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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 201, 203, 1005, and 1007

[Docket No. FR 5707–F–02]

RIN 2502–AJ18

Qualified Mortgage Definition for HUD Insured and Guaranteed Single Family Mortgages

AGENCY: Office of Secretary, HUD.

ACTION: Final rule.

SUMMARY: Through this final rule, HUD establishes a definition of ''qualified mortgage'' for the single family residential loans that HUD insures, guarantees, or administers that aligns with the statutory ability-to-repay criteria of the Truth-in-Lending Act (TILA) and the regulatory criteria of the definition of ''qualified mortgage'' promulgated by the Consumer Financial Protection Bureau (CFPB). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) created new section 129C in TILA, which establishes minimum standards for considering a consumer's repayment ability for creditors originating certain closed-end, dwelling-secured mortgages, and generally prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good-faith determination of a consumer's ability to repay the loan according to its terms. Section 129C authorizes the agency with responsibility for compliance with TILA, which is CFPB, to issue a rule implementing these requirements, and the CFPB has issued its rule implementing these requirements.

The Dodd-Frank Act also charges HUD and three other Federal agencies with prescribing regulations defining the types of loans that these Federal agencies insure, guarantee, or administer, as may be applicable, that are qualified mortgages. Through this rule, HUD complies with this statutory directive for the single family residential loans that HUD insures, guarantees, or administers.

DATES: *Effective Date:* January 10, 2014.

FOR FURTHER INFORMATION CONTACT: Michael P. Nixon, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410; telephone number 202–402–5216, ext. 3094 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

This rule meets HUD's charge under TILA, as amended by the Dodd-Frank Act, to define, in regulation, the term ''qualified mortgage'' for the single family residential mortgages and loans that HUD insures, guarantees, or otherwise administers. While the CFPB, in accordance with statutory direction, has promulgated regulations that define ''qualified mortgage'' for the broader single family mortgage market, HUD, through this rule, promulgates regulations that define this term for HUD's single family insured or guaranteed mortgage programs.

The statutory purpose of defining ''qualified mortgage,'' whether for the conventional mortgage market or for specific Federal programs, as specified in the Dodd-Frank Act, is to identify single family residential mortgages that take into consideration a borrower's ability to repay the loan and provide certain protections for the lender from liability. During the years preceding the mortgage crisis, too many mortgages in the conventional mortgage market were made to borrowers without regard to their ability to repay the loan and included risky features such as ''no doc'' loans or ''interest only'' loans. As a result, many homeowners defaulted on these loans and faced foreclosure, contributing to the collapse in the housing market in 2008 and leading to the Nation's most serious financial crisis since the Great Depression.

In developing its definition of ''qualified mortgage'', HUD reviewed its mortgage insurance and loan guarantee programs and determined that all of the single family residential mortgage and loan products offered under HUD programs should be defined as ''qualified mortgages''; that is, they exclude risky features and are designed so that the borrower can repay the loan. For certain of its mortgage products, HUD establishes qualified mortgage standards similar to those established by the CFPB in its definition of ''qualified mortgage.'' HUD has always required lenders to determine a borrower's ability to repay a mortgage in its insured and guaranteed single family mortgage programs. With ability-to-repay and qualified mortgage standards now in place for conventional mortgage loans, HUD determined that all HUD loans should be qualified mortgages and it could adjust its existing standards to more closely align with the standards promulgated by the CFPB, lessening future differences in standards for HUD's single family residential insured mortgages and those governing conventional mortgages to be designated qualified mortgage, but maintaining standards that continue to support the mission of HUD's programs.

B. Summary of the Major Provisions of the Regulatory Action

In defining ''qualified mortgage'' in its rulemaking, the CFPB established both a safe harbor and a rebuttable presumption of compliance for transactions that are qualified mortgages. The label of safe harbor qualified mortgage applies to those mortgages that are not higher-priced covered transactions (that is the annual percentage rate does not exceed the average prime offer rate by 1.5 percent). These are considered to be the least risky loans and presumed to have conclusively met the ability-to-repay requirements of TILA. The label of rebuttable presumption qualified mortgage is applied to those mortgages that are higher-priced transactions.

In this final rule, the definition of ''qualified mortgage,'' as provided in HUD's September 30, 2013, proposed rule, published at 78 FR 59890, is retained with certain clarifications and exceptions HUD is making in response to public comments. As proposed by HUD in the September 30, 2013, proposed rule, this final rule designates Title I (property improvement loans and manufactured home loans), Section 184

(Indian housing loans), and Section 184A (Native Hawaiian housing loans) insured mortgages and guaranteed loans covered by this rule as safe harbor qualified mortgages and no changes to the current underwriting requirements of these mortgage and loan products are made by this final rule. To this list, FHA adds manufactured housing insured under Title II of the National Housing Act (Title II) and clarifies that the Title I Manufactured Home Loan program is included in the Title I exemption. However, for its largest volume of mortgage products, those insured under Title II of the National Housing Act, with certain exceptions, HUD retains the two categories of qualified mortgages similar to the two categories created in the CFPB final rule—a safe harbor qualified mortgage and a rebuttable presumption qualified mortgage. HUD continues to exempt reverse mortgages insured under section 255 of Title II from the ''qualified mortgage'' definition. HUD has also added to the list of exempted transactions Title II insured mortgages made by housing finance agencies and certain other governmental or nonprofit organizations providing home financing under programs designed for low- and moderate-income individuals and families, and discussed in more detail later in this preamble.

For the remaining Title II insured mortgages, this final rule, consistent with the proposed rule, defines safe harbor qualified mortgage as a mortgage insured under Title II of the National Housing Act that meets the points and fees limit adopted by the CFPB in its regulation at 12 CFR 1026.43(e)(3), and that has an annual percentage rate for a first-lien mortgage relative to the average prime offer rate that is no more than the sum of the annual mortgage insurance premium and 1.15 percentage points. This final rule defines a rebuttable presumption qualified mortgage as a single family mortgage insured under Title II of the National Housing Act that meets the points and fees limit adopted by the CFPB in its regulation at 12 CFR 1026.43(e)(3), but has an annual percentage rate that exceeds the average prime offer rate for a comparable mortgage, as of the date the interest rate is set, by more than the sum of the annual mortgage insurance premium and 1.15 percentage points for a first-lien mortgage.

HUD requires that all loans, subject to the exceptions noted, be insured under Title II of the National Housing Act and meet the CFPB's points and fees limit at 12 CFR 1026.43(e)(3) in order to be either a rebuttable presumption or safe harbor qualified mortgage. The CFPB set a three percent points and fees limit for its definition of qualified mortgage and allowed for adjustments of this limit to facilitate the presumption of compliance for smaller loans.

As more fully discussed in HUD's September 30, 2013, proposed rule, HUD establishes two categories of qualified mortgages for the majority of National Housing Act mortgages to maintain consistency with the TILA statutory criteria defining qualified mortgage, as well as the CFPB's definition, to the extent consistent with the National Housing Act.

While the final rule makes no significant changes to HUD's proposed core definition of qualified mortgage, as noted above, HUD is making certain clarifications and exceptions.

For example, commenters stated that compliance with HUD regulations would necessitate further and immediate system changes and that the lending industry lacked sufficient time to make such changes by January 2014. HUD clarifies that HUD's definition of safe harbor qualified mortgage incorporates CFPB's requirements for a safe harbor qualified mortgage under the special provision for loans insured under the National Housing Act while allowing for a higher APR threshold, so compliance with HUD regulations does not necessitate immediate industry changes for lenders to identify safe harbor qualified mortgages under HUD's definition by January 2014. In other words, compared to the CFPB's regulations, this rule allows more FHA mortgages to qualify as safe harbor qualified mortgages; every FHA loan that would have qualified as a safe harbor qualified mortgage under the CFPB regulations for loans insured under the National Housing Act would qualify as a safe harbor qualified mortgage under this HUD rule. Since the lending industry must comply with CFPB's regulations by January 2014, and were given a full year to prepare for compliance with the CFPB regulations, this clarification should ease concerns about additional immediate compliance costs and the need for additional time to comply with HUD's qualified mortgage regulations.

C. Costs and Benefits

HUD's final rule, in effect, reclassifies a sizeable group (about 19 percent) of Title II loans insured under the National Housing Act from rebuttable presumption qualified mortgages under the CFPB regulations to safe harbor qualified mortgages under HUD's regulation, less than one percent would remain a rebuttable presumption qualified mortgage. A small number (about 7 percent) of Title II loans would continue to not qualify as qualified mortgage based on their exceeding the points and fees limit, while the remaining FHA loans (about 74 percent) would qualify for qualified mortgage status with a safe harbor presumption of compliance with the ability to repay requirements under both the CFPB's rule and HUD's rule. The Title II loans that would be non-qualified mortgages under the CFPB's rule would remain non-qualified mortgage under the proposed rule. The difference is that HUD, through this rule, will no longer insure loans with points and fees above the CFPB level for qualified mortgage, but expects that most of these loans will adapt to meet the points and fees to be insured.

In addition, HUD classifies all Title I, Title II manufactured housing and Section 184 and Section 184A insured mortgages and guaranteed loans as safe harbor qualified mortgages that would have most likely been non-qualified mortgages under the CFPB's rule. Classifying these programs as safe harbor recognizes the unique nature of these loans. For these programs, HUD believes that providing safe harbor status to these programs will not increase market share but instead maintain availability of these products to the underserved borrowers targeted, and allow HUD additional time to further examine these programs and whether they should be covered by a definition of ''qualified mortgage'' similar to the definition provided in this rule for Title II mortgages.

As a result of these reclassifications, HUD expects the following economic impacts:

TABLE 1—SUMMARY OF ECONOMIC EFFECTS: CHANGING THE REBUTTABLE PRESUMPTION STANDARD FOR TITLE I, TITLE II, SECTION 184, AND SECTION 184A LOANS

Effect	Distribution	Effect size
Benefits:		
Lower legal costs through an increase in the number of safe harbor loans.	Lenders (transfers to borrowers via lower interest rates).	$12.2 to $40.7 million.
Costs:		
Foregone benefits from ability-to-pay lawsuits through incremental decrease in rebuttable presumption loans.	Borrowers	Unquantified (the likelihood of such lawsuits has been reduced greatly by changes in lending practices stemming from the Dodd-Frank Act and the lawsuits initiated by Federal and State governments).
Operational costs through the programming of a new HUD standard.	Lenders (potential transfers to borrowers through increased loan costs for borrowers).	De minimus.
Transfers:		
Lower interest rates for FHA mortgages due to the increased legal benefits for lenders with the HUD rule vs. CFPB patch.	Lenders to Borrowers	Unquantified but will be capped by legal benefits to lenders.
Potential increase in the volume of loans due to greater legal benefits to lenders for HUD rule relative to CFPB patch.	Borrowers to FHA	Unquantified as this theoretical increase in volume is expected to be minimal. (The observable impact of both the CFPB patch and the HUD rule will be a decrease in volume relative to HUD volume of loans today).
Potential increase in the net present value of premium revenues minus mortgage insurance claims.	Borrowers to FHA	De minimus.

TABLE 2—SUMMARY OF ECONOMIC EFFECTS: ELIMINATING THE POINTS AND FEE LIMIT FOR TITLE I, SECTION 184, SECTION 184A, AND TITLE II MANUFACTURED HOUSING LOANS

[All designated as safe harbor qualified mortgages]

Effect	Distribution	Size
Benefits:		
Maintained Homeownership benefits for underserved populations as loans continue to be made.	Borrowers (Indian and Native Hawaiian borrowers, home improvement and manufactured housing borrowers).	Positive but unquantified. Under the CFPB patch, there could be a slight decrease in loans to these populations as lenders would be making non-QM loans that are nevertheless guaranteed/insured by HUD.
Lower legal costs	Lenders	Positive but unquantified.
Costs:		
Foregone benefits from ability-to-pay lawsuits	Borrowers	Unquantified but expected to be minimal (the likelihood of such lawsuits has been reduced greatly by changes in lending practices stemming from the Dodd-Frank Act and the lawsuits initiated by Federal and State governments).
Transfers:		
Potential increase in the volume of loans through greater legal protection for HUD rule relative to CFPB patch.	Borrowers to FHA	Unquantified but expected to be minimal.
Potential increase in the net present value of premium revenues minus mortgage insurance claims.	Borrowers to FHA	De minimus.

II. Background

As noted in the Summary of this preamble, it is the Dodd-Frank Act that charges HUD and other Federal agencies to define ''qualified mortgage'' for the single family residential loans that meet statutory ability-to-repay requirements. New section 129C(a) of TILA, added by section 1411 of subtitle B of Title XIV of the Dodd-Frank Act (Pub. L. 111–203, 124 Stat. 1736, approved July 21, 2010), provides minimum standards for considering a consumer's ability to repay a residential mortgage. New section 129C(b), added by section 1412 of the Dodd-Frank Act, establishes the presumption that the ability-to-repay requirements of section 129C(a) are satisfied if a mortgage is a ''qualified mortgage,'' and authorizes, initially, the Federal Reserve Board and, ultimately, the CFPB,[1] to prescribe regulations that revise, add to, or subtract from the criteria in TILA that define a ''qualified mortgage.''

[1] On July 21, 2011, rulemaking authority under TILA transferred from the Federal Reserve Board to the CFPB.

Section 129C(b)(2)(A) defines qualified mortgage as a mortgage that meets the following requirements: (i) The transaction must have regular periodic payments; (ii) the terms of the mortgage must not result in a balloon payment; (iii) the income and financial resources of the mortgagor are verified and documented; (iv) for a fixed rate loan, the underwriting process fully amortizes the loan over the loan term; (v) for an adjustable rate loan, the underwriting is based on the maximum rate permitted under the loan during the

first 5 years and includes a payment schedule that fully amortizes the loan over the loan term; (vi) the transaction must comply with any regulations established by the CFPB relating to ratios of total monthly debt to total monthly income; (vii) the total points and fees payable in connection with the loan must not exceed 3 percent of the total loan amount; and (viii) the mortgage must not exceed 30 years, except in specific areas.[2]

New section 129C(b)(3)(B)(ii) of TILA, also added by section 1412 of the Dodd-Frank Act, requires that HUD, the Department of Veterans Affairs (VA), and the Department of Agriculture (USDA) prescribe rules in consultation with the Federal Reserve Board [3] to define the types of loans they insure, guarantee, or administer, as the case may be, that are ''qualified mortgages,'' and revise, add to, or subtract from the statutory criteria used to define a qualified mortgage.

The CFPB published a final rule on January 30, 2013, at 78 FR 6408, entitled, ''Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z),'' which is referred to in this preamble as the CFPB final rule. The CFPB final rule implemented section 129C(b) by defining ''qualified mortgage'' with two degrees of protections for creditors and assignees of a qualified mortgage. The CFPB's regulations implementing section 129C(b) are codified at 12 CFR part 1026. The CFPB regulations establish both a safe harbor and a rebuttable presumption of compliance for transactions that are ''qualified mortgages.''

Under the CFPB's regulation, a qualified mortgage falls into the safe harbor category and is conclusively presumed to have met the ability-to-repay requirements if it is not a ''higher-priced covered transaction.'' [4] A qualified mortgage that is a higher-priced covered transaction has only a rebuttable presumption of compliance with the ability-to-repay requirement, even though each element of the ''qualified mortgage'' definition is met. See 12 CFR 1026.43(e)(1)(ii)(B). The CFPB's rule is intended to provide greater protection for borrowers by providing only a rebuttable presumption of compliance for higher-priced covered transactions.

The preamble to HUD's September 30, 2013, proposed rule discussed the CFPB's qualified mortgage regulations in more detail. Members of the public interested in more detail about the CFPB's regulations may refer to the preamble of HUD's September 30, 2013, proposed rule (see 78 FR 59892–59893) but more importantly should refer to the preamble to the CFPB's final rule published in the **Federal Register** on January 30, 2013, at 78 FR 6409.[5]

III. HUD's September 30, 2013, Proposed Rule

In its September 30, 2013, proposed rule, HUD submitted for public comment regulations defining qualified mortgage for its insured and guaranteed single family loan programs. The covered programs consist of single family loans insured under the National Housing Act (12 U.S.C. 1701 et seq.), and section 184 loans for Indian housing under the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a) (Section 184 guaranteed loans) and section 184A loans for Native Hawaiian housing under the Housing and Community Development Act of 1992 (1715z–13b) (Section 184A guaranteed loans). Of these programs, the single family loans insured under Title II of the National Housing Act (12 U.S.C. 1701 *et seq.*) (Title II) present the largest volume of mortgages insured by HUD, through FHA.

In the September 30, 2013, proposed rule, HUD proposed to define all FHA-insured single family mortgages to be qualified mortgages, except for reverse mortgages insured under HUD's Home Equity Conversion Mortgage (HECM) program (section 255 of the National Housing Act (12 U.S.C. 1715z–20)), which are exempt from the ability-to-repay requirements. Mortgages insured under the Title I Property Improvement Loan Insurance program and Manufactured Home Loan program (Title I), authorized by section 2 of the National Housing Act (12 U.S.C. 1703), and Section 184 guaranteed loans and Section 184A guaranteed loans, would be designated safe harbor qualified mortgages, with no specific points and fees limits and with no annual percentage rate (APR) limits. See 78 FR 59895 and 59897.

Similar to the CFPB's regulations, HUD proposed to provide for two types of qualified mortgages for FHA Title II mortgages: (1) A safe harbor qualified mortgage and (2) a rebuttable presumption qualified mortgage. For the Title II mortgages, HUD proposed to modify the APR limit used in the ''higher-priced covered transaction'' element as defined by the CFPB to distinguish between HUD's safe harbor qualified mortgages and rebuttable presumption qualified mortgages.

For Title II mortgages, HUD proposed to add a new § 203.19 to its regulations in 24 CFR part 203 [6] that would require, through the proposed definition of ''qualified mortgage,'' all FHA-insured single family mortgages, except for HECMs, to be ''qualified mortgages.'' HUD proposed to incorporate the safe harbor and rebuttable presumption standards within the definition of a ''qualified mortgage'' rather than create subsets based on defining whether a mortgage is a higher-priced covered transaction, as provided in the CFPB's regulations. HUD also proposed to adopt the CFPB's points and fees limitations at 12 CFR 1026.43(e)(3). HUD advised, in the proposed rule, that it considered the adoption of the points and fees limit as established by statute and adopted by the CFPB in its final rule to be appropriate.[7]

HUD's proposed rule defined ''safe harbor qualified mortgage'' for Title II mortgages as one that meets the requirements for insurance under the National Housing Act, meets the CFPB's points and fees limit, and has an APR for a first-lien mortgage relative to the average prime offer rate (APOR) that

[2] Section 129C also provides for a reverse mortgage to be a qualified mortgage if the mortgage meets the CFPB's standards for a qualified mortgage except to the extent that reverse mortgages are statutorily exempted altogether from the ability-to-repay requirements. The CFPB's regulations provide that the ability-to-repay requirements of section 129C(a) do not apply to reverse mortgages. In the preamble to its final rule published on January 30, 2013, the CPFB states: ''The Bureau notes that the final rule does not define a 'qualified' reverse mortgage. As described above, TILA section 129C(a)(8) excludes reverse mortgages from the repayment ability requirements. See section-by-section analysis of § 1026.43(a)(3)(i). However, TILA section 129C(b)(2)(ix) provides that the term 'qualified mortgage' may include a 'residential mortgage loan' that is 'a reverse mortgage which meets the standards for a qualified mortgage, as set by the Bureau in rules that are consistent with the purposes of this subsection.' The Board's proposal did not include reverse mortgages in the definition of a 'qualified mortgage.' '' See 78 FR 6516.

[3] Rulemaking authority under TILA was transferred to the CFPB.

[4] A ''higher-priced covered transaction'' is a transaction that has an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for a first-lien covered transaction, or by 3.5 or more percentage points for a subordinate-lien covered transaction.

[5] Various provisions of CFPB's January 2013, final rule were amended by rules published in the **Federal Register** on June 13, 2013, at 78 FR 35430, July 24, 2013, at 78 FR 44686, July 30, 2013, at 78 FR 45842, October 1, 2013, at 78 FR 60382, and October 23, 2013, at 78 FR 62993.

[6] All single family mortgages insured by FHA under the National Housing Act are governed by regulations in 24 CFR part 203 except for property improvement and manufactured home loans under Title I and the HECM program.

[7] As noted in the proposed rule, HUD's upfront mortgage insurance premium (UFMIP) is not included in the points and fees.

does not exceed the combined annual mortgage insurance premium (MIP) and 1.15 percentage points. HUD's proposed definition of ''safe harbor qualified mortgage'' for Title II mortgages provides a different APR relative to APOR threshold than under the CFPB's regulation. The APR relative to APOR threshold is higher than CFPB's and fluctuates according to the product's MIP. The CFPB's construct for determining a higher-priced covered transaction captured a number of FHA loans as a result of the MIP which HUD believes needs to be addressed.

As provided in the preamble to HUD's proposed rule, because all FHA-insured mortgages include a MIP that may vary from time to time to address HUD's financial soundness responsibilities, including the MIP as an element of the threshold that distinguishes safe harbor from rebuttable presumption allows the threshold to ''float'' in a manner that allows HUD to fulfill its responsibilities that would not be feasible if HUD adopted a threshold based only on the amount that APR exceeds APOR. As noted in the proposed rule, if a straight APR over APOR threshold were adopted by HUD, every time HUD would change the MIP to ensure the financial soundness of its insurance fund and reduce risk to the fund or to reflect a more positive market, HUD would also have to consider changing the threshold APR limit. HUD also provides for a higher overall APR relative to APOR to remove the impact of the MIP on the designation of ''safe harbor qualified mortgage'' and ''rebuttable presumption qualified mortgage'' definitions.

In the September 30, 2013, proposed rule, HUD proposed to define a ''rebuttable presumption qualified mortgage'' for Title II mortgages as a single family mortgage that is insured under the National Housing Act, does not exceed the CFPB's limits on points and fees, and has an APR that exceeds the APOR for a comparable mortgage, as of the date the interest rate is set, by more than the combined annual MIP and 1.15 percentage points for a first-lien mortgage. HUD's proposed rule provided that a mortgage that meets the requirements for a rebuttable presumption qualified mortgage would be presumed to comply with the ability to repay requirements in 15 U.S.C. 1639c(a). The proposed rule further provided that any rebuttal of such presumption of compliance must show that despite meeting the ''rebuttable presumption qualified mortgage'' requirements, the mortgagee did not make a reasonable and good-faith determination of the mortgagor's repayment ability at the time of consummation when underwriting the mortgage in accordance with HUD requirements.

In the September 30, 2013, proposed rule, HUD proposed to require FHA streamlined refinances to comply with HUD's qualified mortgage rule; that is, to require streamlined refinances to meet the points and fees requirements. Section 129C(a)(5) of TILA grants HUD the authority to exempt streamlined refinancing from the income verification requirements of section 129C(a)(4), subject to certain conditions. In the proposed rule, HUD advised that it did not consider it necessary to exercise this authority because HUD's qualified mortgage definition results in an exemption similar to the one contemplated under section 129C(a)(5). HUD requirements only exempt lenders from verifying income if the loan is originated consistent with the FHA-streamlined refinancing requirements, which means that the mortgage must be current, the loan is designed to lower the monthly principal and interest payment, and the loan involves no cash back to the borrower except for minor adjustments.[8]

HUD's proposed rule provided a detailed description of the policy and factors that HUD considered in developing a definition of ''qualified mortgage'' for the mortgages that it insures, guarantees, or otherwise administers. HUD is not repeating such description in the preamble to this final rule, and refers interested parties to the preamble of the September 30, 2013, proposed rule, for more detailed information about the proposed rule choices.

IV. This Final Rule

As noted earlier in this preamble, HUD retains its core definition of qualified mortgage, as provided in the September 30, 2013, proposed rule. However, in response to public comments, HUD makes certain clarifications and provides certain exemptions to compliance with HUD's qualified mortgage regulations in this final rule. Changes to the regulatory text made by this final rule and certain clarifications are as follows:

• *Compliance timeframe.* As HUD notes in greater detail in the responses to public comments below, this rule should allow lenders to make the same number of insured safe harbor qualified mortgages, using systems they have already been putting in place, than if HUD had taken no action. By taking the action of issuing this rule, HUD also provides an opportunity for lenders to modify their systems further on their own timetable to take full advantage of the potential increase in the number of insured safe harbor qualified mortgages allowed by this rule. HUD expects in accordance with a lender's own timetable and allocation of resources a lender will update its systems to increase the number of HUD-insured safe harbor qualified mortgages so to track any future revisions to HUD's MIP.

• *Designation of manufactured home mortgages as FHA safe harbor qualified mortgages.* HUD designates mortgages on manufactured homes insured under Title I and Title II to be safe harbor qualified mortgages with no changes, at this time, to the underwriting requirements for this category of housing. HUD's proposed rule was silent on the treatment of Title II manufactured housing, but HUD's intention was to exempt Title II manufactured housing mortgages from meeting the points and fees requirements of HUD's definition of qualified mortgage. HUD's designation of Title I loans as safe harbor qualified mortgages was also meant to encompass not only the Title I property improvement loans but also the Title I Manufactured Home Loan program. Similar to HUD's approach to Title I, HUD insurance of manufactured housing under Title II is a specialized product that necessitates further study.

• *Transactions exempted from compliance with HUD's qualified mortgage definition.* HUD is exempting certain mortgage transactions from compliance with HUD's qualified mortgage definition, which means that unlike all other FHA-insured mortgages, these mortgages are not subject to the requirements in § 203.19(b). These exemptions are the same exemptions provided by the CFPB in its regulations (see 12 CFR 1026.43(a)(3)). In exempting some of these transactions, the CFPB stated that the institutions involved in these transactions employ a traditional model of relationship lending that did not succumb to the general deterioration in lending standards that contributed to the financial crisis, they have particularly strong incentives to maintain positive reputations in their communities, and they often keep the loans they make in their own portfolios in order to pay appropriate attention to the borrower's ability to repay the loan. Therefore, consistent with the CFPB, HUD exempts from compliance with its definition of qualified mortgage the following insured mortgages:

[8] Handbook 4155.1, Ch. 6, Sec. C (Mortgage Credit Analysis for Mortgage Insurance on One-to-Four Unit Mortgage Loans—Streamline Refinances) *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgh/4155.1.*

(1) A reverse mortgage subject to 12 CFR 1026.33;

(2) a temporary or ''bridge'' loan with a term of 12 months or less;

(3) a construction phase of 12 months or less of a construction-to-permanent loan;

(4) a mortgage made by:

(a) A housing finance agency (HFA), as defined in HUD's regulations at 24 CFR 266.5;

(b) a creditor designated as a Community Development Financial Institution, as defined in the regulations of the Department of Treasury's Community Development Financial Institutions program at 12 CFR 1805.104(h);

(c) a creditor designated as a Downpayment Assistance through Secondary Financing Provider, pursuant to HUD's regulations in 24 CFR 200.194(a), operating in accordance with HUD regulations as applicable to such creditors;

(d) a creditor designated as a Community Housing Development Organization provided that the creditor has entered into a commitment with a participating jurisdiction and is undertaking a project under the HOME Investment Partnerships (HOME) program, pursuant to HUD's regulations at 24 CFR 92.300(a);

(e) a creditor with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3); 26 CFR 1.501(c)(3)–1), provided that:

(i) During the calendar year preceding receipt of the consumer's application, the creditor extended credit secured by a dwelling no more than 200 times;

(ii) during the calendar year preceding receipt of the consumer's application, the creditor extended credit secured by a dwelling only to consumers with income that did not exceed the low- and moderate-income household limit as established pursuant to section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20)) and amended from time to time by HUD pursuant to HUD's regulations at 24 CFR 570.3;

(iii) the extension of credit is to a consumer with income that does not exceed the household limit specified in the applicable FHA program; and

(iv) the creditor determines, in accordance with written procedures, that the consumer has a reasonable ability to repay the extension of credit; and

(5) an extension of credit made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211; 5219).

All of these mortgages were exempt by the CFPB from compliance with its ability to repay regulations and HUD agrees that the single family mortgages with which these governmental and nonprofit organizations are involved, many under HUD programs as noted above, should be exempt from compliance with HUD's qualified mortgage regulations while otherwise meeting HUD requirements.

• *Adoption of the CFPB's guidance definitions for APR, APOR, and points and fees.* For purposes of clarity, this final rule adopts, through cross-reference, the CFPB's definitions of APOR, APR, and points and fees. The CFPB defines APOR at 12 CFR 1026.35, APR at 1026.22, and points and fees at 12 CFR 1026.32(b)(1). In addition to these definitions, the CFPB provides guidance for APR calculations in Appendix J to 12 CFR part 1026; guidance for points and fees is provided in Paragraph 32(b) of CFPB's Official Interpretation, which is Supplement I to 12 CFR part 1026; and guidance for APOR is provided in Paragraph 35 of Supplement I to 12 CFR part 1026. HUD adopts this guidance for consistency with the CFPB.

• *Adoption of CFPB's definition of points and fees and clarification on non-affiliated fees.* HUD clarifies the points and fees calculation that applies in this final rule by incorporating the CFPB's points and fees definition at 12 CFR 1026.32(b). In adopting the CFPB's points and fees definition, HUD clarifies for commenters that housing counseling fees and rehabilitation consultant fees under HUD's 203(k) program may be excluded from points and fees if made by a third-party and is not retained by the creditor, loan originator, or an affiliate of either. HUD-approved housing counseling for borrowers seeking FHA-insured mortgages, whether such counseling is voluntary or required, is not part of the points and fees calculation. HUD-approved housing counseling agencies are not permitted to be affiliated with either a creditor or loan originator and, therefore, fees that were paid for counseling would be exempt from the points and fees calculation for the transaction. Additionally, exempt from the points and fees calculation are consultant fees for ensuring program compliance and for drafting the required architectural exhibits for the 203(k) program by non-affiliated entities. HUD requires the use of a HUD consultant to ensure 203(k) program compliance and strongly encourages the use of an independent consultant to prepare the required architectural exhibits. Both types of consultation fees, if obtained by non-affiliated entities on the 203(k) consultant list, are not included in the points and fees calculation, and therefore adoption of the CFPB points and fees definition should not reduce access to the 203(k) program

• *Clarification of the rebuttable presumption standard.* HUD amends the rebuttable presumption standard to clarify the elements of such standard are consistent with HUD's existing underwriting requirements for rebutting the presumption. The proposed rule stated that to rebut the presumption a borrower must prove that ''the mortgage exceeded the points and fees limit in paragraph (b)(1) of this section or that, despite the mortgage being insured under the National Housing Act, the mortgagee did not make a reasonable and good-faith determination of the mortgagor's repayment ability at the time of consummation, by failing to consider the mortgagor's income, debt obligations, alimony, child support, monthly payment on any simultaneous loans, and monthly payment (including mortgage-related obligations) on the mortgage, as applicable to the type of mortgage, when underwriting the mortgage in accordance with HUD requirements.'' HUD adopted the list of the CFPB's factors (mortgagor's income, debt obligations, alimony, child support, monthly payment on any simultaneous loans, and monthly payment) to remain consistent with the CFPB's rebuttable presumption standard, but intended those factors to harmonize with HUD's existing underwriting requirements. In response to commenters, HUD believes listing HUD's specific underwriting categories is more helpful than solely citing to the list provided by the CFPB. HUD replaces the CFPB's list with FHA's ''income, credit and assets'' underwriting categories, found in FHA's Underwriting Handbook. Additionally, HUD clarifies that the entity is required to do more than consider the list of ability to repay indicators for the borrower, but evaluate the mortgagor's income, credit, and assets in accordance with HUD underwriting requirements.

• *Clarification of relationship between indemnification and qualified mortgage status.* HUD adds at this final rule stage a section clarifying that a demand for indemnification or the occurrence of indemnification does not per se remove qualified mortgage status. The final rule includes an indemnification clause for both Title I and Title II loans, which clarifies that an indemnification demand or resolution

of a demand that relates to whether the loan satisfied relevant eligibility and underwriting requirements at time of consummation may result from facts that could allow a change in qualified mortgage status, but the existence of an indemnification does not per se remove qualified mortgage status.

• *Flexibility to respond to lender or borrower needs consistent with the FHA mission.* HUD also adds language to its qualified mortgage regulations to give FHA flexibility to make adjustments, including to the points and fees definition and the list of exempted transactions, that may be necessary to address situations where the FHA Commissioner determines such adjustments are necessary, including in times of significant decrease of available credit, increase in foreclosures, or disaster situations that adversely affect the availability of housing finance. The changes would provide for notice and the opportunity for comment prior to implementing any changes, and HUD contemplates that changes made through this notice process would be temporary not permanent changes. For example, the housing mortgage crisis that emerged late in 2008 resulted in mortgage products designed to keep homeowners from losing their homes. These mortgage products were largely temporary without a permanent regulatory structure. In a situation such as this, the notice process provided in this rule would allow the Commissioner to determine whether such products would be subject to FHA's qualified mortgage definition or be exempt. The notice process would not, however, apply to the rebuttable presumption/safe harbor thresholds in § 203.19(b)(2) and (3).

In the preamble to the September 30, 2013, proposed rule, HUD committed to further study the parameters for distinguishing between a safe harbor qualified mortgage and a rebuttable presumption qualified mortgage for the Title I, Section 184 and Section 184A loans, and makes this same commitment for Title II loans that are subject to HUD's qualified mortgage regulations in this final rule. HUD will monitor how the two subsets of qualified mortgages work for FHA Title II loans subject to these regulations, primarily in relationship to the two subset approach provided for the conventional mortgage market. Given current and expected MIPs, HUD also reiterates that a mortgage that is a safe harbor qualified mortgage under the CFPB's special rules for HUD loans as a safe harbor qualified mortgage would satisfy HUD's regulations.

V. HUD's Responses to Key Issues Raised by Public Commenters

This section of the preamble discusses the key issues raised by the comments submitted in response to the September 30, 2013, proposed rule. All public comments can be viewed at the following Web site, *www.regulations.gov,* under docket number HUD–2013–0093.

Comment: Delay implementation of HUD's rule: The majority of commenters expressed support for HUD's proposed rule but the majority also stated that an implementation date of January 2014 was too soon and would not allow sufficient time for lenders to modify their systems to include the specific features of HUD requirements for qualified mortgages. Commenters stated that industry would find it extremely challenging to be ready to originate loans without a robust compliance infrastructure in place. Commenters suggested that if HUD is intent in implementing qualified mortgage regulations by January 2014, HUD should do so through a staged approach. Commenters suggested that HUD begin with all HUD insured and guaranteed single family mortgages being designated as safe harbor qualified mortgages and provide for implementation of HUD rebuttable presumption qualified mortgages at a later date. Another commenter requested that HUD withdraw its rule until HUD had taken more time to assess the impacts of its proposed rule.

Response: HUD understands that the lending industry may need more time to adjust systems to fully implement HUD's qualified mortgage regulations. However, HUD considers that all lenders will be in a position to substantially implement HUD's regulations immediately because of system modifications that were already required under CFPB's regulations and which lenders have been given a full year to implement. If HUD had taken no action at all, lenders making FHA-insured loans that are qualified mortgages would have to have systems in place to account for loans that (1) have regular periodic payments and do not have certain risky features, (2) do not exceed a term of 30 years, and (3) do not exceed certain specified limits on points and fees. HUD's rule is not changing any of these requirements and, therefore, no system changes to address any of these requirements because of HUD's rule should be necessary. Further, systems that lenders have put in place to identify safe harbor qualified mortgages under the CFPB's 1.5 percent APR threshold should also identify the substantial majority of safe harbor qualified mortgages under HUD's APR threshold. A loan that meets the 1.5 percent threshold will also be in compliance with the HUD threshold. Only HUD safe harbor loans that exceed the 1.5 percent threshold would not be picked up by such systems. Thus, lenders are no worse off under HUD's rule in terms of making safe harbor qualified mortgages, using systems already required to be in place, than they would be if HUD had taken no action. To the extent that lenders take steps to conform their systems to identify the higher APR safe harbor threshold allowed under the HUD rule, they will be better off in terms of making safe harbor qualified mortgages than they would have been if HUD had taken no action. The HUD rule provides an immediate opportunity for lenders to increase the number of HUD-insured safe harbor qualified mortgages they make in accordance with a timetable and allocation of resources of their choosing, but HUD does not consider it necessary for any lender to change systems immediately to adapt to HUD's requirements in order to make the same number of insured safe harbor qualified mortgages as a lender would otherwise make.

Comment: Unnecessary to establish two types of qualified mortgages for FHA loans: Designate all FHA loans as safe harbor qualified mortgages to reduce burden and costs: Commenters stated that bifurcation between qualified mortgage safe harbor loans and qualified mortgage rebuttable presumption loans under CFPB's rule is intended to provide greater protection for borrowers with higher-priced mortgage loans. The commenters stated that unlike the CFPB's rule, which governs the wider market of private prime and higher-priced lending, HUD's rule covers only FHA loans. The commenters stated that this protection is unnecessary in the context of FHA loans, which are subject to strict oversight, control, and regulation. Commenters stated that FHA's sound underwriting process ensures consumer access to safe mortgage loans and the recent steps FHA has undertaken to strengthen its underwriting standards have reduced risks.

A commenter similarly stated that its view is that there are safeguards and practices in place, unique to FHA lending and its mission, to lessen the need to copy the CFPB's two-tiered qualified mortgage approach and HUD should instead classify all FHA loans as safe harbor qualified mortgages. The commenter stated that other than a desire to mirror the CFPB's final rule,

HUD's proposed rule provides no basis that such a distinction is needed for the FHA market. The commenter stated that HUD acknowledges (in the costs and benefits discussion of the preamble to the proposed rule) that the vast majority of FHA loans will meet the proposed safe harbor parameters; and for most of those that do not, it would be attributable to the limit on points and fees. The commenter stated that this suggests that there are no market indications that the two-tiered approach is warranted.

Another commenter stated that HUD defended its proposal to adopt the same points/fees measure for FHA-insured loans as the CFPB qualified mortgage final rule on the basis that it would not give a lender an incentive to choose on the basis of a different (and perhaps higher) points/fees measure for FHA-insured loans. The commenter stated that HUD should consider the potential loss of additional price, product, and service choices for the borrower that might be reduced by the use of a different qualified mortgage standard.

A few commenters stated that FHA's mission is to correct, not create, market failure. The commenter stated that HUD's proposed rule establishes a materially different qualified mortgage standard for FHA insured mortgages than the CFPB qualified mortgage standard for conventional mortgage loans. The commenters stated that HUD seems to rely upon an overly expansive ''mission'' justification for creating a different qualified mortgage rule than the one established by the CFPB. The commenters stated that to the extent the mission of FHA is to ensure credit access to under-served people, such a distinction may be appropriate, but that the great majority of FHA-insured lending in recent years has been related to a different purpose, which is to provide backstop countercyclical liquidity in a housing market decline. The commenters stated this countercyclical activity is not discussed in the proposed rule, so it is unclear how this activity relates to the mission justification cited. The commenter stated that substantially different qualified mortgage rules distort markets and delay the return of FHA to its primary mission.

Commenters stated that HUD's proposed qualified mortgage structure for FHA loans adds significant regulatory burden and cost to the lender and borrower. Commenters stated that differentiating safe harbor from rebuttable presumption loans for only 3 percent of the current FHA market would require extensive system changes, staff training and monitoring and compliance systems, which will be an expense that saddles the 97 percent of FHA borrowers, whereas, treating all loans as safe harbors will present little compliance cost or regulatory burden. The industry is already burdened with extensive and significant changes that are estimated to increase origination costs.

Response: HUD's position is that in addition to prospective borrowers of FHA-insured mortgages the overall mortgage market benefits from FHA loans being closely aligned with the statutory criteria applicable to a borrower's ability to repay, and the regulations promulgated by the CFPB. Section 1402 of the Dodd-Frank Act states that Congress created new section 129C of TILA upon a finding that ''economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.'' [9] Section 1402 of the Dodd-Frank Act further states that the purpose of section 129C of TILA is to ''assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans.'' The CFPB, in its regulations, distinguishes between a safe harbor qualified mortgage and a rebuttable presumption qualified mortgage based on whether the mortgages are prime loans (safe harbor) or subprime loans (rebuttable presumption).[10]

Although section 129C(b)(3)(B)(ii) of TILA authorizes HUD to revise, add to, or subtract from the statutory criteria used to define a qualified mortgage in defining ''qualified mortgage'' for the mortgages that HUD insures, guarantees or otherwise administers, HUD respects the analysis that the CFPB undertook in defining ''qualified mortgage'' for the conventional mortgage market, and sees value in having a safe harbor qualified mortgage and a rebuttable presumption qualified mortgage as established in regulation by the CFPB. HUD's regulation differs from the CFBP's regulation in distinguishing between the two types of qualified mortgages for FHA Title II mortgages based on the mortgage's APR. HUD incorporates the APR as an internal element of HUD's definition of qualified mortgages to distinguish safe harbor qualified mortgages from the rebuttable presumption qualified mortgages. The CFPB's ''higher-priced covered transaction'' is an external element that is applied to a single definition of ''qualified mortgage.''

As proposed in HUD's September 30, 2013, proposed rule, HUD's ''safe harbor qualified mortgage'' provides a different APR relative to APOR threshold than the CFPB's requirement that a first-lien covered transaction have an APR of less than 1.5 percentage points above the APOR. Under this final rule, for a Title II FHA mortgage to meet the ''safe harbor qualified mortgage'' definition, the mortgage is required to have an APR that does not exceed the APOR for a comparable mortgage by more than the combined annual mortgage insurance premium (MIP) and 1.15 percentage points. HUD adopts the higher APR to remediate the fact that some FHA loans would fall under the CFPB's ''higher-priced covered transaction'' as a result of the MIP. The MIP by itself should not be the factor that determines whether a loan is a higher-priced transaction.

Because all FHA-insured mortgages include a MIP that may vary from time to time to address HUD's financial soundness responsibilities, including the MIP as an element of the threshold that distinguishes safe harbor from rebuttable presumption allows the threshold to ''float'' in a manner that allows HUD to fulfill its responsibilities that would not be feasible if HUD adopted a threshold based only on the amount that APR exceeds APOR. If a straight APR over APOR threshold were adopted by HUD, every time HUD would change the MIP to ensure the financial soundness of its insurance fund and reduce risk to the fund or to reflect a more positive market, HUD would also have to consider changing the threshold APR limit.

In addition to the benefit of having a construct similar to the CFPB's construct, HUD expects that a rebuttable presumption category could place downward pressure on the APRs of FHA mortgages. This downward pressure would result in transfers from some FHA lenders to some FHA borrowers, and would also provide social benefits (more sustainable homeowners due to lower rates) in the aggregate. These transfers from lenders arise from legal protections they receive from achieving safe harbor rather than rebuttable presumption status under the HUD rule. Moreover, HUD, through proposing its own rebuttable presumption standard keeps conventional lenders from sending loans to HUD to take advantage of what would otherwise be no APR threshold and forces conventional lenders to keep APR within the limit for the CFPB's standard or HUD's standard for safe harbor. For example, a

[9] See TILA section 129B(a)(1), 15 U.S.C. 1639b(a)(1).

[10] See 78 FR 6408.

consumer who applies for a higher risk conventional loan may not meet the CFPB's qualified mortgage on the basis of high points and fees, or if the points and fees are reduced to 3 percent, the APR may become too high for safe harbor under the CFPB rules. However, the consumer might instead be offered a higher interest rate FHA loan in return for lower points and fees, and the lender could achieve qualified mortgage with safe harbor status as an FHA loan with a very high APR in the absence of an FHA rebuttable presumption standard. Additionally, HUD believes that the loans that require a higher APR should be treated with more caution and borrowers should retain the right to challenge on ability-to-repay grounds. HUD's rule attempts to strike a balance between providing lenders legal protections and providing borrowers with access to redress when a loan is more risky.

HUD carefully reviewed the public comments requesting that HUD adopt a single standard—a safe harbor standard, but for the reasons presented in this response and in the preamble to HUD's September 30, 2013, proposed rule, HUD maintains that this is the right approach.

Comment: Designate all FHA loans rebuttable presumption qualified mortgages: A few comments opposed the establishment of a safe harbor for most FHA loans. The commenters stated that the proposed rule provides less protection to consumers than the CFPB's rule. The commenters expressed concern that a consequence would be the reemergence of abusive FHA lending. The commenters stated that a rebuttable presumption means that a homeowner can hold a lender to the basic promise of the CFPB's rule, which is that lenders will reasonably assess a person's ability to afford a loan before that loan is made. A commenter stated that only a rebuttable presumption standard can provide consumers with the legal protection needed to preempt unforeseen predatory practices.

Another commenter stated that those who support a safe harbor emphasize the additional cost associated with a rebuttable presumption. The commenter stated that an examination of the structure of TILA and the litigation facts associated with claims under TILA makes clear these claims are unfounded. The commenter stated that TILA's pre-existing general rules on liability already carefully calibrate the interests of the industry and its customers, and are applicable even where there is a rebuttable presumption for ability-to-pay claims. The commenter disputed that there are substantial legal costs associated with defending rebuttable presumption loans. The commenter stated that most homeowners will not have counsel to seek redress, the remedy is circumscribed, the amount of proof is substantial and the objective amount of litigation in this area is very small. The commenter urged HUD to look behind claims of substantial compliance costs associated with a rebuttable presumption.

Response: HUD disagrees that that the inclusion of a safe harbor qualified mortgage, as opposed to making all FHA-insured loans rebuttable presumption mortgages, will result in ''abusive FHA lending.'' The inclusion of a safe harbor qualified mortgage offers lenders an incentive to make qualified mortgages while maintaining the borrower protections required by the Dodd-Frank Act. HUD further notes that a safe harbor qualified mortgage is not exempt from any legal challenge. A borrower can continue to file a legal claim against a lender if the borrower finds or believes that the lender did not meet statutory or regulatory requirements applicable to a mortgage. However, for a safe harbor mortgage, the bar in challenging a lender meeting ability to repay requirements will be higher. Additionally, the borrower benefits from lower loan costs because lender's face lower legal risk with a safe harbor qualified mortgage and, as a result, the lender does not need to build in the cost of the higher legal risk associated with a rebuttable presumption loan. HUD believes, therefore, that the loans labeled safe harbor have met the ability-to-repay requirements and that HUD's structure, that is consistent with CFPB's structure, is appropriate for FHA-insured loans.

