(4)(i) of this section.

(H) *Regulated species or ocean pout catch by the NE multispecies commercial and recreational fisheries.* Unless otherwise specified in the ACL recommendations developed pursuant to paragraph (a)(4)(i) of this section, after all of the deductions and considerations specified in paragraphs (a)(4)(iii)(A) through (G) of this section, the remaining ABC/ACL for each regulated species or ocean pout stock shall be allocated to the NE multispecies commercial and recreational fisheries, pursuant to this paragraph (a)(4)(iii)(H).

(*1*) *Recreational allocation.* Unless otherwise specified in paragraph (a)(5) of this section, recreational catches shall be compared to the ACLs allocated pursuant to this paragraph (a)(4)(iii)(H)(*1*) for the purposes of determining whether adjustments to recreational measures are necessary, pursuant to the recreational fishery AMs specified in § 648.89(f).

(*i*) *Stocks allocated.* Unless otherwise specified in this paragraph (a)(4)(iii)(H)(*1*), the ABCs/ACLs for GOM cod and GOM haddock available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section shall be divided between commercial and recreational components of the fishery, based upon the average proportional catch of each component for each stock during fishing years 2001 through 2006.

(*ii*) *Process for determining if a recreational allocation is necessary.* A recreational allocation may not be made if it is determined that, based upon available information, the ACLs for these stocks are not being fully harvested by the NE multispecies fishery, or if the recreational harvest, after accounting for state waters catch pursuant to paragraph (a)(4)(iii)(A) of this section, is less than 5 percent of the overall catch for a particular stock of regulated species or ocean pout.

(*2*) *Commercial allocation.* Unless otherwise specified in this paragraph (a)(4)(iii)(H)(*2*), the ABC/ACL for regulated species or ocean pout stocks available to the commercial NE multispecies fishery, after consideration of the recreational allocation pursuant to paragraph (a)(4)(iii)(H)(*1*) of this section, shall be divided between vessels operating under approved sector operations plans, as described at § 648.87(c), and vessels operating under the provisions of the common pool, as defined in this part, based upon the cumulative PSCs of vessels participating in sectors calculated pursuant to § 648.87(b)(1)(i)(E). For fishing years 2010 and 2011, the ABC/ACL of each regulated species or ocean pout stocks not allocated to sectors pursuant to § 648.87(b)(1)(i)(E) (i.e., Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish) that is available to the commercial NE multispecies fishery shall be allocated entirely to the common pool. Unless otherwise specified in paragraph (a)(5) of this section, regulated species or ocean pout catch by common pool and sector vessels shall be deducted from the sub-ACL/ACE allocated pursuant to this paragraph (a)(4)(iii)(H)(*2*) for the purposes of determining whether adjustments to common pool measures are necessary, pursuant to the common pool AMs specified in § 648.82(n), or whether sector ACE overages must be deducted, pursuant to § 648.87(b)(1)(iii).

(*3*) *Revisions to commercial and recreational allocations.* Distribution of the ACL for each stock available to the NE multispecies fishery between and among commercial and recreational components of the fishery may be implemented through a framework adjustment pursuant to this section. Any changes to the distribution of ACLs to the NE multispecies fishery shall not affect the implementation of AMs based upon the distribution in effect at the time of the overage that triggered the AM.

(iv) * * *

(B) *Discards.* Unless otherwise specified in this paragraph (a)(4)(iv)(B), regulated species or ocean pout discards shall be monitored through the use of VTRs, observer data, VMS catch reports, and other available information, as specified in this part. Regulated species or ocean pout discards by vessels on a sector trip shall be monitored pursuant to § 648.87(b)(1)(v)(A).

(v) * * *

(5) *AMs.* Except as specified in paragraphs (a)(4)(iii)(A) through (G) of this section, if any of the ACLs specified in paragraph (a)(4) of this section are exceeded based upon available catch information, the AMs specified in

paragraphs (a)(5)(i) and (ii) of this section shall take effect in the following fishing year, or as soon as practicable, thereafter, once catch data for all affected fisheries are available, as applicable.