Comment: HUD's adoption of the CFPB's points and fees features will adversely affect the FHA mortgage market and reduce available credit for the very populations FHA was established to serve: Commenters stated that HUD's cap on points and fees will destroy the lending options for the exact group FHA and HUD were intended to assist. Commenters stated that lenders are not likely to adapt to meet the points and fees requirements to insure the loan, but instead the points and fees threshold will result in preventing some borrowers from obtaining loans. Commenters requested that HUD increase the 3 percent limit on points and fees to ensure that low- and moderate-income borrowers can continue to access a variety of affordable loan products.

A commenter expressed support for protecting borrowers from excessive and unnecessary fees, but stated that the proposed cap was too low and could make ineligible for FHA-insurance many responsibly underwritten loans that are in the borrowers' best interest. A few commenters stated that HUD's adoption of points and fees is contrary to other FHA actions. The commenters stated that HUD is returning to an age where discount points were controlled and limitations were placed on origination points and this is contrary to action taken by FHA a year ago when FHA decided to ''deactivate the 1% ceiling to what was prudent and customary in our region.'' Another commenter stated that HUD should exclude MIP from the points and fees calculation.

Response: In developing the September 30, 2013, proposed rule, HUD gave careful consideration to the percentage limit that should be placed on points and fees. The 3 percent points and fees limit is one of the statutory criteria used to define a qualified mortgage, and the CFPB retained this criterion in its regulatory definition with adjustments to facilitate the presumption of compliance for smaller loans. HUD considers the proposed adoption of the points and fees limit, as established by statute and adopted by the CFPB in its rule, to be appropriate for FHA Title II loans that HUD has identified as subject to its qualified mortgage definition. In this final rule, HUD has clarified the points and fees are applicable to FHA-approved lenders by adopting, through cross-reference, the CFPB's definition of ''points and fees.'' Included in the definition is the exclusion of ''any premium or other charge imposed in connection with any Federal or State agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss.'' 12 CFR 1026.32(b)(1)(i)(B).

As stated in the preamble to HUD's September 30, 2013, proposed rule, HUD's practice prior to this rule was that points and fees would be individually negotiated.[11] Although HUD has not established a firm cap for points and fees for HUD-insured mortgages, they have been limited to reasonable and customary amounts not to exceed the actual costs of specific items and reasonable and customary charges as may be approved by the Federal Housing Commissioner (see 24 CFR 203.27(a)).

As stated in HUD's September 30, 2013, proposed rule, as the market

[11] Generally, the term ''points'' refers to points charged against interest so that a higher up-front payment results in a lower interest rate or vice versa.

adopts the CFPB's 3-percent cap on points and fees for qualified mortgages, FHA lenders would be required to cap points and fees at about 3 percent, as a result of HUD's existing reasonable and customary standard. However, if HUD simply maintained its existing reasonable and customary standard for FHA lenders, FHA lenders would be forced to determine if charging an amount a little over 3-percent points and fees would mean the loan is a qualified mortgage, which could result in higher litigation costs to prove that the loan was a qualified mortgage based solely on whether the points and fees of the loan were reasonable and customary. By HUD adopting the cap of 3- percent points and fees, lenders would not be forced to determine what is reasonable and customary, thereby, providing certainty in the market and setting a clear enforcement standard. Many commenters argued for a bright line test and the points and fees cap adopted from CFPB accommodates that request. Additionally, the 3-percent points and fees cap is consistent with the conventional market's qualified mortgage definition and adopting the same will provide consistency for FHA lenders. HUD believes that if it did not adopt the same 3-percent points and fees caps for the majority of HUD's portfolio FHA could see an increase of market share.

With respect to concerns about loss of access to mortgage credit by low- and moderate-income borrowers that FHA has traditionally served, HUD submits that the exemption of certain transactions from compliance with HUD's qualified mortgage definition (transactions made on behalf of entities with missions similar to HUD which assist low- and moderate-income borrowers in obtaining homeownership financing) helps ensure that low- and moderate-income borrowers can continue to access a variety of affordable loan products. HUD also takes the opportunity at the final rule stage to clarify that HUD-approved housing counseling fees and rehabilitation consultant fees that are required by HUD and provided by non-affiliated entities are third party charges, and as such, would not be included in points and fees under the CFPB's exemption of bona fide third-party charges at 24 CFR 1026.32(b)(1)(i)(D).[12]

HUD also adds language to its qualified mortgage regulations to give FHA flexibility to make any adjustments to the points and fees calculation where the FHA Commissioner determines such adjustments are necessary.

Comment: The inclusion of mortgage broker's and affiliate's fees in the cap on point and fees limits consumer choice and makes it difficult for small lenders and mortgage brokers to compete in the mortgage market: Several commenters stated that HUD's rule will limit the number of lenders who can offer mortgage products to borrowers. The primary objection was the inclusion of mortgage broker fees or affiliate fees in the points and fees cap in the CFPB's definition of points and fees. Commenters stated that applying the 3 percent points and fees cap to mortgage brokers creates a distinct and unfair competitive advantage to the banks and large lenders. Commenters stated that the points and fees cap limit adversely impacts lenders with affiliates without apparent reason.

Commenters stated that the 3 percent cap is too low, and makes it unprofitable for lenders and brokers to engage in mortgage business. The commenters stated that, by including compensation paid by a creditor to any loan originator other than an employee (e.g., a mortgage brokerage company or a lender acting as a mortgage broker) in the points and fees calculation, non-depository direct lenders and other bank owned companies are given a distinct and arguably unfair competitive advantage over those in the wholesale channel. The commenters stated that the retail lender can build compensation into its loan, where the broker and a direct lender cannot, by effect making a double-standard. Commenters stated that inclusion of the lender-paid compensation in the 3 percent cap will all but eliminate broker participation in small loans. The adverse treatment of affiliated fees has a disproportionate effect on lower dollar transactions, and consequently, the availability of lower dollar mortgages will be somewhat limited, which goes against the mission of FHA lending.

One commenter stated that it is important to remember that the largest third-party fee, often provided by an affiliated title agent, is title insurance. The commenter stated that the cost for title insurance to the consumer does not vary from title agent to title agent whether there is or is not an affiliation because agents are bound by their title insurance underwriter's filed rates for the state where the property is located. The commenter stated that the title agent charges the rate filed by the underwriter. Nonetheless, the current definition would include the title insurance charge in the points and fees if the title agent is an affiliate.

One commenter stated that in place of the inclusion of mortgage broker's and affiliate's fees in the cap on points and fees, HUD could limit adverse selection by including in its regulation that ''any lender participating in the FHA program may not pay or compensate a loan originator or broker differently for originating an FHA loan than any other loan type, through any compensation mechanism, whether such compensation is paid directly or indirectly to the originator.''

Response: HUD recognizes that this issue, which was raised in the CFPB's rulemaking on the definition of ''qualified mortgage,'' remains an issue among industry commenters. This issue was discussed by CFPB in the preamble to its January 2013 final rule. CFPB responded to comments submitted on the May 11, 2011, proposed rule of the Federal Reserve Board, which had initial responsibility for proposing regulations to implement section 129C of TILA,[13] As explained by the CFPB in the preamble to the final rule, TILA, as amended by the Dodd-Frank Act, contemplates that compensation paid to mortgage brokers and other loan originators after consummation of a loan transaction is to be counted toward the points and fees threshold.

The CFPB noted that the Dodd-Frank Act removed the phrase ''payable at or before closing'' from the high-cost mortgage points and fees test and did not apply the ''payable at or before closing'' limitation to the points and fees cap for qualified mortgages. See 78 FR 6432 and sections 103(bb)(1)(A)(ii) and 129C(b)(2)(A)(vii), (b)(2)(C) of TILA. The CFPB stated that in light of evident concern by Congress with loan originator compensation practices, it would not be appropriate to waive the statutory requirement that loan originator compensation be included in points and fees, but that the CFPB would provide detailed guidance to clarify what compensation must be included in points and fees. See 78 FR 6434–6435. Additionally, CFPB stated that throughout the Dodd-Frank Act amendments Congress made clear that affiliate fees should be treated the same way as fees paid to loan originators. See 78 FR 6439.

Given the detailed response that CFBP provided in its rule on this issue, the submission of these same comments in response to HUD's rulemaking does not adequately rebut CFPB's justification for the differing treatment, which focuses on potential competition issues. At this final rule stage, HUD will not take a position that differs from that taken by

[12] Exceptions to this exemption include when the charge is for a guaranty or insurance that is not in connection with any Federal or State agency program, is a real-estate related fee, or is a premium or other charge for insurance for which the creditor is the beneficiary. 12 CFR 1026.32(b)(1)(i)(D).

the CFPB, which was based on direction from Congress that loan origination compensation and affiliated fees are to be included in points and fees. HUD needs time to examine this issue further, and see whether HUD has discretion to take action that differs from the position taken by CFPB and whether a departure from CFPB on this issue would be in the interest of promoting HUD's mission.

Comment: Failure to meet the point and fee structure disqualifies a loan from insurance and requires a more careful analysis: Commenters stated that if HUD will not insure non-qualified mortgages, HUD's regulation should provide for adjustment of the points and fees limits for lower balances. One of the commenters expressed support for a higher percentage for lower balance loans and wrote that the threshold of 3 percent for FHA becomes a problem at the $100,000 range. The commenter recommended amending the cap to allow loans between $100,000 and $150,000, up to $4,500 in points and fees. The commenter stated that the additional rate would ''more accurately reflect the fixed costs of originating these smaller balance loans,'' and avoid the denial of loans to otherwise qualified FHA borrowers.

Another commenter stated that HUD's rule provides that a failure to meet the points and fees limit and for any of the qualified mortgage requirements not only disqualifies a loan from qualified mortgage status but also disqualifies a loan from qualifying for FHA insurance. The commenter stated that if FHA does go in this direction it is important for FHA to ensure that qualified mortgage requirements are appropriately adjusted in light of their role as program requirements. The commenter urged HUD to adjust the points and fees limit for lower balance FHA-insured loans. Another commenter stated that, as a result of only being able to originate qualified mortgage loans lenders will likely leave the market place and that will disproportionately hurt underserved populations.

Response: As addressed above, HUD believes aligning with the CFPB's limit on points and fees is appropriate. TILA section 129C(b)(2) defined the points and fees limit for a qualified mortgage at 3 percent and tasked the CFPB to come up with adjustments to the limit for smaller loans. The CFPB analyzed the differences between loan amounts to determine that a $100,000 loan cap was the appropriate place to limit the definition for a smaller loan for the points and fees threshold. See 78 FR 6531–6532. HUD does not currently have data on points and fees to determine whether a different threshold would be appropriate for defining smaller loans for FHA loans. HUD needs time to examine this issue further, and determine whether HUD has discretion to take action that differs from the position taken by CFPB and whether a departure from CFPB on this issue would be in the interest of promoting HUD's mission.

Comment: Capping points and fees is irrelevant to a borrower's ability to repay a mortgage: A few commenters stated that capping points and fees does not have a direct connection to whether a borrower can repay a mortgage loan. A commenter stated that the APOR and APR have nothing to do with the actual ability of the borrower to repay the loan.

Response: The 3 percent points and fees limit is one of the statutory criteria used to define a qualified mortgage. As the CFPB noted in the preamble to its January 2013 final rule, Congressional intent in amending TILA was not solely to require lenders to take the necessary steps to try and ensure that a borrower can repay a residential mortgage loan but that a qualified mortgage is a products with limited fees and safe features which preserves the availability of affordable credit to consumers. See the CFPB's final rule at 78 FR 6426.

Comment: Replace HUD's proposed 1.15 percentage point with the CFPB's 1.5 percentage point: Several commenters recommended that HUD's safe harbor APR standard for FHA be adopted with the standard 1.5 percentage point in place of the proposed 1.15 percentage point. The commenters stated that such a change would bring consistency with the CFPB's regulation, reduce confusion in the lending community, and broaden the scope of loans that meet the safe harbor definition. Other commenters stated that this ''structure will more adequately address the needs of low- and moderate-income borrowers, borrowers from underserved areas, and minority borrowers.'' A commenter stated that adopting the 1.5 percentage point ratio would allow lenders more flexibility to offer lender credits to help first time and underserved buyers without exceeding the qualified mortgage limits.

A commenter questioned HUD's basis for the APR for FHA safe harbor's to exceed the APR of the CFPB's safe harbor standard. The commenter stated that HUD's first justification seems to rest on lower lender compliance costs and lower litigation costs which will pass on savings to borrowers. The commenter stated that the second factor that HUD points to is the perceived need to allow its APR to APOR spread rate to float with the MIP rate. The commenter stated that the overall purpose of Dodd-Frank ability-to-repay requirements, of which the CFPB and HUD qualified mortgage rules are subsets, is to strike a balance between providing lenders with legal protection when making relatively safe loans that the borrower reasonably can be expected to repay, and providing borrowers with appropriate legal recourse when lenders do not do so. The commenter stated that while HUD's mission to facilitate lending to traditionally underserved borrowers is relevant here, so too must be preserving the legal rights of borrowers where lenders fail to meet their obligations to ensure the borrower's reasonable ability to repay the loan. The commenter further stated that while the inclusion of the MIP may be a legitimate concern it can be included within the calculation already provided by the CFPB's safe harbor definition.

Response: As stated in HUD's September 30, 2013, proposed rule, and accompanying regulatory impact analysis, HUD's qualified mortgage standard increases the number of FHA-insured mortgages that are safe harbor. As provided in the proposed rule and maintained in this final rule, FHA's MIP is explicitly included in the APR to APOR spread calculation but the limit on the spread itself, prior to the addition of the MIP, is reduced from 150 basis points (in the CFPB final rule) to 115 basis points (in HUD's rule). The inclusion of the MIP and the reduction in basis points results in a reduction of the pool of FHA-insured mortgages that would be designated rebuttable presumption under the CFPB's standard while increasing the number of FHA-insured mortgages that would be designated safe harbor. As noted in the regulatory impact analysis that accompanied HUD's September 30, 2013, proposed rule, HUD estimated that there were 129,500 (about 19 percent) FHA-insured mortgages (with relatively high APRs) insured between July 2012 and December 2012 that would have been rebuttable presumption under the CFPB's qualified mortgage standard but qualify as safe harbor qualified mortgages under HUD's regulation. If HUD adopted a basis point metric higher than 115 percent plus MIP more loans would be designated safe harbor. HUD's analysis shows that adoption of a higher initial basis point, such as 150 percent, would result in only a few additional loans being designated a safe harbor qualified mortgage, but that the loans that would are the ones that HUD believes would receive greater benefit from having

access to the protections afforded a rebuttable presumption loan. Therefore, HUD maintains that the 115 basis points plus MIP is the appropriate standard.

HUD reiterates that the compliance mechanisms to identify a safe harbor qualified mortgage under the special rules for HUD loans will similarly identify a safe harbor qualified mortgage for FHA insured loans under HUD's final rule.

Comment: Provide a clear distinction between safe harbor and rebuttable presumption: Some commenters expressed support for HUD's proposal to adopt an APR relative to the APOR that accounts for the annual MIP. Other commenters, however, requested that HUD clarify how the threshold between FHA's safe harbor qualified mortgage and rebuttable presumption would work, specifically what the MIP is and how it is to be incorporated. The commenters stated that it is not entirely clear how lenders would combine the annual MIP with 1.15% to calculate the FHA safe harbor threshold. The commenters stated that it appears that HUD intends the lender to calculate the sum of the annual MIP rate and 1.15% (e.g., 1.35 + 1.15 = 2.50) and then determine whether the loan's APR exceeds the applicable APOR by that amount.

Several commenters suggested that the distinction between an FHA safe harbor qualified mortgage and a rebuttable presumption qualified mortgage should be keyed to a bright line standard, not a rate cut-off that incorporates a floating MIP component. The commenters stated that HUD should consider moving from a floating threshold incorporating any of several MIP premiums to the CFPB standard of 150 bps with the addition of 135 bps to reflect the maximum MIP for FHA loans, or 285 bps over APOR. The commenters stated that this standard would be pegged to the CFPB threshold and FHA's maximum MIP going forward so it could be adjusted as needed for all loans but it would not float or vary depending on the individual loan. The commenter stated that this approach has the benefit of employing a widely known and widely programmed standard—the CFPB threshold between safe harbor and rebuttable presumption loans. The commenter stated that taking such an approach would especially be helpful for smaller lenders, as the rule would be simpler and consequently less costly. It will also negate the necessity for the HUD to change its qualified mortgage rule every time FHA changes its maximum allowable MIP. Another commenter recommended that HUD establish a fixed threshold of 2.5 percentage points, which would include the annual MIP at approximately 135 basis points. The commenter stated that FHA loans would receive the safe harbor if the loan APR is no more than the 2.5 percentage points. The commenter stated that this would alleviate the complexities of complying with a fluctuating MIP.

Commenters stated that clear standards without a floating component will simplify lender implementation as well as compliance oversight and accountability. Other commenters encouraged HUD to adopt a simpler approach that uses a single percentage point amount (while still taking the MIP into consideration), similar to the CFPB's approach. A commenter stated that it will be hard for lenders to know when to use the FHA standard and when to use the CFPB standard. A simpler approach that is also consistent with the CFPB's qualified mortgage regulations would minimize confusion and make it easier for both lenders and the FHA to oversee. Another set of commenters, however, stated that allowing the threshold for an FHA safe harbor qualified mortgage to potentially fluctuate in relation to the MIP could result in errors by lenders attempting to comply with the HUD's requirements. Some of the commenters stated that when a change in the threshold were to occur, then a certain period of time would be required to amend policies and procedures, re-program hardware and software systems, and re-train staff on the new threshold requirements and calculations. Several commenters suggested that HUD should provide at least 6 months advance notice prior to the effective date of any MIP change. Commenters also stated that industry needs more clarity and guidance from HUD about how the changes to MIP rates will be instituted going forward.

Similar to comments pertaining to points and fees, a commenter recommended that the APR over APOR calculation, if retained, should increase for lower balance loans that have fixed costs. A commenter stated that, specifically, for loans between $100,000 and $150,000, an additional 50 basis points spread should be added to CFPB's points and fees basis of 150 basis points (1.5 percent)—resulting in a standard of 200 basis points over the APOR, plus the MIP; and for loans below $100,000, a further additional 50 basis points spread should be added to the CFPB's points and fees basis of 150 basis points—resulting in a standard of 250 basis points over the APOR, plus the MIP. The commenter stated that this tiered system would prevent many otherwise qualified FHA borrowers from being denied a loan because of the inability of a lender to meet the APOR standard in the proposed rule.

One commenter suggested that HUD grant safe harbor designation to FHA loans that receive approval through FHA's TOTAL Scorecard. Related to this comment, another suggested that HUD update FHA's Total Scorecard system to allow lenders to use the FHA system, rather than their own, to determine at the front end if a loan qualifies as a safe harbor or rebuttable presumption qualified mortgage.

Another commenter stated that a clear distinction between an FHA safe harbor qualified mortgage and an FHA rebuttable presumption qualified mortgage can be achieved by establishing a clear definition for each term. The commenter stated that HUD should define safe harbor qualified mortgages as loans with APRs equal to or less than APOR + 115bps + on-going MIP, and define rebuttable presumption qualified mortgages as loans with an APR greater than APOR + 115 basis points (bps) + on-going MIP. Similar to this comment, another commenter stated that it is essential that HUD's qualified mortgage rule define the applicable MIP.

Response: HUD's qualified mortgage standard is structured to recognize FHA's mission to serve a population that is somewhat riskier than the market in general and that the cost of providing mortgage insurance to this population is higher as well. This is accomplished by including FHA's MIP in the calculation. Without such accommodation, a high share of FHA-insured mortgages would be considered ''higher-priced covered transactions'' and, under the CFPB's standard, would be designated as rebuttable presumption qualified mortgages.

As discussed in the regulatory impact analysis that accompanied HUD's proposed rule, under the CFPB's qualified mortgage regulations, a portion of FHA-insured mortgages would not qualify as qualified mortgages based on their exceeding the points and fees limit in the CFPB's regulation. As the regulatory impact analysis stated, a larger portion would be designated as qualified mortgages under the CFPB's regulation, but about 20 percent would only meet the CFPB's standard as a rebuttable presumption qualified mortgage. These FHA-insured mortgages would not qualify for safe harbor status under CFPB's regulations because of the 150 basis point limitation on the spread between APR and APOR, in large part because this spread for FHA-insured mortgages includes FHA's annual MIP

that is currently135 basis points for most loans.

HUD recognizes concerns of some commenters that a standard which is tied to FHA's MIP, resulting in a floating threshold, may cause operational difficulties and delay the ability of lenders' to comply with FHA's qualified mortgage standards. As HUD stated in the preamble to its proposed rule, if a straight APR over APOR threshold were adopted by HUD, in lieu of inclusion of the MIP, then every time FHA changes the MIP, for purposes of ensuring the financial soundness of its insurance fund and reducing risk to the fund or to reflect a more positive market, FHA would also have to consider changing the threshold APR limit. This would be a less dynamic approach than that proposed by HUD in its September 30, 2013, proposed rule. HUD believes that the qualified mortgage standard proposed in the September 30, 2013, proposed rule and adopted as final in this rule will be, when systems have been adjusted, easy to administer, and HUD is providing the time for lenders to adjust their systems. Again, a mortgage that would be designated a safe harbor qualified mortgage under the special rules for eligible loans under the National Housing Act in the CFPB's regulations receives the same designated under HUD's definition if insured by HUD.

Comment: The APOR is not an appropriate metric: A few commenters stated that the APOR is not the appropriate metric for FHA to use to determine what constitutes a baseline for the safe harbor/rebuttable presumption distinction, and that an APOR, derived from the Freddie Mac Primary Mortgage Market Survey (PMMS), is not the best metric for determining the dichotomy for FHA. The commenter stated that ''The PMMS index contains only conventional conforming loans; no government insured loans are included. Additionally, in recent quarters the PMMS has fallen well below [the Mortgage Bankers Association] survey rates, at times by as much as 20 basis points.'' The commenter suggested additional study on what is the most useful index for FHA loans.

Response: The Dodd-Frank Act provides for use of the APOR in calculating points and fees and has been adopted by the CFPB in its qualified mortgage regulation. As HUD stated in its September 30, 2013, proposed rule and in this rule, it is HUD's objective to establish qualified mortgage standards that align to the statutory ability-to-repay criteria of TILA and the regulatory criteria of the CFPB's qualified mortgage standard to the extent feasible without departing from FHA's statutory mission. HUD recognizes that the APOR is a rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics, and that the representative sample may not include government-insured loans. However, as a result of the ability-to-repay requirements and enhanced consumer protections of the Dodd-Frank Act, the differences between conventional mortgage products and the government mortgage products are lessened.

Comment: Clarify the APR and APOR calculation: A commenter stated that HUD's final rule should specify the APR being examined. The commenter asked HUD to clarify that the APR is the actual APR on the loan and not the high cost APR calculation used for purposes of ''Section 32 High Cost testing.'' The commenter also stated that the final rule should clarify the effective date of the APOR to be used for testing. The commenter asked whether or not this is the APOR in effect at the time the lock is set (which is consistent with the Section 32 High Cost and Section 35 higher-priced mortgage loans (HPML) testing), or HUD expects the test to use the APOR in effect at the time of case number assignment, or some other time frame. The commenter also asked that HUD's final rule clarify that if the APR is calculated to three or more places, HUD will require a specific rounding or truncation method for the purposes of this test. The commenter asked, for instance, if the APR is 6.225 and the APOR is 2.860 would the difference between them be calculated at 3.36 (the result truncated) or would the result be 3.370 (the result using standard rounding)?

Response: As noted earlier in this preamble, the final rule adopts the CFPB's definition of APR and APOR, and therefore the CFPB's guidance on the determination of each of these rates is applicable to FHA's qualified mortgage regulation. The CFPB provides detailed guidance on each of these calculations. Appendix J to the CFPB's regulations in 12 CFR part 1026 provides guidance on the APR computations for closed-end credit transactions. The guidance notes that the CFPB's regulation at 12 CFR 1026.22(a) provides that the APR for other than open-end credit transactions shall be determined in accordance with either the actuarial method or the United States Rule method, and provides that Appendix J contains an explanation of the actuarial method as well as equations, instructions and examples of how this method applies to single advance and multiple advance transactions. Supplement I (Official Interpretations) to the CFPB's part 1026 regulations, provides guidance on calculation of APOR, under the heading for Section 1026.35. By following the CFPB with respect to the APR and APOR calculations, HUD eliminates any inconsistency between APR/APOR calculations to be undertaken by FHA-approved lenders originating FHA qualified mortgages and lenders originating conventional qualified mortgages in accordance with the CFPB's regulations.

Comment: Exclusion of debt-to-income could increase the number of riskier borrowers coming to FHA—a residual income test should be included: The majority of commenters, commenting on debt-to-income (DTI) limits, stated that HUD's proposal to use its existing underwriting and income verification requirements and to not adopt the CFPB's 43 percent total monthly debt-to-income ratio requirements is the right approach. The commenters stated that HUD's underwriting standards have historically been the industry bench mark for documenting a consumer's ability to repay a mortgage debt. A commenter stated that a fixed DTI would only further limit credit availability especially to borrowers living in high-cost underserved communities.

Another commenter stated that HUD's decision to not include a DTI limit in its qualified mortgage regulations could increase the number of riskier credit quality borrowers to the FHA in an origination environment where conventional loans must meet the more stringent CFPB qualified mortgage standard. The commenter stated that this result is inconsistent with HUD's stated goal to foster private market, not FHA, activity as steps are taken to reduce Fannie Mae and Freddie Mac's position in the market.

Other commenters stated that adoption of a residual income test would substantially improve the sustainability of FHA lending, particularly for low-income borrowers. The commenter stated that it understands that the purposes of FHA differ from those of the CFPB and the adoption of the DTI requirement would likely restrict opportunities for credit for many of the FHA constituencies specifically mentioned in its statute. The commenter urged HUD to work with the Department of Veterans Affairs and the CFPB to develop a residual income test that would be uniform

across these agencies. The commenter stated that such a test, clear and easily integrated into automated systems, would permit good loans to be made to FHA's constituencies at DTIs of 43 percent or higher. The commenter stated that if such a rule were also adopted by the CFPB, then all loans above DTIs or 43 percent would not flow to FHA, thereby satisfying another accepted public policy goal.

Response: HUD appreciates the commenters' suggestions about a residual income test that would be adopted by all agencies, and this may well be something to further examine. For this final rule, HUD retains the approach provided in the proposed rule. However, HUD will add this issue to HUD's plan for retrospective review of regulatory actions.[14]

Comment: Treat certain other loans similarly to proposed treatment of Title I and Sections 184 and 184A loans: The majority of commenters expressed support for HUD's decision to designate all Title 1, Section 184 and Section 184A mortgages as safe harbor qualified mortgages, without any change in underwriting requirements for these loan products. One commenter, however, stated that loans without points and fees caps encourage the assessment of junk fees and these incentives should not be part of loan programs meant to shore up needs in vulnerable communities. The commenter stated that the Title I loan program in particular has had a long history of abusive lending, primarily in low-income communities.

Other commenters, however, identified various loan products that they stated should be treated by HUD similarly to the proposed treatment of Title I, Sections 184, and Section 184A loans. Commenters recommended that HUD automatically make Section 203(k) repair and rehabilitation loans, energy efficient mortgages, and mortgages involving real estate-owned (REO) properties safe harbor qualified mortgages. One of the commenters stated that these types of loans, especially 203(k) loans, require more work for the lender, and consequently, the lender is compensated more. The commenter stated that this higher compensation could jeopardize the qualified mortgage status of the loan if the rule does not permit a higher points and fees threshold for such loans. Another commenter stated that housing finance agencies (HFAs) often use 203(k) loans ''to support the purchase of affordable homes in need of repair or modernization for traditionally underserved consumers.'' The commenter stated that because of the increased costs associated with these loans, HFAs often pay lenders higher levels of compensation for originating them and also have to charge higher fees to borrowers. The commenter stated that ''if these loans are subject to HUD's proposed qualified mortgage requirements, it would become cost-prohibitive for HFAs, or other lenders, to continue originating these loans.''

Response: HUD's final rule will continue to designate Title I, Section 184 and Section 184A loans as safe harbor qualified mortgages. HUD believes that the final rule HUD published on November 7, 2001, entitled, ''Strengthening the Title I Property Improvement and Manufactured Home Loan Insurance Programs and Title I Lender/Title II Mortgagee Approval Requirements'' (66 FR 56410) strengthened the Title I program and that the Title I program is sound. The Title I loan program insures maximum loan amounts of $25,000 for single family home loans to finance the light or moderate rehabilitation of properties, as well as the construction of nonresidential buildings on the property. Additionally, Title I covers the Manufactured Home Loan program which provides a source of financing for buyers of manufactured homes and allows buyers to finance their home purchase at a longer term and lower interest rate than with conventional loans. Considering the small size of the Title I property improvement loans and the limited access to conventional financing otherwise available to manufactured home loans, HUD believes these loans should be designated as safe harbor qualified mortgages until further study can be conducted on how to apply the qualified mortgage definition.

HUD declines to designate Section 203(k) repair and rehabilitation loans as safe harbor qualified mortgages. HUD does clarify that non-affiliated consultation fees authorized under the Section 203(k) program are exempt from the CFPB's points and fees calculation, adopted by HUD. Section 203(k) mortgages cover both the acquisition of a property and its rehabilitation. While Section 203(k) loans involve minimal financing amounts, Section 203(k) mortgages can cover the virtual reconstruction of a property. For example, a home that has been demolished or will be razed as part of rehabilitation is eligible for financing under FHA's Section 203(k) mortgage program provided that the existing foundation remains in place. HUD also declines to designate an FHA-insured mortgage on property acquired by a borrower through FHA's REO process as a safe harbor qualified mortgage. An FHA-insured mortgage on a REO property is a standard single family-insured mortgage, and therefore would need to meet the qualifications for either a safe harbor qualified mortgage or a rebuttable presumption qualified mortgage. In addition, HUD exempts housing finance agencies from the qualified mortgage rule, consistent with the CFPB's rule, as explained further in Section IV of the preamble.

Comment: Provide an exemption for HFAs as exempted under CFPB's rule: With respect to loans originated by HFAs, certain commenters requested that HFAs should be exempt from ability-to-repay requirements and FHA should classify all HFAs loans as safe harbor qualified mortgages. The commenters stated that HFAs have a consistent record of providing good lending for affordable housing, have never engaged in subprime or other risky lending, and the revenues generated are reinvested in furtherance of their affordable housing mission. The commenter stated that recently, 75 percent of HFA mortgages funded by tax-exempt Mortgage Revenue Bonds have been FHA-insured.

Another commenter stated that the proposed safe harbor qualified mortgage APR to APOR rate of 1.15 percentage points plus MIP would hinder the ability of an HFA to finance FHA-insured loans. The commenter stated many lenders are reluctant to finance HFA loans because the HFA requirements already add extra costs to HFA loans. Some of the extra costs which lenders might try to pass onto borrowers with slightly higher interest rates reflect a legitimate business expense incurred by the lender but could cause a loan to exceed the safe harbor APR cap. As a result, HFA lending could be curtailed, particularly when the CFPB allows for a more flexible APR limit on conventional loans.

Response: As noted earlier in this preamble, HUD agrees with the commenters and has exempted HFAs from the requirement to comply with FHA's qualified mortgage regulations, consistent with the CFPB.

Comment: Exempt FHA streamlined refinancing from qualified mortgage requirements: Commenters stated that streamlined refinances should be excluded from the higher-priced mortgage loan limitations or the APR threshold increased to meet the unique needs of refinancing. The commenter

[14] See HUD's plan at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/general_counsel/Review_of_Regulations.*

stated that the rates on streamlined refinances are higher because lenders include the closing cost in the rate and may, therefore, result in some streamlined refinances losing safe harbor qualified mortgage status.

A commenter stated that under TILA, HUD has been granted the authority to exempt streamlined refinancings from the income verification requirements of the ability-to-repay rule, as long as the refinancings meet certain requirements. The commenter stated that HUD, however, intimates that including streamlined refinancings in the proposed qualified mortgage requirements would meet similar objectives of a broader exemption, as the proposed qualified mortgage definition would still require these types of loans to meet the three percent points and fees requirements and HUD's existing requirements for streamlined refinances.

In contrast to these commenters, a commenter expressed support for HUD's inclusion of the points and fees cap in the FHA qualified mortgage definition for streamline refinancings and for all Title II loans. The commenter stated that this will help ensure that FHA borrowers obtain loans in a more fair and transparent market while discouraging price gouging. The commenter stated that the points and fees cap ensures that homeowners are not subject to inflated costs and junk fees associated with the initial making of the loan. The commenter stated that while the streamlined refinance program provides needed access to capital for many homeowners, HUD's guidelines assume that a borrower making payments on the previous loan can actually afford those payments. The commenter stated that the program does not account for instances where the previous loan's payments were paid out of proceeds from that loan (and therefore out of equity from the property).

Response: HUD declines to exempt streamlined refinances from the safe harbor and rebuttable presumption qualified mortgage definition. As HUD stated in the proposed rule, HUD advised that it did not consider it necessary to exercise this authority because HUD's qualified mortgage definition results in an exemption similar to the one contemplated under section 129C(a)(5) of TILA. HUD also believes that the points and fees requirement is appropriate for streamlined refinances just as it is for other Title II products, and that the revised APR to APOR threshold will benefit refinances the same as other Title II products. While HUD maintains that subjecting streamlined refinances to the qualified mortgage definition is appropriate now, HUD recognizes that in times of stress, the current qualified mortgage definition may inhibit access to streamlined refinancing, and if this were to occur, HUD will reexamine whether streamlined refinances should be exempt.

Comment: Establish clear criteria for rebutting the presumption of a rebuttable presumption loan: Several commenters stated that HUD needs to establish clear criteria on the basis for a borrower rebutting the presumption of one's ability to repay a mortgage. A commenter stated that the proposed rule appears to significantly change the requirements for a borrower to rebut the presumption of compliance from the CFPB's relatively narrow focus on whether the borrower had sufficient residual income to one that is a far broader inquiry of whether the general ability to repay test was satisfied. The commenter stated that a qualified mortgage is designed to provide a means for a lender, by meeting product and underwriting standards, to gain a presumption that the lender has satisfied the ability to repay requirements without undergoing the statute's factor by factor analysis and demonstrating that the borrower had a ''reasonable ability to repay.'' The commenter stated that HUD's rebuttable presumption definition, however, appears to render the presumption nearly meaningless by returning the inquiry to whether the lender made a reasonable and good faith determination that the borrower had the ability to repay the loan. The commenter stated that if the proposed rule goes forward, it is unlikely that lenders that participate in the FHA program will be willing to assume the greater liability that comes with a relatively unbounded rebuttable presumption. The commenter stated that lenders are more likely to confine their lending to safe harbor loans and in some cases will choose to operate well within qualified mortgage's safe harbor standards to avoid liability.

Another commenter stated that it understood that the CFPB's rebuttable presumption standard is not appropriate for FHA because residual income calculations are not currently required by FHA, but nevertheless, it is important for HUD to establish a limited, objective and clear inquiry into the presumption. In a similar vein, a commenter stated that FHA underwriting requirements do not contain a residual income requirement and do not require that a creditor assess a consumer's residual income on an FHA loan. The commenter stated that, therefore, a consumer cannot challenge the creditor's assessment of their ability to repay on an FHA loan based on a claim of insufficient residual income, even if that loan is a higher priced mortgage as defined under Regulation Z. The commenter stated that to avoid any possible confusion among creditors and to ensure the greatest number of creditworthy consumers are served by FHA, the commenter asked that HUD confirm this understanding is accurate in the final rule.

A commenter stated that under HUD's rebuttable presumption standard, the borrower may prove the lender did not make a reasonable and good faith determination of the borrower's repayment ability. The commenter stated that it is not clear, however, whether this requires the lender to show it followed the specific HUD requirements or whether the borrower can use other evidence to prove the lender did not consider the borrower's ability to repay, even if the lender followed HUD requirements.

Another commenter stated that HUD needs to elaborate on what is meant by a reasonable and good faith determination of the borrower's ability to repay.

A few commenters stated that HUD's rebuttable presumption standard appears to permit rebuttal of the presumption of compliance based on lending standards that are in addition to FHA underwriting requirements, and therefore HUD is establishing new underwriting requirements. The commenters stated that, as proposed, the presumption of compliance could be rebutted in two ways: One relates to points and fees and the other basis is a showing that, ''despite the mortgage being insured under the National Housing Act, the mortgagee did not make a reasonable and good-faith determination of the mortgagor's repayment ability at the time of consummation, by failing to consider the mortgagor's income, debt obligations, alimony, child support, monthly payment on any simultaneous loans, and monthly payment (including mortgage-related obligations) on the mortgage, as applicable to the type of mortgage, when underwriting the mortgage in accordance with HUD requirements.''

The commenters stated that if underwriting in accordance with HUD's requirements is insufficient to establish sufficient repayment ability under TILA, and if FHA does not revise its requirements to correct that problem, then this language appears to create a new FHA underwriting requirement for rebuttable presumption FHA loans. The commenters stated that the quoted

language in the rule differs from FHA underwriting standards, yet this aspect of the rebuttal standard can only apply to loans that are FHA-insured. The commenters stated that the list of factors in HUD's qualified mortgage rule differs from the list in the FHA Handbook monthly housing expense as defined in section 4155.1 4.C.4.b of the Handbook. The commenters stated that HUD uses, in its rule, mortgage-related obligations, which is undefined in FHA's Handbook. The commenters stated that all the types of income and all the types of obligations that are relevant to rebutting the presumption need to be clearly defined, and mortgagees need to know how and be able to quantify them. The commenters suggested that HUD use standards that do not differ from existing FHA loan underwriting requirements.

A commenter suggested that HUD establish a clear standard for rebutting the presumption by adopting the following language: ''The mortgagee did not make a reasonable and good-faith determination of the mortgagor's repayment ability at the time of consummation, by failing to consider, to the extent required by applicable HUD requirements, the mortgagor's income, debt obligations, alimony, child support, monthly payment on any simultaneous loans and monthly payment (including mortgage-related obligations) on the mortgage, as applicable to the type of mortgage.''

Other commenters stated that HUD proposed to permit rebuttal of the presumption by showing points and fees. The commenters stated that such a standard is meaningless because, under HUD's regulation, any loan with points and fees above the cap cannot be an FHA loan or a qualified mortgage loan. One of the commenters stated that even if HUD's regulations were to apply to a non-FHA loan, a showing of points and fees above the qualified mortgage cap cannot establish a violation of the ability-to-repay requirement. The commenter requested that HUD clarify that it did not intend to imply that points and fees above the cap, without more, could establish a violation of TILA's ability-to-repay requirement.

Another commenter stated that HUD should establish a ''materiality'' standard by which only uncured underwriting errors that make a material difference to a borrower's ability to repay a loan should be a permissible basis for rebutting a presumption of compliance with the ability-to-repay requirement.

Response: In response to the comments, HUD has sought to clarify the rebuttable presumption language in this final rule. As addressed above in Section IV, HUD adopted the list of the CFPB's factors, mortgagor's income, debt obligations, alimony, child support, monthly payment on any simultaneous loans, and monthly payment, to remain consistent with the CFPB's rebuttable presumption standard, but intended those factors to harmonize with HUD's existing underwriting requirements. In response to the comments, HUD will reference FHA's underwriting categories as the applicable categories and believes that this better clarifies that HUD-specific underwriting requirements shall be used for rebutting the presumption, rather than the list provided by CFPB. The applicable categories can be found in FHA Handbook 4155.1, Mortgage Credit Analysis for Mortgage Insurance on One-to-Four Unit Mortgage Loans. Additionally, HUD clarifies that instead of merely considering the factors listed, the mortgagee must evaluate the factors as required by HUD underwriting requirements for each applicable transaction.

Comment: HUD's rule will delay lender compliance with foreclosure timeframes during prolonged rebuttable presumption litigation: A commenter suggested that protracted litigation resulting from the rebuttable presumption could result in the curtailment of an interest claim by a lender because ''lenders are required to meet 'reasonable diligence' timeframes in prosecuting foreclosure proceedings and acquiring title as set forth in 24 CFR 203.356.'' The commenter stated that it is unclear whether litigation resulting from a rebuttable presumption challenge would be viewed as lender error and thus lenders would be ineligible for a timeframe extension.

Response: Litigation resulting from a rebuttable presumption challenge will not in and of itself make a lender ineligible for timeframe extension for submission of a claim. The existence of a challenge to rebuttable presumption does not necessarily indicate lender error rendering the lender ineligible for an extension of the deadline. However, where the presumption is successfully rebutted, FHA will not entertain requests for extensions of foreclosures and claim deadlines.

Comment: Rule needs a cure provision; indemnification demand is not dispositive of loan's qualified mortgage status: Several commenters requested that HUD establish a mechanism by which lenders can cure loans where there was a miscalculation in points and fees or any other failure to satisfy the qualified mortgage test. The commenters stated that a ''cure provision'' is necessary for those situations when technical violations are discovered by lenders and can be easily corrected. The commenters stated that this is particularly important if qualified mortgage status is to equate with FHA eligibility. The commenters stated that these types of procedures encourage early action by lenders and foster more advantageous loans for borrowers. One of the commenters stated that if HUD does not create a mechanism to cure loans where there are qualified mortgage defects, such loans will simply become uninsurable by FHA in the short run and cause greater caution and lack of credit to consumers over the long term. A commenter asked whether FHA would allow lenders to correct a points and fees violation by refunding the excess costs to bring the loan in compliance.

Another commenter requested that HUD continue to insure mortgages which were originated as qualified mortgage loans, but through audit or self-discovery were later found to have certain errors. The commenter stated, for example, if the 3 percent threshold of fees was exceeded, that in lieu of requiring indemnification, HUD allow for the lender to cure the overage. The commenter stated that this would allow the loan to maintain its qualified mortgage status. The commenter requested that if the error was related to an alternative matter (i.e., income/asset related) it would request that HUD allow a lender to indemnify a loan, and through that indemnification, allow for the loan to maintain its qualified mortgage status. The commenter stated that this would allow lenders to continue to treat the loan as a qualified mortgage to avoid unnecessary secondary market ramifications.

Another commenter suggested that HUD should adopt an approach similar to that adopted by Fannie Mae which was that, during the initial roll-out of its qualified mortgage standard, at least during an initial twelve month roll-out period, Fannie Mae would allow the industry to adjust systems and take corrective actions to comply. Without this leniency, the commenter stated that it is concerned that the consumers served will be faced with increased costs, extensive delays and, unfortunately, may find they are unable to obtain the financing they need to secure the American dream.

A commenter stated that recently, the CFPB explained that a defect under the underwriting procedures of the government-sponsored enterprises (GSEs) that is unrelated to the ability to repay should not affect qualified mortgage status.

Another commenter requested clarification of the impact on qualified mortgage status if FHA insurance of a loan is subsequently revoked. The commenter requested that as such revocation may be wholly unrelated to the applicant's ability to repay the loan or to the creditor's compliance with the underwriting requirements, the commenter requested that HUD include in its final rule a statement that such a loan will retain qualified mortgage status following revocation of FHA insurance, provided that all pertinent underwriting criteria had been met.

To address the qualified mortgage status concerns, one commenter requested that § 203.19 include a new paragraph (b)(4) to read as follows: ''(b)(4) Indemnification Demands-An indemnification demand by HUD is not dispositive of qualified mortgage status. Qualified mortgage status depends on whether a loan is guaranteed or insured, provided that other requirements under this section are satisfied. Even where an indemnification demand relates to whether the loan satisfied relevant eligibility requirements at time of consummation, the mere fact that a demand has been made, or even resolved, between a creditor and HUD is not dispositive for purposes of establishing a loan's qualified mortgage status.''

Response: As addressed above in Section IV, HUD adds at the final rule stage a section clarifying that a demand for indemnification or an indemnification does not per se remove qualified mortgage status in the regulations for Title I and Title II.

Requested clarifications: The final rule needs to provide clarification in a number of areas: Several commenters requested that HUD clarify its position in certain areas.

Clarify that this rule preempts CFPB's rule in its entirety for FHA loans:

Response: Except to the extent that FHA's regulation cross-references to terms defined by CFPB, FHA's underwriting requirements and qualified mortgage definition govern FHA insurance of single family mortgages.

Clarify the presumption afforded a safe harbor qualified mortgage:

Response: A safe harbor qualified mortgage is one that provides a conclusive presumption of compliance with the ability to repay requirements for loans that satisfy the definition of a safe harbor qualified mortgage.

Clarify eligibility for insurance versus actual insurance: A commenter stated that HUD's proposed rule appears to base qualified mortgage status on whether a loan is actually insured by FHA, rather than whether the loan is eligible for insurance. The commenter stated that if the commenter is understanding HUD correctly, HUD's position is inconsistent with the transitional qualified mortgage category created by the CFPB in § 1026.43(e)(4) of Regulation Z for loans eligible for purchase, guarantee or insurance by various government agencies and government-sponsored enterprises. The commenter stated that the FHA guidelines impose a variety of requirements relating not only to underwriting, but to the procedures of sale, guarantee, and insurance, as well as to post-consummation activities, which may be wholly unrelated to the applicant's ability to repay. The commenter stated that to avoid basing qualified mortgage status on the actual insurance status of a loan, the commenter requested that HUD clarify in its final rule that the qualified mortgage status of a loan is based on whether the loan is eligible for insurance by FHA. Other commenters also supported that HUD provide qualified mortgage status for FHA Title II loans eligible for FHA insurance. One of the commenters requested that the qualified mortgage coverage be based on whether the loan qualifies or is eligible for FHA insurance so that any transaction defects that are not related to ''ability to repay'' would not affect qualified mortgage coverage.