(i) *AMs for the NE multispecies commercial and recreational fisheries.* If the catch of regulated species or ocean pout by a sub-component of the NE multispecies fishery (i.e., common pool vessels, sector vessels, or private recreational and charter/party vessels) exceeds the amount allocated to each sub-component, as specified in paragraph (a)(4)(iii)(H) of this section, then the applicable AM for that sub-component of the fishery shall take effect, pursuant to paragraphs (a)(5)(i)(A) through (C) of this section. In determining the applicability of AMs specified for a sub-component of the NE multispecies fishery in paragraphs (a)(5)(i)(A) through (C) of this section, the Regional Administrator shall consider available information regarding the catch of regulated species and ocean pout by each sub-component of the NE multispecies fishery, plus each sub-component's share of any overage of the overall ACL for a particular stock caused by excessive catch by vessels outside of the FMP, exempted fisheries, or the Atlantic sea scallop fishery, as specified in this paragraph (a)(5), as appropriate.

(A) *Excessive catch by common pool vessels.* If the catch of regulated species and ocean pout by common pool vessels exceeds the amount of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(H)(*2*) of this section, then the AMs described in § 648.82(n) shall take effect. Pursuant to the distribution of ABCs/ACLs specified in paragraph (a)(4)(iii)(H)(*2*) of this section, for the purposes of this paragraph (a)(5)(i)(A), the catch of each regulated species or ocean pout stock not allocated to sectors pursuant to § 648.87(b)(1)(i)(E) (i.e., Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder, and Atlantic wolffish) during fishing years 2010 and 2011 shall be added to the catch of such stocks by common pool vessels to determine whether the differential DAS counting AM described in § 648.82(n)(1) shall take effect. If such catch does not exceed the portion of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(H)(*2*) of this section, then no AMs shall take effect for common pool vessels.

(B) *Excessive catch by sector vessels.* If the catch of regulated species and ocean pout by sector vessels exceeds the amount of the ACL specified for sector vessels pursuant to paragraph (a)(4)(iii)(H)(*2*) of this section, then the AMs described in § 648.87(b)(1)(iii) shall take effect. For the purposes of this paragraph (a)(5)(i)(B), the catch of regulated species and ocean pout for each sector approved pursuant to § 648.87 shall be based upon the catch of vessels participating in each approved sector. If such catch does not exceed the portion of the ACL specified for an individual sector pursuant to paragraph (a)(4)(iii)(H)(*2*) of this section, then no AMs shall take effect for that sector.

(C) *Excessive catch by the NE multispecies recreational fishery.* If the catch of regulated species and ocean pout by private recreational and charter/party vessels exceeds the amount of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(H)(*1*) of this section, then the AMs described in § 648.89(f) shall take effect. If such catch does not exceed the portion of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(H)(*1*) of this section, then no AMs shall take effect for the recreational fishery.

(D) *AMs for both stocks of windowpane flounder, ocean pout, Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder.* At the end of each fishing year, NMFS shall determine if the overall ACL for northern windowpane flounder, southern windowpane flounder, ocean pout, Atlantic halibut, Atlantic wolffish, or SNE/MA winter flounder was exceeded. If the overall ACL for any of these stocks is exceeded, NMFS shall implement the appropriate AM, as specified in this paragraph (a)(5)(i)(D), in a subsequent fishing year, consistent with the APA. If reliable information is available, the AM shall be implemented in the fishing year immediately following the fishing year in which the overage occurred. Otherwise, the AM shall be implemented in the second fishing year after the fishing year in which the overage occurred. For example, if NMFS determined before the start of fishing year 2013 that the overall ACL for northern windowpane flounder was exceeded by the groundfish fishery in fishing year 2012, the applicable AM would be implemented for fishing year 2013. If NMFS determined after the start of fishing year 2013 that the overall ACL for northern windowpane flounder was exceeded in fishing year 2012, the applicable AM would be implemented for fishing year 2014. If updated catch information becomes available subsequent to the implementation of an AM that indicates that an ACL was not exceeded, the AM will be rescinded, consistent with the Administrative Procedure Act.