Response: The commenters' understanding is correct. Under HUD's regulations, as promulgated through this final rule, qualified mortgage status for FHA Title II loans is provided only for loans that FHA insures. FHA's responsibility and oversight is only for the mortgages that it insures, not for those that may be eligible for FHA insurance but have not been insured by FHA.

Clarify that there is no preemption of State fair lending laws: Two commenters requested that HUD make clear that it does not preempt State claims for fair lending abuses. The commenters stated that State enforcement of fair and responsible lending is essential to prevent unintended consequences.

Response: This final rule does not preempt any claims a borrower may bring for violation of fair lending laws.

Clarify that FHA's regulatory framework is unchanged: Commenters asked that the final rule specify that the regulatory framework of current FHA programs would remain the same with the addition of the ''qualified mortgage'' definition applied, specifically in reference to ability-to-repay.

Response: The commenters are correct that HUD is not changing the regulatory framework for its FHA programs with regard to ability to repay other than to establish the requirements for designation of a safe harbor qualified mortgage or rebuttable presumption qualified mortgage. It should be noted, however, that FHA will not insure a mortgage that is not a qualified mortgage but this is not a departure from existing standards since FHA has always had ability to repay standards and mortgages insured by FHA were based on these standards.

Clarify which FHA loans are covered by HUD's qualified mortgage regulations when the regulations become effective: A commenter requested that HUD clarify if the intended January 10, 2014 effective date will apply to loans with an application date on or after January 10th (consistent with the CFPB effective date for ability-to-repay/qualified mortgage applicability) or with case number assignment dates on or after January 10, 2014.

Response: This rule applies to all case numbers assigned on or after the effective date of this rule.

Clarify whether escrows for taxes and insurance are included in the points and fees limitation: Another commenter stated that there is considerable confusion about whether escrows for taxes and insurance are included in the points and fees limitation. The commenter stated that these are just pass-through amounts that have no risk of imposing excessive costs on consumers, and they should not be included. The commenter stated that the CFPB was not clear on this matter. The commenter urged HUD to clarify that it will interpret the definition of points and fees to exclude escrows for taxes and insurance.

Response: HUD is adopting the CFPB's definition of points and fees, and defers to CFPB's interpretations and guidance on that definition. The CFPB's regulation at 12 CFR 1026.32(b)(1) excludes amounts held for future payment of taxes from the calculation of points and fees. See 12 CFR 1026.32(b)(1)(iii). The CFPB also excludes from the calculation of points and fees any premium or other charge imposed in connection with any Federal or State agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss, and any guaranty or insurance that protects the creditor against the consumer's default or other credit loss and that is not in connection with any Federal or State agency program. See 12 CFR 1026.32(b)(1)(i)(B) and (C). However, the CFPB includes in

the calculation of points and fees any premiums or other charges payable at or before consummation for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life, accident, health, or loss-of-income insurance for which the creditor is a beneficiary, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract. See 12 CFR 1026.32(b)(1)(iv).

Clarify meaning of reasonable ability to repay: A commenter stated that HUD's rule includes a statement that ''the monthly payments on a mortgage must not be in excess of a borrower's reasonable ability to repay.'' The commenter stated that this is too vague and subject to subjective interpretation. The commenter stated that what is reasonable for one person may not be reasonable for another in a similar financial position. The commenter stated that there would be almost no ''safe harbor'' for lenders on FHA loans. The commenter requested that HUD clarify the meaning of ''reasonable'' in this context.

Response: The guiding basis for whether a determination has been made of a borrower's reasonable ability to repay a mortgage is by the lender following the underwriting guidelines in FHA Handbook 4155.1, Mortgage Credit Analysis for Mortgage Insurance on One-to-Four Unit Mortgage Loans, or subsequent handbook.

Recommendations: Several commenters offered recommendations for additional provisions to be included in HUD's rule:

Mandate prepurchase counseling: A commenter stated that ''pre-purchase counseling by a HUD-certified housing counselor should become a mandatory component of all FHA qualified mortgage loans. The commenter stated that housing counseling has proven to be an invaluable tool for creating successful homeowners. The commenter stated that a study of counseling programs found that prepurchase counseling can help reduce the likelihood of default and foreclosures from the start by helping prospective homeowners determine if they are ready to buy.''

Response: As a result of changes made to HUD's housing counseling program by the Dodd-Frank Act, and counseling requirements, HUD is examining a variety of counseling issues, several of which will be addressed through separate rulemaking.

Enforce loss mitigation requirements: Two commenters stated that rigorous loss mitigation requirements and compliance with those rules is essential to a sustainable system. The commenters stated that HUD should fully review its loss mitigation options and compliance programs to maximize beneficial outcomes for homeowners, communities, investors and the FHA insurance fund.

Response: FHA has strong loss mitigation requirements and undertakes periodic review of them. HUD invites the commenters to view the following Web site which identifies mortgagee letters addressing the subject of loss mitigation, recently and previously issued by FHA. See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/lmmltrs.*

Prohibit prepayment penalties: A commenter stated that under the CFPB's regulation, covered transactions, including FHA loans that are covered transactions, ''must not include a prepayment penalty'' unless the loan is a qualified mortgage loan, and prepayment penalties are payable only during the first three years after consummation. The commenter urged FHA to amend its notes to be clear that they do not permit any interest charge for any time after a loan is fully paid, even for a partial month.

Response: HUD is developing a proposed rule that addresses prepayment penalties for an FHA-insured loan.

Provide better lending oversight: A commenter stated the industry does not need more restrictions. The commenter stated that instead of rewarding institutions that have always adhered to the HUD regulations, HUD is treating the good the same as the bad actors. Other commenters stated that government enforcement is a key component to securing widespread industry compliance with regulation. One of the commenters stated that HUD should engage in active oversight of FHA lending, including direct endorsement lenders, with aggressive consequences for non-compliance. The commenter stated that oversight should include proactive resolution of consumer complaints, including requirements for lenders and servicers to document answers to HUD in response to consumer complaints. Another commenter stated that HUD must adopt strong compliance and enforcement provisions to ensure that the required minimum standards are being met in practice and to ensure borrowers have appropriate recourse when these standards are not actually complied with.

Another commenter recommended that HUD avoid unnecessary regulation of FHA lending and that it rely on its existing standards to continue to ensure that FHA loans are appropriate and affordable. The commenter stated that it does not believe another layer of ability-to-repay regulation similar to existing FHA underwriting standards would improve or even alter the quality of FHA loans. The commenter stated that, instead, it would run the risk of constraining lending unless the additional standard is substantially clearer than the proposed rebuttable presumption standard.

Response: FHA continually strives to strengthen its oversight of FHA-approved lenders. HUD values the input of its FHA-approved lenders and other interested parties and members of the public and is considering recommendations offered by the commenters on this notice. HUD also believes that implementation of the final rule improves the quality of FHA loans, which protects borrowers from higher priced loans.

HUD questions in the preamble—feedback offered by commenters:

The preamble to HUD's September 30, 2013, proposed rule included several questions for which HUD specifically sought comment. One question which received the most feedback was HUD's question of whether lenders participating in FHA's mortgage insurance and loan guarantee programs would lower the APR relative to the APOR such that the lenders in essence always opt for the safe harbor qualified mortgage and never make a rebuttable presumption qualified mortgage. HUD asked if commenters thought that was the case, and welcomed comments on the effect this incentive may have on lenders, borrowers, and the broader economy.

Feedback: Several stated that it would be extremely difficult to find lenders to make rebuttable presumption mortgages for the 7 percent [15] of Title II loans that will not qualify as safe harbor qualified mortgages. The commenter stated that mortgage professionals will favor safe harbor qualified mortgages and will avoid the potential legal risk associated with rebuttable presumption qualified mortgages. This will result in disparate impact of homeownership throughout the country. Another commenter agreed that lenders are likely to elect only to offer safe harbor qualified mortgages due to the uncertainty surrounding lending outside of the safe harbor qualified mortgage category. The

[15] The 7 percent referred to by the commenter is in fact the number of loans that would not be considered a qualified mortgage under FHA's rule or eligible for insurance as a result of the points and fees. Only 1 percent of Title II loans would be designated rebuttable presumption under the proposed and final rule.

commenter stated that if this occurs, the result will mean less available credit.

Another commenter stated that due to the high legal fees related to making a rebuttable presumption loan, lenders are more likely not to make loans that would be rebuttable presumption. The commenter stated that the result will be that some borrowers are prevented from obtaining loans due to the risk aversion of lenders.

A commenter stated that the consequences of the 1.15% threshold set by FHA is that loans above that amount will not be made and or will have a disparate impact on minorities who often present somewhat higher risks.

A commenter stated that, after polling its members, the consensus was that, at least in the beginning, members would not make rebuttable presumption loans because of the risk of substantial liability if the courts interpreted rebuttable presumption in an adverse manner. As for lowering the APR to be a safe harbor loan, the commenter stated that a small number may be in the margins, but for a substantially larger number, especially small balance loans, it will not be profitable to lower the APR and lenders will simply not make the loans to an otherwise qualified borrower.

A commenter stated that it believes the majority of FHA qualified mortgages made will qualify for the safe harbor due to the pricing of the loan and the level of protection that such status provides, much the same as under the CFPB's qualified mortgage rule. The commenter also stated that it is possible that lenders may make a small reduction in the APR if that is the only requirement standing in the way of a loan qualifying as a safe harbor.

Another commenter expressed disagreement with HUD's hypothesis that the APR standard would put pressure on the conventional market because HUD's MIP is so high in relation to conventional private mortgage insurance (PMI) or loans without PMI. The commenter stated that FHA's market share is likely to decrease and only people who could not obtain conventional insurance will turn to FHA, presenting danger to the fund. The commenter further stated that HUD's lower threshold for exceeding the safe harbor is also a negative incentive for originating an FHA loan versus a conventional loan and is compounded by excluding the annual MIP in the APOR calculation.

Another commenter stated that, with respect to interest rates, FHA is a relatively competitive market, and the purported benefits of the dichotomy is marginal at best and less effective than FHA's current protections. The commenter stated that it will, however, have the result of limiting some otherwise eligible borrowers from receiving an FHA loan.

Response: HUD appreciates all the feedback provided in response to this question. As HUD stated in the preamble to its September 30, 2013, proposed rule and reiterates in this final rule, HUD will carefully monitor how HUD's definition of safe harbor qualified mortgage and rebuttable presumption qualified mortgage for the majority of its Title II programs works. HUD will also study, as it has committed to do so, the HUD mortgage insurance and guarantee programs whose mortgages have been designated safe harbor qualified mortgage, and the appropriateness of such designation. HUD recognized that there may be a transition period before the one percent of rebuttable presumption loans in FHA portfolio are made, but HUD's changes to the rebuttable presumption definition should clarify for lenders and borrowers the standard that applies for rebuttable presumption qualified mortgage loans. The transition period should be similar to that of the conventional market where the market will assess the legal risk and costs of making a rebuttable presumption loan before proceeding. Additionally, as provided in HUD's accompanying regulatory impact analysis, while there may be programming changes needed to comply with HUD's definition of qualified mortgage, HUD estimates that the costs are de minimis.

Procedural Issues: A few commenters raised concerns with certain procedural issues pertaining to the rule:

Comment: Additional public comment should be provided: A few commenters stated that the 30-day comment period was too short to fully identify and compare policy alternatives and the likely consequences, especially when compared to the time used by the CFPB to explore the issues involved in creating a qualified mortgage rule. The commenters requested HUD extend the comment period for at least 60 days after the CFPB issues its final integrated disclosure rule and clarifies the APR calculation.

Response: HUD recognizes that the comment period provided for its qualified mortgage rule was an abbreviated one. However, since HUD strived to closely align its definition of safe harbor qualified mortgage and rebuttable presumption qualified mortgage, HUD had the advantage of reviewing the comments submitted to the CFPB on issues and approaches that HUD considered in its proposed rule, and the benefit of reviewing the CFPB's analysis of such issues. As HUD stated in its proposed rule, HUD accepted and reviewed comments submitted after the 30-day public comment period closed.

Comment: HUD's regulatory impact analysis did not support the policy taken in HUD's rule: A few commenters stated that HUD's assessment of the probable effects of its rule on important mortgage market stakeholders is not well supported. The commenter stated that borrowers, lenders, U.S. taxpayers, and other private market participants have important interests that have not been analyzed within a robust cost/benefit framework.

Another commenter stated that HUD's supporting economic analysis did not consider the broader mortgage market context, the interaction between HUD's proposed rule and the CFPB qualified mortgage rule, and lender incentives to minimize litigation risk. The commenter suggested that HUD examine the likely credit risk management and loan performance consequences to FHA of reduced conventional access to higher loan-to-value (LTV) loans, combined with the more expansive qualified mortgage standard included in HUD's proposed rule.

A commenter stated that significant questions remain unanswered regarding the likely effect of HUD's rule on the size and allocation of the insured low down-payment market. HUD should examine those questions before issuing a final rule.

Another commenter stated that the economic analysis in the preamble to HUD's rule posits that lenders will have an incentive to keep their costs low to minimize the number of loans that would be ineligible for FHA insurance, in light of lower compliance and litigation costs under the FHA program that HUD expects to result from its proposal. The commenter stated that it believes that lenders are likely to reduce the points and fees to 3 percent or less in more cases, further minimizing the impact even on the 7 percent. The commenter stated that if the APOR or 3 percent cap tests turn out to have onerous effects on first-time homebuyers and other potential FHA borrowers, it trusts HUD will reconsider the rule and take action to eliminate such unintended consequences.

Response: HUD appreciates the comments raised in response to HUD's regulatory analysis. HUD acknowledges that, without a qualified structure yet in place for the majority of FHA Title II loans as provided in this final rule, and without the CFPB's qualified mortgage regulations yet in operation, the data provided in the regulatory impact

analysis are estimates to the best of HUD's ability on how the impact will play out when both sets of regulations are in effect. HUD does not believe that this final rule will have an impact on the LTV in the conventional market and the regulatory impact analysis does not analyze the effect of the CFPB's rule on the number of high loan-to-value (LTV) ratio loans made in the conventional market. The regulatory impact analysis uses a base case scenario in which the CFPB rule is in effect on January 10, 2014. In the regulatory impact analysis that accompanies this final rule, HUD strives to address some of the questions raised by the commenters, but a more accurate analysis may not be possible until the annual actuarial report for FHA prepared in the fall of each year, is prepared in the fall of 2014.

Comment: HUD's Regulatory Flexibility Act analysis failed to discuss the impact on small mortgage brokers: Two commenters stated that data from mortgage broker operations and business models indicate a significant impact on small business mortgage broker firms if the rule is finalized. The commenters stated that HUD's rule could cause a high percentage of mortgage broker firms to change business models, merge with lending operations or cease operations in order to remain in business based on HUD's qualified mortgage proposed rule.

Response: Please see HUD's Regulatory Flexibility Act analysis provided in the preamble of this final rule. HUD continues to maintain that this final rule will not have a significant economic impact on a substantial number of small entities, but HUD addresses the comments raised by the commenters.

VI. Findings and Certifications

Consultation With the Consumer Financial Protection Bureau

In accordance with section 129C(b)(3)(B)(ii) of TILA, HUD consulted with CFPB regarding this final rule.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). This proposed rule was determined to be a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

As already discussed in the preamble, this rule would define ''qualified mortgage'' for loans insured, guaranteed, or otherwise administered by HUD and, in so defining this term, replace application of CFPB's qualified mortgage regulation to these loans. Neither the economic costs nor the benefits of this proposed rule are greater than the $100 million threshold that determines economic significance under Executive Orders 12866 and 13563. The expected impact of the rule is no greater than an annual reduction of lenders' legal costs of $40.7 million on the high end to $12.2 million on the low end, and may even fall below this range.

HUD's final rule, in effect, reclassifies a sizeable group (about 19 percent) of Title II loans insured under the National Housing Act from rebuttable presumption qualified mortgages under the CFPB regulations to safe harbor qualified mortgages under HUD's regulation. A small percentage (about 1 percent) of Title II loans insured under the National Housing Act would remain rebuttable presumption qualified mortgages under HUD's rule based on HUD's APR threshold. Some HUD insured or guaranteed loans, the same number under the CFPB's definition of ''qualified mortgage'', would be non-qualified mortgage due to points and fees rising above the CFPB points and fees limit. Under HUD's rule, these loans would also be non-qualified mortgage. The difference is that HUD, as provided in HUD's proposed rule and retained in this final rule, will no longer insure loans with points and fees above the CFPB level for qualified mortgage. This policy provides a very strong incentive for HUD mortgagees to reduce points and fees to comply with HUD's qualified mortgage requirements. A vast majority of these loans could be expected to be made as lenders could be expected to find ways to comply with the QM requirement and still originate the loan with HUD insurance. As a result, HUD believes only a fraction of the 7 percent of non-qualified mortgage loans that HUD would have insured prior to this rulemaking (from HUD's 2012 analysis) would have to find alternatives to FHA, or not be made at all, once HUD's qualified mortgage rule is issued and effective. However, most of the 7 percent of the non-qualified loans (from HUD's 2012 analysis) are expected to comply and to continue to be insured by HUD, once the rule is in place.

In addition, HUD classifies all Title I, Title II manufactured housing and Section 184 and Section 184A insured mortgages and guaranteed loans as safe harbor qualified mortgages that would have most likely been non-qualified mortgages under the CFPB's rule. Classifying these programs as safe harbor recognizes the unique nature of these loans. For these programs, HUD believes that providing safe harbor status to these programs will not increase market share but instead maintain availability of these products to the underserved borrowers targeted. In addition, HUD considers the additional benefit of homeownership provided under these programs, which might otherwise be lost if HUD applied the points and fees and APR requirements to these programs, justifies the loss of some borrowers access to the broader ability-to-repay challenge afforded a rebuttable presumption loan. Assuming that all of these loans are re-classified from non-QMs or rebuttable presumptions QMs to safe harbor QMs, the expected reduction in costs is no greater than an annual reduction of lenders' legal costs of $2.8 million on the high end to $900 thousand on the low end, and may even fall below this range.

A difference between HUD's proposed rule and this final rule is that this final rule exempts certain institutions such as state and local housing finance agencies (HFAs) from the TILA ability-to-pay requirements, thereby aligning with CFPB's regulations in this regard. Since the loans from these institutions would be exempt under both the CFPB's regulation and HUD's regulation, it is reasonable to expect a symmetric effect in both scenarios. Typically, the loans from HFAs are made to lower income families with some form of downpayment assistance, and often with below market interest rates. By HUD's estimate, about 1.3 percent (or 0.9 percent as a share of aggregate principal balance) of its fiscal year (FY) 2012 endorsements were funded by HFAs.

Although HUD is exempting certain institutions from the TILA ability-to-repay requirements, the analysis made at the proposed rule stage and the analysis made at this final rule stage remains the same in that the majority of HUD loans insured or guaranteed prior to the implementation of this rule will qualify as safe harbor qualified mortgage under this final rule. HUD does not expect FHA's loan volume to increase nor does it expect the volume of conventional loans to be materially affected as a result of this rule, and consequently HUD's market share is not expected to increase as a result of this rule.

While HUD considered whether it should make all loans safe harbor as requested by a number of commenters, HUD believes that if the largest category of FHA loans, Title II non-manufactured housing loans, were all designated safe harbor than FHA would see an increase in market share and borrowers would be charged higher APRs than those in the conventional market. HUD does not believe that this alternative would benefit borrowers. As a result of these reclassifications, HUD continues to maintain that lenders face lower costs of compliance under HUD's regulations than under the CFPB regulations and therefore receive incentives to continue making these loans without having to pass on their increased compliance costs to borrowers.

While, under HUD's regulations, borrowers benefit from not having to pay for the higher lender costs, HUD acknowledges that they also face less opportunity to challenge the lender with regard to ability to repay. Given that litigation involves many wasteful costs, HUD expects that almost all borrowers will gain from the reduction in litigation and that the reduction of the interest rate will compensate for the loss of the option to more easily challenge a lender. As a result of the reclassification of some of HUD loans, the expected impact of the rule is an annual reduction of legal costs from $12.2 to $40.7 million, and may even fall below this range, as the range was derived from the CFPB's estimate of the range of legal cost differences between a qualified mortgage loan and a non-qualified mortgage loan.

Thus, the FHA qualified mortgage rule would not have an economic impact above $100 million, and the rule is not economically significant.

HUD's full economic analysis of the costs and benefits and possible impacts of this rule is available on *www.regulations.gov*.

Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. For the reasons provided in the preamble to this final rule and further discussed in this section, this rule will not have a significant economic impact on a substantial number of small entities.

As provided in this final rule (and as proposed in the September 30, 2013, rule), HUD makes no change to the current requirements governing its Title I loans, its Section 184 and 184A guaranteed loans, and HECM loans. Therefore, this rule has no impact on either lenders or prospective borrowers under these programs. In addition to the exemptions provided in the proposed rule, and as discussed in the preamble to this final rule, HUD is also exempting Title I and Title II manufactured home mortgages, and certain transactions from compliance with HUD's qualified mortgage regulations. (See the second and third bulleted paragraphs in Section IV of the preamble to this final rule.) Consequently, there is also no impact on either lenders or prospective borrowers under these programs or transactions. These exemptions address several of the concerns raised by small entities in public comments submitted in response to HUD's September 30, 2013, proposed rule.

In this final rule, HUD also provides clarifications that address certain other issues raised by small entities. HUD clarifies that housing counseling fees and rehabilitation consultant fees under HUD's 203(k) program may be excluded from points and fees if made by a third-party and is not retained by the creditor, loan originator, or an affiliate of either. HUD-approved housing counseling for borrowers seeking FHA-insured mortgages, whether such counseling is voluntary or required, is not part of the points and fees calculation. HUD also clarifies that exempt from the points and fees calculation are consultant fees for ensuring program compliance and for drafting the required architectural exhibits for the 203(k) program by non-affiliated entities. HUD requires the use of a HUD consultant to ensure 203(k) program compliance and strongly encourages the use of an independent consultant to prepare the required architectural exhibits. Both consultation fees, if obtained by non-affiliated entities on the 203(k) consultant list, are not included in the points and fees calculation, and therefore adoption of the CFPB points and fees definition should not reduce access to the 203(k) program.

The primary concern, however, of commenter raising small entity concerns was the time needed to adjust systems in order to be able to comply with HUD's qualified mortgage regulation. The commenters were particularly concerned about changes that would need to be made to address the rebuttable presumption distinction for FHA loans. The commenters questioned why such a distinction was needed since, as they stated per HUD's own analysis, this category would cover only a small percentage of FHA loans. This concern was reiterated in a November 4, 2013, letter to HUD's FHA Commissioner from the Office of Advocacy of the Small Business Administration (SBA).

As stated earlier in the preamble to this final rule, HUD respects the analysis that CFPB undertook in defining ''qualified mortgage'' for the conventional mortgage market, and sees value in having a safe harbor qualified mortgage and a rebuttable presumption qualified mortgage as established in regulation by the CFPB. HUD's regulation differs from CFPB's regulation in distinguishing between the two types of qualified mortgages for FHA Title II mortgages based on the mortgage's APR. HUD incorporates the APR as an internal element of HUD's definition of qualified mortgages to distinguish safe harbor qualified mortgages from the rebuttable presumption qualified mortgages. The CFPB's ''higher-priced covered transaction'' is an external element that is applied to a single definition of ''qualified mortgage.''

Under this final rule, for a Title II FHA mortgage to meet the ''safe harbor qualified mortgage'' definition, the mortgage is required to have an APR that does not exceed the APOR for a comparable mortgage by more than the combined annual mortgage insurance premium (MIP) and 1.15 percentage points. HUD adopts a higher APR than that adopted by CFPB to remediate the fact that some FHA loans would fall under CFPB's ''higher-priced covered transaction'' as a result of the MIP. The MIP by itself should not be the factor that determines whether a loan is a higher-priced transaction. By reclassifying some loans that would have been rebuttable presumption loans under CFPB's ''higher-priced covered transaction'' definition to safe harbor qualified mortgage loans under HUD's rule, HUD thus reduces the potential cost of litigation for those loans. The reclassification will result in lenders facing lower costs under HUD's regulations than under the CFPB regulations and therefore receive incentives to continue making these loans without having to pass on their increased compliance costs to borrowers.

Because all FHA-insured mortgages include a MIP that may vary from time to time to address HUD's financial soundness responsibilities, including the MIP as an element of the threshold that distinguishes safe harbor from rebuttable presumption allows the threshold to ''float'' in a manner that allows HUD to fulfill its responsibilities that would not be feasible if HUD adopted a threshold based only on the amount that APR exceeds APOR. If a straight APR over APOR threshold were adopted by HUD, every time HUD would change the MIP, to ensure the financial soundness of its insurance fund and reduce risk to the fund or to reflect a more positive market, HUD would also have to consider changing the threshold APR limit.

As further stated in the preamble of this final rule HUD expects that a rebuttable presumption category could place downward pressure on the APRs of FHA mortgages. This downward pressure could have positive implications for FHA borrowers. Moreover, HUD, through having its own rebuttable presumption standard, keeps pressure on conventional lenders to keep APR within the limit for CFPB's standard for safe harbor as well. For example, a consumer who applies for a higher risk conventional loan may not meet the CFPB's QM on the basis of high points and fees, or if the points and fees are reduced to 3 percent, the APR may become too high for safe harbor under CFPB rules. However, the consumer might instead be offered a higher interest rate FHA loan in return for lower points and fees, and the lender could achieve QM with safe harbor status as an FHA loan in the absence of an FHA rebuttable presumption standard. With the FHA rebuttable presumption standard, the conventional lender would have incentive to work within the CFPB's APR–APOR spread to maintain a safe harbor status. It is for these reasons that HUD believes it is important to retain a rebuttable presumption category for Title II mortgages.

With respect to concerns about insufficient time to adjust systems to accommodate the different categories of loans, HUD has clarified that lenders can identify a safe harbor qualified mortgage for Title II loans under HUD's regulations by using the same compliance mechanisms for identifying ''qualified mortgages'' under the CFPB's definition. Systems that lenders have put in place to identify safe harbor qualified mortgages under the CFPB's 1.5 percent APR threshold should also identify the substantial majority of safe harbor qualified mortgages under HUD's APR threshold. A loan that meets the 1.5 percent threshold will also be in compliance with the HUD threshold. Only HUD safe harbor loans that exceed the 1.5 percent threshold and rebuttable presumption loans would not be picked up by such systems. Thus, lenders are no worse off under HUD's rule in terms of making safe harbor qualified mortgages, using systems already required to be in place, than they would be if HUD had taken no action.

HUD has heard from the industry that a change to the system would require resources but not that the specific system as proposed would be more costly than any other system. A system to identify HUD safe harbor qualified mortgage would need to pull the MIP from a specific source or be manually inputted by the individual lender to calculate an APR to APOR threshold similar to CFPB's metric. All system changes require resources and time, but, in accordance with a timetable and allocation of resources of their choosing, when lenders do implement HUD's rule it provides an immediate opportunity for lenders to increase the number of HUD-insured safe harbor qualified mortgages they make in accordance with a timetable and allocation of resources of their choosing. HUD does not consider it necessary for any lender to change systems immediately to adapt to HUD's requirements in order to make the same number of insured safe harbor qualified mortgages as a lender would otherwise make.

For the reasons provided above and in this preamble overall, the undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That FONSI remains applicable to this final rule and is available for public inspection between 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (i) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and will not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Mortgage Insurance-Homes is 14.117; for the Section 184 Loan Guarantees for Indian Housing is 14.865, and for the Section 184A Loan Guarantees is 14.874.

List of Subjects

24 CFR Part 201

Claims, Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recording requirements.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 1005

Indians, Loan programs—Indians, Reporting and recordkeeping requirements.

24 CFR Part 1007

Loan programs—Native Hawaiians, Native Hawaiians, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD amends 24 CFR parts 201, 203, 1005 and 1007 as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

■ 1. The authority citation for part 201 is revised to read as follows:

Authority: 12 U.S.C. 1703; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

■ 2. A new § 201.7 is added to subpart A to read as follows:

§ 201.7 Qualified mortgage.

(a) *Qualified mortgage.* A mortgage insured under section 2 of title I of the National Housing Act (12 U.S.C. 1703), except for mortgage transactions exempted under § 203.19(c)(2), is a safe harbor qualified mortgage that meets the ability to repay requirements in 15 U.S.C. 1639c(a).

(b) *Effect of indemnification on qualified mortgage status.* An indemnification demand or resolution of a demand that relates to whether the loan satisfied relevant eligibility and underwriting requirements at the time of consummation may result from facts that could allow a change to qualified mortgage status, but the existence of an indemnification does not per se remove qualified mortgage status.

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 3. The authority citation for part 203 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z–16, 1715u, and 1717z–21; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

■ 4. A new § 203.19 is added to read as follows:

§ 203.19 Qualified mortgage.

(a) *Definitions.* As used in this section:

(1) *Average prime offer rate* means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to mortgagors by a representative sample of mortgagees for mortgage transactions that have low-risk pricing characteristics as published by the Consumer Financial Protection Bureau (CFPB) from time to time in accordance with the CFPB's regulations at 12 CFR 1026.35, pertaining to prohibited acts or practices in connection with higher-priced mortgage loans.

(2) *Annual percentage rate* is the measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the mortgagor to the amount and timing of payments made and is the rate required to be disclosed by the mortgagee under 12 CFR 1026.18, pertaining to disclosure of finance charges for mortgages.

(3) *Points and fees* has the meaning given to ''points and fees'' in 12 CFR 1026.32(b)(1) as of January 10, 2014. Any changes made by the CFPB to the points and fees definition may be adopted by HUD through publication of a notice and after providing FHA-approved mortgagees with time, as may be determined necessary, to implement.

(b) *Qualified mortgage.* (1) *Limit.* For a single family mortgage to be insured under title II of the National Housing Act (12 U.S.C. 1701 *et seq.*), except for mortgages for manufactured housing and mortgages under paragraph (c) of this section, the total points and fees payable in connection with a loan used to secure a dwelling shall not exceed the CFPB's limit on points and fees for qualified mortgage in its regulations at 12 CFR 1026.43(e)(3) as of January 10, 2014. Any changes made by the CFPB to the limit on points and fees may be adopted by HUD through publication of a notice and after providing FHA-approved mortgagees with time, as may be determined necessary, to implement.

(2) *Rebuttable presumption qualified mortgage.* (i) A single family mortgage insured under title II of the National Housing Act (12 U.S.C. 1701 *et seq.*), except for mortgages for manufactured housing and mortgages under paragraph (c) of this section, that has an annual percentage rate that exceeds the average prime offer rate for a comparable mortgage, as of the date the interest rate is set, by more than the combined annual mortgage insurance premium and 1.15 percentage points for a first-lien mortgage is a rebuttable presumption qualified mortgage that is presumed to comply with the ability to repay requirements in 15 U.S.C. 1639c(a).

(ii) To rebut the presumption of compliance, it must be proven that the mortgage exceeded the points and fees limit in paragraph (b)(1) of this section or that, despite the mortgage having been endorsed for insurance under the National Housing Act, the mortgagee did not make a reasonable and good-faith determination of the mortgagor's repayment ability at the time of consummation, by failing to evaluate the mortgagor's income, credit, and assets in accordance with HUD underwriting requirements.

(3) *Safe harbor qualified mortgage.* (i) A mortgage for manufactured housing that is insured under Title II of the National Housing Act (12 U.S.C. 1701 *et seq.*) is a safe harbor qualified mortgage that meets the ability to repay requirements in 15 U.S.C. 1639c(a); and

(ii) A single family mortgage insured under title II of the National Housing Act (12 U.S.C. 1701 *et seq.*), except for mortgages under paragraph (c) of this section, that has an annual percentage rate that does not exceed the average prime offer rate for a comparable mortgage, as of the date the interest rate is set, by more than the combined annual mortgage insurance premium and 1.15 percentage points for a first-lien mortgage is a safe harbor qualified mortgage that meets the ability to repay requirements in 15 U.S.C. 1639c(a).

(4) *Effect of indemnification on qualified mortgage status.* An indemnification demand or resolution of a demand that relates to whether the loan satisfied relevant eligibility and underwriting requirements at the time of consummation may result from facts that could allow a change to qualified mortgage status, but the existence of an indemnification does not per se remove qualified mortgage status.

(c) *Exempted transactions.* The following transactions are exempted from the requirements in paragraph (b) of this section:

(1) Home Equity Conversion Mortgages under section 255 of the National Housing Act (12 U.S.C. 1715z–20); and

(2) Mortgage transactions exempted by the CFPB in its regulations at 12 CFR 1026.43(a)(3) as of January 10, 2014. Any changes made by CFPB to the list of exempted transactions may be adopted by HUD through publication of a notice and after providing FHA-approved mortgagees with time, as may be determined necessary, to implement.

(d) *Ability to make adjustments to this section by notice.* The FHA Commissioner may make adjustments to this section, including the calculations of fees or the list of transactions excluded from compliance with the requirements of this section as the Commissioner determines necessary for purposes of meeting FHA's mission, after solicitation and consideration of public comments.

PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

■ 5. The authority citation for part 1005 is revised to read as follows:

Authority: 12 U.S.C. 1715z–13a; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

■ 6. A new § 1005.120 is added to read as follows:

§ 1005.120 Qualified mortgage.

A mortgage guaranteed under section 184 of the Housing and Community

Development Act of 1992 (12 U.S.C. 1715z–13a), except for mortgage transactions exempted under § 203.19(c)(2), is a safe harbor qualified mortgage that meets the ability-to-repay requirements in 15 U.S.C. 1639c(a).

PART 1007—SECTION 184A LOAN GUARANTEES FOR NATIVE HAWAIIAN HOUSING

■ 7. The authority citation for part 1007 is revised to read as follows:

Authority: 12 U.S.C. 1715z–13b; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

■ 8. A new § 1007.80 is added to read as follows:

§ 1007.80 Qualified mortgage.

A mortgage guaranteed under section 184A of the Housing and Community Development Act of 1992 (1715z–13b), except for mortgage transactions exempted under § 203.19(c)(2), is a safe harbor qualified mortgage that meets the ability-to-repay requirements in 15 U.S.C. 1639c(a).

Dated: December 5, 2013.

Shaun Donovan,

Secretary.

[FR Doc. 2013–29482 Filed 12–10–13; 8:45 am]

BILLING CODE 4210–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter II

[Docket No. FR–5595–N–01]

RIN 2502–AJ07

Federal Housing Administration (FHA) Risk Management Initiatives: New Manual Underwriting Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice of new manual underwriting requirements.

SUMMARY: On July 15, 2010, HUD issued a document seeking comment on three initiatives that HUD proposed would contribute to the restoration of the Mutual Mortgage Insurance Fund capital reserve account. This document implements one of these proposals. Specifically, through this document, FHA is providing more definitive underwriting standards for mortgage loan transactions that are manually underwritten.

DATES: *Effective date:* This document will be effective for FHA case numbers assigned on or after a date to be established by Mortgagee Letter following publication of this document. The effective date shall be no earlier March 11, 2014. HUD will publish a document in the **Federal Register** announcing the effective date. *Comment due date:* February 10, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding the revised credit score threshold for use of compensating factors to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Karin Hill, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410; telephone number 202–708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose and Legal Authority

Under the National Housing Act (12 U.S.C. 1701 *et seq.*), which authorizes Federal Housing Administration (FHA) mortgage insurance, HUD has a responsibility to ensure that the Mutual Mortgage Insurance Fund (MMIF) remains financially sound. During times of economic volatility, FHA has maintained its countercyclical influence, supporting the private sector when access to housing finance capital is otherwise constrained. FHA played this role in the recent housing crisis, and the volume of FHA insurance increased rapidly as private sources of mortgage finance retreated from the market. However, the growth in the MMIF portfolio over such a short period of time contributed significantly to the projected losses to, and financial soundness of, the Fund.[1] Consistent with the Secretary's responsibility under the National Housing Act to ensure that the MMIF remains financially sound, FHA has taken steps to improve the health of the Fund. Therefore, HUD published a July 15, 2010, notice, and sought public comment on three proposals designed to address features of FHA mortgage insurance that have resulted in high mortgage insurance claim rates and risk of loss to FHA.

At the close of the public comment period on August 16, 2010, HUD received 902 public comments in response to the July 15, 2010, notice. The majority of the public comments focused on the proposal to reduce allowable seller concessions. In order to provide itself with the necessary additional time to consider the issues

[1] U.S. Department of Housing and Urban Development, Annual Report to Congress Regarding the Financial Status of the FHA Mutual Mortgage Insurance Fund, Fiscal Year 2012. See *http://portal.hud.gov/hudportal/documents/huddoc?id=F12MMIFundRepCong111612.pdf.*

raised by the commenters, HUD decided to separately implement the proposals contained in the July 15, 2010, notice.

B. Summary of Major Changes

This final document implements the revised manual underwriting requirements, and takes into consideration the public comments received on this proposal. Through this final document, FHA is providing more definitive underwriting standards for mortgage loan transactions that are manually underwritten. In response to comment, HUD has made five changes to the proposed manual underwriting requirements at this stage. First, HUD has taken the opportunity to address the issue of borrowers who exceed the 31 percent housing-to-income ratio, yet carry little or no discretionary debt and, therefore, do not exceed the maximum 43 percent debt-to-income ratio. Second, HUD has addressed the relationship between compensating factors and ''stretch ratios'' that permit borrowers to exceed the housing payment and total debt-to-income ratios under certain FHA mortgage insurance programs. Third, this document establishes additional compensating factors that can be used to qualify borrowers who exceed FHA's standard housing payment and debt to income ratios. Fourth, HUD has reduced the credit score (from 620 to 580) below which compensating factors may not be cited and the standard ratio guidelines may not be exceeded. Fifth, HUD has extended the applicability of these underwriting policies to FHA-to-FHA rate and term refinance transactions (no cash-out) and credit-qualifying FHA streamline refinance transactions.

Manually underwritten loans are required to have reserves equal to at least one full monthly mortgage payment (1–2 unit properties) or three full monthly mortgage payments (3–4 unit properties). FHA currently has standard guidelines for the debt-to-income ratios. The mortgage payment-to-income ratio (the front-end ratio) may not exceed 31 percent, and the total fixed payment-to-income ratio (the back-end ratio) may not exceed 43 percent. Either or both of these ratios may be exceeded provided that there are compensating factors. This document establishes for manually underwritten loans a maximum front ratio and a maximum back ratio that may not be exceeded based on the borrower's credit score. Borrowers with no credit score [2] or with credit scores below 580 may not exceed the standard 31/43 ratios. Borrowers with credit scores of 580 or higher may be approved for ratios as high as 37/47 with one compensating factor, and 40/50 with two compensating factors. In addition, the final document restricts the use of compensating factors to borrowers with credit scores of 580 or higher. Borrowers not meeting this standard are limited to maximum ratios of 31/43 unless they meet the Energy Efficient Mortgage requirements which provide maximum stretch ratios of 33/45.

The manual underwriting requirements are applicable for purchase transactions and all credit qualifying FHA refinance transactions

C. Requests for Comments on Credit Score Threshold for Use of Compensating Factors

As noted above, and discussed in more detail in the response to comments that follows, HUD has reduced the credit score (from 620 to 580) below which compensating factors may not be cited and the standard ratio guidelines may not be exceeded. This change will expand the pool of eligible borrowers who may qualify for the use of such compensating factors. Although this document is being issued for effect, HUD nonetheless invites public comment on this one change. HUD is not soliciting comments on other aspects of the document. Comments on the revised credit score threshold for use of compensating factors are due on or before February 10, 2014, and submitted in accordance with the procedures described in the **ADDRESSES** section of this document. HUD will publish a follow-up document addressing the comments received on the revised credit score threshold.

D. Benefits and Costs

The effect of the document is to reduce underwriting losses by strengthening manual underwriting guidelines and thereby increase revenue per loan for FHA as a result of more rigorous underwriting practices that reduce the number of claims. FHA can control costs through risk management practices. The lower costs are a gain to FHA. The target of the document is low net-revenue loans, which have higher claim rates and higher loss rates. HUD expects the net revenue per loan to increase by $2,300 (discounted at 3 percent) primarily because the expected claim amount falls. At a 7 percent discount rate, the increase in net revenue per loan is $1,900. Any gain to the FHA is a transfer. Whether there are net transfers to FHA depends on the impact of the rule on volume and thus the proportion of the current borrowers excluded from receiving a loan. When 10 percent of applicants are excluded, the gain (transfer) to FHA ranges from $35 to $42 million. Under certain circumstances, reducing the riskiest of loans will allow FHA to return additional revenues to the U.S. Treasury.

The new underwriting guidelines will postpone (perhaps indefinitely for some) the purchase of a home or the refinancing of a loan until the excluded households can satisfy more specific requirements. As noted by many of the public commenters on the July 15, 2010, notice, the policy changes being made by FHA have already been adopted by the private mortgage lending industry. Accordingly, the borrowers excluded by the document would not be able to purchase mortgage insurance from a private mortgage insurance company.

Many of the borrowers who would not qualify under the underwriting requirements may adjust their financial situation in order to meet the requirements. If the front-end ratio is the disqualifying factor, then a borrower could adjust by purchasing a less expensive home. Longer term solutions include saving to build reserves and repaying non-housing debt to meet the back-end ratio. A household could work to repair their credit score which would raise the allowable debt ratios. Once the borrower reaches a credit score of 580 or greater, compensating factors such as 3 months of reserves or the purchase of an energy-efficient home will raise the qualifying ratios even further. Thus, not all of the 16,000–19,000 borrowers affected by the document will be excluded from an FHA loan. Some will be able to adjust immediately and others within a year or two.

Another consideration in measuring the costs of the document is that by excluding potential borrowers from the benefits of an FHA loan guarantee, the new manual underwriting requirements may lead to a reduction in the social benefits of homeownership. HUD assumed two potential outcomes: that homeownership has positive net public benefits or that there are no public benefits of homeownership. The first scenario is motivated by economic theory and the second by recent empirical evidence. One study estimated the public benefits of homeownership to be $443 ($341 adjusted to the 2013 price level). Assuming that homeowners leave their current homes every seven years, the annualized benefit per loan is $70 (at a 3 percent discount rate) or $80 (at a 7 percent discount rate). The exclusion of

[2] For manually underwritten loans with insufficient credit references and with greater than 31/43 ratios, HUD currently does not to allow for compensating factors. Under this document, HUD will continue not to allow for compensating factors for these borrowers.

homeowners may reduce these public benefits of homeownership. However, HUD also notes that some studies find that a negative social effect of home ownership is reduced mobility, which leads to rigidity in the labor market and thus lengthens economic downturns. In addition, a full analysis of the expected cost to society of excluding a household from homeownership would account for the expected social costs of foreclosure for every homeowner created.

The aggregate economic impact of the document is found by examining the aggregate changes to FHA's net revenue, the total impact on consumers (rejected applicants and accepted borrowers), and the public benefits of homeownership. HUD quantifies the revenue impacts and discusses qualitatively the impacts on consumers and social benefits. The pre-document number of loans is estimated to be 18,000. HUD assumes that some proportion of those loans will be excluded as a direct result of the document. The implications of raising the number of loans that cannot make the transition into higher quality loans are that the gain to the FHA will decline and the total cost to borrowers will rise (since the loss due to exclusion is assumed to be greater than the loss due to compliance). As long as not more than 13 percent of applications are excluded, the net transfers to FHA outweigh the burdens of the document regardless of the discount rate.

The aggregate revenue impacts of the document for a variety of assumptions concerning key parameters are summarized in the table below.

ANNUAL AGGREGATE IMPACTS OF THE FINAL DOCUMENT

[In millions of dollars]

Category	0% of loans excluded		10% of loans excluded		20% of loans excluded		100% of loans excluded	
	discount rate of		discount rate of		discount rate of		discount rate	
	3%	7%	3%	7%	3%	7%	3%	7%
Transfers								
FHA Gain	+42	+35	+20	+16	−17	−3	−176	−156

II. Background

On July 15, 2010, at 75 FR 41217, HUD submitted for public comment three policy changes that HUD proposed would contribute to the restoration of the MMIF capital reserve account. The volume of FHA insurance has increased rapidly as private sources of mortgage finance retreated from the market. FHA's share of the single-family mortgage market was estimated at 17 percent (33 percent for home purchase mortgages) in Fiscal Year (FY) 2010, up from 3.4 percent in FY 2007, and the dollar volume of insurance written has jumped from the $77 billion issued in FY 2007 to $319 billion in FY 2010. The growth in the MMIF portfolio over such a short period of time coincided with worsening economic conditions that have seen high levels of defaults and foreclosures, and consequently FHA has had to balance its social mission, which includes meeting the needs of homebuyers with low down payments and first time homebuyers, with the risk of incurring unexpected losses that could deplete capital reserves in the MMIF.[3] The National Housing Act, which authorizes FHA mortgage insurance, envisions that FHA will adjust program standards and practices, as necessary, to operate the MMIF, on a financially sound basis.

Consistent with HUD's responsibility under the National Housing Act to ensure that the MMIF remains financially sound, HUD published the July 15, 2010, notice and sought public comment on three proposals designed to address features of FHA mortgage insurance that have resulted in high mortgage insurance claim rates and risk of loss to FHA. Specifically, HUD proposed to reduce the amount of closing costs a seller may pay on behalf of a homebuyer purchasing a home with FHA-insured mortgage financing for the purposes of calculating the maximum mortgage amount; to introduce a credit score threshold as well as reduce the maximum loan-to-value (LTV) for borrowers with lower credit scores who represent a higher risk of default and mortgage insurance claim; and to provide more definitive underwriting standards for mortgage loan transactions that are manually underwritten.

The proposed changes were developed to preserve both the historical role of the FHA in providing a home financing vehicle during periods of economic volatility and HUD's social mission of helping underserved borrowers. Interested readers are referred to the July 15, 2010, notice for details regarding the proposed changes to FHA requirements.