(*1*) *Windowpane flounder and ocean pout.* If NMFS determines the overall ACL for either stock of windowpane flounder or ocean pout is exceeded, as described in this paragraph (a)(5)(i)(D)(*1*), by any amount greater than the management uncertainty buffer, the applicable small AM area for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by rhumb lines, unless otherwise noted. Vessels fishing with trawl gear in these areas may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). If an overage of the overall ACL for SNE/MA windowpane flounder is as a result of an overage of the sub-ACL allocated to exempted fisheries pursuant to paragraph (a)(4)(iii)(F) of this section, the applicable AM area(s) shall be in effect for any trawl vessel fishing with a codend mesh size of greater than or equal to 5-inch (12.7-cm) in other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3). If an overage of the overall ACL for SNE/MA windowpane flounder is as a result of an overage of the sub-ACL allocated to the groundfish fishery pursuant to paragraph (a)(4)(iii)(H)(*2*) of this section, the applicable AM Area(s) shall be in effect for any limited access NE multispecies permitted vessel fishing on a NE multispecies DAS or sector trip. If an overage of the overall ACL for SNE/MA windowpane flounder is as a result of overages of both the groundfish fishery and exempted fishery sub-ACLs, the applicable AM area(s) shall be in effect for both the groundfish fishery and exempted fisheries. If a sub-ACL for either stock of windowpane flounder or ocean pout is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are otherwise developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e.,

the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA

Point	N. latitude	W. longitude
1	41°10′	67°40′
2	41°10′	67°20′
3	41°00′	67°20′
4	41°00′	67°00′
5	40°50′	67°00′
6	40°50′	67°40′
1	41°10′	67°40′

NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA

Point	N. latitude	W. longitude
1	42°10′	67°40′
2	42°10′	67°20′
3	41°00′	67°20′
4	41°00′	67°00′
5	40°50′	67°00′
6	40°50′	67°40′
1	42°10′	67°40′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREA

Point	N. latitude	W. longitude
1	41°10′	71°30′
2	41°10′	71°20′
3	40°50′	71°20′
4	40°50′	71°30′
1	41°10′	71°30′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA 1

Point	N. latitude	W. longitude
1	41°10′	71°50′
2	41°10′	71°10′
3	41°00′	71°10′
4	41°00′	71°20′
5	40°50′	71°20′
6	40°50′	71°50′
1	41°10′	71°50′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA 2

Point	N. latitude	W. longitude
1	(1)	73°30′
2	40°30′	73°30′
3	40°30′	73°50′
4	40°20′	73°50′
5	40°20′	(2)
6	(3)	73°58.5′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREA 2—Continued

Point	N. latitude	W. longitude
7	(4)	73°58.5′
8	40°32.6′ (5)	73°56.4′ (5)
1	(1)	73°30′

[1] The southern-most coastline of Long Island, NY at 73°30′ W. longitude.
[2] The eastern-most coastline of NJ at 40°20′ N. latitude, then northward along the NJ coastline to Point 6.
[3] The northern-most coastline of NJ at 73°58.5′ W. longitude.
[4] The southern-most coastline of Long Island, NY at 73°58.5′ W. longitude.
[5] The approximate location of the southwest corner of the Rockaway Peninsula, Queens, NY, then eastward along the southern-most coastline of Long Island, NY (excluding South Oyster Bay), back to Point 1.

(*2*) *Atlantic halibut.* If NMFS determines the overall ACL for Atlantic halibut is exceeded, as described in this paragraph (a)(5)(i)(D)(*2*), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by straight lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Halibut Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Halibut Fixed Gear AM Areas, unless transiting with its gear stowed in accordance with § 648.23(b), or such gear was approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for Atlantic halibut is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

ATLANTIC HALIBUT TRAWL GEAR AM AREA

Point	N. latitude	W. longitude
1	42°00′	69°20′
2	42°00′	68°20′
3	41°30′	68°20′
4	41°30′	69°20′

ATLANTIC HALIBUT FIXED GEAR AM AREA 1

Point	N. latitude	W. longitude
1	41°40′	69°40′
2	41°40′	69°30′
3	41°30′	69°30′
4	41°30′	69°40′

ATLANTIC HALIBUT FIXED GEAR AM AREA 2

Point	N. latitude	W. longitude
1	43°10′	69°40′
2	43°10′	69°30′
3	43°00′	69°30′
4	43°00′	69°40′

(*3*) *Atlantic wolffish.* If NMFS determines the overall ACL for Atlantic wolffish is exceeded, as described in this paragraph (a)(5)(i)(D)(*3*), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by straight lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the Atlantic Wolffish Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). When in effect, a limited access NE multispecies permitted vessel with gillnet or longline gear may not fish or be in the Atlantic Wolffish Fixed Gear AM Areas, unless transiting with

its gear stowed in accordance with § 648.23(b), or such gear was approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for Atlantic wolffish is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

ATLANTIC WOLFFISH TRAWL GEAR AM AREA

Point	N. latitude	W. longitude
1	42°30′	70°30′
2	42°30′	70°15′
3	42°15′	70°15′
4	42°15′	70°10′
5	42°10′	70°10′
6	42°10′	70°20′
7	42°20′	70°20′
8	42°20′	70°30′

ATLANTIC WOLFFISH FIXED GEAR AM AREA 1

Point	N. latitude	W. longitude
1	41°40′	69°40′
2	41°40′	69°30′
3	41°30′	69°30′
4	41°30′	69°40′

ATLANTIC WOLFFISH FIXED GEAR AM AREA 2

Point	N. latitude	W. longitude
1	42°30′	70°20′
2	42°30′	70°15′
3	42°20′	70°15′
4	42°20′	70°20′

(*4*) *SNE/MA winter flounder.* If NMFS determines the overall ACL for SNE/MA winter flounder is exceeded, as described in this paragraph (a)(5)(i)(D)(*4*), by any amount greater than the management uncertainty buffer, the applicable AM areas shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area(s) for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section, and the Council shall revisit the AM in a future action. The AM areas defined below are bounded by the following coordinates, connected in the order listed by straight lines, unless otherwise noted. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in the SNE/MA Winter Flounder Trawl Gear AM Area may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.84(e); or any other gear approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for SNE/MA winter flounder is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 1

Point	N. latitude	W. longitude
1	41°10′	71°40′ [1]
2	41°10′	71°20′
3	41°00′	71°20′
4	41°00′	71°40′

[1] Point 1 connects to Point 2 along 41°10′ N or the southern coastline of Block Island, RI, whichever is further south.

SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 2

Point	N. latitude	W. longitude
1	41°20′	70°30′
2	41°20′	70°20′
3	41°00′	70°20′
4	41°00′	70°30′

SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 3

Point	N. latitude	W. longitude
1	41°20′	69°20′
2	41°20′	69°10′
3	41°10′	69°10′
4	41°10′	69°20′

SNE/MA WINTER FLOUNDER TRAWL GEAR AM AREA 4

Point	N. latitude	W. longitude
1	41°20′	69°20′
2	41°20′	([1])
3	([1])	69°00′
4	41°00′	69°00′
5	41°00′	69°10′
6	41°10′	69°10′
7	41°10′	69°20′

[1] The southwest-facing boundary of Closed Area I.

(E) [Reserved].

(ii) *AMs if the overall ACL for a regulated species or ocean pout stock is exceeded.* If the catch of any stock of regulated species or ocean pout by vessels fishing outside of the NE multispecies fishery; vessels fishing in state waters outside of the FMP; or vessels fishing in exempted fisheries, as defined in this part, exceeds the sub-component of the ACL for that stock specified for such fisheries pursuant to paragraphs (a)(4)(iii)(A) through (G) of this section, and the overall ACL for that stock is exceeded, then the amount of the overage of the overall ACL for that stock due to catch from vessels fishing outside of the NE multispecies fishery shall be distributed among components of the NE multispecies fishery based upon each component's share of that stock's ACL available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section. Each component's share of the ACL overage for a particular stock would be then added to the catch of that stock by each component of the NE multispecies fishery to determine if the resulting sum of catch of that stock for each component of the fishery exceeds that individual component's share of that stock's ACL available to the NE multispecies fishery. If the total catch of that stock by any component of the NE multispecies fishery exceeds the amount of the ACL specified for that component of the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(H) of this section, then the AMs specified in paragraphs (a)(5)(i)(A) through (C) of this section shall take effect, as applicable. If the catch of any stock of regulated species or ocean pout by vessels outside of the FMP exceeds the sub-component of the ACL for that stock specified pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, but the overall ACL for that stock is not exceeded, even after consideration of the catch of that stock by other sub-components of the fishery, then the AMs specified in this paragraph (a)(5)(ii) shall not take effect.