At the close of the public comment period on August 16, 2010, HUD received 902 public comments in response to the July 15, 2010, notice. The majority of the public comments focused on the reduction in seller concessions and revised manual underwriting requirements. In order to provide itself with the necessary additional time to consider the issues raised by the commenters on these two issues, HUD decided to separately implement the proposals contained in the July 15, 2010, notice. On September 10, 2010, HUD published a final rule, at 75 FR 54020, implementing a credit score threshold and reducing the maximum LTV for borrowers with lower credit scores.

III. This Document—Implementation of Revised Manual Underwriting Requirements; Additional Compensating Factors

This document implements the revised manual underwriting requirements, and takes into consideration the public comments received on this proposal. The new manual underwriting requirements will reduce the risk to the MMIF by reducing the probability of default and protecting consumers from predatory, irresponsible lending practices.

Section III of this document discusses the significant issues raised by the public comments regarding the new manual underwriting requirements, as well as HUD's responses to these issues. Section IV of this document implements the new manual underwriting

[3] While the Federal Credit Reform Act of 1990 requires that FHA (and all other government credit agencies) estimate and budget for the anticipated cost of mortgage loan guarantees, the National Housing Act imposes a special requirement that the MMIF hold an additional amount of funds in reserve to cover unexpected losses. FHA maintains the MMIF capital reserve in a special reserve account, which the National Housing Act mandates maintain a 2 percent ratio of reserve relative to the amount of outstanding insurance in force. The capital ratio generally reflects the reserves available (net of expected claims and expenses) as a percentage of the current portfolio, to address unexpected losses.

requirements. HUD will also issue additional guidance through Mortgagee Letter to assist in implementation of these new requirements.

As discussed in the July 15, 2010, notice, the purpose of mortgage underwriting is to determine a borrower's ability and willingness to repay the debt and to limit the probability of default. An underwriter must consider the borrower's credit history, evaluate their capacity to repay the loan based on income, assets and current debt, determine if cash to be used for closing is sufficient and from an acceptable source, determine if the value of the collateral is adequate security for the amount being borrowed and reserves are adequate. In cases where mortgage loans cannot be rated by FHA's TOTAL Mortgage Scorecard, the loan is referred by TOTAL, or the loan is manually downgraded the loan must be manually underwritten. Where FHA's standard qualifying ratios for total mortgage payment-to-income and total fixed payment-to-income are exceeded, lenders must cite at least one compensating factor. Under FHA's current manual underwriting standards, there is no limit on the maximum debt to income ratios a lender may approve nor does FHA define which or how many compensating factors must be cited to exceed FHA's standard qualifying ratio guidelines [4] FHA has determined that factors concerning housing and debt-to-income ratios, along with cash reserves, are particularly good predictive indicators as to the sustainability of the mortgage. Through this document, FHA is implementing additional requirements for consideration of these factors for manually underwritten mortgage loans. These additional requirements will consider the borrower's credit history, LTV percentage, housing/debt ratios, reserves, and compensating factors.

In response to comment, HUD has made five changes to the proposed manual underwriting requirements at this stage. First, HUD has taken the opportunity to address the issue of borrowers who exceed the 31 percent housing-to-income ratio, yet carry little or no discretionary debt and, therefore, do not exceed the maximum 43 percent debt-to-income ratio. Second, HUD has addressed the relationship between compensating factors and ''stretch ratios'' that permit borrowers to exceed the housing payment and total debt-to-income ratios under certain FHA mortgage insurance programs. Third, this document establishes additional compensating factors that can be used to qualify borrowers who exceed FHA's standard housing payment and debt to income ratios. Fourth, HUD has reduced the credit score (from 620 to 580) below which compensating factors may not be cited and the standard ratio guidelines may not be exceeded. Fifth, the manual underwriting requirements are applicable to all purchase loans and all credit qualifying refinance loans, including FHA-to-FHA rate and term refinance transactions (no cash out) and credit qualifying FHA streamline refinance transactions.

IV. Discussion of the Public Comments Regarding Proposed Revisions to Manual Underwriting Requirements

Comment: Support for revised manual underwriting requirements. The majority of the commenters submitting comments on the revised manual underwriting requirements wrote to express support for the new policy. The commenters agreed that clarifying the underwriting standards for manually underwritten loans would reduce risks to the FHA MMIF and help to stem the tide of home foreclosures. Moreover, these commenters wrote that the new manual underwriting standards would protect consumers from predatory and irresponsible lending practices, thereby assisting in stabilizing the housing industry.

HUD Response. HUD appreciates the support expressed by these commenters, and agrees that the changes will reduce the risk to the MMIF and help ensure that homebuyers are offered FHA-insured mortgage loans that are sustainable.

Comment: Opposition to revised manual underwriting guidelines. Several commenters opposed the proposed manual underwriting standards. Some of these commenters questioned the need for the proposed changes. These commenters wrote that lenders have voluntarily implemented stricter underwriting standards to help ensure borrowers are financially capable of meeting their loan obligations. Other commenters focused on the potential impacts of the new standards on low- and moderate-income homebuyers. The commenters wrote that borrowers are already facing limited access to credit as a result of stricter underwriting standards being adopted by lenders, and that the standards proposed by FHA would further restrict the ability of these homebuyers to obtain financing for the purchase of a home.

HUD Response. HUD has considered these comments and as a result, revised its proposal to reduce the credit score requirement for the use of compensating factors from 620 to 580, thereby expanding the pool of eligible borrowers who may qualify for the use of such factors. In addition to expanding access to compensating factors, the new threshold provides for the more precise and historically accurate use of credit scores. The formerly proposed thresholds would have grouped borrowers with non-traditional/insufficient credit together all borrowers with credit scores up to 619. Such a grouping would have been overly broad. The new threshold recognizes that the loan performance of FHA borrowers with non-traditional/insufficient credit is comparable to that of borrowers with credit scores of 579 or lower. Moreover, the use of the credit score of 580 is consistent with HUD's recent guidance on manual underwriting contained in Mortgagee Letter 2013–05 (January 31, 2013).[5]

In response to these comments, HUD is also providing more flexible front-end and back-end ratios. The document also establishes better defined compensating factors, and provides that HUD may establish additional compensating factors through Mortgagee Letter, thereby enabling HUD to more promptly address changes in market conditions and the population of borrowers being served by the FHA programs. While HUD does not presently anticipate the need for issuing such a Mortgage Letter, HUD emphasizes that the purpose of any such issuance would be to add to, but not subtract from, the list of compensating factors established in this document.

HUD believes that these changes strike the appropriate balance between fulfilling the Department's historical and social mission as well as its statutory duty to preserve the financial health of the MMIF. Moreover, sustainable homeownership is essential to a healthy and well-functioning housing market. These changes will promote that goal by helping to ensure that homeowners are able to afford their FHA-insured mortgage loans.

The preamble to the July 15, 2010, notice specifically solicited public comment on acceptable compensating factors and, in particular, on how FHA could serve borrowers with housing ratios above the proposed threshold and debt-to-income ratios below the threshold (see 75 FR 41222). These borrowers, while having established

[4] The manual underwriting procedures are detailed in HUD Handbook 4155.1 ''Mortgage Credit Analysis for Mortgage Insurance.'' The handbook may be downloaded at: *http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4155.1/41551HSGH.pdf.*

[5] *http://portal.hud.gov/hudportal/documents/huddoc?id=13-05ml.pdf.*

credit lines, traditionally do not use credit to finance purchases over a period of several months or years or pay them off within the billing cycle. Therefore, they have a history of carrying little to no discretionary debt. While the housing debt assumed by such a borrower may be higher than the housing ratios established by this document, their overall debt-to-income ratios fall within acceptable underwriting levels and reflect a record of responsible credit. To address this issue, HUD has established an additional ''compensating factor'' that would allow such borrowers to qualify for FHA mortgage insurance. Specifically, a borrower will be permitted to exceed the housing and debt-to-income ratios, if the borrower has access to credit but carries no discretionary debt. For example, the borrower's monthly housing expense is the only open installment debt with an outstanding balance and revolving debt is paid off every month.

HUD also agrees that borrowers are already facing limited access to credit as a result of stricter underwriting standards being adopted by mortgagees. To provide additional consideration for manually evaluating the borrower for expanded ratios, HUD has included a residual income compensating factor that can be used to determine if the borrower has sufficient income after making their monthly mortgage payment, including taxes and insurance, to meet their needs for food, utilities, clothing, transportation, work-related expenses, and other essentials. HUD will permit the use of a compensating factor modeled on the Department of Veteran's Affairs (VA) residual income requirements (codified in regulation at 38 CFR 36.4340). Under the VA regulations, residual income is calculated by determining the borrower's gross monthly income, then deducting the borrower's monthly expenses from the total gross monthly income. The balance remaining is ''residual income'' and the mortgagee can determine if the mortgagor meets the applicable residual income requirements, which vary based on family size, region, and loan amount as described in tables codified in the VA regulations. If the mortgagor meets the residual income test, the mortgagee can use residual income as a compensating factor.[6]

Second, HUD has clarified the relationship between the compensating factors and the ''stretch ratios'' provided for under certain FHA mortgage insurance programs that authorize borrowers to exceed qualifying housing and debt-to-income ratios. For example, as noted in the preamble to the July 15, 2010, notice, borrowers using FHA energy efficient mortgage insurance may have stretch ratios of 33/45 if the homes are built or retrofitted to exceed the applicable International Energy Conservation Code (IECC) standard. HUD has taken the opportunity afforded by this document to clarify that, although such borrowers may not be subject to the 31/43 percent qualifying ratios established by this document, these borrowers may not exceed the 33/45 percent upper limit for stretch ratios established by the document unless they qualify for higher ratios based on credit score and additional compensating factors.

Comment: Hold underwriters to a higher standard. Several commenters suggested that, in addition to the proposed manual underwriting requirements, HUD should hold underwriters themselves to a higher standard. The commenters recommended that HUD require underwriters to absorb a higher percentage of the risk associated with manual underwriting. For example, one of the commenters recommended that HUD suspend lenders with high default rates on their manually underwritten loans.

HUD Response. HUD has not revised its proposal based on these comments. The Department has already implemented the types of action recommended by the commenters. Mortgagee Letter 2010–03, issued on January 21, 2010, announced several steps undertaken by HUD to enhance its authority to address deficiencies in a lender's performance, focusing on all underwriting decisions, not just those that were manually underwritten.[7] Specifically, Mortgagee Letter 2010–03 advised that every three months, HUD reviews the rates of default and claims on all FHA-insured single family loans. This review analyzes the performance of every participating lender based on its area of operation. HUD may terminate an underwriting lender's approval to underwrite FHA-insured loans in an area where the lender's default and claim rate exceeds the established Credit Watch Termination thresholds.

Comment: Clarify what are acceptable compensating factors in underwriting guidelines. Several commenters, while expressing support of the proposed changes to the manual underwriting requirements, also suggested that HUD simplify the acceptable compensating factors. For example, one commenter recommended that FHA develop a list or chart that more clearly identifies the relationship between the compensating factors and the acceptable housing and debt to income ratios. Another commenter suggested that FHA more specifically define the compensating factors.

HUD Response. As noted above, HUD has, in response to these comments, made changes to clarify the compensating factors and their relationship to the qualifying housing and debt-to-income ratios. In addition, HUD is providing a matrix outlining credit score, front-end ratios, back-end ratios, cash reserves, acceptable compensating factors, and criteria for stretch ratios.

V. Establishment of Revised Manual Underwriting Requirements

Commencing on the effective date:

Manual Underwriting. On manually underwritten mortgage loans, borrowers are required to have minimum cash reserves equal to one monthly mortgage payment for one- and two-unit properties, and 3 months for three- and four-unit properties, which includes principal, interest, taxes, and insurance. For borrowers with credit scores of 500 to 579 or non-traditional credit the maximum housing and debt-to-income ratios for manually underwritten loans are set at 31 percent and 43 percent, respectively, unless the borrower qualifies for 33/45 stretch ratios available for manually underwritten borrowers with homes built or retrofitted to exceed the applicable IECC standard including Energy Efficient Mortgages. For borrowers with credit scores of 580 or higher the maximum housing and debt-to-income ratios for manually underwritten loans are set at 31 percent and 43 percent, respectively, unless the borrower (1) qualifies for 33/45 stretch ratios available for manually underwritten borrowers with homes built or retrofitted to exceed the applicable IECC standard including Energy Efficient Mortgages or (2) meets the compensating factors criteria in the matrix below. To exceed 31/43 ratios or, in the case of homes built or retrofitted to exceed the applicable IECC standard including Energy Efficient Mortgages, the 33/45 stretch ratios, not to exceed 37/47 percent, borrowers must meet *at least* one of the acceptable compensating factors. To exceed the qualifying ratios of 37/47 percent, not to exceed 40/50 percent, borrowers must

[6] For more details on the VA residual income requirements, please refer to Chapter 4 of VA Pamphlet 26–7, ''Lenders Handbook,'' available at *http://www.benefits.va.gov/warms/pam26_7.asp.*

[7] Mortgagee Letter 2010–03 is available for download at: *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/10-03ml.pdf.*

meet at least *two* of the acceptable compensating factors. These minimum cash reserve and maximum qualifying ratio requirements are applicable for purchase transactions and all credit-qualifying FHA refinance transactions, where the loan received a REFER scoring recommendation from TOTAL, where TOTAL cannot score the loan (non-traditional credit) or where the TOTAL Scorecard scoring recommendation is Accept, but the underwriter manually downgrades it to Refer. These maximum front and back ratios requirements and reserve requirements are not applicable for non-credit qualifying FHA streamline refinance transactions and Home Equity Conversion Mortgage transactions.

Credit score	Maximum front and back ratios	Acceptable compensating factors (Note: HUD may establish additional compensating factors through Mortgagee Letter)
500–579 or Non-traditional/ Insufficient Credit.	31/43	Not applicable. Borrowers with credit scores below 580 or with Non-traditional/insufficient credit may not exceed 31/43 ratios.
580 and above	31/43	No compensating factors required.
580 and above	37/47	One of the following: • Verified and documented liquid cash reserves equal to at least three total monthly mortgage payments (1–2 units) or six total monthly mortgage payments (3–4 units). • New total monthly mortgage payment is not more than $100 or 5% higher than previous total monthly housing payment, whichever is less; and verified and documented twelve month housing payment history (1X30 only). • Sufficient Residual Income as calculated per VA requirements
580 and above	40/40	Borrower with established credit and open credit lines carries no discretionary debt. Monthly housing payment is only open installment account and revolving credit is paid off monthly.
580 and above	40/50	Two of the following: • Verified and documented liquid cash reserves equal to at least three total monthly mortgage payments (1–2 units) or six total monthly mortgage payments (3–4 units). • New total monthly mortgage payment is not more than $100 or 5% higher than previous total monthly housing payment, whichever is less; and verified and documented twelve month housing payment history (1X30 only). • Sufficient Residual Income as calculated per VA requirements. • Verified and documented additional income that is not considered effective income. Overtime and bonus income can be cited as a compensating factor if the mortgagee verifies and documents that the borrower has received this income for at least one year but less than two years, and it will likely continue. Part-time and seasonal income can be cited as a compensating factor if the mortgagee verifies and documents that the borrower has worked the part-time or seasonal job uninterrupted for at least one year but less than two years, and plans to continue.

Note: Maximum ratios for manually underwritten borrowers with homes built or retrofitted to exceed the applicable IECC standard including Energy Efficient Mortgages are eligible for stretch ratios of 33/45 regardless of credit score or Nontraditional credit, but must meet the minimum required reserve requirement for manually underwritten loans (1 month for 1–2 units, 3 months for 3–4 units). These transactions may also be eligible for higher ratios if they meet additional criteria, i.e. minimum 580 FICO and one or more additional compensating factors.

VI. Findings and Certification

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This document was determined to be a ''significant regulatory action'' as defined in section 3(f) of Executive Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

As noted above, this document implements one of the three initiatives announced in HUD's July 15, 2010, notice to aid in the restoration of the MMIF capital reserve account. Specifically, this document provides more definitive underwriting standards for mortgage loan transactions that are manually underwritten to overcome lender uncertainty and resistance to manually underwritten, credit-worthy FHA borrowers in this time of tighter mortgage credit. The benefit of the document is to reduce underwriting losses by strengthening manual underwriting requirements and thereby increase net revenue to the FHA. Whether there are net transfers to FHA depends on what proportion of the current borrowers is excluded from receiving a loan. As long as not more than 13 percent are excluded, the net transfer to FHA is positive. When 10 percent of applicants are excluded, the gain (transfer) to FHA ranges from $35 million to $42 million. HUD has prepared an economic analysis assessing costs and benefits of the new manual underwriting requirements. HUD's full analysis can be found at *www.regulations.gov*. A summary of HUD's analysis follows:

A. *Transfers/Revenue Effects.* The broader purpose of the policy change is to reduce the risk to the MMIF so that FHA can continue to provide mortgage loans. Facilitating the provision of credit during a liquidity crisis is a welfare-enhancing activity, and FHA provides such a public benefit.

A government agency's increase in net revenue is usually treated as a transfer because governments traditionally raise revenue through taxes and fees. In the case of the manual underwriting document, the increase in FHA revenue occurs as the result of more rigorous underwriting practices that reduce the number of claims. FHA can control its costs through risk management practices. The lower costs are a gain to

FHA. When 10 percent of applicants are excluded, HUD's estimate of the expected net gain to the FHA (and subsequent transfer to the U.S. Treasury) ranges from $35 million to $42 million depending upon the discount rate. Any gain to the FHA is an eventual transfer to others. Under certain circumstances, reducing the riskiest of loans will allow FHA to return excess revenues to the U.S. Treasury.

HUD expects a reduction in the number of loans but also a reduction in the number of claims. The target of the document is low net-revenue loans, which have higher claim rates and higher loss rates. HUD expects the net revenue per loan to increase by $2,300 (discounted at 3 percent) primarily because the expected claim amount. At a 7 percent discount rate, the increase in net revenue per loan is $1,900.

B. *Benefits/Costs.* The new underwriting guidelines will postpone (perhaps indefinitely for some) the purchase of a home or the refinancing of a loan until the excluded households can satisfy more specific requirements. As noted by many of the public commenters on the July 15, 2010, notice, the policy changes being made by FHA have already been adopted by the private mortgage lending industry. Accordingly, the borrowers excluded by the document would not be able to purchase mortgage insurance from a private mortgage insurance company. The only choice for a rejected applicant would be to improve the strength of their financial position. A few analytical options exist for estimating the magnitude of the cost of being excluded from homeownership. The costs are: the direct private costs of meeting the new requirements, the private costs of delaying the loan, and the public costs of delay.

Many of the borrowers who would not qualify under the underwriting requirements may adjust their financial situation in order to meet the requirements. If the front-end ratio is the disqualifying factor, then a borrower could adjust by purchasing a less expensive home. Longer term solutions include saving to build reserves and repaying non-housing debt to meet the back-end ratio. A household could work to repair their credit score which would raise the allowable debt ratios. Most of the negatives will be removed from a credit report after 7 years, and it is possible to increase credit scores significantly after 3 years by better managing consumer debt. Once the borrower reaches a credit score of 580 or greater, compensating factors such as 3 months of reserves or the purchase of an energy-efficient home will raise the qualifying ratios even further. Thus, not all of the 16,000–19,000 borrowers affected by the document will be excluded from an FHA loan. Some will be able to adjust immediately and others within a year or two.

Another consideration in measuring the costs of the document is that by excluding potential borrowers from the benefits of an FHA loan guarantee, the new manual underwriting requirements may lead to a reduction in the social benefits of homeownership. HUD assumed two potential outcomes: that homeownership has positive net public benefits or that there are no public benefits of homeownership. The first scenario is motivated by economic theory and the second by recent empirical evidence. One study estimated the public benefits of homeownership to be $443 ($341 adjusted to the 2013 price level). Assuming that homeowners leave their current homes every seven years, the annualized benefit per loan is $70 (at a 3 percent discount rate) or $80 (at a 7 percent discount rate). The exclusion of homeowners may reduce these public benefits of homeownership. However, HUD also notes that some studies find that a negative social effect of home ownership is reduced mobility, which leads to rigidity in the labor market and thus lengthens economic downturns. In addition, a full analysis of the expected cost to society of excluding a household from homeownership would account for the expected social costs of foreclosure for every homeowner created.

C. *Aggregate costs and benefits.* The aggregate economic impact of the document is found by examining the aggregate changes to FHA's net revenue, the total impact on consumers (rejected applicants and accepted borrowers), and the public benefits of homeownership. HUD quantifies the revenue impacts and discusses qualitatively the impacts on consumers and social benefits. The pre-document number of loans is estimated to be 18,000. HUD assumes that some proportion of those loans will be excluded as a direct result of the document. The implications of raising the number of loans that cannot make the transition into higher quality loans are that the gain to the FHA will decline and the total cost to borrowers will rise (since the loss due to exclusion is assumed to be greater than the loss due to compliance).

The aggregate revenue impacts of the document for a variety of assumptions concerning key parameters are summarized in the table below.

ANNUAL AGGREGATE IMPACTS OF THE FINAL DOCUMENT

[In millions of dollars]

Category	0% of loans excluded		10% of loans excluded		20% of loans excluded		100% of loans excluded	
	discount rate of		discount rate of		discount rate of		discount rate	
	3%	7%	3%	7%	3%	7%	3%	7%
Transfers								
FHA Gain	+42	+35	+20	+16	−17	−3	−176	−156

As long as not more than 13 percent of applications are excluded, the net transfers to FHA outweigh the burden of the document regardless of the discount rate.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any document subject to notice and comment

rulemaking requirements unless the agency certifies that the document will not have a significant economic impact on a substantial number of small entities. The document does not establish new and unfamiliar regulatory requirements on FHA-approved mortgage lenders. Rather, the document builds on existing requirements and procedures that are familiar to lenders. Specifically, the document tightening portions of FHA's current underwriting guidelines that present an excessive level of risk to both homeowners and FHA. The benefit of the set of actions to regulated lending institutions will be to reduce the risk to the MMIF so that FHA can continue to insure mortgage loans originated and serviced by these lenders.

As noted in the economic analysis for the document, relative to the total FHA portfolio, few borrowers are served in the categories that would be excluded under the new policies, relative to the total FHA portfolio. Further, as noted by many of the public commenters on the July 15, 2010, notice, the policy changes being made by FHA have already been adopted by the private mortgage lending industry. The impact of the policy changes will, therefore, largely be limited to conforming FHA standards to widespread industry practice. Accordingly, to the extent this document has any economic impact on the minority of lenders that have not already adopted such stricter underwriting standards; they will be minimal, encompassing a relatively small proportion of their FHA business activities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This document would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This document would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Dated: December 3, 2013.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2013–29170 Filed 12–10–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DoD–2013–HA–0085]

RIN 0720–AB60

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/TRICARE: Pilot Program for Refills of Maintenance Medications for TRICARE for Life Beneficiaries Through the TRICARE Mail Order Program

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Interim final rule.

SUMMARY: This interim final rule implements Section 716 of the National Defense Authorization Act for Fiscal Year 2013 which establishes a five year pilot program that would generally require TRICARE for Life beneficiaries to obtain all refill prescriptions for covered maintenance medications from the TRICARE mail order program or military treatment facility pharmacies. Covered maintenance medications are those that involve recurring prescriptions for chronic conditions, but do not include medications to treat acute conditions. Beneficiaries may opt out of the pilot program after one year of participation. This rule includes procedures to assist beneficiaries in transferring covered prescriptions to the mail order pharmacy program. This regulation is being issued as an interim final rule in order to comply with the express statutory intent that the program begin early in calendar year 2013. Public comments, however, are invited and will be considered for possible revisions to this rule for the second year of the program.

DATES: This rule is effective February 14, 2014. Written comments received at the address indicated below by February 10, 2014 will be considered and addressed in the final rule.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov.

Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 4800 Mark Center Drive, Suite 02G09, Alexandria, VA 22350.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Rear Admiral Thomas McGinnis, Chief, Pharmacy Operations Directorate, TRICARE Management Activity, telephone 703–681–2890.

SUPPLEMENTARY INFORMATION:

A. Executive Summary

1. Purpose

This interim final rule implements section 716 of the National Defense Authorization Act for Fiscal Year 2013, which establishes a five year pilot program requiring TRICARE for Life beneficiaries to obtain all prescription refills for select maintenance medications from the TRICARE mail order program or military treatment facilities.

The legal authority for this rule is section 716 of the National Defense Authorization Act for Fiscal Year 2013. Subsection (d) of that law requires the issuance of this rule.

2. Summary of the Major Provisions of the Interim Final Rule

TRICARE for Life beneficiaries are required to obtain all prescription refills for select maintenance medications from the TRICARE mail order program (where beneficiary copayments are much lower than in retail pharmacies) or military treatment facilities (where there are no copayments). TRICARE for Life beneficiaries are those TRICARE beneficiaries enrolled in the Medicare wraparound coverage option of the TRICARE program. Covered maintenance medications are those prescribed for chronic, long-term conditions that are taken on a regular, recurring basis, but do not include medications to treat acute conditions. TRICARE will follow best commercial practices, including that beneficiaries will be notified of the new rules and mechanisms to allow them to receive adequate medication during their transition to mail for their refills. The statute and rule authorize a waiver of the mail order requirement based on patient needs and other appropriate circumstances. Beneficiaries may opt out of the program after one year of participation. The program will expire December 31, 2017, unless extended by Congress.

3. Costs and Benefits

The effect of the statutory requirement, implemented by this rule, is to shift a volume of prescriptions from retail pharmacies to the mail order pharmacy program. This will produce savings to the Department of approximately $120 million during the initial year of the demonstration and savings to beneficiaries of approximately $28 million in reduced copayments during the initial year of the demonstration. Savings to both Department and the beneficiaries are expected to increase approximately four percent per year during the remainder of the demonstration.

B. Background

In Fiscal Year 2012, 70 million prescriptions were filled for TRICARE beneficiaries through the TRICARE retail pharmacy benefit at a net cost of $3.8 billion to the government. Of those prescriptions, 33 million or 47% were filled for TRICARE for Life beneficiaries at a cost of $2.2 billion to the government. On average, the government pays 17% less for maintenance medication prescriptions filled in the mail order program than through the retail program. Not all prescriptions filled through the retail program are maintenance/chronic medications. Those that are not are excluded from the program. However, there is potential for significant savings to the government by shifting a portion of the TRICARE for Life prescription refills to the mail order program. In addition, there will be significant savings to the TRICARE for Life beneficiaries who will receive up to a 90 day refill at no charge for generics in the mail order program compared to a $5 copay for only up to a 30 day refill in retail. The savings is even greater for brand-name prescriptions: $13 for up to 90 days in mail versus $17 for up to 30 days in retail, meaning that for a 90-day supply the copayment comparison is $13 in mail to $51 in retail. The non-formulary copayment comparison is $43 for up to 90 days in mail compared to $44 for only up to 30 days in retail.

C. Provisions of the Interim Final Rule

The interim final rule adds a new paragraph (r) to 32 CFR 199.21. The new paragraph (r) establishes rules for the new program of refills of maintenance medications for TRICARE for Life beneficiaries through the mail order pharmacy program. Paragraph (r)(1) requires that for covered maintenance medications, TRICARE for Life beneficiaries are generally required to obtain their prescription refills through the national mail order pharmacy program or through military treatment facility pharmacies. TRICARE for Life beneficiaries are those enrolled in the Medicare wraparound coverage option of the TRICARE program.

Paragraph (r)(2) provides that the Director, TMA will establish, maintain, and periodically revise and update a list of covered maintenance medications, which will be accessible through the TRICARE Pharmacy Program Web site and by telephone through the TRICARE Pharmacy Program Service Center. Each medication included on the list will be a medication prescribed for a chronic, long-term condition that is taken on a regular, recurring basis. It will be clinically appropriate and cost effective to dispense the medication from the mail order pharmacy. It will be available for an initial filling of a 30-day or less supply through retail pharmacies, and will be generally available at military treatment facility pharmacies for initial fill and refills. It will be available for refill through the national mail-order pharmacy.

Paragraph (r)(3) provides that a refill is a subsequent filling of an original prescription under the same prescription number or other authorization as the original prescription, or a new original prescription issued at or near the end date of an earlier prescription for the same medication for the same patient.

Paragraph (r)(4) provides that a waiver of the general requirement to obtain maintenance medication prescription refills from the mail order pharmacy or military treatment facility pharmacy will be granted in several circumstances. There is a blanket waiver for prescription medications that are for acute care needs. There is also a blanket waiver for prescriptions covered by other health insurance. There is a case-by-case waiver to permit prescription maintenance medication refills at a retail pharmacy when necessary due to personal need or hardship, emergency, or other special circumstance, for example, for nursing home residents. This waiver is obtained through an administrative override request to the TRICARE pharmacy benefits manager under procedures established by the Director, TMA.

Paragraph (r)(5) establishes procedures for the effective operation of the program. The Department will implement the program by utilizing best commercial practices to the extent practicable. An effective communication plan that includes efforts to educate beneficiaries in order to optimize participation and satisfaction will be implemented. Beneficiaries with active prescriptions for a medication on the maintenance medication list will be notified that their medication is covered under the program. Beneficiaries will be advised that they may receive up to two 30 day fills at retail while they transition their prescription to the mail order program. The beneficiary will be contacted after each of these two fills reminding the beneficiary that the prescription must be transferred to mail. Requests for a third fill at retail will be blocked and the beneficiary advised to call the pharmacy benefits manager (PBM) for assistance. The PBM will provide a toll free number to assist beneficiaries in transferring their prescriptions from retail to the mail order program. With the beneficiary's permission, the PBM will contact the physician or other health care provider who prescribed the medication to assist in transferring the prescription to the mail order program. In any case in which a beneficiary is required to obtain a maintenance medication prescription refill from the national mail-order pharmacy program and attempts instead to refill such medications at a retail pharmacy, the PBM will also maintain

the toll free number to assist the beneficiary. This assistance may include information on how to request a waiver or in taking any other appropriate action to meet the beneficiary's needs and to implement the program. The PBM will ensure that a pharmacist is available at all times through the toll-free telephone number to answer beneficiary questions or provide other appropriate assistance.

Paragraph (r)(6) provides that any beneficiary who has been covered by the program for a period of at least one year may opt out of continuing to participate in the program. For this purpose, the starting date for this one-year period is the first date after the effective date of this regulation on which the beneficiary had a maintenance medication prescription filled through the mail order pharmacy program. The beneficiary may exercise his or her right to opt out of the program by contacting the PBM. Following an opt out, the beneficiary may obtain prescriptions from a retail pharmacy, subject to the normal limitations and procedures under the TRICARE Pharmacy Benefits Program. Beneficiaries may also, if they wish, obtain refills from military treatment facility pharmacies and the mail order pharmacy program.

Paragraph (r)(7) provides that the program and its requirements will expire December 31, 2017, unless Congress enacts a statutory extension of the program. If this happens, the program will automatically continue, with any adjustments or modifications required by law.

D. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders (EOs) 12866 and 13563 require that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined primarily as one that would result in an effect of $100 million or more in any one year. The DoD has examined the economic and policy implications of this interim rule and has concluded that it is an economically significant regulatory action under the Executive Orders. The pilot program will produce savings to the Department of approximately $120 million during the initial year of the demonstration and savings to beneficiaries of approximately $28 million in reduced copayments during the initial year of the demonstration. Savings to both Department and the beneficiaries are expected to increase approximately four percent per year during the remainder of the demonstration.

Congressional Review Act, 5 U.S.C. 801, et seq.

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100 million or more or have certain other impacts. This interim rule is a major rule under the Congressional Review Act.

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

This rule does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of $100 million or more (adjusted for inflation) in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This interim rule does not have a significant impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This interim rule contains no new information collection requirements subject to the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3511).

Executive Order 13132, ''Federalism''

This interim rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on the States; the relationship between the National Government and the States; or the distribution of power and responsibilities among the various levels of Government.

Public Comments Invited

This rule is being issued as an interim final rule based on the express Congressional intent in the Conference Report accompanying the final version of the bill, that the provision enacted was to ''require the Secretary to conduct the 5-year mail-order pilot program for TRICARE for Life beneficiaries.'' Because of the statutory sunset date of December 31, 2017, it is the clear Congressional intent that the program begin as soon as possible in calendar year 2013. DoD invites public comments on all provisions of the rule. They will be considered for possible revisions to the program for the second and subsequent years of operation.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.21 is amended by revising the section heading and adding a new paragraph (r) to read as follows:

§ 199.21. TRICARE Pharmacy Benefits Program.

* * * * *

(r) *Refills of maintenance medications for TRICARE for Life beneficiaries through the mail order pharmacy program*—(1) *In general.* Consistent with section 716 of the National Defense Authorization Act for Fiscal Year 2013, this paragraph requires that for covered maintenance medications, TRICARE for Life beneficiaries are generally required to obtain their prescription through the national mail-order pharmacy program or through military treatment facility pharmacies. For purposes of this paragraph, TRICARE for Life beneficiaries are those enrolled in the Medicare wraparound coverage option of the TRICARE program made available to the beneficiary under section 1086(d) of title 10, United States Code.

(2) *Medications covered.* The Director, TMA will establish, maintain, and periodically revise and update a list of covered maintenance medications subject to the requirement of paragraph (r)(1) of this section. The current list will be accessible through the TRICARE Pharmacy Program Internet Web site and by telephone through the TRICARE Pharmacy Program Service Center. Each medication included on the list will meet the following requirements:

(i) It will be a medication prescribed for a chronic, long-term condition that is taken on a regular, recurring basis.

(ii) It will be clinically appropriate to dispense the medication from the mail order pharmacy.

(iii) It will be cost effective to dispense the medication from the mail order pharmacy.

(iv) It will be available for an initial filling of a 30-day or less supply through retail pharmacies.

(v) It will be generally available at military treatment facility pharmacies for initial fill and refills.

(vi) It will be available for refill through the national mail-order pharmacy program.

(3) *Refills covered.* For purposes of the program under paragraph (r)(1), a refill is:

(i) A subsequent filling of an original prescription under the same prescription number or other authorization as the original prescription; or

(ii) A new original prescription issued at or near the end date of an earlier prescription for the same medication for the same patient.

(4) *Waiver of requirement.* A waiver of the general requirement to obtain maintenance medication prescription refills from the mail order pharmacy or military treatment facility pharmacy will be granted in the following circumstances:

(i) There is a blanket waiver for prescription medications that are for acute care needs.

(ii) There is a blanket waiver for prescriptions covered by other health insurance.

(iii) There is a case-by-case waiver to permit prescription maintenance medication refills at a retail pharmacy when necessary due to personal need or hardship, emergency, or other special circumstance. This waiver is obtained through an administrative override request to the TRICARE pharmacy benefits manager under procedures established by the Director, TMA.

(5) *Procedures.* Under the program established by paragraph (r)(1) of this section, the Director, TMA will establish procedures for the effective operation of the program. Among these procedures are the following:

(i) The Department will implement the program by utilizing best commercial practices to the extent practicable.

(ii) An effective communication plan that includes efforts to educate beneficiaries in order to optimize participation and satisfaction will be implemented.

(iii) Beneficiaries with active retail prescriptions for a medication on the maintenance medication list will be notified that their medication is covered under the program. Beneficiaries will be advised that they may receive up to two 30 day fills at retail while they transition their prescription to the mail order program. The beneficiary will be contacted after each of these two fills reminding the beneficiary that the prescription must be transferred to mail.

(iv) Requests for a third fill at retail will be blocked and the beneficiary advised to call the pharmacy benefits manager (PBM) for assistance.

(v) The PBM will provide a toll free number to assist beneficiaries in transferring their prescriptions from retail to the mail order program. With the beneficiary's permission, the PBM will contact the physician or other health care provider who prescribed the medication to assist in transferring the prescription to the mail order program.

(vi) In any case in which a beneficiary required under paragraph (r) of this section to obtain a maintenance medication prescription refill from national mail order pharmacy program and attempts instead to refill such medications at a retail pharmacy, the PBM will also maintain the toll free number to assist the beneficiary. This assistance may include information on how to request a waiver, consistent with paragraph (r)(4)(iii) of this section, or in taking any other appropriate action to meet the beneficiary's needs and to implement the program.

(vii) The PBM will ensure that a pharmacist is available at all times through the toll-free telephone number to answer beneficiary questions or provide other appropriate assistance.

(6) *Nonparticipation through opt-out from program.* Any beneficiary who has been covered by the program under paragraph (r)(1) of this section for a period of at least one year may opt out of continuing to participate in the program.

(i) For this purpose, the starting date for this one-year period is the first date after the effective date of paragraph (r)(1) of this section on which the beneficiary had a maintenance medication prescription filled through the mail order pharmacy program.

(ii) The beneficiary may exercise his or her right to opt out of the program by contacting the PBM.

(iii) Following an opt out, the beneficiary may obtain prescriptions from a retail pharmacy, subject to limitations under the TRICARE Pharmacy Benefits Program other than those under paragraph (r) of this section. These beneficiaries may also, if they wish, obtain refills from military treatment facility pharmacies and the mail order pharmacy program.

(7) *Expiration of program.* The program and requirements established under paragraph (r)(1) of this section will expire December 31, 2017, unless Congress enacts a statutory extension of the program. If this happens, the program will automatically continue, with any adjustments or modifications required by law.

Dated: December 5, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–29434 Filed 12–10–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0969]

Safety Zone; Sacramento New Years Eve Fireworks Display, Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the 1,000 foot safety zone in the navigable waters of the Sacramento River in Sacramento, CA on December 31, 2013 during the Sacramento New Years Eve Fireworks Display. The fireworks display will occur from 9 p.m. to 9:20 p.m. on December 31, 2013 for the annual Sacramento New Years Eve Fireworks Display. This action is necessary to control vessel traffic and to help protect the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulation in 33 CFR 165.1191, Table 1, Item number 29, will be enforced from 9 p.m. to 9:20 p.m. on December 31, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Junior Grade William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11-PF-MarineEvents@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Sacramento New Years Eve Fireworks Display safety zone in the navigable waters of the Sacramento River around the Tower Bridge in Sacramento, CA in approximate position 38°34′49.98″ N, 121°30′29.61″ W (NAD 83). Upon the commencement of the fireworks display, scheduled to begin at 9 p.m. on December 31, 2013, the safety zone will encompass the navigable waters around the fireworks launch site on the Tower Bridge in Sacramento, CA in

approximate position: 38°34′49.98″ N, 121°30′29.61″ W (NAD 83) within a radius of 1,000 feet. At the conclusion of the fireworks display the safety zone shall terminate. This safety zone will be in effect from 9 p.m. to 9:20 p.m. on December 31, 2013.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This document is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552 (a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this document, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: November 26, 2013.

Gregory G. Stump,

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

[FR Doc. 2013–29471 Filed 12–10–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0902]

RIN 1625–AA00

Safety Zone: Google's Night at Sea Fireworks Display, San Francisco Bay, Alameda, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones in the navigable waters of the San Francisco Bay near the breakwater in Alameda, CA in support of Google's Night at Sea Fireworks Displays on December 7, 2013 and December 14, 2013. These safety zones are established to help protect the participants and spectators from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zones without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective on December 7, 2013 and December 14, 2013. This rule will be enforced from 12:01 p.m. to 10:45 p.m. on December 7, 2013 and from 12:01 p.m. to 11:30 p.m. on December 14, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0902. 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 Lieutenant Junior Grade William Hawn, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7442 or email at *D11–PF-MarineEvents@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NOAA National Oceanic and Atmospheric Administration
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 the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in these fireworks displays, the safety zones are necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. 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**.

B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

Google will sponsor the Google's Night at Sea Fireworks Displays on December 7, 2013 and December 14, 2013 near the breakwater in Alameda, CA in approximate position 37°46′07″ N, 122°19′10″ W (NAD83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18650. These safety zones establish a temporary restricted area on the waters 100 feet surrounding the fireworks barges during the loading, transit and arrival of the pyrotechnics from the loading site to the launch site until the commencement of the fireworks displays. Upon the commencement of the fireworks displays, the safety zones will increase in size and encompass the navigable waters around the fireworks barges within a radius of 420 feet. The fireworks displays are meant for entertainment purposes. The restricted area around the fireworks barges is necessary to protect spectators, vessels, and other property from the hazards associated with pyrotechnics.

C. Discussion of the Final Rule

The Coast Guard will enforce safety zones in navigable waters around and under the fireworks barges within a radius of 100 feet during the loading, transit, and arrival of the fireworks barges to the display location until the start of the fireworks displays. From 12:01 p.m. until 9 p.m. on December 7, 2013 and from 12:01 p.m. until 8 p.m. on December 14, 2013 the fireworks

barges will be loaded at Pier 50 in San Francisco, CA. From 9 p.m. until 9:45 p.m. on December 7, 2013 and from 8 p.m. until 8:45 p.m. on December 14, 2013 the loaded fireworks barges will transit from Pier 50 to the launch site near the breakwater in Alameda, CA in approximate position 37°46′07″ N, 122°19′10″ W (NAD 83) where they will remain until the commencement of the fireworks displays. Upon the commencement of the fireworks display, scheduled to take place from 10:15 p.m. to 10:45 p.m. on December 7, 2013; from 9:15 p.m. to 9:20 p.m. on December 14, 2013; and from 11:15 p.m. to 11:30 p.m. on December 14, 2013, the safety zones will increase in size and encompass the navigable waters around and under the fireworks barges within a radius 420 feet in approximate position 37°46′07″ N, 122°19′10″ W (NAD 83) for the Google's Night at Sea Fireworks Displays. At the conclusion of the fireworks displays the safety zones shall terminate.

The effect of the temporary safety zones will be to restrict navigation in the vicinity of the fireworks barges while the fireworks are set up, and until the conclusion of the scheduled displays. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted areas. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks barges to ensure the safety of participants, spectators, and transiting vessels.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of 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.

We expect the economic impact of this rule will not rise to the level of necessitating a full Regulatory Evaluation. The safety zones are limited in duration, and are limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zones, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zones will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

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 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 may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zones will be activated, and thus subject to enforcement, for a limited duration. When the safety zones are activated, vessel traffic will be able to navigate around the safety zones. The maritime public will be advised in advance of this safety zones via Broadcast Notice to Mariners.

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 INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

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 safety zones of limited size and duration. 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.

E. List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and 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. 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165–T11–609 to read as follows:

§ 165–T11–609 Safety zone; Google's Night at Sea Fireworks Display, San Francisco Bay, Alameda, CA.

(a) *Location.* These temporary safety zones are established in the navigable waters of the San Francisco Bay near the breakwater in Alameda, CA as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18650. From 12:01 p.m. until 10:15 p.m. on December 7, 2013, from 12:01 p.m. until 9:15 p.m. on December 14, 2013, and from 9:20 p.m. until 11:15 p.m. on December 14, 2013, the temporary safety zones apply to the nearest point of the fireworks barges within a radius of 100 feet during the loading, transit, and arrival of the fireworks barges from Pier 50 to the launch site near the breakwater in Alameda, CA in approximate position 37°46′07″ N, 122°19′10″ W (NAD83). From 10:15 p.m. until 10:45 p.m. on December 7, 2013, from 9:15 p.m. until 9:20 p.m. on December 14, 2013, and from 11:15 p.m. until 11:30 p.m. on December 14, 2013, the temporary safety zones will increase in size and encompass the navigable waters around and under the fireworks barges in approximate position 37°46′07″ N, 122°19′10″ W (NAD83) within a radius of 420 feet.

(b) *Enforcement Period.* The zones described in paragraph (a) of this section will be enforced from 12:01 p.m. through 10:45 p.m. on December 7, 2013 and from 12:01 p.m. through 11:30 p.m. on December 14, 2013. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which these zones will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zones.

(d) *Regulations.* (1) Under the general regulations in 33 CFR Part 165, Subpart C, entry into, transiting or anchoring within these safety zones is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zones are closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zones must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zones on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: November 26, 2013.

Gregory G. Stump,

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

[FR Doc. 2013–29369 Filed 12–10–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2013–0007]

RIN 0651–AC85

Changes To Implement the Patent Law Treaty; Correction

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office (Office) published in the **Federal Register** on October 21, 2013, a final rule revising the rules of practice in patent cases for consistency with the changes in the Patent Law Treaty (PLT) and provisions of the Patent Law Treaties Implementation Act of 2012 (PLTIA) that implement the PLT (PLT Final Rule). The PLT Final Rule as published in the **Federal Register** inadvertently omits the small and micro entity fee amounts for certain petitions and contains a cross-reference to a section that has been removed. This document corrects the omission and removes the cross-reference in the PLT Final Rule as published in the **Federal Register**.

DATES: *Effective Date:* December 18, 2013.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr, Senior Patent Counsel,

Office of Patent Examination Policy, at (571) 272–8090.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (Office) published in the **Federal Register** on October 21, 2013, a final rule revising the rules of practice in patent cases for consistency with the changes in the Patent Law Treaty (PLT) and provisions of the Patent Law Treaties Implementation Act of 2012 (PLTIA) that implement the PLT. *See Changes to Implement the Patent Law Treaty,* 78 FR 62367 (Oct. 21, 2013). The PLT Final Rule as published in the **Federal Register** inadvertently omits the small and micro entity fee amounts for petitions referring to the petition fee set forth in 37 CFR 1.17(g). *See Changes to Implement the Patent Law Treaty,* 78 FR at 62395. The PLT Final Rule as published in the **Federal Register** also amends 37 CFR 1.197 to refer to 37 CFR 90.3 rather than former 37 CFR 1.304 for the time for appeal or for commencing a civil action. The judicial review provisions of 37 CFR 1.302 through 1.304 were replaced by 37 CFR part 90 in September of 2012, but 37 CFR 1.197(a) as published in the **Federal Register** inadvertently retains a cross-reference to 37 CFR 1.304. *See Changes to Implement the Patent Law Treaty,* 78 FR at 62382–83 and 62406. This document corrects 37 CFR 1.17 to include the small and micro entity fee amounts for petitions referring to the petition fee set forth in 37 CFR 1.17(g) and removes the cross-reference to former 37 CFR 1.304 from 37 CFR 1.197(a).