(iii) *AMs if the incidental catch cap for the Atlantic herring fishery is*

exceeded. At the end of the NE multispecies fishing year, NMFS shall evaluate Atlantic herring fishery catch using VTR, VMS, IVR, observer data, and any other available information to determine whether a haddock incidental catch cap has been exceeded based upon the cumulative catch of vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3. If the catch of haddock by all vessels issued an Atlantic herring permit and fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, exceeds the amount of the incidental catch cap specified in § 648.85(d) of this section, then the appropriate incidental catch cap shall be reduced by the overage on a pound-for-pound basis during the following fishing year. Any overage reductions shall be announced by the Regional Administrator in the **Federal Register**, accordance with the Administrative Procedure Act, prior to the start of the next NE multispecies fishing year after which the overage occurred, if possible, or as soon as possible thereafter if the overage is not determined until after the end of the NE multispecies fishing year in which the overage occurred.

* * * * *

■ 16. In § 648.201, revise paragraph (a)(2) to read as follows:

§ 648.201 AMs and harvest controls.

* * * * *

(a) * * *

(2) When the Regional Administrator has determined that the GOM and/or GB incidental catch cap for haddock in § 648.85(d) has been caught, no vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear in the applicable Accountability Measure (AM) Area, i.e., the Herring GOM Haddock AM Area or Herring GB Haddock AM Area, as defined in § 648.86(a)(3)(ii)(A)(*2*) and (*3*) of this part, may not fish for, possess, or land herring in excess of 2,000 lb (907.2 kg) per trip in or from the applicable AM Area, unless all herring possessed and landed by a vessel were caught outside the applicable AM Area and the vessel complies with the gear stowage provisions specified in § 648.23(b) while transiting the applicable AM Area. Upon this determination, the haddock possession limit is reduced to 0 lb (0 kg) in the applicable AM area, for a vessel issued a Federal Atlantic herring permit and fishing with midwater trawl gear or for a vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit fishing on a declared herring trip, regardless of area fished or gear used, in the applicable AM area, unless the vessel also possesses a Northeast multispecies permit and is operating on a declared (consistent with § 648.10(g)) Northeast multispecies trip.

* * * * *

[FR Doc. 2013–06774 Filed 3–22–13; 8:45 am]

BILLING CODE 3510–22–P

Reader Aids

Federal Register

Vol. 78, No. 57

Monday, March 25, 2013

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, MARCH

13771–13998 1
13999–14154 4
14155–14428 5
14429–14634 6
14635–14906 7
14907–15276 8
15277–15596 11
15597–15868 12
15869–16132 13
16133–16398 14
16399–16600 15
16601–16676 18
16777–17068 19
17069–17284 20
17285–17590 21
17591–17864 22
17865–18220 25

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
Ch. I 17300
Ch. II 17300
Ch. XXVII 17888

3 CFR

Proclamations:
8933 14429
8934 14431
8935 14433
8936 14435
8937 14627
8938 14629
8939 14631
8940 17069

Executive Orders:
11958 (revoked by EO 13637) 16131
12777 (amended by EO 13638) 17589
12957 (See Notice of March 12, 2013) 16397
12959 (See Notice of March 12, 2013) 16397
13059 (See Notice of March 12, 2013) 16397
13222 (amended by EO 13637) 16131
13553 (See Notice of March 12, 2013) 16397
13574 (See Notice of March 12, 2013) 16397
13590 (See Notice of March 12, 2013) 16397
13599 (See Notice of March 12, 2013) 16397
13606 (See Notice of March 12, 2013) 16397
13608 (See Notice of March 12, 2013) 16397
13622 (See Notice of March 12, 2013) 16397
13628 (See Notice of March 12, 2013) 16397
13637 16131
13638 17589

Administrative Orders:
Memorandums:
Memorandum of February 20, 2013 13997
Notices:
Notice of March 1, 2013 (see EO 13288 of 3/6/2003; EO 13391 of 11/22/2005; EO 13469 of 7/25/2008) 14427
Notice of March 12, 2013 16397
Order of March 1, 2013 14633

5 CFR

2640 14437

Proposed Rules:
850 14233
Ch. XXVIII 17888

6 CFR

Proposed Rules:
5 15889

7 CFR

7 13771
20 16777
51 14907
205 13776
761 13999
762 13999
905 13777
1230 14909

Proposed Rules:
20 16819
60 15645
65 15645
457 17606
905 14236

8 CFR

Proposed Rules:
Ch. V 17888

9 CFR

417 14635
424 14636

10 CFR

20 16922
30 16922
32 16922
33 16922
34 16922
35 16922
36 16922
37 16922
39 16922
51 16922
71 16922
72 16601
73 16922

Proposed Rules:
72 16619
170 14880
171 14800
429 .....15653, 15808
430 .....14467, 14717, 15808, 15891, 16443
431 .....14024, 17890

12 CFR

998 15869
1730 15869

Proposed Rules:
234 14024

701 17136

14 CFR

21 16779
25 ....14005, 14007, 14155
33 15597
39 ....14158, 14160, 14162, 14164, 14442, 14640, 14642, 14644, 14647, 15277, 15279, 15281, 15599, 15870, 15874, 16604, 17071, 17073, 17075, 17076, 17079, 17080, 17082, 17285, 17290, 17294, 17297, 17591, 17593, 17865
71 ....14649, 14651, 14652, 14653, 14909, 14911, 16399, 16400, 17083, 17084
73 17085
97 ....14009, 14010, 16606, 16608
117 14166
121 ....14166, 15876
129 14912
254 14913
Proposed Rules:
25 13835
39 ....14029, 14467, 14469, 14719, 14722, 14726, 14729, 14731, 14734, 14934, 15332, 15335, 15655, 15658, 16196, 16198, 16200, 16620, 17300
71 ....13843, 14031, 14032, 14473, 14474, 14475, 14477, 14478, 14479, 16202, 16821, 16823

15 CFR

30 16366
744 14914
Proposed Rules:
400 14238
922 ....16622, 16628

16 CFR

4 16611
1112 15836
1118 15836
Proposed Rules:
1500 15660
1634 17140

17 CFR

201 14179
Proposed Rules:
242 18084
249 18084

18 CFR

11 15602
38 14654
366 16133

19 CFR

12 14183

20 CFR

1001 15283

21 CFR

14 17086
56 16401
73 14664
172 14664
173 14664
176 14664
177 14664
178 14664
184 14664
189 ....14012, 14664
510 ....14667, 17595, 17866
520 ....14667, 17595
522 ....14667, 17595, 17866
524 ....17595, 17866
529 ....14667, 17595, 17866
558 ....14667, 17595
700 14012
890 ....14013, 14015
Proposed Rules:
Ch. I 16824, 17611
1 17142
16 ....17142, 17155
106 17142
110 17142
112 17155
114 17142
117 ....15894, 17142
120 17142
123 17142
129 17142
179 17142
211 17142
870 17890
Ch. II 17888
1308 17895

23 CFR

Proposed Rules:
771 15925

24 CFR

Proposed Rules:
203 17303

25 CFR

11 14017
Proposed Rules:
226 16629

26 CFR

1 ....17024, 17053, 17868
48 ....15877, 15878
602 ....17024, 17053
Proposed Rules:
1 ....15337, 16445, 17066, 17612, 17900
31 17612
54 ....16445, 17313
57 ....14034, 17612
301 ....14939, 15337, 16446, 17901

27 CFR

Proposed Rules:
9 14046
Ch. II 17888

28 CFR

16 14669
58 ....16138, 16159
Proposed Rules:
Ch. I 17888
Ch. III 17888
Ch. V 17888
Ch. VI 17888