In rule FR Doc. 2013–24471, published on October 21, 2013 (78 FR 62367), make the following corrections:

§ 1.17 [Correction]

■ 1. On page 62395, second and third columns, revise amendatory instruction 9 and its amendatory text to read as follows:

■ 9. Section 1.17 is amended by revising paragraphs (f), (g), (m), and (p), adding new paragraph (o), and removing and reserving paragraphs (l) and (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(f) For filing a petition under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29)	$100.00
By a small entity (§ 1.27(a))	$200.00
By other than a small or micro entity	$400.00

§ 1.36(a)—for revocation of a power of attorney by fewer than all of the applicants.

§ 1.53(e)—to accord a filing date.

§ 1.182—for decision on a question not specifically provided for in an application for patent.

§ 1.183—to suspend the rules in an application for patent.

§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term.

(g) For filing a petition under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29)	$50.00
By a small entity (§ 1.27(a))	$100.00
By other than a small or micro entity	$200.00

§ 1.12—for access to an assignment record.

§ 1.14—for access to an application.

§ 1.46—for filing an application on behalf of an inventor by a person who otherwise shows sufficient proprietary interest in the matter.

§ 1.55(f)—for filing a belated certified copy of a foreign application.

§ 1.57(a)—for filing a belated certified copy of a foreign application.

§ 1.59—for expungement of information.

§ 1.103(a)—to suspend action in an application.

§ 1.136(b)—for review of a request for extension of time when the provisions of § 1.136(a) are not available.

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.

§ 1.550(c)—for patent owner requests for extension of time in *ex parte* reexamination proceedings.

§ 1.956—for patent owner requests for extension of time in *inter partes* reexamination proceedings.

§ 5.12—for expedited handling of a foreign filing license.

§ 5.15—for changing the scope of a license.

§ 5.25—for retroactive license.

* * * * *

(l) [Reserved]

(m) For filing a petition for the revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, for the delayed response by the patent owner in any reexamination proceeding, for the delayed payment of the fee for maintaining a patent in force, for the delayed submission of a priority or benefit claim, or for the extension of the twelve-month (six-month for designs) period for filing a subsequent application (§§ 1.55(c), 1.55(e), 1.78(b), 1.78(c), 1.78(e), 1.137, 1.378, and 1.452):

By a small entity (§ 1.27(a)) or micro entity (§ 1.29)	$850.00
By other than a small or micro entity	$1,700.00

* * * * *

(o) For every ten items or fraction thereof in a third-party submission under § 1.290:

By a small entity (§ 1.27(a)) or micro entity (§ 1.29)	$90.00
By other than a small entity	$180.00

(p) For an information disclosure statement under § 1.97(c) or (d):

By a micro entity (§ 1.29)	$45.00
By a small entity (§ 1.27(a))	$90.00
By other than a small or micro entity	$180.00

* * * * *

(t) [Reserved]

§ 1.197 [Correction]

■ 2. On page 62406, second and third columns, revise amendatory instruction 32 and its amendatory text to read as follows:

■ 32. Section 1.197 is revised to read as follows:

§ 1.197 Termination of proceedings.

(a) Proceedings on an application are considered terminated by the dismissal of an appeal or the failure to timely file an appeal to the court or a civil action except:

(1) Where claims stand allowed in an application; or

(2) Where the nature of the decision requires further action by the examiner.

(b) The date of termination of proceedings on an application is the date on which the appeal is dismissed or the date on which the time for appeal to the U.S. Court of Appeals for the Federal Circuit or review by civil action (§ 90.3 of this chapter) expires in the absence of further appeal or review. If an appeal to the U.S. Court of Appeals for the Federal Circuit or a civil action has been filed, proceedings on an application are considered terminated when the appeal or civil action is terminated. A civil action is terminated when the time to appeal the judgment expires. An appeal to the U.S. Court of Appeals for the Federal Circuit, whether from a decision of the Board or a judgment in a civil action, is terminated when the mandate is issued by the Court.

Dated: December 5, 2013.

Margaret A. Focarino,

Commissioner for Patents, Performing the functions and duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2013–29523 Filed 12–10–13; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2013–0060; FRL–9903–98–Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Prevention of Significant Deterioration; Greenhouse Gas Plantwide Applicability Limit Permitting Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving portions of one revision to the New Mexico State Implementation Plan (SIP) submitted by the New Mexico Environment Department (NMED) to EPA on January 8, 2013. The January 8, 2013, submittal adopted revisions to the New Mexico Prevention of Significant Deterioration (PSD) plantwide applicability limit (PAL) permitting provisions to enable the NMED to issue PALs to greenhouse gas (GHG) emitting sources. EPA is approving the January 8, 2013, SIP revision to the New Mexico PSD permitting program as consistent with federal requirements for PSD permitting. EPA is taking no action on the portion of the January 8, 2013, SIP revision that relates to the provisions of EPA's July 20, 2011, GHG Biomass Deferral Rule. EPA is taking this final action under section 110 and part C of the Clean Air Act (CAA or the Act). EPA is not approving these rules within the exterior boundaries of a reservation or other areas within any Tribal Nation's jurisdiction.

DATES: This final rule will be effective January 10, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2013–0060. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, Air Permits Section (6PD–R), telephone 214–665–2115; email address *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background for This Final Action
II. Final Action
III. Statutory and Executive Order Reviews

I. Background for This Final Action

On August 23, 2013, EPA proposed approval of the January 13, 2013, submitted revisions to 20.2.74 NMAC into the New Mexico SIP. See 78 FR 52473. Our proposed rulemaking provided our preliminary determination that the January 13, 2013, revisions to the New Mexico PSD permitting program are substantively similar to the federal requirements for the permitting of GHG-emitting sources subject to PSD. Our proposal demonstrated that the submitted revisions to 20.2.74.7(AZ)(1) and 20.2.74.320 NMAC appropriately revised the New Mexico PSD PAL permitting requirements to provide the NMED the authority to issue GHG PALs, consistent with EPA's Tailoring Rule Step 3 for GHG PALs. Our analysis also demonstrated that non-substantive revisions adopted at 20.2.74.7(AZ)(1), (2), (2)(b), (3), (4), and (5) NMAC to correct typographical errors are also approvable as revisions to the New Mexico SIP.

We accepted comments on this proposed rulemaking through September 23, 2013. No comments were received. Therefore, EPA is finalizing the rule as proposed.

II. Final Action

EPA is approving portions of the January 8, 2013, submitted revisions to 20.2.74 NMAC into the New Mexico SIP which provide the NMED the authority to issue GHG PALs in the New Mexico PSD program. EPA has determined that the January 8, 2013, revisions to 20.2.74 NMAC are approvable because they were adopted and submitted in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs. Therefore, under section 110 and part C of the Act, and for the reasons stated in our proposed rulemaking, EPA approves the following revisions to the New Mexico SIP:

- Substantive revisions to 20.2.74.7(AZ)(1) NMAC establishing GHG PAL permitting requirements,
- Non-substantive revisions to 20.2.74.7(AZ)(1), (2), (2)(*b*), (3), (4), and (5) NMAC to correct formatting, and
- Substantive revisions to 20.2.74.320 NMAC establishing the GHG PAL permitting requirements.

EPA is taking no action at this time on the submitted revisions to 20.2.74.7(AZ)(2)(*a*) NMAC. The DC Circuit Court issued an order to vacate EPA's Biomass Deferral Rule on July 12, 2013.

EPA is not approving these rules within the exterior boundaries of a reservation or other areas within any Tribal Nation's jurisdiction.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this 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.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 10, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 25, 2013.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart GG—New Mexico

■ 2. Section 52.1620(c) is amended by revising the entry for Part 74 under the first table titled ''EPA Approved New Mexico Regulations'' to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED NEW MEXICO REGULATIONS

State Citation	Title/Subject	State approval/ effective date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality				
*	*	*	*	*
Part 74	Permits—Prevention of Significant Deterioration.	1/8/2013	12/11/2013 [Insert FR page number where document begins].	Revisions to 20.2.74.303(A) NMAC submitted 5/23/2011, effective 6/3/2011, are NOT part of SIP. 20.2.74.303 NMAC submitted 12/1/2010, effective 1/1/2011, remains SIP approved (6/20/2011, 76 FR 43149). Revisions to 20.2.74.7(AZ)(2)(*a*) NMAC submitted 1/8/2013, effective 2/6/2013, are NOT part of SIP. 20.2.74.7(AZ)(2)(a) NMAC submitted 5/23/2011, effective 6/3/2011, remains SIP approved.
*	*	*	*	*

* * * * *

[FR Doc. 2013–29448 Filed 12–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0832; FRL–9398–1]

Prohydrojasmon; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the biochemical pesticide prohydrojasmon (PDJ) when used as a plant growth regulator in or on apple and grape pre-harvest, in accordance with label directions and good agricultural practices. This regulation eliminates the need to establish a maximum permissible level for residues of PDJ.

DATES: This regulation is effective December 11, 2013. Objections and requests for hearings must be received

on or before February 10, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0832, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Gina Burnett, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 605–0513; email address: *burnett.gina@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0832 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 10, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0832, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

In the **Federal Register** of January 9, 2013, (78 FR 1798) (FRL–9374–2), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 2F8056) by Fine Agrochemicals Ltd. (the petitioner), on behalf of SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192. The petition requested that 40 CFR 180.1299 be amended by establishing an exemption from the requirement of a tolerance for residues of PDJ, propyl-3-oxo-2-pentylcyclo-pentylacetate, in or on red apples and grapes. The notice referenced a summary of the petition prepared by the petitioner, which is available in the docket, *http://www.regulations.gov*. No substantive comments were received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . '' Additionally, FFDCA section 408(b)(2)(D) requires that the Agency consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability, and the relationship of this information to human risk. EPA has also considered

available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A. Overview of PDJ

PDJ is a synthetically made plant growth regulator that is structurally similar and functionally identical to jasmonic acid (JA), a naturally occurring plant regulator present in all vascular plants. The jasmonates, of which JA is a member, is a group of plant hormones involved in multiple stages of plant development and defense, including the ability to stimulate fruit ripening. The highest levels of naturally occurring JA are found in actively growing plant tissues such as leaves, flowers, and developing fruit, thus JA has always been a natural component of diets containing plant materials. To date, there have been no reported toxic effects associated with the consumption of JA in fruits and vegetables. See the document entitled, ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for Prohydrojasmon (PDJ), propyl-3-oxo-2-pentylcyclo-pentylacetate'' (July 16, 2013), available in the docket for this action.

B. Biochemical Pesticide Toxicology Data Requirements

All applicable mammalian toxicology data requirements supporting the petition to exempt residues of PDJ from the requirement of a tolerance in or on apple and grape pre-harvest have been fulfilled. No toxic endpoints were established and no significant toxicological effects were observed in any of the acute toxicity studies. In addition, studies submitted indicate that PDJ is not genotoxic, has no subchronic toxic effects, and is not a developmental toxicant. There are no known effects on endocrine systems via oral, dermal, or inhalation routes of exposure. For a full discussion of the data upon which EPA relied, and its human health risk assessment based on that data, please refer to the document entitled, ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for Prohydrojasmon (PDJ), propyl-3-oxo-2-pentylcyclo-pentylacetate'' (July 16, 2013). This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

The proposed use patterns may result in dietary exposure to PDJ; however, exposure to residues on treated fruit or foliage is not expected to exist above background levels of naturally occurring JA (see document entitled, ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for Prohydrojasmon (PDJ), propyl-3-oxo-2-pentylcyclo-pentylacetate'' (July 16, 2013)). No significant exposure via drinking water is expected; PDJ is applied at low rates, rapidly degrades, and is not directly applied to water. Should exposure occur, however, minimal to no risk is expected for the general population, including infants and children, due to the low toxicity of PDJ as demonstrated in the data submitted and evaluated by the Agency, as fully explained in the document entitled, ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for Prohydrojasmon (PDJ), propyl-3-oxo-2-pentylcyclo-pentylacetate'' (July 16, 2013).

B. Other Non-Occupational Exposure

Non-occupational exposure is not expected because PDJ is not approved for residential uses. The active ingredient is applied directly to commodities and degrades rapidly.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

EPA has determined PDJ to have a non-toxic mode of action, and the compound does not appear to produce any toxic metabolites. For the purposes of this tolerance action, therefore, the EPA has assumed that PDJ does not have a common mechanism of toxicity with other substances. Following from this, the EPA concludes that there are no cumulative effects associated with PDJ that need to be considered. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Determination of Safety for U.S. Population, Infants and Children

Section 408(b)(2)(C) of FFDCA provides that, in considering the establishment of a tolerance or tolerance exemption for a pesticide chemical residue, EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional ten-fold (10×) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure, unless EPA determines that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor. In applying this provision, EPA either retains the default value of 10×, or uses a different additional or no safety factor when reliable data are available to support a different additional or no safety factor.

As part of its qualitative assessment, EPA evaluated the available toxicity and exposure data on PDJ and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. EPA considers the toxicity database to be complete and has identified no residual uncertainty with regard to prenatal and postnatal toxicity or exposure. No hazard was identified based on the available studies, as fully explained in the document entitled, ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for Prohydrojasmon (PDJ), propyl-3-oxo-2-pentylcyclo-pentylacetate'' (July 16, 2013). Based upon its evaluation, EPA concludes that there are no threshold effects of concern to infants, children, or adults when PDJ is applied as a plant growth regulator to stimulate fruit ripening, and used in accordance with label directions and good agricultural practices. As a result, EPA concludes that no additional margin of exposure (safety) is necessary.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes for the same reasons that EPA did not apply an extra 10× margin of safety, discussed in Unit VI., and because EPA is establishing an exemption from the requirement of a

tolerance without any numerical limitation.

B. International Residue Limits

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

The Codex has not established a MRL for PDJ.

VIII. Conclusion

EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of PDJ. EPA is therefore establishing an exemption from the requirement of a tolerance for residues of PDJ when used as a plant growth regulator in or on apple and grape pre-harvest, in accordance with label directions and good agricultural practices.

IX. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 25, 2013.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Revise § 180.1299 to read as follows:

§ 180.1299 Prohydrojasmon; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biochemical pesticide prohydrojasmon (PDJ), propyl-3-oxo-2-pentylcyclo-pentylacetate, when used as a plant growth regulator in or on apple and grape pre-harvest, in accordance with label directions and good agricultural practices.

[FR Doc. 2013–29561 Filed 12–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0295; FRL–9902–17]

Flutriafol; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of flutriafol in or on coffee, bean, green and coffee, instant. Cheminova A/S, c/o Cheminova Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 11, 2013. Objections and requests for hearings must be received on or before February 10, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0295, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs

Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0295 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 10, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0295, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 5, 2013 (78 FR 33785) (FRL–9386–2), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E8074) by Cheminova A/S, c/o Cheminova, Inc., 1600 Wilson Blvd., Suite 700, Arlington, VA 22209–2510. The petition requested that EPA establish import tolerances for residues of the fungicide flutriafol, in or on coffee, bean, green at 0.20 parts per million (ppm) and coffee, instant at 0.30 ppm. That document referenced a summary of the petition prepared by Cheminova A/S, c/o Cheminova, Inc., the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, tolerances for coffee, green bean have been revised from 0.20 to 0.15 ppm. The reason for this change is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

The hazard characterization and toxicity endpoints for risk assessment remain unchanged from the assessment upon which the final rule published in the **Federal Register** on August 8, 2012 (77 FR 47296) (FRL–9348–8) is based. Specific information on the studies received and the nature of the adverse effects caused by flutriafol as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the

preamble to that final rule and its supporting documents as well as in the most recent human health risk assessment, Flutriafol: Human-Health Risk Assessment for Tolerances in/on Imported Coffee, which can be found in *www.regulations.gov,* under docket ID number EPA–HQ–OPP–2013–0295–0004.

B. Toxicological Points of Departure/ Levels of Concern

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

A summary of the toxicological endpoints for flutriafol used for human risk assessment is shown in the table contained in Unit III.B. of the preamble to the final rule published in the **Federal Register** issue of August 8, 2012 (77 FR 47296) (FRL–9348–8).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to flutriafol, EPA considered exposure under the petitioned-for tolerances as well as all existing flutriafol tolerances in 40 CFR 180.629. EPA assessed dietary exposures from flutriafol in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for flutriafol. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture's (USDA) National Health and Nutrition Examination Survey, What We Eat In America (NHANES/WWEIA) conducted from 2003–2008. As to residue levels in food, EPA made the following assumptions for the acute exposure assessment: tolerance-level residues or tolerance-level residues adjusted to account for the residues of concern for risk assessment, 100 percent crop treated (PCT), modeled drinking water estimates, and DEEM™ ver. 7.81 default processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA's (NHANES/WWEIA) conducted from 2003–2008 as well. As to residue levels in food, EPA made the following assumptions for the chronic exposure assessment: Tolerance-level residues or tolerance-level residues adjusted to account for the residues of concern for risk assessment, 100 PCT, modeled drinking water estimates, and DEEM™ ver. 7.81 default processing factors.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that flutriafol does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

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

2. *Dietary exposure from drinking water.* The proposed tolerance in or on imported coffee will not impact residues in the U.S. drinking water. However, there are registered uses for application of flutriafol in the U.S.A and the Agency used screening level water exposure models to estimate residues in drinking water. These estimates were then incorporated in the dietary exposure analysis and risk assessment for flutriafol. The simulation models take into account data on the physical, chemical, and fate/transport characteristics of flutriafol.

Based on the First Index Reservoir Screening Tool (FIRST), and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of flutriafol for acute exposures are estimated to be 48.8 parts per billion (ppb) for surface water and 310 ppb for ground water.

For chronic exposures for non-cancer assessments the EDWC's are estimated to be 5.70 ppb for surface water and 202 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 310 ppb was used to assess the contribution to drinking water.

For chronic dietary risk assessment, the water concentration of value 202] ppb was used to assess the contribution to drinking water. The drinking water models and their descriptions are available at the EPA internet site: *http://www.epa.gov/oppefed1/models/water/.*

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Flutriafol is not registered for any specific use patterns that would result in residential exposure.

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

Flutriafol is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events. In conazoles, however, a variable pattern of toxicological responses is found; some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of

toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

Triazole-derived pesticides can form the metabolite 1,2,4-triazole (T) and two triazole conjugates triazolylalanine (TA) and triazolylacetic acid (TAA). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, EPA conducted an initial human-health risk assessment for exposure to T, TA, and TAA resulting from the use of all current and pending uses of any triazole-derived fungicide as of September 1, 2005. The risk assessment was a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high-end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X Food Quality Protection Act (FQPA) safety factor (SF) for the protection of infants and children. The assessment included evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment can be found in the propiconazole reregistration docket at *http://www.regulations.gov,* Docket Identification (ID) Number EPA–HQ–OPP–2005–0497 and an update to the aggregate human health risk assessment for free triazoles and its conjugates may be found in this current docket, Docket ID Number EPA–HQ–OPP–2013–0295 entitled ''Common Triazole Metabolites: Updated Dietary (Food + Water) Exposure and Risk Assessment to Address the Revised Tolerance for Residues of Fenbuconazole in Peppers.''

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The potential impact of *in utero* and perinatal flutriafol exposure was investigated in three developmental toxicity studies (two in rats, one in rabbits) and two multi-generation reproduction toxicity studies in rats. In the first of two rat developmental toxicity studies, a quantitative susceptibility was observed (delayed ossification or non-ossification of the skeleton in the fetuses) at a lower dose than maternal effects. In the second rat developmental study, a qualitative susceptibility was noted. Although developmental toxicity occurred at the same dose level that elicited maternal toxicity, the developmental effects (external, visceral, and skeletal malformations; embryo lethality; skeletal variations; a generalized delay in fetal development; and fewer live fetuses) were more severe than the decreased food consumption and body-weight gains observed in the dams. For rabbits, intrauterine deaths occurred at a dose level that also caused adverse effects in maternal animals. In the two-generation reproduction studies, a qualitative susceptibility was also seen. Effects in the offspring (decreased litter size and percentage of live births, increased pup mortality, and liver toxicity) can be attributed to the systemic toxicity of the parental animals (decreased body weight and food consumption and liver toxicity).

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

i. The toxicity database for flutriafol is complete.

ii. There is no indication that flutriafol is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. Signs of neurotoxicity were reported in the acute and subchronic neurotoxicity studies at the highest dose only; however, these effects were primarily seen in animals that were agonal (at the point of death) and, thus, are not indicative of neurotoxicity. In addition, there was no evidence of neurotoxicity in any additional short-term studies in rats, mice, and dogs, or in the long-term toxicity studies in rats, mice, and dogs.

iii. There are no concerns or residual uncertainties for prenatal and/or postnatal toxicity. Although there is evidence for increased qualitative susceptibility in the prenatal study in rats and rabbits and the two-generation reproduction study in rats, there are no concerns for the offspring toxicity observed in the developmental and reproductive toxicity studies for the following reasons:

- Clear NOAELs and LOAELs were established in the fetuses/offspring for each of these studies;
- The dose-response for these effects are well-defined and characterized;
- Developmental endpoints are used for assessing acute dietary risks to the most sensitive population (females 13–49 years old) as well as all other short- and intermediate-term exposure scenarios; and
- The chronic reference dose is greater than 300-fold lower than the dose at which the offspring effects were observed in the two-generation reproduction studies.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to flutriafol in drinking water. These assessments will not underestimate the exposure and risks posed by flutriafol.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to flutriafol will occupy 27% of the aPAD for females 13–49 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to flutriafol from food and water will utilize 36% of the cPAD for all infants less than 1 year old, the population group receiving the greatest exposure. Because there are no

residential uses for flutriafol, the chronic aggregate risk includes food and drinking water only.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Since flutriafol is not registered for any use patterns that would result in residential exposure, the short- and intermediate-term aggregate risk is the sum of the risk from exposure to flutriafol through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, flutriafol is classified as ''not likely to be carcinogenic to humans''. EPA does not expect flutriafol to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Gas Chromatography/Nitrogen/Phosphorus detector (GC/NPD) for proposed tolerances) are available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

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

The Codex has established MRLs for flutriafol in or on coffee, bean, green at 0.15 ppm. These MRLs are the same as the tolerances established for flutriafol in the United States.

C. Revisions to Petitioned-For Tolerances

Based on the analysis of the residue field trial data and application of the Organization for Economic Cooperation and Development (OECD) tolerance calculator procedure, a green coffee bean tolerance of 0.15 ppm for residues of flutriafol is appropriate. The tolerance for coffee, green bean is harmonized with the Codex MRL. The Agency determined that the tolerance level of 0.15 ppm would be appropriate so as to harmonize with the MRL.

V. Conclusion

Therefore, tolerances are established for residues of flutriafol, (±)-α-(2-fluorophenyl)-α-(4-fluorophenyl)-1*H*-1,2,4-triazole-1-ethanol in or on coffee, bean, green at 0.15 ppm and coffee, instant at 0.30 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 2, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.629, in the table in paragraph (a), add alphabetically entries for ''Coffee, green, bean'' and ''Coffee, instant,'' and revise footnote 1 to read as follows:

§ 180.629 Flutriafol; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Coffee, green, bean [1]	0.15
Coffee, instant [1]	0.30
* * * * *	

[1] There are no U.S. registrations as of October 22, 2013.

* * * * *

[FR Doc. 2013–29556 Filed 12–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0038; FRL–9902–07]

Flonicamid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of flonicamid in or on multiple commodities which are identified and discussed later in this document. In two separate petitions, Interregional Research Project No. 4 (IR–4) and ISK Biosciences Corporation (ISK) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 11, 2013. Objections and requests for hearings must be received on or before February 10, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0038, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0038 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 10, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0038, by one of the following methods:

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

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of June 5, 2013 (78 FR 33785) (FRL–9386–2), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E8137) by IR–4, 500 College Rd. East, Suite 201W., Princeton, NJ 08540. The petition requested that 40 CFR 180.613 be amended by establishing tolerances for residues of the insecticide flonicamid and its metabolites and degradates determined by measuring flonicamid (*N*-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide) and its metabolites TFNA (4-trifluoromethylnicotinic acid), TFNA–AM (4-trifluoromethylnicotinamide), and TFNG (*N*-(4-trifluoromethylnicotinoyl)glycine), calculated as the stoichiometric equivalent of flonicamid, in or on alfalfa, forage at 7.0 parts per million (ppm); alfalfa, hay at 0.20 ppm; alfalfa, seed at 1.5 ppm; clover, forage at 7.0 ppm; clover, hay at 4.0 ppm;

peppermint, tops at 7.0 ppm; spearmint, tops at 7.0 ppm; vegetable, fruiting, group 8–10 at 0.40 ppm; vegetable, cucurbit, group 9 at 1.5 ppm; fruit, pome, group 11–10 at 0.20 ppm; and fruit, stone, group 12–12 at 0.60 ppm. The petition also requested, upon the approval of the aforementioned tolerances, removal of the established tolerances for residues of the flonicamid in or on the following crop groups: Vegetable, fruiting, group 8; fruit, pome, group 11; fruit, stone, group 12; cucumber; and vegetable, cucurbit, group 9, except cucumber. That document referenced a summary of the petition prepared by ISK Biosciences Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

In addition, in the **Federal Register** of February 27, 2013 (78 FR 13295) (FRL–9380–2), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F8088) by ISK Biosciences Corporation, 7470 Auburn Rd., Suite A, Concord, OH 44077. The petition requested that 40 CFR 180.613 be amended by establishing tolerances for residues of the insecticide, flonicamid (*N*-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide) and its metabolites, TFNA (4-trifluoromethyl nicotinic acid), TFNA–AM (4-trifluoromethylnicotinamide), and TFNG (*N*-(4-trifluoro methylnicotinoyl)glycine), calculated as the stoichiometric equivalent of flonicamid, in or on tree, nuts, crop group 14–12 at 0.09 ppm; almond at 0.09 ppm; pecan at 0.04 ppm; and almond, hulls at 10.0 ppm. That document referenced a summary of the petition prepared by ISK Biosciences Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the levels at which tolerances are being established for some commodities and has determined not to establish tolerances for some of the requested commodities. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

In the 28-day dermal study with flonicamid technical, no dermal or systemic toxicity was seen at the limit dose. In oral studies using rats and dogs, the kidney and liver are the target organs for flonicamid toxicity. Increased kidney weight and hyaline droplet deposition were observed as well as liver centrilobular hypertrophy in the rat 28-day oral range-finding, 90-day oral, developmental, and reproductive studies. The 90-day dog study showed kidney tubular vacuolation as well as increased adrenal weights, increased reticulocytes and decreased thymus weights. Increased reticulocyte count was noted in both the subchronic and chronic dog studies.

In rats, developmental effects including increased incidence of cervical ribs were observed at maternally toxic (liver and kidney gross and histopathological effects) dose levels. In rabbits, developmental effects were not observed at any dose level including maternally toxic doses. Offspring effects (decreased body weight and delayed sexual maturation) in the multi-generation study were seen only in the presence of parental toxicity (kidney effects in males, blood effects in females). Thus, there is no evidence that flonicamid results in increased susceptibility (qualitative or quantitative) in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

There are no concerns for flonicamid neurotoxicity. Although clinical signs suggesting potential neurotoxic effects (e.g., decreased motor activity, tremors) were seen in the acute and subchronic neurotoxicity studies; other effects in these studies (e.g., increased mortality, and significant decreases in food consumption and body weight) indicated that the clinical signs were a result of the animals being in an extreme condition or otherwise compromised and in a state of general malaise. Also, these types of effects were not observed in the other subchronic or chronic studies in mice, rats or dogs. Thus, there is not clear evidence of neurotoxicity. Lastly, clear no-observed-adverse-effect-levels (NOAELs) and lowest-observed-adverse effect-levels (LOAELs) were defined for the clinical signs, which are above the levels currently used for risk assessment purposes.

A 28-day oral (dietary) immunotoxicity study of technical flonicamid in female CD–1 mice demonstrated that flonicamid is not an immuno-suppressant, either structurally or functionally up to and including dose levels exceeding the limit dose.

Although there is some limited evidence suggesting that flonicamid has a potential for carcinogenic effects, EPA determined that quantification of risk using a non-linear approach (i.e., using a chronic reference dose (cRfD)) adequately accounts for all chronic toxicity, including carcinogenicity that could result from exposure to flonicamid. The following considerations support that determination. First, mutagenicity studies were negative for the parent chemical, flonicamid, and its metabolites, TFNA, TFNA–AM, TFNG, TFNG–AM, and TFNA–OH. Second, although flonicamid is carcinogenic in CD–1 mice, based on increased incidences of lung tumors associated with Clara cell activation, this tumor type is associated with species and strain sensitivity and is not directly correlated with cancer risks in humans. Third, nasal cavity tumors seen in male

Wistar rats were linked to incisor inflammation and not considered to be treatment related. These tumor findings were confounded by the lack of a dose response and the biological significance is questionable.

Specific information on the studies received and the nature of the adverse effects caused by flonicamid as well as the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in the document entitled ''Flonicamid—Human Health Risk Assessment for a Section 3 Registration of New Uses on Alfalfa and Clover Grown for Seed, Mint, Greenhouse Grown Tomatoes, and Tree Nuts,'' pp. 33–39 in docket ID number EPA–HQ–OPP–2013–0038.

B. Toxicological Points of Departure/ Levels of Concern

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

A summary of the toxicological endpoints for flonicamid used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of November 14, 2012 (77 FR 67771) (FRL–9368–7).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to flonicamid, EPA considered exposure under the petitioned-for tolerances as well as all existing flonicamid tolerances in 40 CFR 180.613. EPA assessed dietary exposures from flonicamid in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for flonicamid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, the chronic dietary exposure assessment was a conservative assessment, conducted using tolerance-level residues and 100 percent crop treated (PCT).

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

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

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for flonicamid in drinking water. These simulation models take into account data on the physical, chemical, and fate/ ;transport characteristics of flonicamid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://;www.epa.gov/;oppefed1/;models/ ;water/;index.htm.*

The drinking water assessment was conducted using a parent only and total toxic residues of flonicamid (TTR) approach. Total toxic residues include TFNA, TFNA–AM, TFNA–OH, TFNG, and TFNG–AM.

Based on the Pesticide Root Zone Model/;Exposure Analysis Modeling System (PRZM/;EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of total toxic residues of flonicamid for chronic exposures for non-cancer assessments are estimated to be 0.94 parts per billion (ppb) for surface water and 9.92 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 9.92 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Flonicamid is not registered for any specific use patterns that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

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

available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicity database for flonicamid includes prenatal developmental toxicity studies in rats and rabbits and a multi-generation reproduction toxicity study in rats. There is no evidence that flonicamid results in increased susceptibility (qualitative or quantitative) in rats or rabbits exposed *in utero* in the prenatal developmental studies or in young rats in the multi-generation reproduction study. No developmental effects were seen in rabbits. In the multi-generation reproduction study, developmental delays in the offspring (decreased body weights, delayed sexual maturation) were seen only in the presence of parental toxicity (kidney and blood effects). Also, there are clear NOAELs and LOAELs for all effects. The degree of concern for prenatal and/;or post-natal susceptibility is, therefore, low due to the lack of evidence of qualitative and quantitative susceptibility.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for chronic dietary and other exposures, except as noted below. That decision is based on the following findings:

i. The toxicity database for flonicamid is complete except for a subchronic inhalation study. In the absence of a route specific inhalation study, EPA has retained a 10X FQPA SF to assess risks for inhalation exposure scenarios. However, residential inhalation exposures are not expected.

ii. The available data base includes acute and subchronic neurotoxicity studies. As discussed in Unit III.A., EPA has concluded that the clinical signs observed in those studies were not the result of a neurotoxic mechanism and that therefore a developmental neurotoxicity study is not required.

iii. There was no evidence for quantitative or qualitative susceptibility following oral exposures to rats *in utero* or oral exposure to rabbits *in utero.*

iv. There are no residual uncertainties identified in the exposure databases. An unrefined conservative chronic dietary exposure assessment for food and drinking water was conducted, assuming tolerance level residues for all existing and proposed commodities and 100 PCT of registered and proposed crops. The drinking water assessment utilized water concentration values generated by models and associated modeling parameters which are designed to produce conservative, health protective, high-end estimates of water concentrations which are not likely to be exceeded. The dietary (food and drinking water) exposure assessment does not underestimate the potential exposure for infants, children, or women of child bearing age.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, flonicamid is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to flonicamid from food and water will utilize 30% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for flonicamid.

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

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

4. *Aggregate cancer risk for U.S. population.* Based on the discussion in Unit III.A., EPA has concluded that the cPAD is protective of possible cancer effects from flonicamid, and as evidenced in Unit III.E.2, aggregate exposure to flonicamid is below the cPAD.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available to enforce the tolerances for flonicamid and the major metabolites in plants and livestock. The proposed method for plants uses liquid chromatography with tandem mass spectrometry (LC/MS/MS) (FMC No. P–3561M) to determine the residues of flonicamid and its major metabolites, TFNA–AM, TFNA, and TFNG. Three enforcement methods are used for livestock commodities:

1. An LC/MS/MS method RCC No. 844743 for determination of residues in eggs, poultry tissues, and fat of cattle, goat, hog, horse, and sheep;

2. LC/MS method RCC No. 842993 for determination of residues in milk; and

3. LC/MS/MS method FMC No. P–3580, which includes an acid hydrolysis step, for determination of residues in meat and meat products (kidney and liver) of cattle, goat, hog, horse, and sheep. All three methods determine flonicamid and the metabolites OH–TFNA–AM, TFNA–AM, TFNG, and TFNA

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

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint

United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established any MRLs for flonicamid.

C. Revisions to Petitioned-For Tolerances

Based on the review of the residue data, EPA is modifying the proposed tolerance on alfalfa forage from 7.0 ppm to 10.0 ppm; alfalfa hay from 0.20 ppm to 1.0 ppm; almond hulls from 10.0 ppm to 9.0 ppm; and the tree nut group 14–12 from 0.09 ppm to 0.15 ppm. For alfalfa forage, the tolerance was calculated using 5x the mean of the field trial data instead of using the Organization for Economic Cooperation and Development (OECD) tolerance calculation procedures because there are only two field trials reflecting the proposed application rate and pre-harvest interval. For alfalfa hay, the level of quantitation (LOQ) was used since all residues were <LOQ. The tolerances for the almond hulls and tree nuts were calculated using the OECD tolerance calculation procedures including using average field trial residues.

Second, due to the need for additional field trials, the Agency is not establishing the tolerances requested for clover forage and clover hay at this time.

Additionally, because ''almond'' and ''pecan'' are part of the tree nut group 14–12, the Agency is not establishing separate tolerances on these commodities.

And lastly, EPA is increasing the established tolerance on milk and establishing new tolerances for hog commodities based on the maximum reasonably balanced diets (MRBD), calculated using ''Table 1 Feedstuffs'' (June 2008), and additional livestock feed items associated with the proposed uses in both PPs 2E8137 and 2F8088.

V. Conclusion

Therefore, tolerances are established for residues of flonicamid and its metabolites and degradates determined by measuring flonicamid (*N*-(cyanomethyl)-4-(trifluoromethyl)- 3-pyridinecarboxamide) and its metabolites TFNA (4-trifluoromethylnicotinic acid), TFNA–AM (4-trifluoromethyl-nicotinamide), and TFNG (*N*-(4-trifluoromethylnicotinoyl) glycine), calculated as the stoichiometric equivalent of flonicamid, in or on alfalfa, forage at 10.0 ppm; alfalfa, hay at 1.0 ppm; alfalfa, seed at 1.5 ppm; peppermint, tops at 7.0 ppm; spearmint, tops at 7.0 ppm; vegetable, fruiting, group 8–10 at 0.40 ppm; vegetable, cucurbit, group 9 at 1.5 ppm; fruit, pome, group 11–10 at 0.20 ppm; fruit, stone, group 12–12 at 0.60 ppm; almond, hulls at 9.0 ppm; nut, tree, group 14–12 at 0.15; hog, fat at 0.03 ppm; hog, meat at 0.03 ppm; and hog, meat byproducts at 0.03 ppm. The existing tolerance for milk is revised from 0.03 ppm to 0.05 ppm. Lastly, as a result of the establishment of the above tolerances, the following existing tolerances are removed as unnecessary: Fruit, pome, group 11; fruit, stone, group 12; vegetable, fruiting, group 8; cucumber; vegetable, cucurbit, group 9, except cucumber.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: November 12, 2013.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.613:

■ a. Remove from the table in paragraph (a)(1) the entries for ''Fruit, pome, group 11,'' ''Fruit, stone, group 12,'' ''Vegetable, cucurbit, group 9, except cucumber'' and ''Vegetable, fruiting, group 8''.

■ b. Add alphabetically to the table in paragraph (a)(1) the following entries.

■ c. Add alphabetically to the table in paragraph (a)(2) the entries for ''Hog, fat,'' ''Hog, meat,'' and ''Hog, meat byproducts.''

■ d. Revise the entry for ''Milk'' in the table in paragraph (a)(2).

The amendments read as follows:

§ 180.613 Flonicamid; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Alfalfa, forage	10.0
Alfalfa, hay	1.0
Alfalfa, seed	1.5
Almond, hulls	9.0
* * * * *	
Fruit, pome, group 11–10	0.20
Fruit, stone, group 12–12	0.60
* * * * *	
Nut, tree, group 14–12	0.15
* * * * *	
Peppermint, tops	7.0
* * * * *	
Spearmint, tops	7.0
* * * * *	
Vegetable, cucurbit, group 9	1.5
Vegetable, fruiting, group 8–10	0.40
* * * * *	

(2) * * *

Commodity	Parts per million
* * * * *	
Hog, fat	0.03
Hog, meat	0.03
Hog, meat byproducts	0.03
* * * * *	
Milk	0.05
* * * * *	

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[FR Doc. 2013–29576 Filed 12–10–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111220786–1781–01]

RIN 0648–XD012

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Available for the State of New Jersey

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

ACTION: Temporary rule.

SUMMARY: NMFS announces that the 2013 summer flounder commercial fishery in the State of New Jersey will be reopened to provide the opportunity for the fishery to fully harvest the available quota. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may land summer flounder in New Jersey until the quota is fully harvested. Regulations governing the summer flounder fishery require publication of this notification to advise New Jersey that quota remains available, and the summer flounder fishery is open to vessel permit holders for landing summer flounder in New Jersey, and to inform dealer permit holders in New Jersey that they may purchase summer flounder.

DATES: Effective December 6, 2013, through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Carly Bari, (978) 281–9224, or *Carly.Bari@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102.

The initial total commercial quota for summer flounder for the 2013 fishing year is 11,793,596 lb (5,349,575 kg) (77 FR 76942, December 31, 2012). The percent allocated to vessels landing summer flounder in New Jersey is 16.72499 percent, resulting in a commercial quota of 1,972,478 lb (894,716 kg). The 2013 allocation was adjusted to 1,972,066 lb (894,514 kg) after deduction of research set-aside, adjustment for 2012 quota overages, and adjustments for quota transfers between states. On November 27, 2013, NMFS closed the 2013 commercial summer flounder fishery in New Jersey prematurely, quota remains available for harvest.

The Administrator, Northeast Region, NMFS (Regional Administrator), monitors the state commercial landings and has determined that, due to an error, there is still commercial summer flounder quota available for harvest in New Jersey. NMFS is required to publish notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, there is commercial quota available for landing summer flounder in that state.

Therefore, effective December 6, 2013, vessels holding summer flounder commercial Federal fisheries permits can land summer flounder in New Jersey until the commercial state quota is fully harvested. Effective December 6, 2013, federally permitted dealers can also purchase summer flounder from federally permitted vessels that land in New Jersey until the commercial state quota is fully harvested.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action reopens the summer flounder fishery for New Jersey until the state commercial summer flounder quota is fully harvested, under current regulations. If implementation of this reopening was delayed to solicit prior public comment, the quota for this fishing year would not be fully harvested, thereby undermining the conservation objectives of the Summer Flounder Fishery Management Plan. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reason stated above.

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

Dated: December 6, 2013.

Sean F. Corson,

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

[FR Doc. 2013–29525 Filed 12–6–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 110708376–3995–02]

RIN 0648–BB17

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; Cost Recovery

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

ACTION: Final rule.

SUMMARY: This action implements a cost recovery program for the Pacific coast groundfish trawl rationalization program, as required by the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action includes regulations that affect all trawl rationalization program sectors (Shorebased Individual Fishing Quota (IFQ) Program, Mothership Cooperative Program, and Catcher/Processor Cooperative Program) managed under the Pacific Coast Groundfish Fishery Management Plan (FMP).

DATES: Effective January 10, 2014.

ADDRESSES: NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is summarized in the Classification section of this final rule. NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule. Copies of the IRFA, FRFA and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or by phone at 206–526–6150. Copies of the Small Entity Compliance Guide are also available on the West Coast Region's Web site at *http://www.westcoast.fisheries.noaa.gov/*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, and to OMB by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, 206–526–4656; (fax) 206–526–6736; *jamie.goen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

In January 2011, NMFS implemented a trawl rationalization program, a type of limited access privilege program (LAPP), for the Pacific coast groundfish fishery's trawl fleet. The trawl rationalization program is also referred to as the trawl ''catch share'' program. The program was adopted through Amendment 20 to the FMP and consists of three sectors: an IFQ program for the shorebased trawl fleet (including whiting and non-whiting fisheries); and cooperative (coop) programs for the at-sea mothership (MS) and catcher/processor (C/P) trawl fleets (whiting only). Allocations to the limited entry trawl fleet for certain species were developed through a parallel process with Amendment 21 to the FMP.

Since implementation, the Pacific Fishery Management Council (Council) and NMFS have been working to address additional regulatory requirements associated with the trawl rationalization program. One such requirement is cost recovery, where NMFS collects fees from the fishing industry to cover part of its costs of management, data collection, and enforcement of the trawl rationalization program. This rule creates a cost recovery program for the trawl rationalization program in compliance with the requirements of the MSA, and based upon a recommended methodology developed in coordination with the Council.

In accordance with the MSA, 16 U.S.C. 1853(c), 1853a(e), 1854(b), 1854(d)(2), 1855(d), NMFS shall collect mandatory fees of up to three percent of the ex-vessel value of groundfish by sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). The Council discussed the structure and methodology of cost recovery over its April, June, and September 2011 meetings, with final Council recommendations to NMFS during the September 2011 Council meeting. In addition, NMFS received further guidance on these issues from the Council at its September 2012 meeting.

This final rule implements the cost recovery program as proposed at 78 FR 7371 (February 1, 2013), with the exception of the minor changes described under ''Changes from the Proposed Rule'' later in this preamble. Generally, this final rule will require fish buyers to collect cost recovery fees from fish sellers beginning January 2014. Fish buyers will remit those fees to NMFS via online payments through Pay.gov.

Fees will be collected during the 2014 calendar year to recover NMFS estimated costs from the previous fiscal year. NMFS costs from 2011 and 2012 will not be collected retroactively.

Fee Percentage by Sector for 2014

As described in the proposed rule, during the last quarter of the calendar year, NMFS will announce in a **Federal Register** document the next year's applicable fee percentages and the applicable MS pricing for the C/P Coop Program. NMFS will calculate and announce the fee percentage after each fiscal year ends, and before the fee would go into effect on January 1 of the following year. For 2014, NMFS is announcing the fee percentages for each sector in this final rule preamble.

NMFS will calculate the actual fee percentage by sector using the best available information, not to exceed three percent of the ex-vessel value of fish harvested. As explained further below, the fee percentages for the first year of cost recovery are low because NMFS only included the incremental costs of employees' time in the fee percentage calculation rather than all incremental costs of management, data collection, and enforcement.

For 2014, the fee percentages by sector are:

- 3.0 percent for the Shorebased IFQ Program,
- 2.4 percent for the MS Coop Program
- 1.1 percent for the C/P Coop Program.

To calculate the fee percentage by sector, NMFS used the formula specified in regulation at § 660.115(b)(1), where the fee percentage by sector equals the lower of three percent or direct program costs (DPC) for that sector divided by total ex-vessel value (V) for that sector multiplied by 100.

- Shorebased IFQ Program—
  3.0% = the lower of 3% or
  $((\$1,877,752.00/\$48,182,167) \times 100)$
- MS Coop Program—
  2.4% = the lower of 3% or
  $((\$274,936.05/\$11,453,663) \times 100)$
- C/P Coop Program—
  1.1% = the lower of 3% or
  $((\$176,460.05/\$16,763,066) \times 100)$

''DPC'', as defined in the regulations at § 660.115(b)(1)(i), are the actual incremental costs for the previous fiscal year directly related to the management, data collection, and enforcement of each sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). Actual incremental costs means those net costs that would not have been incurred but for the implementation of the trawl rationalization program, including both increased costs for new

requirements of the program and reduced costs resulting from any program efficiencies. For 2014, the first year of cost recovery, NMFS only included the cost of employees' time (salary and benefits) spent working on the program in calculating DPC because of limited agency resources and time to calculate additional incremental costs. While employees' time spent working on the trawl rationalization program has been coded and tracked since 2011, not all additional categories of incremental costs have been tracked in a manner that can be quickly compiled. For example, the incremental costs of travel, rent, and equipment will require research and documentation before they can be adequately accounted for. That additional work could not be completed in time for the final rule to be effective in January 2014. Therefore, the DPC for 2014 underestimates costs compared to all incremental costs of management, data collection, and enforcement.

NMFS expects that for 2015 and beyond, DPC will include all NMFS incremental costs, potentially including some federal costs resulting from duties performed by the states, as well. Between the proposed and final rule for the cost recovery program, NMFS discussed with the states of Washington, Oregon, and California whether the costs of some state-performed activities resulting from the trawl rationalization program are costs that could be recovered, consistent with the requirements of the MSA. While NMFS did not include federal costs incurred by the states in the calculation of DPC for the 2014 fee percentage, NMFS will continue to work with the states for 2015 and beyond to determine what federal costs being borne by the states might be included.

NMFS will work with the Council to review the costs included in the calculation for 2014 and to determine additional incremental costs to be included for 2015 and beyond. For additional incremental costs, NMFS will consider the Council recommendation to use Appendix B of the Cost Recovery Committee (CRC) Report from the September 2011 Council meeting (Agenda Item G.6.b) as guidance in calculating incremental costs associated with the program.

''V'', as specified in § 660.115(b)(1)(ii), is the total ex-vessel value for each sector from the previous calendar year. The ex-vessel value for each sector is further described in the definition section at § 660.111, and includes the total ex-vessel value for all groundfish species. For 2014, NMFS used the ex-vessel value for 2012 as reported in Pacific Fisheries Information Network (PacFIN) from electronic fish tickets to determine V. The electronic fish ticket data in PacFIN is for the Shorebased IFQ Program. Therefore, the ex-vessel value for both the MS Coop Program and the C/P Coop Program is a proxy based on the Shorebased IFQ Program ex-vessel price and on the retained catch estimates (weight) from the observer data for the MS and C/P Coop Programs. NMFS is using data from PacFIN and not the ex-vessel values reported on buyback forms (IFQ and MS submit buyback forms) because that data is not readily available in a database. NMFS will announce the details of the calculation and the data used in the NMFS annual report (released with the final rule in fall 2013 and for 2015 and beyond, in the spring each year). See ''Changes from the Proposed Rule'' for an explanation of calculating ex-vessel value from the previous calendar year instead of from the previous fiscal year.

MS Pricing for C/P Coop Program Fee Amount in 2014

''MS pricing'' is the MS Coop Program's average price per pound from the previous complete calendar year. The MS pricing will be used by the C/P Coop Program to determine their fee amount due (MS pricing multiplied by the value of the aggregate pounds of all groundfish species harvested by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the C/P fee percentage, equals the fee amount due). However, because the MS Coop Program's average price per pound as reported on the cost recovery form is not yet available, the MS pricing for the first year of cost recovery is based on the average price per pound of Pacific whiting as reported in PacFIN from the Shorebased IFQ Program. In other words, data from the IFQ fishery is used as a proxy for the MS average price per pound to determine the ''MS pricing'' used in the calculation for the C/P sector's fee amount due. For 2015 and beyond, NMFS may either continue to calculate MS pricing from PacFIN, or may use values derived from those reported on the MS Coop Program cost recovery form from the previous calendar year, depending on what NMFS determines is the best information available. As described in the proposed rule, NMFS will announce the next year's applicable MS pricing for the C/P Coop Program along with the fee percentage for all sectors in a **Federal Register** notice during the last quarter of the calendar year. However, for 2014, NMFS is announcing the MS pricing in this final rule preamble as follows:

- $ 0.14/lb for Pacific whiting.

How and Where To Pay Cost Recovery Fees

During the last quarter of the calendar year, NMFS will publish in the **Federal Register** information on how and where to pay cost recovery fees, in addition to the applicable fee percentages and MS pricing. This final rule's preamble includes that information for 2014.

Cost recovery fees can only be paid online through the Federal Government's online payment system, Pay.gov. Users can access the Pay.gov Web site directly or click on the link to Pacific Coast Groundfish Cost Recovery for their sector (IFQ, MS, or C/P): *https://pay.gov/paygov/agencySearchForms.html?nc=1375298963306&agencyDN=ou%3DFA_National+Oceanic+and+Atmospheric+Administration%2Cou%3DFA_Department+of+Commerce%2Cou%3DFA_Executive+Branch%2Cou%3DFederal+Agency%2Cou%3DTreasury+Web+Application+Infrastructure%2Cou%3DFiscal+Service%2Cou%3DDepartment+of+the+Treasury%2Co%3DU.S.+Government%2Cc%3DUS&alphabet=N.*

Users can also access Pay.gov through a link on our West Coast Region trawl catch share program Web site at: *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/index.html.*

For the Shorebased IFQ Program, the IFQ first receiver (first receiver site license holder), as the fish buyer, must collect the fee from each catcher vessel (fish seller) at the time of landing groundfish in the IFQ fishery, or in the case of post-delivery payment, at the time of payment. Each fish buyer (IFQ first receiver) is required to maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS. This account is called a ''deposit account.'' Each fish buyer, no less frequently than at the end of each month, must deposit all fees collected, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to NMFS. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes. The fish buyer is responsible

for remitting payment to NMFS on a monthly basis at the same time the buyback fee is due (i.e., no later than the 14th of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes). Payment to NMFS must be the full amount of deposit principal from the deposit account. For any post-delivery payments by the first receiver to the vessel, the first receiver must withhold the fee from such payments at the time of payment and remit that fee to NMFS in the upcoming month's payment.

For the MS Coop Program, the structure of fee payment and collection is the same as for the Shorebased IFQ Program, except that the fish buyer and fish seller are defined differently and, because the fleet operates at sea, there is no ''landing.'' For the MS Coop Program, each catcher vessel (fish seller, including vessels registered to an MS/CV-endorsed limited entry trawl permit and any limited entry trawl permits without an MS/CV endorsement while they are participating in the MS Coop Program) is charged the fee at the time of delivery to the mothership (fish buyer—defined as the owner of a vessel registered to an MS permit, the operator of a vessel registered to an MS permit, and the owner of the MS permit registered to that vessel). The fish buyer must then remit payment to NMFS monthly in coordination with the buyback fee (i.e., no later than the 14th of each month). For any post-delivery payments by the mothership to the catcher vessel, the mothership must withhold the fee from such payments at the time of payment and remit that fee to NMFS in the upcoming month's payment. In addition, the MS Coop Program is subject to the same deposit account requirements as the Shorebased IFQ Program.

For the C/P Coop Program, the structure of fee payment and collection is different than the Shorebased IFQ and MS Coop Programs. In the C/P Coop Program, the C/P (fish buyer—defined as the owner of a vessel registered to a C/P-endorsed limited entry trawl permit, the operator of a vessel registered to a C/P-endorsed limited entry trawl permit, and the owner of the C/P-endorsed limited entry trawl permit registered to that vessel) is responsible for paying the full fee in the last quarter of the calendar year and by December 31 each year. The fee is for the harvests of groundfish for the calendar year by each vessel registered to a C/P-endorsed limited entry trawl permit. For the purposes of cost recovery, the C/P is described as both the fish buyer and fish seller. Unlike the Shorebased IFQ Program and the MS Coop Program, fish buyers in the C/P Coop Program are not required to maintain segregated deposit accounts because the fish seller and the fish buyer are always the same entity and they only make one payment to NMFS per year.

Comments and Responses

NMFS solicited public comment on the cost recovery proposed rule (78 FR 7371, February 1, 2013). The comment period as published in the proposed rule **Federal Register** notice ended March 18, 2013. However, regulations.gov did not accept public comment submitted through their Web site after March 17, 2013. Because of the mistake in *regulations.gov,* NMFS accepted comments received via email, fax, or mail a day beyond the comment period, through March 19, 2013. Because the proposed rule also included a collection-of-information requirement subject to review and approval under the Paperwork Reduction Act (PRA), the responses to public comments in this section of the preamble address the proposed rule and the PRA submission. NMFS received eleven letters of comments on the proposed rule submitted by individuals or organizations.

Timing of Implementation

Comment 1. Cost recovery should be delayed until the start of a calendar year and until January 1, 2014, at the earliest. Implementing cost recovery mid-year in 2013, as proposed, could create inequity in the fleet, penalizing fishermen who primarily fish later in the year.

Response. NMFS agrees that starting cost recovery at the beginning of a calendar year will affect all sectors (IFQ, MS, C/P) equally. In light of the public comment and the need for NMFS to complete additional internal steps necessary for the operation of the cost recovery program, NMFS delayed implementation of cost recovery until January 2014 at the earliest.

Comment 2. NMFS should prioritize additional, or ''trailing,'' amendments to the trawl rationalization program that continue to move the fleet toward environmental conservation and economic sustainability before cost recovery. NMFS should prioritize those trawl trailing actions that are immediately beneficial to the fleet, such as quota share trading, decreasing monitoring costs (electronic monitoring), gear-related issues (where, when, and with what gear fishermen can fish), and other important trailing actions that improve the fleet's efficiency and access to target species. ''Left-over'' restrictions on where and how to fish from fishery management actions before trawl rationalization are limiting access to target species (and limiting revenues) and are no longer relevant with 100% accountability. Prioritizing trailing actions that improve the fleet's flexibility and economic efficiency will enhance the trawl rationalization program's durability, and will improve the fleet's profitability and ability to pay cost recovery fees in later years. Industry was aware that downsizing of the fleet would be an outcome of the trawl rationalization program, but NMFS should take steps to avoid accelerating that outcome. Cost recovery should not be implemented before economic benefits have been adequately realized and while fishermen are struggling to pay operating costs, including high fuel prices. The trawl rationalization program has produced no net gains and has increased costs.

Response. NMFS has prioritized trailing amendments to the trawl rationalization program that continue to move the fleet toward environmental conservation, economic sustainability, and increased flexibility, along with cost recovery. NMFS has prioritized the following trawl trialing actions: (1) Response to litigation; (2) original trawl rationalization program provisions not yet implemented (e.g. QS trading, cost recovery, new observer providers); and (3) items that increase flexibility and economic efficiency. Items under (3) must have been recommended through the Council process and have appropriate analysis before NMFS can implement them. NMFS has set these priorities in light of the approaching MSA-required 5-year review for LAPPs, with the goal of fully implementing the trawl rationalization program and then maximizing its potential.

For the trawl rationalization program, NMFS spent much of 2012 and early 2013 responding to litigation (priority 1). NMFS is now in the process of implementing rulemakings for priorities 2 and 3, including: chafing gear, observer and catch monitor provisions, cost recovery, and additional program improvement and enhancements (PIE) such as QS trading. The chafing gear rule proposes to revise gear requirements for midwater trawlers. The observer and catch monitor rule proposes permitting requirements for observer providers to allow new providers to enter the fishery (potentially reducing observer costs) and revised observer safety requirements. The PIE 2 rule (the second PIE rule since the trawl rationalization program was implemented in 2011, referred to as ''PIE 2'') will allow QS trading, remove

the ban on QP transfers from December 15 through 31, liberalize the opt-out requirements, reduce the frequency of first receiver site inspections, and remove double filing of coop reports (final rule published in the **Federal Register** November 15, 2013). This cost recovery rule implements an original program provision that has been delayed since 2011.

In addition to these rulemakings, which are expected to be implemented in 2014, NMFS and the Council are developing the Adaptive Management Program (AMP), an original program provision, and are exploring whether monitoring costs could be decreased through electronic monitoring.

NMFS agrees it is important to implement trailing actions that improve the fleet's efficiency and access to target species. In addition to the rulemakings listed above that are already in development, NMFS would like to work with stakeholders through the Council process to develop a comprehensive rulemaking that would improve the fleet's flexibility by addressing gear-related issues (where, when, and with what gear fishermen can fish) and ''left-over'' regulations from the management structure before the trawl rationalization program that may no longer be necessary. NMFS agrees that this increased flexibility should help the fleet's economic efficiency. NMFS introduced the concept for a ''trawl flexibility'' rulemaking, which would address these issues, at the Council's June and September 2013 meetings.

NMFS appreciates the comments that cost recovery should be delayed until other trawl trailing actions have been implemented and the fleet is profitable, and NMFS has delayed cost recovery implementation so that additional work on trailing actions could be accomplished. As mentioned above, other trailing actions that will improve the fleet's flexibility and economic efficiency are in development or will be implemented near the start of January 2014. The fleet has benefitted from the delayed implementation of cost recovery since 2011, and NMFS will not be collecting retroactive fees. In addition, while NMFS appreciates that there is always room to improve profitability, the fleet has already started realizing the benefits of the trawl rationalization program. Preliminary data from the mandatory economic data collection program compares data from 2009 and 2010 (pre-trawl rationalization) versus 2011 (post-trawl rationalization) (see Agenda Item F.2 from the Council's June 2013 meeting), and shows that when looking at net revenue, the fleet is still profitable even with increased costs (e.g., high fuel prices, observer costs). However, with only one year of data post-trawl rationalization, it is too early to make conclusions on the economic benefits of the program.

NMFS understands that some in the fleet do not want to accelerate consolidation, which is an expected outcome of the trawl rationalization program; but at the same time, the program should continue to be implemented as intended. NMFS, the Council, and stakeholders were aware that downsizing, or consolidation, of the fleet was expected and implemented some mitigation measures that could help address that, namely the Adaptive Management Program (AMP), the flexibility to form risk pools, accumulation limits, and a quota share trading moratorium for the first years of program. The AMP has been delayed through 2014 and the quota pounds associated with AMP are being issued to current quota share holders while AMP is in development. Risk pools, where quota share or quota pound holders work together in sharing arrangements, have been forming since the trawl rationalization program started and seem to be effective at mitigating risk, especially for participants that might not be operational alone.

Comment 3. Fishermen are already paying fees to the buyback program, paying state landing taxes, and increasing costs for 100 percent human observer coverage. Adding cost recovery at this time is a burden on the sustainability of some businesses. The industry has been working through a broad 3-state coalition of harvesters and processors to refinance the buyback loan down from the current five percent of the annual gross revenues. While the industry has paid back some of the money borrowed, there is still no end in sight with the industry still owing more than it borrowed. Industry expects that the loan will be refinanced during the 2013 legislative session. Cost recovery should not be implemented before refinancing the buyback loan.

Response. NMFS is aware that fishermen already have costs associated with buyback, state landing taxes, and observer coverage, and understands that adding cost recovery is an additional burden. As described in the response to comment 2, participants in the trawl rationalization program have already started realizing the benefits of the program even with these costs. In addition, NMFS, the Council, and stakeholders were aware that there would be consolidation of the fleet under the program as the less economically efficient vessels left the fishery. When the program was implemented, predictions were that the fleet would consolidate down from approximately 120 vessels to approximately 60 vessels (Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery final environmental impact statement, June 2010, Table 4–46). The final rule, dated October 1, 2010 (''initial issuance'' final rule) (75 FR 60868), which among other things announced approval of the trawl rationalization program and implemented an application processes, acknowledged in response to comment 19 that consolidation was expected and necessary. In approving and implementing the program, NMFS and the Council balanced consolidation to generate benefits of the program with the adverse impacts of consolidation. The response to comment also described many of the measures NMFS and the Council implemented to mitigate for some of the adverse impacts, including an Adaptive Management Program, accumulation limits, and quota share trading moratorium for first years of program.

NMFS acknowledges that while it is a cost to industry, the harvesters that remained and are now in the Shorebased IFQ or MS Coop Programs have benefitted from the buyback program. The industry has also benefitted from cost recovery being delayed for three years since implementation. Cost recovery is required under the MSA. NMFS will implement cost recovery for the trawl rationalization program beginning January 2014. The commenter should also be aware that bills have been introduced to both the House of Representatives and the Senate, titled ''Revitalizing the Economy of Fisheries in the Pacific Act,'' H.R. 2646 and S.1275 respectively, that would refinance the buyback loan extending the term of the loan and capping the fee rate at three percent of ex-vessel value, down from five percent.

Cost Recovery for Trawl Rationalization by Sector

Comment 4. Several commenters supported calculating and collecting the cost recovery fee on a sector by sector basis as NMFS proposed because of the differential incremental costs to NMFS for each sector.

Response. NMFS calculated the cost recovery fee percentage separately for each sector- Shorebased IFQ Program, MS Coop Program, and C/P Coop Program. NMFS will also collect fees separately for each sector.

Comment 5. Before requiring the C/P Coop Program to pay cost recovery fees, NMFS should provide the legal basis for defining the C/P Coop Program as a LAPP, including why other U.S. sector-based, cooperative management programs are not defined as LAPPs. NMFS should explain why its LAPP guidance document, ''The Design and Use of Limited Access Privilege Programs,'' describes the C/P sector as not technically a LAPP (p. 110).

Response. NMFS and the Council decided that the C/P Coop Program was a LAPP during implementation of Amendment 20, not through this rule. During implementation of the trawl rationalization program through Amendment 20, NMFS described the legal basis for defining the C/P Coop Program as a LAPP. Consistent with the definition of a ''limited access privilege'' in the MSA (16 U.S.C. 1802 (26)), the C/P Coop Program is a LAPP under the MSA (16 U.S.C. 1853a) because it requires a Federal permit for exclusive use by the coop to harvest a portion of the total allowable catch. In addition, if the coop dissolves, the individual permit owners would be issued IFQ. All three sectors of the trawl rationalization program receive LAPs and gain the benefits of exclusive use of a public resource.

The C/P Coop Program is distinct from other U.S. sector-based, cooperative management programs. When determining whether a program is a LAPP, the unique facts for each program must be considered. In contrast to the C/P Coop Program, NMFS determined the northeast sector program is not a LAPP because the sectors are not issued a Federal permit that allows them to harvest a portion of the total allowable catch for their exclusive use. NMFS is implementing cost recovery for several fisheries in Alaska and is evaluating whether the American Fisheries Act (AFA) catcher processors are subject to cost recovery.

While not as dramatic of a change as the IFQ or MS sectors, the C/P cooperative changed with implementation of the trawl rationalization program and has benefitted from that change. Now the C/P Coop Program is allocated not only Pacific whiting, but also key bycatch species; providing dedicated access to a public resource and more protection from being closed by harvest in other sectors. Under the new program, a C/P coop permit is required for this sector to operate as a coop. If the coop dissolves, each individual limited entry, C/P-endorsed permit owner would be allocated quota share under an IFQ program, creating an incentive to maintain the coop. The C/P Coop Program now has C/P endorsements on limited entry permits, providing a closed number of participants access to a public resource and allowing them protections to develop their own coop. The C/P Coop Program provides flexibility regarding when participants in the sector can fish their allocation. The C/P Coop Program now includes other provisions that enhance management, data, and enforcement of the program, such as a mandatory economic data collection, mandatory observer program with collection of estimates of operational or other discards, coop agreements, and annual coop reports.

NMFS acknowledges that generally the C/P Coop Program management costs are less than those of the other sectors. The decision to implement cost recovery on a sector by sector basis, where the costs of managing the C/P sector are calculated separately from other sectors, addresses this issue.

NMFS also clarifies for the commenter that NMFS' LAPP technical memorandum titled, ''The Design and Use of Limited Access Privilege Programs,'' was published in 2007, before implementation of the trawl rationalization program, and describes the C/P cooperative as it existed before it was a LAPP under the trawl rationalization program.

Fee Percentage Calculation, Including Incremental Costs

Comment 6. In evaluating whether there should be a common fee or a fee that varies by sector, the commenter requested that further analyses be conducted before NMFS implements a cost recovery program that will no doubt eliminate many small boats that help stabilize coastal communities. A fee schedule comparative analysis should be conducted based on: (1) The volume of harvest by sector; (2) the value of harvest by sector; (3) number of communities that are benefited by sector; and (4) the benefit received by the sector because of the program.

Response. NMFS recognizes that there may be different impacts of cost recovery on businesses. The classification section of the proposed rule preamble provided a summary of the IRFA (see **ADDRESSES**). The summary discusses the economic impact of the proposed action, including impacts on small versus large businesses, and acknowledges that, ''While the cost recovery fees may be affordable for the average fisherman, for other fishermen the cost recovery fee may not be affordable given the other costs they incur. Many fishermen, particularly shorebased fishermen, have voiced concerns that paying for costs of state landing taxes, the buyback fees, the costs of observers, and cost recovery fees will be challenging.'' The summary also noted that most of the Shorebased IFQ Program participants and catcher vessels in the MS Coop Program are small businesses, while most of the at-sea processors in the MS and C/P Coop Programs are large businesses. The classification section of this final rule includes a summary of the FRFA.

While there may be different impacts of cost recovery on small versus large businesses, the cost recovery provisions of the MSA (16 U.S.C. 1854(d)(2)(B)) do not differentiate between the fee percentage that must be charged for small versus large businesses. Fees are calculated on the costs of management, data collection, and enforcement for each sector of the trawl rationalization program and must not exceed three percent of the ex-vessel value of fish harvested in that sector.

NMFS did not draft a fee schedule comparative analysis requested by the commenter because much of the information is already publicly available. An estimate of the ex-vessel value of harvest by sector was provided in the summary of the initial regulatory flexibility analysis in the classification section of the proposed rule preamble and is again summarized in the classification section of this final rule. For the Shorebased IFQ Program, information on the volume and value of harvest by sector, port, and gear type is available in the Annual Catch Report for the Pacific Coast Groundfish, Shorebased IFQ Program posted on NMFS Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/ifq_analytical_documents.html.* At the June 2013 Council meeting, NMFS released a draft report on the economic data collection program for all sectors of the trawl rationalization program (IFQ, MS, and C/P), which covers pre-trawl rationalization years 2009 and 2010, and the first year post-trawl rationalization, 2011. While this report is still in draft form, it includes industry-reported information on volume and value of harvest by sector, port, and gear type. It also provides insight to the benefits received by sector because of the program. However, with only one year of data post-trawl rationalization, it is too early to make conclusions on the economic benefits of the program.

Also, as discussed in the Amendment 20 Environmental Impact Statement and Record of Decision, providing for a profitable groundfish fishery and minimizing adverse economic impacts

on communities were some of the objectives guiding development of the trawl rationalization program. During the development of Amendment 20, NMFS considered the impacts of the program on communities in detail and minimized adverse economic impacts to the extent practicable. NMFS implemented mechanisms to address concerns about communities, including an Adaptive Management Program, a moratorium on QS transfers for the first years of the program, accumulation limits, and a five-year review.

Comment 7. Some commenters said that NMFS should implement the Council's recommendation to cap the fee percentage at one percent for C/P, two percent for MS, and three percent for IFQ rather than using a formula (DPC/V × 100) to determine the actual fee percentage by sector up to the MSA three percent cap. A commenter noted that the MSA (section 303A(e)) provides authority to the Council to develop a cost recovery program, but does not provide discretion to NMFS to change the Council action. Another commenter said the Council's recommendation of one percent for C/P, two percent for MS, and three percent for IFQ was arbitrarily derived based on the number of boats in a sector (i.e., more boats must equal more costs). The Council did not analyze other options, except for whether the fee percentage should be calculated and paid based on all sectors combined or by each sector individually (IFQ, MS, and C/P). One commenter said the proposed rule states that for the first year the cost recovery fee percentage would be limited to one percent for the C/P sector, but then up to the MSA maximum of three percent thereafter without providing any justification for why the interim period ends after the first year of cost recovery. Other commenters requested that NMFS clarify what it intends to do.

Response. The proposed rule preamble explained NMFS' proposed approach to the fee percentage calculation (78 FR 7371, p.7375). NMFS calculated the actual fee percentage by sector between the proposed and final rule using the best available information and following the process explained in the preamble to the final rule at ''Fee Percentage by Sector for 2014.''

NMFS considered the Council's September 2011 recommendation to cap the fee percentage at two percent for the MS Coop Program and one percent for the C/P Coop Program. However, NMFS decided that the two percent and one percent caps were not consistent with the MSA, which requires that the Secretary of Commerce collect fees to ''recover the actual costs directly related to the management, data collection, and enforcement'' of any LAPP, (16 U.S.C. 1854(d)(2)), but caps the fee at three percent of the ex-vessel value. Under the MSA, the Council's role in cost recovery is to ''(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and (2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.'' (16 U.S.C. § 1853a(e)). In other words, the Council develops the cost recovery program and its methodology (e.g. calculate fee by sector, coordinate with the buyback program, etc.), but NMFS has the authority, and the requirement, to recover actual costs up to the three percent cap.

Comment 8. The alternate approach of calculating the cost recovery fee for the C/P Coop Program described by NMFS in the proposed rule is not specific enough to determine how it would function and how it would be more cost effective. NMFS should meet with participants in the C/P Coop Program to discuss both approaches.

Response. In the preamble to the proposed rule (78 FR 7371, p.7376) under the section titled ''Fee Payment and Collection,'' NMFS described two methods of calculating the cost recovery fee amount for the C/P Coop Program. One is similar to the other sectors (IFQ and MS), in that the fee amount is calculated by multiplying the ex-vessel value by a percentage. This was the method of calculation that NMFS proposed. In the alternate approach, the fee amount would have been calculated by determining NMFS' costs from the previous fiscal year and directly billing the C/P sector (as long as the amount was below the three percent cap). To clarify for the commenter, the alternate approach of direct billing was not expected to be more cost effective, but rather was expected to result in fewer adjustments for over and under charges between years. Because NMFS did not get public comment supporting the alternate approach, NMFS is implementing the method as described in the proposed rule and in § 660.115(d)(2) of this final rule. This issue is also mentioned under the section of the preamble titled ''Items NMFS Requested Comment on in the Proposed Rule.''

Comment 9. The cost recovery fee should be based on fish sold by a harvester to a fish buyer, not on how much fish is harvested. NMFS does not need to rely on discard estimates and 100 percent observer coverage in order to determine the volume of groundfish for cost recovery fee collection.

Response. NMFS agrees that the fee amount should be based on the value of fish sold by a harvester and not on discards. The regulations in both the proposed and final rule reflect that. The fee amount due to NMFS is a percentage of the ex-vessel value (as specified at § 660.115(c) and reflected on the cost recovery form). Ex-vessel value is defined at § 660.111 for each sector (IFQ, MS, and C/P) and includes the value of fish harvested. Where NMFS relies on information from observer coverage is for the at-sea sectors (MS and C/P), for NMFS to verify that appropriate cost recovery fees are paid.

For the Shorebased IFQ Program, fish are harvested and retained catch is delivered to shorebased facilities and documented on an electronic fish ticket. The weight and ex-vessel value of the harvested and retained catch is documented on the electronic fish ticket. NMFS can use the electronic fish ticket to verify that the cost recovery fees paid are appropriate. For the at-sea sectors, fish are not documented on electronic fish tickets. Fish are harvested and retained catch is processed at sea. Observers collect data to determine species composition and to estimate retained and discarded catch by species. The observer data can be effectively used by NMFS to verify the cost recovery fees paid are appropriate by reviewing the observer data on retained catch.

Comment 10. For NMFS to be transparent, before the fee percentages are set for the year, NMFS should provide the Council and industry representatives a chance to review. The Council should have an opportunity to ask questions, request more data, request clarification, and resolve any questions to the Council's satisfaction. NMFS detailed accounting should be made public with time for public review to verify recoverable costs. In 2011, NMFS provided a general budget of costs, but has not yet provided detailed information on its pre and post trawl rationalization program costs, including what constitutes incremental costs. NMFS should provide line items by category. For example, not lump sums for salaries and benefits, but salaries broken down and to what category of employee they are assigned. Another commenter noted that to determine recoverable costs, NMFS should provide a detailed comparison of trawl fishery management costs prior to 2004 and at the present time. If there is

approximately $2.5 million per year in incremental costs as stated in the proposed rule, then there should be at least 20 more employees now who spend 100 percent of their time on catch shares and do not duplicate any of the work being done by employees prior to 2004. Providing an annual report after the fact is not adequate.

Response. NMFS will continue to be transparent in implementation of cost recovery. As described further in the preamble under ''Fee Percentage by Sector for 2014,'' NMFS is including only the cost of NMFS employees' time for work on the trawl rationalization program in the calculation of the fee percentage for 2014. These are costs that would not have been incurred but for the trawl rationalization program. NMFS will publish further details on the fee percentage calculation for 2014 in the annual report. The annual report is expected to be published in the spring each year. However, for initial implementation of cost recovery, NMFS will publish an annual report in the fall of 2013.

NMFS is only including the cost of employees' time in the calculation for 2014 because of NMFS' limited resources and time to determine the additional incremental costs. After January 2014, and once cost recovery is implemented, NMFS would like to work with the Council to identify additional incremental costs to be used in the fee percentage calculation in future years. As described in the preamble to the proposed rule (78 FR 7371, p.7375), the Council's Cost Recovery Committee (CRC) is tasked with assisting NMFS to identify specific incremental costs on a sector-by-sector basis, and to identify any opportunities for long-term cost efficiencies within the program. The Council recommended using Appendix B of the CRC Report from the September 2011 Council meeting (Agenda Item G.6.b) as guidance in calculating incremental costs associated with the program. The Council emphasized the need for transparency within cost accounting procedures, and ensuring that the Council has an ongoing, periodic role in reviewing fee percentages. NMFS is committed to transparent cost accounting practices and would like to work with the Council to identify incremental costs that are in addition to the cost of employees' time spent on management, data collection, and enforcement of the program.

Notification of the Fee Percentage and MS Pricing

Comment 11. NMFS proposed to notify the public of the upcoming year's fee percentage through publication of a **Federal Register** notice. In addition, NMFS should directly notify those fish buyers who will be responsible for collecting fees to ensure proper fees are collected and avoid additional collection costs.

Response. NMFS will not directly mail notification of the fee percentage changes to fish buyers. NMFS has moved away from paper mailing where possible to save money and resources and, instead, provides electronic notification. In addition to publishing a **Federal Register** notice in the last quarter of the calendar year to announce the upcoming year's fee percentage, NMFS will notify fish buyers and the general public of the fee percentage through a public notice emailed to the groundfish email list and posted on NMFS' Web site. The fee percentage will also be automatically updated on the cost recovery form that is filled out on Pay.gov with fee payments. Public notices are posted on the following Web site along with information on how to join the groundfish email list to receive public notices via email: *http://www.westcoast.fisheries.noaa.gov/publications/fishery_management/groundfish/public_notices/recent_public_notices.html*. **Federal Register** documents are posted on NMFS Web site at: *http://www.westcoast.fisheries.noaa.gov/publications/frn/groundfish_frns.html*.

Fee Payment and Collection

Comment 12. Several commenters support NMFS coordinating the fee payment structure for cost recovery with the groundfish buyback loan to reduce the burden on fish buyers as fee collectors. Some commenters noted that NMFS should use separate forms with payment of buyback fees versus cost recovery fees because they are different programs. NMFS should keep the online reporting as simple and straight-forward as possible given the disparity of online capabilities of fish buyers and that not all have access to high speed internet. NMFS should revise the buyback regulations to provide an online reporting option for fish buyers collecting buyback fees.

Response. NMFS will use separate forms for buyback versus cost recovery. In addition, NMFS will use separate cost recovery forms for each sector (IFQ, MS, C/P). During implementation of cost recovery and its corresponding Pay.gov application, NMFS became more aware of the accounting and reconciliation procedures within the agency. As part of that, and in order to maintain good accounting practices, NMFS has decided to use separate forms for payment of buyback versus cost recovery. Similarly, because cost recovery fees are charged for each sector of the fishery, and in order to keep payment, tracking, and accounting for each sector distinct, NMFS has created a separate cost recovery form for each sector. One form would be submitted with each payment and a fish buyer may only make payments for one sector's fees at a time. In order to reduce the burden of these additional forms on the public, NMFS has made the cost recovery forms similar in structure and format to the buyback forms. In addition, once the fish buyer establishes an online account with Pay.gov, certain fields on the form, such as name and address, will auto-populate. Also, links to buyback and cost recovery forms will be available on Pay.gov and through the West Coast Region trawl catch share Web site.

NMFS has designed the online fee payment system to be similar to buyback, and to be as simple and straight-forward as possible, while maintaining clear tracking and accounting of fees paid. Finally, NMFS would like to clarify for the commenter that the buyback program does provide for online reporting and payment of buyback fees.

This issue is also mentioned under the section of the preamble titled ''Items NMFS Requested Comment on in the Proposed Rule.''

Comment 13. Instead of requiring fish buyers to have a separate bank account for cost recovery and buyback, fish buyers should have the option to use the same federally insured bank account for both buyback and cost recovery, as long as all records are clearly kept as required by regulation. This would be simpler for fish buyers, would still be subject to audit, and is enforceable because of the recordkeeping requirements.

Response. With this final rule, NMFS is maintaining the requirement for fish buyers in the IFQ and MS sectors to have a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue for cost recovery, called a ''deposit account'' in regulation at § 660.115(d)(1)(ii). Fish buyers in the C/P sector are not required to have segregated accounts because the fish seller and the fish buyer is always the same entity, and they only make one payment to NMFS per year. NMFS believes this requirement ensures clear accounting. In addition, the buyback regulations (§ 600.1014(a)) require a segregated account for the collection of buyback fees, which means the cost recovery fees could not be kept in a

buyback account without changing the buyback regulations. The buyback regulations apply to other U.S. fisheries than just the Pacific coast groundfish fisheries. This final rule is not revising the national buyback regulations. However, if the buyback regulations are revised through a future rulemaking, the possibility of a joint buyback and cost recovery deposit account could be explored and, if adopted, would need to include a revision to the Pacific coast groundfish regulations.

Comment 14. NMFS should clarify how the prohibition at § 660.112(a)(6)(iii) applies to the C/P Coop Program. The C/P Coop Program neither collects nor disburses cost recovery fees from fish sellers.

Response. With this final rule, NMFS clarifies the prohibition at § 660.112(a)(6)(iii) to only apply to the Shorebased IFQ and MS Coop Programs, and not to C/P Coop Program. Because vessels in the C/P Coop Program act as both the harvester and the processor, they are not required to collect fees from themselves, keep a segregated bank account, and then disburse payments to NMFS from the segregated bank account. The C/P Coop Program would still be required to make timely fee payments to NMFS and subject to the other prohibitions in § 660.112(a)(6). This issue is also mentioned under the section of the preamble titled ''Changes from the Proposed Rule.''

Recordkeeping, Reporting, and Auditing

Comment 15. NMFS should not require an annual cost recovery report from the C/P cooperative participants for the reasons listed in the preamble to the proposed rule (78 FR 7371, February 1, 2013): the fish buyer and fish seller are the same entity, only pay at end of year, are not be required to have a deposit account, and are not paying the fee amount based on their own ex-vessel value (they pay based on MS ex-vessel value). The public reporting burden for an annual report from fish buyers in the C/P Coop Program is unreasonable and unnecessary.

Response. NMFS agrees and with this final rule has removed the requirement for an annual report in the C/P Coop Program at § 660.113(d)(5)(i) and at § 660.115(d)(4)(ii). This issue is described in more detail under the section of the preamble titled ''Items NMFS Requested Comment on in the Proposed Rule,'' and is mentioned under the section of the preamble titled ''Changes from the Proposed Rule.''

Comment 16. NMFS should clarify how the reporting and recordkeeping requirements regarding ex-vessel value and the collection of fees proposed at § 660.113(d)(5)(i) and (ii) apply to the C/P Coop Program.

Response. NMFS requires fish buyers to submit a cost recovery form with the fish buyer's fee payment to NMFS. The cost recovery form requires certain information to be completed by the fish buyer, including the ex-vessel value and the fee collected, as specified at § 660.113(d)(5)(i). The ex-vessel value is defined at § 660.111. For the C/P Coop Program, the ex-vessel value reported on the cost recovery form should be the value of the aggregate pounds of all groundfish species harvested by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the MS Coop Program average price per pound. The field on the cost recovery form to record the fee collected is the fee due to NMFS. The amount of fee due to NMFS is determined by multiplying the amount in the ex-vessel value field by the applicable fee percent. In addition to reporting the ex-vessel value and the fee collected on the cost recovery form, the fish buyer is required to maintain their own records of these items, as specified at § 660.113(d)(5)(ii).

NMFS revised the term ''fee collected'' on the cost recovery form and in the records maintained by fish buyers to read ''fee due'' to NMFS. NMFS revised the term to reduce confusion and distinguish between the fee collected by fish buyers from fish sellers versus the fee due to NMFS from fish buyers. With this final rule, regulations at § 660.113(b)(5)(i), (c)(5)(i), and (d)(5)(i) have been revised from ''fee collected'' to ''fee due.'' This issue is also mentioned under the section of the preamble titled ''Changes from the Proposed Rule.''

Comment 17. Participants in the C/P Coop Program should be exempt from the audit provisions proposed at § 660.115(d)(4)(iii). Provisions to ensure accurate accounting and reporting of transactions between buyers and sellers do not apply to C/P cooperative participants.

Response. NMFS disagrees that the C/P Coop Program should be exempt from the audit provisions at § 660.115(d)(4)(iii). Any fish buyer or fish seller in the trawl rationalization program required to directly or indirectly pay fees to the Federal government may be subject to an audit to ensure compliance with cost recovery.

Failure To Pay

Comment 18. NMFS should use the same penalty structure for cost recovery as is required for buyback. NMFS' proposed penalty to not renew a mothership permit if payment is not received by the deadline is too harsh.

Response. This issue was discussed at the Council's June and September 2011 meetings, and the Council made a final recommendation to NMFS to include non-renewal of a permit for failure to pay cost recovery fees. At the Council's June 2011 meeting, the Council asked that options for ensuring payment be analyzed, and that NMFS indicate a preferred option and rationale (in reference to Question 4 in the June 2011 Agenda Item E.7.b Supplemental NMFS Report 2 on what type of linkage should exist between payment of the cost recovery fee and permitting requirements). At the September 2011 meeting, the Council reviewed Agenda Item G.6.b, Supplemental NMFS Report 2, which analyzed the pros and cons of different approaches and noted NMFS preferred option. NMFS' preferred option, Option 4, linked failure to pay the assessed cost recovery fee to permit or IFQ first receiver site license renewal, but did not require proof of fee payment as part of a complete renewal application. With this approach, the primary compliance incentive is an administrative link between failure to pay the appropriate cost recovery fee and permit/license renewal. Potential enforcement action would remain an option in some cases. This rule incorporates a permit link to ensure compliance while minimizing the associated administrative burden to both NMFS and industry. The way the Council had already recommended structuring the cost recovery program would create incentives that lead to a high compliance rate. However, success of the trawl rationalization program is tied to successful cost recovery. Due to the reasons listed above, reliance on enforcement actions alone would likely not provide sufficient compliance incentives. Additionally, NMFS noted that including a permit link was most consistent with NMFS policy on permits issuance under the Debt Collection Improvement Act. Ultimately, the Council recommended Option 4 from Agenda Item G.6.b, Supplemental NMFS Report 2, September 2011. The Council's advisory bodies, including the Groundfish Advisory Subpanel and the Enforcement Consultants, supported this recommendation for effective implementation and enforcement of cost recovery. With this final rule, NMFS has implemented the Council's recommendation to include a permit linkage for failure to pay.

Items NMFS Requested Comment on in the Proposed Rule

NMFS specifically requested comment on several items in the proposed rule. Below, NMFS identifies each issue where NMFS specifically requested public comments, and indicates whether comments were received. In instances where NMFS made changes to the proposed rule, NMFS identified these changes in the section titled ''Changes from the Proposed Rule.''

• *Coordinating Cost Recovery With Buyback*

In the proposed rule, NMFS specifically requested comment on using one form to submit two payments, one payment to each program (cost recovery and buyback). However, NMFS proposed a separate cost recovery form, in part because NMFS found several drawbacks to using one combined form for both programs. The drawbacks to one combined form for both programs included the potential for increased misreporting/mispayment, different consequences for misreporting/mispayment (late fee versus nonrenewal of permit/license), and increased time to correct errors, potentially harming business operations.

In an effort to further coordinate the cost recovery program with the buyback program, NMFS will use the same online portal for payment as the buyback program, Pay.gov. By using the same portal, users are able to go to one place to make payments, maintain a user profile, and click on a link to pay either buyback fees or cost recovery fees. The forms submitted with payment for each fee are contained in each link. The cost recovery form on the Pay.gov link has been designed to look very similar to the buyback form, with the addition of a box to fill out the weight (in lbs) and fees paid based on the cost recovery program fee percentage (which is different than the buyback fee percentage). In addition, certain fields on the form will auto-populate for users with existing Pay.gov accounts. With this system, NMFS expects that the ex-vessel value reported on the cost recovery form should match that reported on the buyback form, because both forms report based on the value of all groundfish species. NMFS solicited public comment on the benefits and drawbacks of one form versus two, and received comments (see Comment 12 in the ''Comments and Responses'' section). After considering the comments, NMFS will use separate forms for cost recovery and buyback. While no regulatory changes were made from the proposed rule, NMFS decided to split the cost recovery form in to one for each sector (IFQ, MS, and C/P) as described further in the response to comment 12.

• *Fee Amount; Fee Payment and Collection*

In the proposed rule, NMFS specifically requested comment on an alternate approach to calculating the cost recovery fee amount for the C/P Coop Program. Instead of multiplying the ex-vessel value (using MS pricing) by the fee percentage to get the fee amount, NMFS could have directly billed the sector in the last quarter of the year so long as the value for DPC of the C/P Coop Program in the fee percentage calculation for the previous fiscal year was an amount equal to or less than three percent of the ex-vessel value of the fishery (using MS pricing). Under this alternate approach, NMFS would have calculated the fee percentage using information from the previous fiscal year in order to ensure that the fee did not exceed three percent. NMFS would have also announced the amount due from the C/P Coop Program in the fall before the fishing year in which the fee amount would have been applied. This way, the C/P Coop Program would have known at the start of the fishing year how much money would be due to NMFS for cost recovery at the end of the year. Under this alternate approach, the C/P Coop would have been responsible for figuring out which ''fish buyers,'' as defined for the cost recovery program, were responsible for which portion of the payment and for notifying NMFS. NMFS would have then billed each fish buyer accordingly. This alternate approach would have resulted in more accurate payment and less adjustments for over or under payment between years. NMFS received comments on this proposal (see Comment 8 in the ''Comments and Responses'' section), and made no changes from the proposed rule.

• *Recordkeeping, Reporting, and Auditing*

In the proposed rule, NMFS specifically requested comment on additional reporting requirements for the at-sea whiting sectors (MS and C/P) to verify information reported on the cost recovery form. In order to hold the three sectors (IFQ, MS, and C/P) to similar standards and to ensure fair and accurate fee payment among the sectors, NMFS proposed an annual report for both of the at-sea sectors. However, there are some distinctions between the at-sea sectors (MS and C/P). Because in the C/P Coop Program the fish buyer and fish seller are the same entity, because they would only pay at end of year, because they would not be required to have a deposit account, and because they are not paying the fee amount based on their own ex-vessel value (they pay based on MS ex-vessel value), NMFS solicited public comment on the need for an annual report in the C/P Coop Program. Comments were received (see Comment 15 in the ''Comments and Responses'' section), and this rule changes the requirements at § 660.113(d)(5)(i) and at § 660.115(d)(4)(ii) to remove the requirement for an annual report from fish buyers in the C/P Coop Program. See also ''Changes from the Proposed Rule.''

Changes From the Proposed Rule

In this final rule, NMFS has made several small changes from the proposed rule. NMFS revised the definition of ''ex-vessel value'' at § 660.111 to say ''. . . or for any goods or services . . .'' instead of ''or for any goods for services.'' NMFS clarified the prohibition at § 660.112(a)(6)(iii) on deposit accounts and fee collection to only apply to the Shorebased IFQ and MS Coop Programs, and not to C/P Coop Program—see response to Comment 14. NMFS revised § 660.115(d)(3)(i)(A)(*4*) by adding ''failing or'' to the following phrase ''failing or refusing to collect'' to clarify the conditions of the requirement. NMFS revised the name of the Regional Office from ''Northwest'' to ''West Coast'' at § 660.115(d)(3)(i)(B) and (d)(3)(ii)(B) to reflect the new regional name following the merger of NMFS Northwest and Southwest Regional Offices. NMFS removed the requirement for an annual report from fish buyers in the C/P Coop Program at § 660.113(d)(5)(i) and at § 660.115(d)(4)(ii)—see response to Comment 15. NMFS revised the term ''fee collected'' to ''fee due'' on the cost recovery form and in regulations at § 660.113(b)(5)(i), (c)(5)(i), and (d)(5)(i)—see response to Comment 16. NMFS also revised § 660.113(b)(5)(i), (c)(5)(i), and (d)(5)(i) to clarify terms (using ''fish buyer'' which is defined at § 660.111 instead of ''fee collector'') and make them more specific to each sector (e.g., reporting only the year of harvest for C/P versus month and year of landings/deliveries for IFQ and MS).

NMFS revised regulations at § 660.115(b)(1)(ii) to calculate ex-vessel value based on the previous calendar year rather than fiscal year. Ex-vessel value for the Shorebased IFQ Program is reported in PacFIN from fish ticket data. PacFIN groups data and reports by calendar year. In addition, PacFIN

reports may have a time delay. Therefore, pulling accurate data based on a fiscal year, right after the fiscal year has closed, may not be possible.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law. To the extent that the regulations in this final rule differ from what was deemed by the Council, NMFS invokes its independent authority under 16 U.S.C. 1855(d).

The Council prepared a final environmental impact statement (EIS) for Amendment 20 and Amendment 21 to the Pacific Coast Groundfish FMP. The Amendment 20 and 21 EISs are available on the Council's Web site at *http://www.pcouncil.org/*. The regulatory changes in this rule were categorically excluded from the requirement to prepare a NEPA analysis.

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

The preamble to the proposed rule (78 FR 7371, February 1, 2013) included a detailed summary of the analyses contained in the IRFA. NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared a FRFA in support of this final rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see **ADDRESSES**) and a summary of the FRFA, per the requirements of 5 U.S.C. 604(a), follows:

This rulemaking affects participants in the trawl rationalization program. Cost recovery for the trawl rationalization program requires the fish sellers to pay the fee and all parties making the first ex-vessel purchase of groundfish (i.e., the fish buyers) to collect the fee, account for, and forward the fee revenue to NMFS (Note: In the C/P Coop Program, a cooperative of vessels that both harvest and process whiting at-sea, the fish seller and the fish buyer are the same entity).

Each vessel account holder, mothership catcher vessel, mothership processor, and catcher-processor must apply to participate in the trawl rationalization program. There are 144 vessel accounts, 36 mothership-endorsed limited entry permits, 6 mothership permits, 10 catcher-processor permits, and 51 first receiver site licenses. In many instances, one entity may own several permits or accounts. As part of the application process, applicants were asked if they considered themselves a ''small'' business based on a review of the Small Business Administration (SBA) size criteria.