29 CFR

2520 13781
2560 13797
2571 13797
4022 16401
4044 16401
Proposed Rules:
2590 17313

30 CFR

Proposed Rules:
950 16204

31 CFR

561 16403
Proposed Rules:
Ch. IX 17888

33 CFR

100 ....13811, 16780, 17087, 17598
117 ....14185, 14444, 14446, 15292, 15293, 15878, 15879, 16410, 16411, 17090
165 ....13811, 14185, 14188, 15293, 16177, 17094, 17097, 17099, 17869
401 16180
Proposed Rules:
100 ....16205, 17613
101 17782
104 17782
105 17782
106 17782
165 ....16208, 16211, 17613

34 CFR

600 17598
602 17598
603 17598
668 17598
682 17598
685 17598
686 17598
690 17598
691 17598
Proposed Rules:
75 16447
Ch. III 14480, 14483, 14947, 16447

36 CFR

7 ....14447, 14673
Proposed Rules:
1195 16448

37 CFR

1 ....16182, 17102
41 17102
42 17871

39 CFR

Proposed Rules:
111 16213

40 CFR

49 17836
52 ....14020, 14450, 14681, 15296, 16412, 16783, 16785, 16790, 17108
55 14917
58 16184
60 14457
63 14457
80 14190
81 16792
136 14457
180 ....14461, 15880, 17123, 17600
271 15299
300 16612
Proposed Rules:
35 16630
49 16825
52 ....15664, 15895, 16449, 16452, 16826, 17157, 17161, 17168, 17304, 17902
81 ....16827, 17902, 17915
147 14951
180 14487
271 15338
372 ....14241, 15913
Ch. IV 17888

41 CFR

Proposed Rules:
Ch. 128 17888

42 CFR

405 16614
411 16614
412 ....14689, 15882, 16614
413 15882
419 16614
424 ....15882, 16614
476 15882
483 16795
488 16795
489 ....16614, 16795
498 16795
Proposed Rules:
414 16632
419 16632

44 CFR

64 ....14694, 17130, 17133
67 ....14697, 14700
Proposed Rules:
67 ....14737, 14738
201 13844
204 14740

45 CFR

153 ....15410, 15541
155 15410
156 ....15410, 15541
157 15410
158 15410
800 15560
Proposed Rules:
144 17313
146 17313
147 17313
155 15553
156 15553
Ch. V 17888

46 CFR

Proposed Rules:
10 17917
67 14053

47 CFR

1 15615
2 14920
10 16806
25 ....14920, 17604
43 15615
54 ....13936, 16808
63 15615
64 14701
73 16816
Proposed Rules:
2 14952
54 ....14957, 16456, 17624

73.....14060, 14490
95.....16827

48 CFR

Proposed Rules:
4.....14746
13.....14746
14.....14746
15.....14746
19.....14746
52.....17176
Ch. 28.....17888

49 CFR

71.....15883
105.....15303
171.....15303
172.....14702, 15303, 17874
173.....14702, 15303, 17874
176.....14702, 17874
177.....15303
178.....14702, 15303, 17874
180.....15303
213.....16052
219.....14217
234.....16414
238.....16052
382.....16189
383.....16189, 17875
384.....17875
390.....16189
391.....16189
395.....16189
396.....16189

Proposed Rules:
571.....13853, 15920
622.....15925
633.....16460

50 CFR

17.....14022, 15624
300.....16423
622.....14225, 15641, 15642, 16817, 17882
648.....13812, 14226, 14230
665.....15885
679.....13812, 13813, 14465, 14932, 15643, 16195, 16617, 17135, 17884, 17885, 17886

Proposed Rules:
17.....14245, 15925, 16828, 18000
20.....14060
100.....14755
216.....15669
300.....14490, 17919
600.....17625
622.....14069, 14503, 15338, 15672, 17178, 17336
635.....17625
648.....15674, 16220, 16574, 18188
660.....14259
679.....14490, 17340
680.....15677, 17341

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 307/P.L. 113–5
Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Mar. 13, 2013; 127 Stat. 161)

Last List March 12, 2013

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.