On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398; June 20, 2013). This change affects the classification of vessels that harvest groundfish under this program. The rule increased the size standard for Finfish Fishing from $4.0 to 19.0 million, Shellfish Fishing from $4.0 to 5.0 million, and Other Marine Fishing from $4.0 to 7.0 million (Id. at 37400-Table 1). Prior to SBA's recent changes to the size standards for commercial harvesters, a business involved in both the harvesting and processing of seafood products, also referred to as a catcher/processor (C/P), was considered a small business if it met the $4.0 million criterion for commercial fish harvesting operations. In light of the new size standards for commercial harvesters, NMFS is reviewing the size standard for C/Ps. However, for purposes of this rulemaking, NMFS is applying the $19 million standard because whiting C/Ps are involved in the commercial harvest of finfish. The size standards for entities that process were not changed. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide.

Based on the new finfish size standard ($19 million), NMFS reassessed those businesses previously considered large under the old size standard ($4 million) based on information provided by these companies under the NMFS Northwest Fisheries Science Center's Economic Data Collection Program. This reassessment also included adjustments for entities that own multiple accounts and or permits. Based on the new size standard ($19 million) and after taking into account NWFSC economic data, NMFS permit and ownership information, and affiliation between entities, NMFS estimates that there are 145 fishery-related entities directly affected by these regulations, of which 102 are ''small'' businesses.

Using the fee rate by sector for 2014 and 2012 calendar year revenues, for the Shorebased IFQ Program, would lead to the following projected collections: Shorebased IFQ Program, $1.44 million ($48 million × 0.030); MS Coop Program, approximately $264,000 ($11 million × 0.024); and for the C/P Coop Program, approximately $187,000 ($17 million × 0.011). Using this example, NMFS would recover approximately $1.9 million by implementing cost recovery.

Overall, as discussed above NMFS received 11 public comments on the groundfish trawl rationalization cost recovery proposed rule. No significant issues were raised by the public comments in response to the IRFA. However, Comment 6 above does raise ''small boat'' issues. The comment period ended March 18, 2013.

Generally, the comments acknowledged the MSA requirement for cost recovery. Many commenters requested that implementation be delayed to January 1, 2014 at the earliest. Some of these commenters noted that mid-year implementation would unfairly disadvantage fishermen who fish later in the year. Other commenters requested that it be delayed until the trawl rationalization fishery has gained more economic stability, namely after the buyback loan has been refinanced, NMFS identifies and shares a detailed budget of incremental costs, and trawl trailing amendments have been implemented (e.g., electronic monitoring, more flexibility in where and with what gear fishermen can fish, widow rockfish reallocation, etc). Some commenters felt NMFS should prioritize these trailing actions that would benefit the program and the fleet before implementing cost recovery. These trailing actions would make the fleet more profitable and thus, better able to afford the cost recovery fee.

The impacts on both small and large entities are the fees being collected—up to three percent of ex-vessel revenues or the mothership and catch processor equivalents. As discussed in the proposed rule (78 FR 7371, February 1, 2013), fishermen have been paying state landing taxes for years. The buyback fees, on the other hand, are associated with a reduction of the fleet that has significantly increased the amount of fish that the post buyback fishermen were able to harvest under the trip limit regime (prior to trawl rationalization) or received as QS that fishermen now receive under trawl rationalization. (Buyback history was equally divided among all shorebased groundfish permits.) Fishermen are now petitioning Congress for a reduction in the interest rate associated with the $36 million buyback loan. While the costs of observers may be high, NMFS and the Council are looking at the feasibility of electronic monitoring to lower administrative and fishermen costs. The costs of paying the cost recovery fees

can be reduced by developing a lower cost administrative system or by increased revenues as fishermen develop techniques to reduce bycatch so they can increase their target catch. The effects of all factors on current and future individual and industry profits are hard to assess, particularly as QS trading is not allowed until 2014. When QS trading is initiated, it is expected that the number of participants in the Shorebased IFQ Program will be reduced. A reduction in the number of participants may lower administrative costs while raising average revenues per participant.

Because cost recovery is mandatory under the MSA, the ''no action'' alternative is not a viable alternative. All of the other alternatives would have the same expected effects among each other because the MSA requires fees of up to three percent of the ex-vessel value to be collected. Implementation costs were reduced by adapting the existing buyback fee collection processes and by adjusting these processes to each sector.

While there may be different impacts of cost recovery on small and large businesses, the cost recovery provisions of the MSA (16 U.S.C. 1854(d)(2)(B)) do not differentiate between the fee percentage charged for small versus large businesses. Cost recovery was originally approved as part of Amendment 20, and is required under the MSA for LAPPs like the trawl rationalization program. NMFS delayed implementation of cost recovery for the first three years of the trawl rationalization program. In response to public comments, NMFS decided to continue the delay until January 2014.

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the West Coast Regional Office, and the guide will be sent to all permit owners and first receiver license holders for the fishery. The guide and this final rule will also be available on the West Coast Region's Web site (see **ADDRESSES**) and upon request.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), and which has been approved by OMB under control number 0648–0663. NMFS received three letters of comment on the proposed rule regarding this information collection. In the ''Comments and Responses'' section of the preamble, comments 12 through 16 address aspects of the information collection. The comments generally sought to reduce the burden on fish buyers as collection agents, keep online reporting simple, use separate forms for cost recovery and buyback, not require a segregated bank account, not require an annual report for the C/P Coop Program, and clarify the ex-vessel value and fee due on the cost recovery form for the C/P Coop Program. Based on these comments on the information collection, NMFS made several changes between the proposed and final rule, as noted in the preamble section ''Changes from the Proposed Rule.'' Public reporting burden for the cost recovery form is estimated to average 1 hour per response. Public reporting burden for a failure to pay report is estimated to average 4 hours per response. Public reporting burden for the annual report for the MS Coop Program is estimated to average 1 hour per response. These public reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these or any other aspects of the collection of information, including suggestions for reducing the burden, to NMFS, West Coast Region at the **ADDRESSES** above, and email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This final rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. The regulations have no direct effect on the tribes; these regulations were deemed by the Council as ''necessary or appropriate'' to implement the FMP as amended.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: December 6, 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 Chapter VI is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.11, add the definition for ''Fiscal year'' and ''Fund'' in alphabetical order to read as follows:

§ 660.11 General definitions.

* * * * *

Fiscal year means the year beginning at 0001 local time on October 1 and ending at 2400 local time on September 30 of the following year.

* * * * *

Fund means, for the purposes of subparts C through G of this part, the U.S. Treasury's Limited Access System Administration Fund (LASAF) established by the Magnuson-Stevens Act, 16 U.S.C. 1855(h)(5)(B), specifically the LASAF subaccounts associated with the PCGFMP cost recovery programs.

* * * * *

■ 3. In § 660.25, as added at 78 FR 68767, November 15, 2013, effective January 1, 2014, is revised to read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(G) An MS permit or a limited entry permit with a C/P endorsement will not be renewed, if it was the permit owner that failed to pay, until payment of all cost recovery program fees required pursuant to § 660.115 has been made. The IAD, appeals, and final decision process for the cost recovery program is specified at § 660.115(d)(3)(ii).

* * * * *

■ 4. In § 660.111, add the definition for ''Ex-vessel value,'' ''fish buyer,'' ''Fish seller,'' and ''Net ex-vessel value'' in alphabetical order to read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Ex-vessel value means, for the purposes of the cost recovery program specified at § 660.115, all compensation (based on an arm's length transaction between a buyer and seller) that a fish buyer pays to a fish seller in exchange for groundfish species (as defined in § 660.11), and includes the value of all in-kind compensation and all other goods or services exchanged in lieu of cash. Ex-vessel value shall be determined before any deductions are made for transferred or leased allocation, or for any goods or services.

(1) For the Shorebased IFQ Program, the value of all groundfish species (as defined in § 660.11) from IFQ landings.

(2) For the MS Coop Program, the value of all groundfish species (as defined in § 660.11) delivered by a catcher vessel to an MS-permitted vessel.

(3) For the C/P Coop Program, the value as determined by the aggregate pounds of all groundfish species (as defined in § 660.11) harvested by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the MS Coop Program average price per pound as announced pursuant to § 660.115(b)(2).

Fish buyer means, for the purposes of the cost recovery program specified at § 660.115,

(1) For the Shorebased IFQ Program, the IFQ first receiver as defined in § 660.111.

(2) For the MS Coop Program, the owner of a vessel registered to an MS permit, the operator of a vessel registered to an MS permit, and the owner of the MS permit registered to that vessel. All three parties shall be jointly and severally responsible for fulfilling the obligations of a fish buyer.

(3) For the C/P Coop Program, the owner of a vessel registered to a C/P-endorsed limited entry trawl permit, the operator of a vessel registered to a C/P-endorsed limited entry trawl permit, and the owner of the C/P-endorsed limited entry trawl permit registered to that vessel. All three parties shall be jointly and severally responsible for fulfilling the obligations of a fish buyer.

Fish seller means the party who harvests and first sells or otherwise delivers groundfish species (as defined in § 660.11) to a fish buyer.

* * * * *

Net ex-vessel value means, for the purposes of the cost recovery program specified at § 660.115, the ex-vessel value minus the cost recovery fee.

* * * * *

■ 5. In § 660.112, add paragraph (a)(6) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(a) * * *

(6) *Cost recovery program.* (i) Fail to fully pay or collect any fee due under the cost recovery program specified at § 660.115 and/or otherwise avoid, decrease, interfere with, hinder, or delay any such payment or collection.

(ii) Convert, or otherwise use any paid or collected fee for any purpose other than the purposes specified in this subpart.

(iii) For the Shorebased IFQ Program and the MS Coop Program, fail to deposit on time the full amount of all fee revenue collected under the cost recovery program specified at § 660.115 into a deposit account, or fail to timely disburse the full amount of all deposit principal to the Fund.

(iv) Fail to maintain records as required by § 660.113 and/or fail to make reports to NMFS as required under § 660.113.

(v) Fail to advise NMFS of any fish buyer's failure to collect any fee due and payable under the cost recovery program specified at § 660.115.

(vi) Refuse to allow NMFS employees, agents, or contractors to review and audit all records and other information required to be maintained as set forth in § 660.113, and/or § 660.115.

(vii) Make any false statement to NMFS, including any NMFS employee, agent or contractor, concerning a matter related to the cost recovery program described in this subpart.

(viii) Obstruct, prevent, or delay, or attempt to obstruct, prevent, or delay, any audit or investigation NMFS employees, agents, or contractors conduct, or attempt to conduct, in connection with any of the matters in the cost recovery program described in this subpart.

* * * * *

■ 6. In § 660.113, add paragraphs (b)(5), (c)(5), and (d)(5) to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(b) * * *

(5) *Cost recovery program.* In addition to the requirements at paragraph (a) of this section, the fish buyer, as defined at § 660.111 for the Shorebased IFQ Program, is required to comply with the following recordkeeping and reporting requirements:

(i) *Reporting.* The fish buyer must submit a cost recovery form at the time cost recovery fees are paid to NMFS as specified at § 660.115. The cost recovery form requires providing information that includes, but is not limited to, fish buyer's name, address, phone number, first receiver site license number, month and year of landings, weight of landings, ex-vessel value, and fee due.

(ii) *Recordkeeping.* The fish buyer must maintain the following records:

(A) For all deliveries of groundfish that the fish buyer buys from each fish seller:

(*1*) The date of delivery,

(*2*) The fish seller's identity,

(*3*) The weight of each species of groundfish delivered,

(*4*) Information sufficient to specifically identify the fishing vessel which delivered the groundfish,

(*5*) The ex-vessel value of each species of groundfish,

(*6*) The net ex-vessel value of each species of groundfish,

(*7*) The identity of the payee to whom the net ex-vessel value is paid, if different than the fish seller,

(*8*) The date the net ex-vessel value was paid,

(*9*) The total fee amount collected as a result of all groundfish.

(B) For all fee collection deposits to and disbursements from the deposit account:

(*1*) The date of each deposit in to the deposit account required at § 660.115(d)(1)(ii)(A),

(*2*) The total amount deposited in to the deposit account,

(*3*) The date of each disbursement,

(*4*) The total amount disbursed,

(*5*) The dates and amounts of disbursements to the fish buyer, or other parties, of interest earned on deposits.

(c) * * *

(5) *Cost recovery program.* In addition to the requirements at paragraph (a) of this section, the fish buyer, as defined at § 660.111 for the MS Coop Program, is required to comply with the following recordkeeping and reporting requirements:

(i) *Reporting.* (A) *Cost recovery form.* The fish buyer must submit a cost recovery form at the time cost recovery fees are paid to NMFS as specified at § 660.115. The cost recovery form requires providing information that includes, but is not limited to, fish buyer's name, address, phone number, MS permit number, vessel name, USCG vessel documentation number, month and year of deliveries, weight of deliveries, ex-vessel value, and fee due.

(B) *Annual report.* By March 31 each year, each fish buyer must submit to NMFS a report containing the following information from the preceding calendar year for all groundfish each fish buyer purchases from fish sellers:

(*1*) Total weight bought,

(*2*) Total ex-vessel value paid,

(*3*) Total fee amounts collected,

(*4*) Total fee collection amounts deposited by month,

(*5*) Dates and amounts of monthly disbursements to the Fund.

(ii) *Recordkeeping.* The fish buyer must maintain the following records:

(A) For all deliveries of groundfish that the fish buyer buys from each fish seller:

(*1*) The date of delivery,

(*2*) The fish seller's identity,

(*3*) The weight of each species of groundfish delivered,

(*4*) Information sufficient to specifically identify the fishing vessel which delivered the groundfish,

(*5*) The ex-vessel value of each species of groundfish,

(*6*) The net ex-vessel value of each species of groundfish,

(*7*) The identity of the payee to whom the net ex-vessel value is paid, if different than the fish seller,

(*8*) The date the net ex-vessel value was paid,

(*9*) The total fee amount collected as a result of all groundfish.

(B) For all fee collection deposits to and disbursements from the deposit account:

(*1*) The date of each deposit in to the deposit account required at § 660.115(d)(1)(ii)(A),

(*2*) The total amount deposited in to the deposit account,

(*3*) The date of each disbursement,

(*4*) The total amount disbursed,

(*5*) The dates and amounts of disbursements to the fish buyer, or other parties, of interest earned on deposits.

(d) * * *

(5) *Cost recovery program.* In addition to the requirements at paragraph (a) of this section, the fish buyer, as defined at § 660.111 for the C/P Coop Program, is required to comply with the following recordkeeping and reporting requirements:

(i) *Reporting.* The fish buyer must submit a cost recovery form at the time cost recovery fees are paid to NMFS as specified at § 660.115. The cost recovery form requires providing information that includes, but is not limited to, fish buyer's name, address, phone number, C/P-endorsed limited entry permit number, vessel name, USCG vessel documentation number, year of harvest, weight, ex-vessel value, and fee due.

(ii) *Recordkeeping.* The fish buyer must maintain the following records:

(A) For all groundfish:

(*1*) The date of harvest,

(*2*) The weight of each species of groundfish harvested,

(*3*) Information sufficient to specifically identify the fishing vessel which harvested the groundfish,

(*4*) The ex-vessel value of each species of groundfish,

(*5*) The net ex-vessel value of each species of groundfish,

(*6*) The total fee amount collected as a result of all groundfish.

(B) For all disbursements to NMFS:

(*1*) The date of each disbursement,

(*2*) The total amount disbursed.

■ 7. Section 660.115 is added to read as follows:

§ 660.115 Trawl fishery—cost recovery program.

(a) *General.* The cost recovery program collects mandatory fees of up to three percent of the ex-vessel value of fish harvested by sector under the trawl rationalization program in accordance with the Magnuson-Stevens Act. NMFS collects the fees to recover the actual costs directly related to the management, data collection, and enforcement of the trawl rationalization program. In addition to the requirements of this section, the following groundfish regulations also apply:

(1) Regulations set out in the following sections of subpart C: § 660.11 Definitions and § 660.25 Permits.

(2) Regulations set out in the following sections of subpart D: § 660.111 Definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.140 Shorebased IFQ Program, § 660.150 MS Coop Program, and § 660.160 C/P Coop Program.

(b) *Fee percentage by sector.* The annual fee percentage by sector is calculated as described in paragraph (b)(1) of this section. NMFS will establish the fee percentage each year and will announce the fee percentage by sector in accordance with paragraph (b)(2) of this section. The fee percentage must not exceed three percent of the ex-vessel value of fish harvested by sector under the trawl rationalization program pursuant to the Magnuson-Stevens Act at 16 U.S.C. 1854(d)(2)(B).

(1) *Calculation.* In the last quarter of each calendar year, NMFS will calculate the fee percentage by sector based on information from the previous fiscal year (defined at § 660.11). The fee percentage will be rounded to the nearest 0.1 percent and must not exceed three percent for each sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). NMFS will use the following equation to annually determine the fee percentage by sector: Fee percentage = the lower of 3% or $(DPC/V) \times 100$, where:

(i) ''DPC,'' or direct program costs, are the actual incremental costs for the previous fiscal year directly related to the management, data collection, and enforcement of each sector (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program). Actual incremental costs means those net costs that would not have been incurred but for the implementation of the trawl rationalization program, including additional costs for new requirements of the program and reduced trawl sector related costs resulting from efficiencies as a result of the program. If the amount of fees collected by NMFS is greater or less than the actual net incremental costs incurred, the DPC will be adjusted accordingly for calculation of the fee percentage in the following year.

(ii) ''V'' is, for each applicable sector, the total ex-vessel value, as defined at § 660.111, from the previous calendar year attributable to that sector of the trawl rationalization program (Shorebased IFQ Program, MS Coop Program, and C/P Coop Program).

(2) *Notification of the fee percentage and MS average pricing.* During the last quarter of each calendar year, NMFS will announce the following through a **Federal Register** notice:

(i) The fee percentage to be applied by fish buyers and fish sellers, for each sector, that will be in effect for the upcoming calendar year, and

(ii) The average MS price per pound from the previous fiscal year as reported for the MS Coop Program to be used in the C/P Coop Program to calculate the fee amount for the upcoming calendar year as specified in paragraph (c) of this section.

(iii) Information on how to pay in to the Fund subaccount as specified at paragraph (d) of this section.

(c) *Fee amount.* The fee amount is the ex-vessel value, as defined at § 660.111, for each sector multiplied by the fee percentage for that sector as announced in accordance with paragraph (b)(2) of this section.

(d) *Fee payment and collection*—(1) *Fee payment and collection in the Shorebased IFQ Program and MS Coop Program.* Payment of fees at the fee percentage rate announced in paragraph (b)(2) of this section begins January 1 and continues without interruption through December 31 each year.

(i) *Between the fish seller and fish buyer.* Except as described below, the full fee is due and payable at the time of fish landing/delivery. Each fish buyer must collect the fee at the time of fish landing/delivery by deducting the fee from the ex-vessel value before paying the net ex-vessel value to the fish seller. Each fish seller must pay the fee at the time of fish landing/delivery by receiving from the fish buyer the net ex-vessel value, as defined at § 660.111.

(A) In the event of any post-delivery payment for fish, the fish seller must

pay, and the fish buyer must collect, at the time the amount of such post-landing/delivery payment, the fee that would otherwise have been due and payable at the time of initial fish landing/delivery.

(B) When the fish buyer and fish seller are the same entity, that entity must comply with the requirements for both the fish seller and the fish buyer as specified in this section.

(ii) *Between the fish buyer and NMFS*—(A) *Deposit accounts.* Each fish buyer shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue from the cost recovery program specified in this section and disbursing the deposit principal directly to NMFS in accordance with paragraph (d)(1)(ii)(C) of this section.

(B) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each month, shall deposit, in the deposit account established under paragraph (d)(1)(ii)(A) of this section, all fees collected, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. The deposit principal may not be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the Fund in accordance with paragraph (d)(1)(ii)(C) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(C) *Deposit principal disbursement.* Not later than the 14th calendar day after the last calendar day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full deposit principal then in the deposit account. The fish buyer shall disburse deposit principal by electronic payment to the Fund subaccount to which the deposit principal relates. NMFS will announce information about how to make an electronic payment to the Fund subaccount in the notification on fee percentage specified in paragraph (b)(2) of this section. Each disbursement must be accompanied by a cost recovery form provided by NMFS. Recordkeeping and reporting requirements are specified in paragraph (d)(4) of this section and at § 660.113(b)(5) for the Shorebased IFQ Program and § 660.113(c)(5) for the MS Coop Program. The cost recovery form will be available on the pay.gov Web site.

(2) *Fee payment and collection in the C/P Coop Program.* Payment of fees for the calendar year at the fee percentage rate announced in paragraph (b)(2) of this section is due in the last quarter of the calendar year and no later than December 31 each year. The fish buyer is responsible for fee payment to NMFS. The fish seller and the fish buyer, as defined at § 660.111, are considered the same entity in the C/P Coop Program. The fish buyer shall disburse to NMFS the full fee amount for the calendar year by electronic payment to the Fund subaccount. NMFS will announce information about how to make an electronic payment to the Fund subaccount in the notification on fee percentage specified in paragraph (b)(2) of this section. Each disbursement must be accompanied by a cost recovery form provided by NMFS. Recordkeeping and reporting requirements are specified in paragraph (d)(4) of this section and at § 660.113(d)(5) for the C/P Coop Program. The cost recovery form will be available on the pay.gov Web site.

(3) *Failure to pay or collect*—(i) *Responsibility to notify NMFS.* (A) If a fish buyer fails to collect the fee in the amount and manner required by this section, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's cost recovery fee collection obligation. If the fish buyer still fails to properly collect the fee, the fish seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing at the address in paragraph (d)(3)(i)(C) of this section of the full particulars, including:

(*1*) The fish buyer's and fish seller's name, address, and telephone number,

(*2*) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(*3*) The weight and ex-vessel value of each species of fish that the fish seller delivered, and

(*4*) The fish buyer's reason, if known, for failing or refusing to collect the fee in accordance with this subpart;

(B) Notifications must be mailed or faxed to: National Marine Fisheries Service, West Coast Region, Office of Management and Information, ATTN: Cost Recovery Notification, 7600 Sand Point Way NE., Seattle, WA 98115; Fax: 206–526–6426; or delivered to National Marine Fisheries Service at the same address.

(ii) *IAD, appeals, and final decision.* If NMFS determines the fish buyer or other responsible party has not submitted a complete cost recovery form and corresponding payment by the due date specified in paragraphs (d)(1) and (2) of this section, NMFS will at any time thereafter notify the fish buyer or other responsible party in writing via an initial administrative determination (IAD) letter.

(A) *IAD.* In the IAD, NMFS will state the discrepancy and provide the person 30 calendar days to either pay the specified amount due or appeal the IAD in writing.

(B) *Appeals.* If the fish buyer appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 30 calendar days after the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day. The appeal must be in writing, must allege credible facts or circumstances, and must include any relevant information or documentation to support the appeal. Appeals must be mailed, faxed, or hand-delivered to: National Marine Fisheries Service, West Coast Region, Office of Management and Information, ATTN: Cost Recovery Appeals, 7600 Sand Point Way NE., Seattle, WA 98115; Fax: 206–526–6426; or delivered to National Marine Fisheries Service at the same address.

(C) *Final decision*—(*1*) *Final decision on appeal.* For the appeal of an IAD, the Regional Administrator shall appoint an appeals officer. After determining there is sufficient information and that all procedural requirements have been met, the appeals officer will review the record and issue a recommendation on the appeal to the Regional Administrator, which shall be advisory only. The recommendation must be based solely on the record. Upon receiving the findings and recommendation, the Regional Administrator, acting on behalf of the Secretary of Commerce, will issue a written decision on the appeal which is the final decision of the Secretary of Commerce.

(*2*) *Final decision if there is no appeal.* If the fish buyer does not appeal the IAD within 30 calendar days, NMFS will notify the fish buyer or other responsible party in writing via a final decision letter. The final decision will be from the Regional Administrator acting on behalf of the Secretary of Commerce.

(*3*) *If the final decision determines that the fish buyer is out of compliance,* the final decision will require payment within 30 calendar days. If such payment is not received within 30 calendar days of issuance of the final decision, NMFS will refer the matter to the appropriate authorities for purposes of collection. As of the date of the final decision if the fish buyer is out of compliance, NMFS will not approve a permit renewal for an MS permit or a C/

P-endorsed limited entry trawl permit until all cost recovery fees due have been paid as specified at § 660.25(b)(4)(i)(G); or reissue an IFQ first receiver site license until all cost recovery fees due have been paid, as specified at § 660.140(f)(4).

(4) *Recordkeeping, reporting, and audits*—(i) *Recordkeeping.* Each fish buyer and fish seller shall retain records in accordance with § 660.113(a). In addition, fish buyers shall retain records in accordance with the following paragraphs: § 660.113(b)(5) for the Shorebased IFQ Program, § 660.113(c)(5) for the MS Coop Program, and § 660.113(d)(5) for the C/P Coop Program.

(ii) *Reporting, including annual report.* Each fish buyer shall submit reports in accordance with the following paragraphs: § 660.113(b)(5) for the Shorebased IFQ Program, § 660.113(c)(5) for the MS Coop Program, and § 660.113(d)(5) for the C/P Coop Program. The fish buyer must submit a cost recovery form along with fee payment to NMFS. By March 31 each year, fish buyers in the MS Coop Program must submit an annual report to NMFS containing information from the preceding calendar year as specified at § 660.113(c)(5).

(iii) *Audits.* NMFS or its agents may audit, in whatever manner NMFS determines reasonably necessary for the duly diligent administration of the cost recovery program, the financial records of fish buyers and fish sellers in order to ensure proper fee payment, collection, deposit, disbursement, accounting, recordkeeping, and reporting. Fish buyers and fish sellers must respond to any inquiry by NMFS or a NMFS agent within 20 calendar days of the date of issuance of the inquiry, unless an extension is granted by NMFS. Fish buyers and fish sellers shall make all relevant records available to NMFS or NMFS' agents at reasonable times and places and promptly provide all requested information reasonably related to these records. NMFS may employ a third party agent to conduct the audits. The NMFS auditor may review and request copies of additional data provided by the submitter, including but not limited to, previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data submitted.

■ 8. In § 660.140:
■ a. Revise paragraph (a)(2);
■ b. Add paragraphs (b)(1)(x) and (b)(2)(ix);
■ c. Add text to reserved paragraph (e)(8);
■ d. Revise paragraphs (f)(4) and (6); and
■ d. Add paragraph (f)(10).

The revisions and additions read as follows:

§ 660.140 Shorebased IFQ Program.

(a) * * *

(2) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.115 Trawl fishery cost recovery program, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(1) * * *

(x) Fish sellers must pay cost recovery program fees, as specified at § 660.115.

(2) * * *

(ix) Collect and remit to NMFS cost recovery program fees, as specified at § 660.115.

* * * * *

(e) * * *

(8) *Cost recovery.* The fish seller, as defined at § 660.111, is subject to the cost recovery program specified at § 660.115.

(f) * * *

(4) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a first receiver site license. If disapproved, the IAD will provide the reasons for this determination. NMFS will not reissue a first receiver site license until the required cost recovery program fees, as specified at § 660.115, have been paid. The IAD, appeals, and final decision process for the cost recovery program is specified at § 660.115(d)(3)(ii).

* * * * *

(6) *Reissuance in subsequent years.* Existing license holders must reapply annually. If the existing license holder fails to reapply, the first receiver's site license will expire as specified in paragraph (f)(5) of this section. The IFQ first receiver will not be authorized to receive IFQ species from a vessel if their first receiver site license has expired. NMFS will not reissue a first receiver site license until all required cost recovery program fees, as specified at § 660.115, associated with that license have been paid.

* * * * *

(10) *Cost recovery.* The first receiver site license holder is considered the fish buyer as defined at § 660.111, and must comply with the cost recovery program specified at § 660.115.

* * * * *

■ 9. In § 660.150:
■ a. Revise paragraphs (a)(4) and (b)(1)(ii)(A);
■ b. Add paragraphs (b)(1)(ii)(D) and (b)(2)(ii)(C);
■ c. Remove paragraph (d)(5);
■ d. Revise paragraph (f)(6); and
■ e. Add paragraph and (g)(7).

The revisions and additons read as follows:

§ 660.150 Mothership (MS) Coop Program.

(a) * * *

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.115 Trawl fishery cost recovery program, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *Recordkeeping and reporting.* Maintain a valid declaration as specified at § 660.13(d); maintain records as specified at § 660.113(a); and maintain and submit all records and reports specified at § 660.113(c) including, economic data, scale tests records, cease fishing reports, and cost recovery.

* * * * *

(D) *Cost recovery program.* Collect and remit to NMFS cost recovery program fees as specified at § 660.115.

* * * * *

(2) * * *

(ii) * * *

(C) *Cost recovery program.* Vessel must pay cost recovery program fees, as specified at § 660.115.

* * * * *

(f) * * *

(6) *Cost recovery.* The owner of a vessel registered to an MS permit, the operator of a vessel registered to an MS permit, and the owner of the MS permit registered to that vessel, are considered to be the fish buyer as defined at § 660.111, and must comply with the cost recovery program specified at § 660.115.

(g) * * *

(7) *Cost recovery.* The fish seller, as defined at § 660.111, is subject to the cost recovery program specified at § 660.115.

* * * * *

■ 10. In § 660.160:

■ a. Revise paragraphs (a)(4) and (b)(1)(ii)(A);
■ b. Add paragraph (b)(1)(ii)(D);
■ c. Remove paragraph (d)(5);
■ d. Add paragraph (e)(5); and
■ e. Remove paragraph (e)(6).

The revisions and additions read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

(a) * * *

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.115 Trawl fishery cost recovery program, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *Recordkeeping and reporting.* Maintain a valid declaration as specified at § 660.13(d); maintain records as specified at § 660.113(a); and maintain and submit all records and reports specified at § 660.113(d) including, economic data, scale tests records, cease fishing reports, and cost recovery.

* * * * *

(D) *Cost recovery program.* Collect and remit to NMFS cost recovery program fees, as specified at § 660.115.

* * * * *

(e) * * *

(5) *Cost recovery.* The owner of a vessel registered to a C/P-endorsed limited entry trawl permit, the operator of a vessel registered to a C/P-endorsed limited entry trawl permit, and the owner of the C/P-endorsed limited entry trawl permit registered to that vessel, are considered both the fish buyer and the fish seller as defined at § 660.111, and must comply with the cost recovery program specified at § 660.115.

* * * * *

[FR Doc. 2013–29546 Filed 12–10–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 78, No. 238

Wednesday, December 11, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–1038; Notice No. 25–13–37–SC]

Special Conditions: Bombardier Inc., Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Flight Envelope Protection: High Speed Limiting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes. These airplanes will have a novel or unusual design feature associated with an electronic flight control system that contains fly-by-wire control laws, including envelope protections, for the overspeed protection and roll limiting function. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before January 27, 2014.

ADDRESSES: Send comments identified by docket number FAA–2013–1038 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2011; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On December 10, 2009, Bombardier Inc. applied for a type certificate for their new Models BD–500–1A10 and BD–500–1A11 series airplanes (hereafter collectively referred to as ''C-series''). The C-series airplanes are swept-wing monoplanes with a pressurized cabin. They share an identical supplier base and significant common design elements. The fuselage is aluminum alloy material, blended double-bubble fuselage, sized for nominal 5-abreast seating. Each airplane's powerplant consists of two under wing Pratt and Whitney PW1524G ultra-high bypass, geared turbofan engines. Flight controls are fly-by-wire flight with two passive/uncoupled side sticks. Avionics includes five landscape primary cockpit displays. The dimension of the airplanes encompass a wingspan of 115 feet; a height of 37.75 feet; and a length of 114.75 feet for the Model BD–500–1A10 and a length of 127 feet for the Model BD–500–1A11. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11. Maximum takeoff thrust is 21,000 pounds for the Model BD–500–1A10 and 23,300 pounds for the Model BD–500–1A11. Range is 3,394 miles (5,463 kilometers) for both models of airplanes. Maximum operating altitude is 41,000 feet for both model airplanes.

The longitudinal control law design of the Bombardier C-series airplanes incorporates an overspeed protection system in the normal mode. This mode prevents the pilot from inadvertently or intentionally exceeding a speed approximately equivalent to the maximum speed for stability characteristics (V_{FC}) or attaining demonstrated flight diving speed (V_{DF}). Current Title 14, Code of Federal Regulations (14 CFR) part 25 standards did not envision a high speed limiter that might preclude or modify flying qualities assessments in the overspeed region.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Bombardier Inc. must show that the C-series airplanes meet the applicable provisions of part 25 as amended by Amendments 25–1 through 25–129 thereto.

If the Administrator finds that the applicable airworthiness regulations

(i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the C-series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the C-series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The C-series airplanes will incorporate the following novel or unusual design features: An electronic flight control system that contains fly-by-wire control laws, including envelope protections, for the overspeed protection and roll limiting function. Current part 25 requirements do not contain appropriate standards for high speed protection systems.

Discussion

The overspeed protection functionality includes multifunction spoilers (MFS) that will automatically deploy as speed brakes once the airspeed exceeds a small tolerance above maximum operating limit speed (V_{mo}/M_{mo}); the MFS will retract automatically when speed is subsequently reduced. Special conditions are necessary in addition to the requirements of § 25.143 for the operation of the high speed protection. The general intent is that the overspeed protection does not impede normal maneuvering and speed control, and that the overspeed protection does not restrict or prevent emergency maneuvering.

These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Models BD–500–1A10 and BD–500–1A11 series airplanes. Should Bombardier Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on two model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes.

1. *Flight Envelope Protection—High Speed Limiting.* In addition to § 25.143, the following requirements apply: Operation of the high speed limiter during all routine and descent procedure flight must not impede normal attainment of speeds up to overspeed warning.

Issued in Renton, Washington, on November 29, 2013.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29485 Filed 12–10–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–1039; Notice No. 25–13–38–SC]

Special Conditions: Bombardier Inc., Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Flight Envelope Protection: Normal Load Factor (g) Limiting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes. These airplanes will have a novel or unusual design feature associated with an electronic flight control system that prevents the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before January 27, 2014.

ADDRESSES: Send comments identified by docket number FAA–2013–1039 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2011; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On December 10, 2009, Bombardier Inc. applied for a type certificate for their new Models BD–500–1A10 and BD–500–1A11 series airplanes (hereafter collectively referred to as ''C-series''). The C-series airplanes are swept-wing monoplanes with a pressurized cabin. They share an identical supplier base and significant common design elements. The fuselage is aluminum alloy material, blended double-bubble fuselage, sized for nominal 5-abreast seating. Each airplane's powerplant consists of two under wing Pratt and Whitney PW1524G ultra-high bypass, geared turbofan engines. Flight controls are fly-by-wire flight with two passive/uncoupled side sticks. Avionics includes five landscape primary cockpit displays. The dimension of the airplanes encompass a wingspan of 115 feet; a height of 37.75 feet; and a length of 114.75 feet for the Model BD–500–1A10 and a length of 127 feet for the Model BD–500–1A11. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11. Maximum takeoff thrust is 21,000 pounds for the Model BD–500–1A10 and 23,300 pounds for the Model BD–500–1A11. Range is 3,394 miles (5,463 kilometers) for both models of airplanes. Maximum operating altitude is 41,000 feet for both model airplanes.

The design of the electronic flight control system for the C-series airplanes incorporates normal load factor limiting on a full time basis that prevents the flightcrew from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. This feature is considered novel and unusual in that the current regulations do not provide standards for maneuverability and controllability evaluations for such systems.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Bombardier Inc. must show that the C-series airplanes meet the applicable provisions of part 25 as amended by Amendments 25–1 through 25–129 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the C-series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the C-series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The C-series airplanes will use a fly-by-wire electronic flight control system (EFCS). This system provides an electronic interface between the pilot's flight controls and the flight control surfaces for both normal and failure states; and it generates the actual surface commands that provide for stability augmentation and control about all three airplane axes. The design of the EFCS incorporates the following novel or unusual design feature: Normal load factor limiting on a full-time basis that will prevent the flight crew from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. This feature is considered novel or unusual because the current regulations do not provide standards for maneuverability and controllability evaluations for such systems. Therefore, special conditions are needed to ensure adequate maneuverability and controllability when using this design feature.

Discussion

Title 14 Code of Federal Regulations (14 CFR) part 25 sections do not specify requirements or policy for demonstrating maneuver control that impose any handling qualities requirements beyond the design limit structural loads. Nevertheless, some pilots have become accustomed to the availability of this excess maneuver capacity in case of extreme emergency such as upset recoveries or collision avoidance.

As with previous fly-by-wire airplanes, the FAA has no regulatory or safety reason to prohibit a design for an electronic flight control system with load factor limiting. It is possible that pilots accustomed to this feature feel more freedom in commanding full-stick displacement maneuvers because of the following:

- Knowledge that the limit system will protect the structure,
- Low stick force/displacement gradients,
- Smooth transition from pilot elevator control to limit control.

These special conditions will ensure adequate maneuverability and controllability when using this design feature.

The normal load factor limit on the C-series airplanes is unique in that traditional airplanes with conventional flight control systems (mechanical linkages) are limited in the pitch axis only by the elevator surface area and deflection limit. The elevator control power is normally derived for adequate controllability and maneuverability at the most critical longitudinal pitching moment. The result is that traditional airplanes have a significant portion of the flight envelope wherein maneuverability in excess of limit structural design values is possible.

These proposed special conditions for the C-series airplanes supplement the applicable regulations, including § 25.143, to accommodate the unique features of the flight envelope limiting systems, and establish an equivalent level of safety to the existing regulations.

Applicability

As discussed above, these special conditions are applicable to the Models

BD–500–1A10 and BD–500–1A11 series airplanes. Should Bombardier Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on two model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes.

1. *Flight Envelope Protection: Normal Load Factor (g) Limiting.* To meet the intent of adequate maneuverability and controllability required by § 25.143(a), and in addition to the requirements of § 25.143(a) and in the absence of other limiting factors, the following special conditions based on § 25.333(b) apply:

a. The positive limiting load factor must not be less than:

(1) 2.5g for the normal state of the electronic flight control system with the high lift devices retracted.

(2) 2.0g for the normal state of the electronic flight control system with the high lift devices extended.

b. The negative limiting load factor must be equal to or more negative than:

(1) Minus 1.0g for the normal state of the electronic flight control system with the high lift devices retracted.

(2) 0.0g for the normal state of the electronic flight control system with high lift devices extended.

c. Maximum reachable positive load factor wings level may be limited by the characteristics of the electronic flight control system or flight envelope protections (other than load factor protection) provided that:

(1) The required values are readily achievable in turns, and

(2) That wings level pitch up is satisfactory.

d. Maximum achievable negative load factor may be limited by the characteristics of the electronic flight control system or flight envelope protections (other than load factor protection) provided that:

(1) Pitch down responsiveness is satisfactory, and

(2) From level flight, 0g is readily achievable or alternatively, a satisfactory trajectory change is readily achievable at operational speeds. For the FAA to consider a trajectory change as satisfactory, the applicant should propose and justify a pitch rate that provides sufficient maneuvering capability in the most critical scenarios.

e. Compliance demonstration with the above requirements may be performed without ice accretion on the airframe.

These proposed special conditions do not impose an upper bound for the normal load factor limit, nor does it require that the limit exist. If the limit is set at a value beyond the structural design limit maneuvering load factor ''n'' of §§ 25.333(b) and 25.337(b) and (c), there should be a very obvious positive tactile feel built into the controller so that it serves as a deterrent to inadvertently exceeding the structural limit.

Issued in Renton, Washington, on November 29, 2013.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29486 Filed 12–10–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–1040; Notice No. 25–13–39–SC]

Special Conditions: Bombardier Inc., Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Flight Envelope Protection: General Limiting Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes. These airplanes will have a novel or unusual design feature associated with a new control architecture and a full digital flight control system that provides flight envelope protections. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before January 27, 2014.

ADDRESSES: Send comments identified by docket number FAA–2013–1040 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2011; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On December 10, 2009, Bombardier Inc. applied for a type certificate for their new Models BD–500–1A10 and BD–500–1A11 series airplanes (hereafter collectively referred to as ''C-series''). The C-series airplanes are swept-wing monoplanes with a pressurized cabin. They share an identical supplier base and significant common design elements. The fuselage is aluminum alloy material, blended double-bubble fuselage, sized for nominal 5-abreast seating. Each airplane's powerplant consists of two under wing Pratt and Whitney PW1524G ultra-high bypass, geared turbofan engines. Flight controls are fly-by-wire flight with two passive/uncoupled side sticks. Avionics includes five landscape primary cockpit displays. The dimension of the airplanes encompass a wingspan of 115 feet; a height of 37.75 feet; and a length of 114.75 feet for the Model BD–500–1A10 and a length of 127 feet for the Model BD–500–1A11. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11. Maximum takeoff thrust is 21,000 pounds for the Model BD–500–1A10 and 23,300 pounds for the Model BD–500–1A11. Range is 3,394 miles (5,463 kilometers) for both models of airplanes. Maximum operating altitude is 41,000 feet for both model airplanes.

Bombardier has developed comprehensive flight envelope protection features integral to the C-series electronic flight control system (EFCS) design. These flight envelope protection features include limitations on angle-of-attack, normal load factor, bank angle, pitch angle, and speed. To accomplish this flight envelope limiting, a significant change (or multiple changes) occurs in the EFCS control laws as the limit is approached or exceeded. When EFCS failure states occur, flight envelope protection features can likewise either be modified, or in some cases, eliminated. The current regulations were not written with these comprehensive flight envelope limiting systems in mind.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Bombardier Inc. must show that the C-series airplanes meet the applicable provisions of part 25 as amended by Amendments 25–1 through 25–129 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the C-series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the C-series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The C-series airplanes will incorporate the following novel or unusual design features: new control architecture and a full digital flight control system that provides comprehensive flight envelope protections.

Discussion

The applicable airworthiness regulation in this instance is 14 CFR 25.143. The purpose of § 25.143 is to verify that any operational maneuvers conducted within the operational envelope can be accomplished smoothly with average piloting skill and without exceeding any structural limits. The pilot should be able to predict the airplane response to any control input. During the course of the flight test program, the pilot determines compliance with § 25.143 through primarily qualitative methods. During flight test, the pilot should evaluate all of the following:

- The interface between each protection function;
- Transitions from one mode to another;
- The aircraft response to intentional dynamic maneuvering, whenever applicable, through dedicated maneuvers;
- General controllability assessment;
- High speed characteristics; and
- High angle-of-attack.

Section 25.143, however, does not adequately ensure that the novel or unusual features of the C-series airplanes will have a level of safety equivalent to that of existing standards. These special conditions are therefore required to accommodate the flight envelope limiting systems in the C-series airplanes. The additional safety standards in these special conditions will ensure a level of safety equivalent to that of existing standards.

Applicability

As discussed above, these special conditions are applicable to the Models BD–500–1A10 and BD–500–1A11 series airplanes. Should Bombardier Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on two model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes.

1. General Limiting Requirements:

a. Onset characteristics of each envelope protection feature must be smooth, appropriate to the phase of flight and type of maneuver, and not in conflict with the ability of the pilot to satisfactorily change airplane flight path, speed, or attitude as needed.

b. Limit values of protected flight parameters (and if applicable, associated warning thresholds) must be compatible with the following:

i. Airplane structural limits,

ii. Required safe and controllable maneuvering of the airplane, and

iii. Margins to critical conditions. Unsafe flight characteristics/conditions must not result if dynamic maneuvering, airframe and system tolerances (both manufacturing and in-service), and non-steady atmospheric conditions, in any appropriate combination and phase of flight, can produce a limited flight parameter beyond the nominal design limit value.

c. The airplane must be responsive to intentional dynamic maneuvering to within a suitable range of the parameter limit. Dynamic characteristics such as damping and overshoot must also be appropriate for the flight maneuver and limit parameter in question.

d. When simultaneous envelope limiting is engaged, adverse coupling or adverse priority must not result.

2. Failure States: Electronic flight control system failures (including sensor) must not result in a condition where a parameter is limited to such a reduced value that safe and controllable maneuvering is no longer available. The crew must be alerted by suitable means if any change in envelope limiting or maneuverability is produced by single or multiple failures of the electronic flight control system not shown to be extremely improbable.

Issued in Renton, Washington, on November 29, 2013.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29487 Filed 12–10–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–1026; Directorate Identifier 2012–NM–173–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes. This proposed AD was prompted by reports of cracking of the main fitting of the nose landing gear (NLG). This proposed AD would require revising the maintenance program by incorporating a new safe-life limitation for the NLG main fitting. We are proposing this AD to prevent collapse of the NLG, which could lead to degradation of direction control on the ground or an un-commanded turn to the left and a consequent loss of control of the airplane on the ground, possibly resulting in damage to the airplane and injury to occupants.

DATES: We must receive comments on this proposed AD by January 27, 2014.

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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact BAE SYSTEMS (OPERATIONS) LIMITED, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at http://www.regulations.gov; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–1026; Directorate Identifier 2012–NM–173–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0191R1, dated November 6, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Several occurrences of the aeroplane's Nose Landing Gear (NLG) Main Fitting cracking have been reported. Subsequently in different cases, NLG Main Fitting crack lead to collapsed NLG, locked NLG steering and an aeroplane's un-commanded steering to the left.
>
> Cracks in the NLG Bell Housing are not detectable with the NLG fitted to the aeroplane and are difficult to detect during overhaul without substantial disassembly of the gear.
>
> This condition, if not corrected, could lead to degradation of directional control on the ground or an un-commanded turn to the left and a consequent loss of control of the aeroplane on the ground, possibly resulting in damage to the aeroplane and injury to occupants.
>
> Prompted by these findings, BAE Systems (Operations) Ltd issued Inspection Service Bulletin (ISB) 32–186 (hereafter referred to as the ISB) to introduce a new safe life of 16,000 flight cycles (FC) for certain NLG main fittings, having a Part Number (P/N) as identified in Paragraph 1A, tables 1, 2 and 3 of the ISB.

To correct this unsafe condition, EASA issued AD 2012–0191R1 to require implementation of the new safe-life limitation for the affected NLG main fittings and replacement of fittings that have already exceeded the new limit.

Since that [EASA] AD was issued, it was found that clarification is necessary regarding the existing NLG main fitting life limits. Consequently, this [EASA] AD is revised by adding a Note to clarify that the current life limits, as specified in the applicable Aircraft Maintenance Manual (AMM), remain valid and should be applied, pending compliance with this AD.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–1026.

Relevant Service Information

BAE SYSTEMS (OPERATIONS) LIMITED has issued Subject 05–10–15, ''Aircraft Equipment Airworthiness Limitations,'' of Chapter 05, ''Time Limits/Maintenance Checks,'' of the BAE Systems BAe 146 Series/AVRO 146–RJ Series Aircraft Maintenance Manual, Revision 108, dated September 15, 2012; and BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.32–186, dated April 12, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this proposed AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Differences Between This Proposed AD and the MCAI or Service Information

This proposed AD differs from the MCAI and/or service information as follows: Although the MCAI specifies replacement thresholds for the affected NLG fittings, this proposed AD does not specify these thresholds as they are addressed by the maintenance program and contained in the safe-life limitations of the NLG main fitting, as specified in Chapter 05, ''Time Limits/Maintenance Checks,'' of the BAE Systems BAe 146 Series/AVRO 146–RJ Series Aircraft Maintenance Manual, Revision 108, dated September 15, 2012.

Costs of Compliance

We estimate that this proposed AD affects 4 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise maintenance program	1 work-hour × $85 per hour = $85	$0	$85	$340

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited: Docket No. FAA–2013–1026; Directorate Identifier 2012–NM–173–AD.

(a) Comments Due Date

We must receive comments by January 27, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146–100A, –200A, and –300A airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category; all models, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by reports of cracking of the main fitting of the nose landing gear (NLG). We are issuing this AD to prevent collapse of the NLG, which could lead to degradation of direction control on the ground or an un-commanded turn to the left and a consequent loss of control of the airplane on the ground, possibly resulting in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Revise Maintenance or Inspection Program

Within 30 days after the effective date of this AD: Revise the maintenance or inspection program to incorporate a new safe-life limitation of the NLG main fitting, as specified by BAE Systems BAe 146 Series/AVRO 146–RJ Series Aircraft Maintenance Manual, Revision 108, dated September 15, 2012. Comply with all applicable instructions and airworthiness limitations included in BAE Systems BAe 146 Series/AVRO 146–RJ Series Aircraft Maintenance Manual, Revision 108, dated September 15, 2012. The initial compliance times for doing the actions is at the applicable times specified in BAE Systems BAe 146 Series/AVRO 146–RJ Series Aircraft Maintenance Manual, Revision 108, dated September 15, 2012, or within 30 days after the effective date of this AD, whichever is later.

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

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

(i) Parts Installation Limitation

As of the effective date of this AD, no person may install an NLG main fitting, having a part number identified in paragraph 1.A., Tables 1., 2., and 3. of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.32–186, dated April 12, 2012, unless it is in compliance with the requirements of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the design approval holder with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2012–0191R1, dated November 6, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov.*

(2) For service information identified in this AD, contact BAE SYSTEMS (OPERATIONS) LIMITED, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may review copies of this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on November 29, 2013.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29514 Filed 12–10–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–1025; Directorate Identifier 2013–NM–096–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model DHC–8–102, –103, and –106 airplanes; and DHC–8–200 and DHC–8–300 series airplanes. This proposed AD was prompted by a report of a beta warning horn (BWH) system failing to activate when the beta mode was triggered. This proposed AD would require modifying the BWH microswitch installation. We are proposing this AD to prevent the inadvertent activation of ground beta mode during flight, which could lead to engine overspeed, engine damage or failure, and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by January 27, 2014.

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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, 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: Kent Fredrickson, Aerospace Engineer, Propulsion and Flight Test Branch, ANE–173, FAA; New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7364; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–1025; Directorate Identifier 2013–NM–096–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–01R1, dated March 6, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

* * * * *

During an on-ground Beta Warning Horn (BWH) system check conducted in the wake of an in-flight Beta range operation incident on a DHC–8 Series 200 aeroplane, it was discovered that the BWH system failed to activate when the Beta mode was triggered.

An investigation by Bombardier had determined that the deformation of the flexible center console cover could cause the BWH system triggering microswitch to malfunction, resulting in dormant failure of the BWH system. To mitigate the safety risk by minimizing the risk exposure period, [TCCA] * * * mandate[d] a 50 hours periodic operational test of the BWH system functionality.

To address the root cause of the subject problem, Bombardier has issued Service Bulletin (SB) 8–76–33 that modifies the BWH microswitch installation by replacing the BWH microswitch attachment bracket with a new, more robust bracket that is not affected by deformation of the center console cover. [TCCA] AD CF–2012–01 is therefore revised to mandate compliance with SB 8–76–33 as terminating action for the 50 hours periodic operational test requirement.

The unsafe condition is the inadvertent activation of ground beta mode during flight, which could lead to engine overspeed, engine damage or failure, and consequent reduced controllability of the airplane. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–1025.

Relevant Service Information

Bombardier, Inc., has issued Service Bulletin 8–76–33, dated December 13, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

Although the MCAI includes an operational test of the BWH system, this proposed AD does not require that action. Once the actions required by this AD are done, the modification of the BWH microswitch installation adequately addresses the identified unsafe condition. Also, AD 2005–13–35, Amendment 39–14172 (70 FR 48854, August 22, 2005), for all Bombardier, Inc., Model DHC–8–100, DHC–8–200, and DHC–8–300 series airplanes, includes a requirement for certain airplanes to perform operational checks of the beta lockout system. This difference has been coordinated with TCCA.

Costs of Compliance

We estimate that this proposed AD affects 94 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	7 work-hours × $85 per hour = $595	$117	$712	$66,928

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2013–1025; Directorate Identifier 2013–NM–096–AD.

(a) Comments Due Date

We must receive comments by January 27, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category; serial numbers 003 through 672 inclusive with a beta warning horn (BWH) (Mod 8/2852) incorporated; except for airplanes that have incorporated Bombardier option CR873CH00003, CR873CH00005, CR873SOO8112, or MS8Q902206.

(d) Subject

Air Transport Association (ATA) of America Code 31, Instruments; Code 76, Engine Controls.

(e) Reason

This AD was prompted by a report of a BWH system failing to activate when the beta mode was triggered. We are issuing this AD to prevent the inadvertent activation of ground beta mode during flight, which could lead to engine overspeed, engine damage or failure, and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Terminating Modification

Within 6,000 flight hours or 36 months, whichever occurs first, after the effective date of this AD: Modify the BWH microswitch installation by replacing the existing BWH microswitch installation bracket with a new bracket having part number 87610164–003, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–76–33, dated December 13, 2012.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or by the Design Approval Holder with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2012–01R1, dated March 6, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–1025.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view copies of this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on November 29, 2013.

Johm P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29513 Filed 12–10–13; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0687; FRL9903–99–Region 9]

Approval and Promulgation of Implementation Plans; State of California; 2012 Los Angeles County State Implementation Plan for 2008 Lead Standard

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State implementation plan revision submitted by the State of California to provide for attainment of the 2008 lead national ambient air quality standard in the Los Angeles County nonattainment area. The submitted SIP revision is the *Final 2012 Lead State Implementation Plan—Los Angeles County.* Specifically, EPA is proposing to approve the emissions inventory, attainment demonstration, the reasonably available control measures/reasonably available control technology, reasonable further progress demonstration, and contingency measures as meeting the requirements of the Clean Air Act and EPA's implementing regulations for the lead NAAQS.

DATES: Any comments must arrive by January 10, 2014.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2013–0687, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov*. Follow the on-line instructions.
- *Email: tax.wienke@epa.gov.*
- *Mail or deliver:* Marty Robin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 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 *www.regulations.gov* or email. The *www.regulations.gov* Web site 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 comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically on the *www.regulations.gov* Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at 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 below.

Copies of the SIP materials are also available for inspection at the following locations:

- California Air Resources Board, 1001 I Street, Sacramento, California 95812, and
- South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California 91765.

The SIP materials are also electronically available at: *http://www.aqmd.gov/aqmp/Lead_SIP/homepage.htm* and *http://www.arb.ca.gov/planning/sip/sip.htm*.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 947–4192, *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The Lead NAAQS and the Los Angeles County Lead Nonattainment Area

A. The Lead NAAQS

Under the Clean Air Act (CAA), EPA must establish national ambient air quality standards (NAAQS) for six criteria pollutants, including lead. Lead is generally emitted in the form of particles, which end up being deposited in water, soil, and dust. People may be exposed to lead by inhaling it, or by ingesting lead-contaminated food, water, soil, or dust. Once in the body, lead is quickly absorbed into the bloodstream and can result in a broad range of adverse health effects. These include damage to the central nervous system, cardiovascular function, kidneys, immune system, and red blood cells. Children are particularly vulnerable to lead exposure, in part because they are more likely to ingest lead and in part because their still-developing bodies are more sensitive to the effects of lead. Urban children are also of particular risk if the mother is exposed to lead. The harmful effects to children's developing nervous systems (including their brains) arising from lead exposure may include IQ loss, poor academic achievement, long-term learning disabilities, and an increased risk of delinquent behavior.

EPA first established a lead standard in 1978 at 1.5 micrograms per meter cubed ($\mu g/m^3$) as a quarterly average.[1] Based on new health and scientific data, EPA revised the federal lead standard to 0.15 $\mu g/m^3$ and revised the averaging time for the standard on October 15, 2008 (see 73 FR 66964, November 12, 2008). A violation of the standard occurs when ambient lead concentrations exceed 0.15 $\mu g/m^3$ averaged over a 3-month rolling period.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d) of the CAA. The CAA requires EPA to complete the initial area designations process within two years of promulgating a new or revised NAAQS. Designations for the 2008 lead NAAQS were promulgated effective December 31, 2010 (see 75 FR 71033). Based on ambient air quality data for the years 2007–2009, a portion of Los Angeles County (excluding the high desert areas, San Clemente and Santa Catalina Islands) was identified as an area that did not meet the 2008 lead NAAQS.[2]

Areas are required to attain the revised lead standard as expeditiously as practicable, but no later than five years from the date the nonattainment designation became effective. For the Los Angeles County lead nonattainment area, this date is December 31, 2015.

Attainment demonstration state implementation plans (SIPs) are due 18

[1] See 43 FR 46246, October 5, 1978.

[2] For an exact description of the Los Angeles County lead nonattainment area, see 40 CFR 81.305.

months after the effective date of an area's designation. For the Los Angeles County lead nonattainment area, the SIP was due June 30, 2012. These SIPs should include emissions inventories, a reasonable further progress (RFP) demonstration, reasonably available control measures/reasonably available control technology (RACM/RACT) demonstration, an attainment demonstration, and contingency measures. To demonstrate attainment, control measures need to be in place by November 1, 2012.[3]

A. The Lead Nonattainment Problem in Los Angeles County

Stationary sources of lead are generally from large industrial sources, including metals processing, particularly primary and secondary lead smelters. Lead can also be emitted by iron and steel foundries; primary and secondary copper smelters; industrial, commercial and institutional boilers; waste incinerators; glass manufacturing; refineries; and cement manufacturing. The South Coast Air Quality Management District (SCAQMD or ''District'') has determined that the primary causes of the nonattainment status of Los Angeles County are two large lead-acid battery recycling facilities, Exide Technologies located in the city of Vernon, and Quemetco, Inc. located in the City of Industry. These facilities receive used lead-acid batteries and other lead-bearing materials and recycle them, recovering the lead. Lead is recycled because of its value and to reduce toxic waste, and it is primarily used to manufacture new batteries.

Because regional ambient air lead concentrations indicate low ambient lead levels relative to the new lead NAAQS, and the only ambient levels exceeding the NAAQS were at sites near the lead-acid battery recyclers, SCAQMD's lead attainment strategy is focused on reducing directly-emitted lead from these two sources.

II. California's State Implementation Plan Submittal To Address Lead Nonattainment in the Los Angeles Nonattainment Area

A. California's SIP Submittal

Designation of an area as nonattainment starts the process for a state to develop and submit to EPA a SIP under title 1, part D of the CAA. This SIP must include, among other things, a demonstration of how the NAAQS will be attained in the nonattainment area as expeditiously as practicable, but no later than the date required by the CAA. Under CAA section 191(a), a State has up to 18 months after an area's designation to nonattainment to submit its SIP to EPA. For the 2008 lead NAAQS, these nonattainment SIPs were due no later than June 30, 2012.

The SCAQMD is the air quality agency that develops SIPs for the Los Angeles area. The *Final 2012 Lead State Implementation Plan—Los Angeles County* (2012 Los Angeles County Lead SIP) was adopted by the SCAQMD Governing Board on May 4, 2012.[4] The California Air Resources Board (CARB) adopted the SIP on May 24, 2012 and submitted it to EPA on June 20, 2012.[5]

B. CAA Procedural and Administrative Requirements for SIP Submittals

CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and a public hearing was held consistent with EPA's implementing regulations in 40 CFR section 51.102.

Both the District and CARB have satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submittal of the 2012 Los Angeles County Lead SIP. The District provided a public comment period and held a public hearing prior to the adoption of the 2012 Los Angeles County Lead SIP on May 4, 2012. CARB provided the required public notice and opportunity for public comment prior to its May 24, 2012 public hearing on the plan.

The SIP submittal includes notices of the District and CARB public hearings, as evidence that all hearings were properly noticed.[6] We therefore find that the submittals meet the procedural requirements of CAA sections 110(a) and 110(l).

CAA section 110(k)(1)(B) requires EPA to determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any plan that EPA has not affirmatively determined to be complete or incomplete will become complete 6 months after the date of submittal by operation of law. EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V. The 2012 Los Angeles County Lead SIP became complete by operation of law on December 20, 2012.

III. CAA and Regulatory Requirements for Lead Attainment SIPs

A. CAA and EPA Guidance

EPA is implementing the lead NAAQS under Title 1, Part D, subparts 1 and 5 of the CAA, which includes section 172, ''Nonattainment plan provisions,'' and sections 191 and 192, ''Plan Submission Deadlines'' and ''Attainment Dates,'' respectively.

Section 192(a) establishes the attainment date for lead nonattainment areas ''as expeditiously as practicable'' but no later than five years from the date of the nonattainment designation for the area. EPA designated most of Los Angeles County (except for the high desert areas and San Clemente and Catalina Islands) as a nonattainment area effective December 31, 2010, and thus the applicable attainment date is no later than December 31, 2015. Under section 172(a)(2)(D), the Administrator is precluded from granting an extension of this attainment date where the statute separately establishes a specific attainment date, such as the 5-year deadline established in section 192(a).

Section 172(c) contains the general statutory planning requirements applicable to all nonattainment areas, including the requirements for emissions inventories, RACM/RACT, attainment demonstrations, RFP demonstrations, and contingency measures.

When EPA issued the NAAQS for lead on November 12, 2008 (''lead NAAQS rule''), it included some implementation guidelines for the lead NAAQS regarding planning requirements. See 73 FR 66964. EPA also issued several guidance documents related to planning requirements for the lead NAAQS. These include:

- Memorandum from Scott Mathias, Interim Director, Air Quality Policy Division, USEPA Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions I–X, ''2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) Implementation Questions and Answers,'' July 8, 2011, (''Lead Q&A'') and
- ''Addendum to the 2008 Lead NAAQS Implementation Questions and Answers Signed on July 11, 2011, by Scott Mathias,'' dated August 10, 2012. (''Lead Q&A Addendum''); and

[3] See 73 FR 66964 (November 12, 2008).

[4] See SCAQMD Governing Board Resolution No. 12–11.

[5] See CARB Board Resolution No. 12–20.

[6] See Enclosure 3, California Air Resources Board, ''Notice of Public Meeting to Consider Approval of the Proposed State Implementation Plan Revision for the Federal Lead Standard,'' and Enclosure 6, Notice of Public Hearing, Adoption of 2012 Lead State Implementation Plan—Los Angeles Count for the South Coast Air Quality Management District in the 2012 Los Angeles County Lead SIP.

• *Implementation of the 2008 Lead National Ambient Air Quality Standards—Guide to Developing Reasonably Available Control Measures (RACM) for Controlling Lead Emissions,* USEPA Office of Air Quality Planning and Standards, EPA–457/R–12–001, March 2012 (''Lead RACM Guidance'').[7]

The lead NAAQS rule and its preamble and the two guidance documents address the statutory planning requirements for emissions inventories, RACM/RACT, attainment demonstrations including air quality modeling requirements, RFP demonstrations, and contingency measures. The lead NAAQS rule also addresses other matters such as monitoring, designations, lead infrastructure SIPs and exceptional events.

Control measures for the 2008 lead NAAQS need to be in place as expeditiously as practicable. In order for control measures to result in three years of monitored clean data by the attainment date, lead nonattainment areas required to demonstrate attainment by December 31, 2015 would need to have all necessary controls in place no later than November 1, 2012.[8]

We will discuss each of the CAA and regulatory requirements for lead attainment plans in more detail below in our review of the 2012 Los Angeles County Lead SIP.

B. Infrastructure SIPs for Lead

Under section 110 of the CAA, all states (including those without nonattainment areas) are required to submit infrastructure SIPs within three years of the promulgation of a new or revised NAAQS. Because the lead NAAQS was signed and widely disseminated on October 15, 2008, the infrastructure SIPs were due by October 15, 2011. Section 110(a)(1) and (2) require states to address basic program elements, including requirements for emissions inventories, monitoring, and modeling, among other things. Subsections (A) through (M) of section 110(a)(2) set forth the elements that a states program must contain in the SIP. California's lead infrastructure SIP was submitted on October 6, 2011 and will be acted on in a separate rulemaking action.

IV. Review of the 2012 Los Angeles County Lead SIP

A. Summary of EPA's Proposed Actions

EPA is proposing to approve the 2012 Los Angeles County Lead SIP demonstrating attainment of the 2008 lead NAAQS in the Los Angeles County lead nonattainment area. We are proposing to approve the base year emissions inventory in this SIP revision as meeting the applicable requirements of the CAA and EPA guidance. We are also proposing to approve the attainment demonstration, RACM/RACT analysis, RFP demonstration, and the contingency measures as meeting the applicable requirements of the CAA and EPA guidance.

EPA's analysis and findings are discussed below for each applicable requirement. The Technical Support Document (TSD) for today's proposed action contains additional details on selected lead planning requirements. We also discuss the SCAQMD lead monitoring network and present recent ambient air quality monitoring data in the TSD.

B. Emission Inventories

1. Requirements for Emission Inventories

CAA section 172(c)(3) requires that states submit a ''comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant.'' Therefore, all sources of lead emissions in the nonattainment area must be included in the submitted inventory. A base year emission inventory is required for the attainment demonstration and for meeting RFP requirements. The base year emissions inventory for 2010 or other suitable year should be used for attainment planning and RFP plans for areas initially designated nonattainment for the lead NAAQS in 2010.[9]

In addition to inventory reporting requirements in CAA section 172(c)(3), 40 CFR 51.117(e)(1) requires that the inventory contain all point sources that emit 0.5 tons of lead emissions per year (tpy).[10] Based on annual emissions reporting for 2010, no point sources in the Los Angeles County lead nonattainment area emit over 0.5 tpy of lead.

2. Base Year Emissions Inventory in the 2012 Los Angeles County Lead SIP

The 2010 base year inventory for the Los Angeles County lead nonattainment area and additional documentation for the inventory are described in Chapter 3 of the 2012 Los Angeles County Lead SIP. The 2010 base year lead inventory provides the basis for the control measure analysis and the RFP and attainment demonstrations in the 2012 Los Angeles County Lead SIP.

Lead emissions are grouped into two general categories, stationary sources and mobile sources. Stationary sources can be further divided into ''point'' and ''area'' sources. Point sources are typically emitted from permitted facilities and have one or more identified and fixed pieces of equipment and emissions points. Facilities are required to report their emissions to the SCAQMD Annual Emissions Reporting Program. Conversely, area sources consist of widespread and numerous smaller emission sources, such as small permitted facilities, households, and road dust. The mobile sources category can be divided into two major subcategories, ''on-road'' and ''off-road'' mobile sources. On-road mobile sources include light-duty automobiles, light-, medium-, and heavy-duty trucks, and motorcycles. Off-road mobile sources include aircraft, locomotives, construction equipment, mobile equipment, and recreational vehicles. The methodologies used to calculate the emission inventories are described in Chapter 3 of the 2012 Los Angeles County Lead SIP.

Table 1 depicts the 2010 lead emissions inventory for the Los Angeles County lead nonattainment area as presented in the 2012 Los Angeles County Lead SIP. Emissions in Table 1 are broken down by the major source categories described above. Table 2 provides a further break down of the 2010 inventory into specific subcategories. Table 1 indicates that 4.2 tons per year (tpy) of lead emissions are from mobile sources. This accounts for 23 percent of the total lead inventory for Los Angeles County. Because lead is still used as an additive in general aviation fuel, aircraft powered by piston-driven engines comprise 4.0 tpy or 93 percent of the mobile source inventory.[11] Stationary and area sources

[7] All three of these guidance documents can be found in the docket for today's action.

[8] Lead Q&A, p. 4.

[9] *2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) Implementation Questions and Answers,* Memorandum from Scott Mathias, Interim Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, USEPA to Air Quality Division Directors, Regions I–X. July 8, 2011. Also see, *Addendum to the 2008 Lead NAAQS Implementation Questions and Answers Signed on July 11, 2011, by Scott Mathias.* August 10, 2012.

[10] Additional emissions inventory reporting requirements are also found in EPA's Air Emissions Reporting Rule (AERR) (codified at 40 CFR part 51 subpart A) and 73 FR 76539. Although the AERR requirements are separate from the SIP-related requirements in CAA section 172(c)(3) and 40 CFR 51.117(e)(1), the AERR requirements are intended to be compatible with the SIP-related requirements.

[11] For a complete list of airports located in the Los Angeles County lead nonattainment area and their lead emissions, see table 3–3 on page 3–11 of the South Coast Lead 2012 SIP or the Technical Support Document for this action. For more information on EPA efforts to monitor lead

emit 14.0 tpy or 77 percent of the lead inventory. Two area sources, construction and demolition and paved road dust, account for 12.6 tpy or approximately 90 percent of the total stationary and area source emissions.

TABLE 1—SUMMARY OF LOS ANGELES COUNTY NONATTAINMENT AREA 2010 EMISSIONS INVENTORY FOR LEAD

Source category	Lead emissions [a] (tpy)
	2010
Stationary and Area	14.0
On-road Mobile	0.2
Off-road Mobile	4.0
Total	18.2

[a] Source: Table 3–1, 2012 Los Angeles County Lead SIP.

As indicated in Chapter 3, page 3–3 of the 2012 Los Angeles County Lead SIP, Los Angeles County's lead nonattainment status is linked to two large lead-acid battery-recycling facilities—Exide Technologies in Vernon (''Exide'') and Quemetco Inc. in City of Industry (''Quemetco''). These two sources fall within the *Metal Processes* subcategory shown in Table 2.[12] Even though the Metal Processes category accounts for a small percentage of total emissions in the nonattainment area, based on the historical lead measurements in Los Angeles County, the vicinities near the Exide and Quemetco facilities are areas where exceedances of the lead NAAQS have occurred in the past and could potentially reoccur.

TABLE 2—CATEGORY-SPECIFIC LOS ANGELES COUNTY NONATTAINMENT AREA 2010 EMISSIONS INVENTORY FOR LEAD

Source category	2010 Lead emissions [a] (tpy)
Stationary and Area Sources	
Fuel Combustion:	
Electric Utilities	0.02
Cogeneration	0.01
Petroleum Refining (Combustion)	0.05
Manufacturing and Industrial	0.08
Service and Commercial	0.04
Waste Disposal:	
Incinerators	0.01
Petroleum Production & Marketing:	
Petroleum Refining	0.03
Industrial Processes:	
Mineral Processes	0.06
Metal Processes	0.42
Glass and Related Products	0.02
Miscellaneous Processes:	
Residential Fuel Combustion	0.02
Construction and Demolition	5.80
Paved Road Dust	6.83
Unpaved Road Dust	0.47
Fugitive Windblown Dust	0.06
Fires	0.01
Waste Burning and Disposal	0.03
Total Stationary and Area Sources	13.96
Mobile Sources	
On-Road Vehicles:	
Light-Duty Passenger	0.09
Light & Medium Duty Trucks	0.06
Heavy-Duty Gas Trucks	0.0
Heavy-Duty Diesel Trucks	0.07

emissions at airports, see EPA Program Update ''Airport Lead Monitoring,'' EPA–420–F–13–032, June 2013 found at *http://www.epa.gov/otaq/regs/nonroad/aviation/420f13032.pdf*.

[12] Lead concentrations at all ambient monitoring network sites in the Los Angeles County portion of the Basin are well below the new 2008 standard for lead, with typical levels of about 0.01 μg/m^3. The Los Angeles County lead nonattainment area's nonattainment status has not been linked to any stationary sources other than Exide and Quemetco; however, for additional information on point sources that emit greater than one pound of lead per year and are located in the nonattainment area, see Table 3–2 on page 3–9 of the 2012 Los Angeles County Lead SIP.

TABLE 2—CATEGORY-SPECIFIC LOS ANGELES COUNTY NONATTAINMENT AREA 2010 EMISSIONS INVENTORY FOR LEAD—Continued

Source category	2010 Lead emissions [a] (tpy)
Total On-Road Vehicles	0.22
Off-road Mobile:	
Aircraft	3.95
Trains	0.01
Ships & Commercial Boats	0.0
Off-Road Equipment	0.06
Total Off-Road Mobile	4.02
Total All Sources	18.20

[a] Source: 2012 Los Angeles County Lead SIP, Table 3–1.

3. Proposed Action on the Emission Inventory

We have reviewed the emissions inventories in the 2012 Los Angeles County Lead SIP and the inventory methodologies used by the District and CARB for consistency with CAA requirements, the lead NAAQS rule, and EPA's guidance. We find that the 2010 base year inventory is a comprehensive, accurate, and current inventory of actual or projected emissions of lead in the Los Angeles County lead nonattainment area as of the date of the submittal. We therefore propose to approve the 2010 base year inventory as meeting the requirements of CAA section 172(c)(3) and applicable EPA guidance.

C. RACM/RACT Demonstration and Adopted Control Strategy

1. Requirements for RACM/RACT Demonstrations

CAA section 172(c)(1) requires that each attainment plan ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.'' EPA defines RACM as measures that a state finds are both reasonably available and contribute to attainment as expeditiously as practicable in its nonattainment area. Lead nonattainment plans must contain RACM (including RACT) that address sources of ambient lead concentrations. The EPA's historic definition of RACT is the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[13] EPA recommends that, at a minimum, all stationary sources emitting 0.5 tpy or more should undergo a RACT review. See 73 FR 67038. Based on annual emissions reporting for 2010, no point sources in the Los Angeles County lead nonattainment area emit over 0.5 tpy of lead.[14]

2. RACM/RACT Demonstration in the 2012 Los Angeles County Lead SIP

CARB and the District have rulemaking processes for development, adoption and implementation of RACM/RACT that have been in place for decades.

Because of lead's dispersion characteristics (e.g., lack of transport over a large geographic area), the highest ambient concentrations of lead are expected to be near lead sources (e.g., Exide and Quemetco). The 2008 lead NAAQS is unique in that attainment must be demonstrated at source-oriented monitors as well as ambient monitors, and this RACM/RACT demonstration addresses specific facilities that may cause a NAAQS exceedance. The RACM/RACT demonstration for the 2012 Los Angeles County Lead SIP does not involve or require a typical RACM evaluation as is done for other criteria pollutants (e.g., ozone or fine particulate matter) which involves looking at a broader set of source categories.

Based on lead monitoring data, SCAQMD identified two large lead-acid battery recycling facilities (i.e., Exide and Quemetco) as the only sources of lead in the Los Angeles County lead nonattainment area that have caused or have the potential to cause exceedances of the 2008 lead NAAQS.[15] The overall control strategy in the 2012 Los Angeles County Lead SIP relies primarily on implementation of Rule 1420.1—Emissions Standard for Lead from Large Lead-Acid Battery Recycling Facilities, adopted by SCAQMD in November 2010. Thus EPA's evaluation of RACM/RACT is based on an evaluation of Rule 1420.1. SCAQMD's RACM/RACT evaluation is found in Section 6, pages 17–21 of the 2012 Los Angeles County Lead SIP. A discussion of Rule 1420.1 is provided below.

Control Measure

On January 25, 2013, EPA approved SCAQMD Rule 1420.1 into the California SIP. See 78 FR 5305. Rule 1420.1 establishes facility-wide and individual point source maximum allowable emission rates and requires secondary lead control devices on dryers. Fugitive lead emissions are addressed through housekeeping and maintenance activity requirements, and total enclosures, vented to control devices, for all areas where lead is being processed and where maintenance activities are occurring. The rule also sets ambient standards for airborne lead concentrations at monitors around the facility and requires facility-operated monitors (a minimum of four) that collect samples on a once every-three-days schedule. Source testing, recordkeeping, and reporting requirements are included to ensure continuous compliance. The rule also requires the submittal of a new compliance plan and emission reduction feasibility study when a

[13] *See* for example, 44 FR 53761 (September 17, 1979) and footnote 3 of that notice.

[14] Exide is the largest stationary source emitter of lead in Los Angeles County with 2010 emissions of 655.5 pounds or approximately 0.3 tpy.

[15] As previously stated, EPA recommends that, at a minimum, all stationary sources emitting 0.5 tpy (1000 pounds) or more should undergo a RACT review (See 73 FR 66964, at 67038). Based on annual emissions reporting for 2010, no point sources in the Los Angeles Lead nonattainment area emit over 0.5 tpy of lead.

source's monitoring indicates ambient levels have reached 0.12 μg/m³, which is 80% of the rule limit.

EPA describes RACM/RACT nationally for secondary lead smelters in guidance published in March 2012.[16] Rule 1420.1 includes extensive and comprehensive provisions for the control of lead point source and fugitive emissions and contains all the necessary RACM/RACT elements described in the EPA guidance. A summary of these minimum elements and how they are addressed in Rule 1420.1 is provided in EPA's TSD for this action and in the TSD for EPA's approval of Rule 1420.1.[17]

EPA also published the final residual risk and technology review revisions to the National Emission Standard for Hazardous Air Pollutants from Secondary Lead Smelting on January 5, 2012 (NESHAP from Secondary Lead Smelting). 77 FR 556. The revised NESHAP requirements represent maximum achievable control technology (MACT) under CAA section 112. MACT requirements apply nationwide, regardless of whether an area attains the lead NAAQS. EPA considered the MACT requirements as part of our evaluation of RACM/RACT. A summary of the MACT requirements and how they are addressed by Rule 1420.1 is also in the TSD for EPA's approval of Rule 1420.1, which can be found in the docket for today's proposed action.

In its January 25, 2013 approval of Rule 1420.1, EPA determined that, based on comparison of Rule 1420.1 to the national RACM guidance and MACT, and additional analysis provided in SCAQMD's staff report,[18] Rule 1420.1 adequately fulfills CAA RACM/RACT requirements.

The following provides a detailed description of Rule 1420.1 requirements.

▪ *Ambient Air Lead Concentrations:* Facilities are not allowed to discharge into the atmosphere emissions which contribute to ambient air concentrations of lead that exceed 0.15 μg/m³ averaged over any 30 consecutive days. The averaging time is shorter than that of the lead NAAQS (rolling 3-month average of monthly averages) with a more frequent sampling requirement of one sample in three days versus the NAAQS which requires one sample in six days. Ambient air samples are collected close to the facility's fenceline. Thus, potential rule violations in the form of exceedances of the ambient limits in Rule 1420.1 will likely occur before exceedances of the federal NAAQS and allow for corrective action to take place to avoid such federal NAAQS exceedances.

▪ *Ambient Air Monitoring and Sampling Requirements:* Each facility is required to collect and analyze ambient air lead samples to determine compliance with the ambient air quality lead concentration standard of Rule 1420.1. The rule requires a minimum of four monitors at facility locations approved by the District. Federal regulations require only one source-oriented monitor at all facilities emitting more than 0.5 tons of lead per year. Facilities are required to collect samples at least once every three days, more frequently than the federal requirement of once every six days.

Facilities that exceed an ambient air lead concentration of 0.15 μg/m³ averaged over any 30 consecutive days, measured at any fence line monitor, will be in violation of the rule and be required to increase ambient air monitoring and sampling to a daily frequency. Daily monitoring and sampling will be required to be conducted for a period of at least 60 consecutive days at each sampling site that measured an exceedance until no 30-day average exceedances are recorded. Sampling sites at the property line may be located just inside the fence line on facility property if logistical constraints preclude placement outside the fence line. As a result, monitors required under Rule 1420.1 will be located closer to fugitive lead sources, in most cases, when compared to monitors required by federal monitoring requirements, which must be in publicly accessible areas. Along with the shorter averaging time described previously, all of the ambient air monitoring and sampling requirements of Rule 1420.1 are more stringent than the federal requirements, such that potential rule violations will likely occur before exceedances of the lead NAAQS.

▪ *Total Enclosures:* All areas used in the lead-acid battery recycling operation for processing or storage of lead-containing material, and all areas where maintenance is being performed, are required to install total enclosures vented to a lead control device. This requirement provides maximum containment and will minimize fugitive lead-dust emissions generated in areas where processing, handling and storage of lead-containing materials occur. Rule 1420.1 also establishes requirements for monitoring and maintaining negative pressure and in-draft velocity at the openings of these enclosed areas.

▪ *Lead Point Source Emission Controls:* All lead emissions from lead point sources are required to be vented to an emissions collection system that transports the entire gas stream to a lead control device. The total facility mass lead emission rate for all lead point sources shall not exceed 0.045 pounds of lead per hour (lbs/hr), with a maximum emission rate for any single lead point source not to exceed 0.010 lbs/hr. The maximum emission rates of 0.045 and 0.010 lb/hr were established to adequately provide a protective limit for exposure to lead emissions and achieve the ambient federal standard of 0.15 μg/m³.

▪ *Housekeeping Requirements:* The housekeeping requirements in Rule 1420.1 include: Prescribed requirements for cleaning frequencies of specific areas; maintenance activity; encapsulation of all facility grounds; removal of weather caps on any lead emissions source stacks; building structural integrity inspections; storage and transport of lead-containing materials; onsite mobile vacuum sweeping; and surface impoundment pond or reservoir cleanings.

▪ *Annual Source Testing:* Annual source tests are required for all lead control devices to demonstrate compliance with the facility total lead mass emission rate standard of 0.045 lb/hr, and the maximum individual stack lead emission rate standard of 0.010 lb/hr. If the most recent source test for a lead point source demonstrates emissions of 0.0025 lb/hr or less, the facility may alternatively elect to conduct the next source test for that device within 24 months.

▪ *Recordkeeping and Reporting Requirements:* Requires recordkeeping and reporting, including public notifications, for specific maintenance activity, turnarounds and shutdowns for all lead-containing materials processed at the facility. Records for all housekeeping, maintenance activity, ambient air lead monitoring, lead control device inspection and maintenance, and unplanned shutdowns of any smelting furnaces must be maintained. Facilities are required to submit reports for monthly ambient air monitoring results for lead and wind data measured at each sampling location on a monthly basis. The rule also requires notifications of

[16] Implementation of the 2008 Lead National Ambient Air Quality Standards, Guide to Developing Reasonably Available Control Measures (RACM) for Controlling Lead Emissions, EPA–457/R–12–001. March 2012.

[17] TSD for EPA's Proposed Rulemaking for the California SIP, SCAQMD Rule 1420.1, Emissions Standard for Lead from Large Lead-acid Battery Recycling Facilities. June 2012. The TSD is included in the docket for today's action.

[18] Staff Report, Proposed Rule 1420.1—Emissions Standard for Lead from Large Lead-Acid Battery Recycling Facilities, November, 2010.

planned and unplanned shutdowns, and turnarounds.

▪ *Compliance Plan:* As an additional safeguard against the facilities exceeding the lead NAAQS or Rule 1420.1 limits, the requirement to prepare and submit a compliance plan is triggered if the facility exceeds 0.12 μg/m³ as measured on a 30-day rolling average. The compliance plan must be implemented if the facility's lead emissions contribute to an exceedance of the Rule 1420.1 ambient lead standard of 0.15 μg/m³ as measured on a 30-day rolling average. The compliance plan provision is intended to ensure that measures can be identified prior to exceedances of the 0.15 μg/m³ NAAQS (which is measured on a 90-day rolling average) and are ready for fast implementation if the 0.15 μg/m³ standard NAAQS is exceeded.

▪ On January 27, 2012, SCAQMD approved a Compliance Plan for Exide. The approved Compliance Plan requires Exide to implement various measures and install various controls to reduce lead emissions. Condition 8 of the Compliance Plan states that if, after March 31, 2012, monitored ambient lead concentrations exceed 0.15 μg/m³, Exide must submit to SCAQMD for approval, within 15 days of any such occurrence, the mitigation measures it will implement. Such mitigation measures include installation of second stage high efficient particulate air (HEPA) filters at specified locations.

▪ We discuss below how Rule 1420.1's compliance plan provisions meet EPA criteria for contingency measures.

Expeditious Implementation of RACM/RACT. We find that expeditious implementation of RACM/RACT at affected sources within the nonattainment area is an appropriate approach to assure attainment of the lead NAAQS in an expeditious manner.[19] Rule 1420.1 establishes various deadlines for affected sources. Specifically, Rule 1420.1 requires affected sources to: (1) Submit a complete permit application for all construction and necessary equipment within 30 days of November 5, 2010; (2) complete all construction within 180 days of receiving permit to construct approvals from the District, or by July 1, 2011, whichever was earlier; and (3) install, maintain, and operate total enclosures and lead point source emission control devices) by July 1, 2011. In addition, Rule 1420.1 requires expeditious installation of additional controls in the event monitored ambient lead concentrations exceed 0.15 μg/m³ on a rolling 30 day average. EPA believes the measures and schedule in Rule 1420.1 are both reasonably available and provide for attainment as expeditiously as practicable in the Los Angeles County lead nonattainment area.

Adopted Control Strategies

As described above, the primary control strategy in the 2012 Los Angeles County Lead SIP relies on emission reductions achieved through the implementation of SCAQMD Rule 1420.1—Emissions Standard for Lead from Large Lead-Acid Battery Recycling Facilities. Full implementation of Rule 1420.1 began on January 1, 2012, and EPA approved the rule into the SIP on January 25, 2013. See 78 FR 5305.

3. Proposed Actions on RACM/RACT Demonstration and Adopted Control Strategy

We propose to find that there are, at this time, no additional RACM that individually or collectively would advance attainment of the lead NAAQS by one year or more in the Los Angeles County lead nonattainment area. We also propose to find that the RACM/RACT measure is both reasonably available and provides for attainment as expeditiously as practicable in the Los Angeles County lead nonattainment area. This proposal is based on our review of the 2012 Los Angeles County Lead SIP, the sources contributing to nonattainment of the lead NAAQS, the District's adopted control strategy and EPA guidance. Therefore, we propose to find that the 2012 Los Angeles County Lead SIP provides for the implementation of RACM/RACT as required by CAA section 172(c)(1).

D. Attainment Demonstration

1. Requirements for Attainment Demonstrations

CAA section 172 requires a state to submit a plan for each of its nonattainment areas that demonstrates attainment of the applicable ambient air quality standard as expeditiously as practicable but no later than the specified attainment date. This demonstration should consist of four parts:

(1) Technical analyses that locate, identify, and quantify sources of emissions that are contributing to violations of the lead NAAQS;

(2) analyses of future year emissions reductions and air quality improvement resulting from already-adopted national, state, and local programs and from potential new state and local measures to meet the RACT, RACM, and RFP requirements in the area;

(3) adopted emissions reduction measures with schedules for implementation; and

(4) contingency measures required under section 172(c)(9) of the CAA.

The requirements for the first two parts are described in the sections on emissions inventories and RACM/RACT above and in the sections on air quality modeling and the attainment demonstration that follows immediately below. Requirements for the third and fourth parts are described in the sections on the control strategy and the contingency measures, respectively.

2. Air Quality Modeling in the 2012 Los Angeles County Lead SIP

The lead attainment demonstration must include air quality dispersion modeling developed in accordance with EPA's Modeling Guidance.[20] The SCAQMD modeling analysis was prepared using EPA's preferred dispersion modeling system, the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) consisting of the AERMOD (version 12060) model and two data input preprocessors AERMET (version 11059) and AERMAP (version 11103). AERSURFACE (version 08009) was also used to develop inputs to AERMET. The Building Profile Input Program for Plume Rise Model Enhancements was also used in the downwash-modeling and incorporated good engineering practice. More detailed information on the AERMOD modeling system and other modeling tools and documents can be found on the EPA Technology Transfer Network Support Center for Regulatory Atmospheric Modeling (SCRAM)[21] and in the 2012 Los Angeles County Lead SIP in the docket for today's proposed action.

a. Modeling Approach

The following is an overview of the lead modeling approach used in 2012 Los Angeles County Lead SIP. This approach was developed by the SCAQMD and revised based on comments received from the EPA.

Model inputs were developed using the AERMOD modeling system. AERMET was used to develop the necessary 5-year meteorological data set for each facility using the meteorological data from the most representative monitoring station. For

[19] See Lead NAAQS Rule, 73 FR 66964 (November 12, 2008) at 67038–67039.

[20] 40 CFR Part 51 Appendix W (EPA's *Guideline on Air Quality Models*) (November 2005) located at *http://www.epa.gov/ttn/scram/guidance/guide/appw_05.pdf.*

[21] *http://www.epa.gov/ttn/scram/.*

the Exide facility modeling application, the SCAQMD Central LA monitoring station was determined to be the most representative meteorological site. SCAQMD's rationale for the use of these data is described in the TSD for today's action. Only four years of meteorological data were available for this station (2006 to 2009). The La Habra monitoring station was determined to be the most representative site for the Quemetco facility, and five years (2005 to 2009) of meteorological data were available. The National Weather Service San Diego Miramar Naval Air Station were determined to be the most representative upper air meteorological monitoring site for Exide and Quemetco.

A Cartesian receptor grid with 50-meter by 50-meter spacing was used at each facility, in addition to fence-line receptors placed at 25-meter intervals. Receptor elevations and hill heights were assigned using AERMAP and terrain data, available from the United States Geological Survey. AERMOD output was processed through EPA's LEADPOST post processor (version 12114) deriving the maximum 3-month average rolling design value across the 5-year meteorological data period for Quemetco, and the 4-year period for Exide.

b. Modeling Results

Rule 1420.1 requirements were modeled to provide the assurance that emissions will not cause a NAAQS violation in 2015. The modeling results for total emissions (stack and fugitive emissions) are provided in the SIP for each facility, and are discussed below. The lead NAAQS compliance results of the attainment modeling are summarized below in Table 3, 2008 Lead NAAQS Attainment Demonstration Modeling Results for Exide and Quemetco Lead-Acid Battery Acid Recycling Facilities.

Stack Emissions

The Rule 1420.1 emission stack limits for 2015 were modeled for Exide and Quemetco. For each facility, the 0.045 lb/hr total stack emissions were evenly distributed throughout the stacks, and emissions from any individual stack were kept below the 0.010 lb/hr per stack limit. The modeled maximum 3-month rolling average lead concentration from stack emissions alone for Exide is 0.115 μg/m³. For Quemetco, the modeled maximum 3-month rolling average lead concentration from stack emissions is 0.083 μg/m³. The 2015 modeled lead concentrations for the Quemetco facility are a conservative estimate of the impact because the modeling assumes the allowable stack emission limits set by Rule 1420.1, which are significantly higher than Quemetco's current stack emissions. No significant increases in actual emissions are expected beyond the modest growth factors used in the emission projection.

Fugitive Emissions

According to Chapter 6 of the 2012 Los Angeles County Lead SIP, Exide identified fugitive lead emissions as resulting from its raw materials processing system (RMPS) and from roadways. Quemetco did not identify fugitive lead emission to SCAQMD, so SCAQMD assumed fugitive emissions from Quemetco's battery wrecking area (which SCAQMD assumed to be approximately equivalent to Exide's RMPS) and from roadways. For 2015, for both Exide and Quemetco, SCAQMD relied on Rule 1420.1 emission standards (in particular, a requirement to use an onsite mobile vacuum sweeper or equivalent), and applied an 80% reduction to the roadway fugitive emissions (based on an assumed efficiency of 80% or greater for certified street sweepers). SCAQMD assumed that fugitive emissions for Exide's RMPS and Quemetco's battery wrecker area would not change between the current year and 2015 and therefore applied the same emissions values to the current year and year 2015 for these areas.

The modeling takes a number of relevant factors into consideration, including emissions, receptor proximity, and wind direction. The modeled maximum 3-month rolling average lead concentration from all emissions (stack and fugitive emissions combined) is 0.135 μg/m³ for the Exide facility, and 0.140 μg/m³ for Quemetco.

3. Attainment Demonstration

The AERMOD modeling results are presented in Table 3 below. A background ambient air quality concentration of 0.01 μg/m³, based on air quality monitoring data from the South Coast AQMD network,[22] is included in the modeling results. The maximum modeled 3-month rolling average, including background data, for each of the facilities is less than or equal to the 2008 Lead NAAQS of 0.15 μg/m³. Based on these modeled attainment demonstration results, the SCAQMD concludes that the proposed controls should be sufficient to attain the 2008 lead NAAQS. A more detailed discussion of the modeling is included in the TSD for today's action and in Chapter 5 of the 2012 Los Angeles County Lead SIP.

TABLE 3—2008 LEAD NAAQS ATTAINMENT DEMONSTRATION MODELING RESULTS FOR EXIDE AND QUEMETCO LEAD-ACID BATTERY ACID RECYCLING FACILITIES[23]

Facility	Lead concentration (maximum 3-month rolling average),[24] stack and fugitive emission
Exide	0.135 μg/m³
Quemetco	0.140 μg/m³

4. Proposed Action on Attainment Demonstration

EPA has reviewed the modeling that SCAQMD submitted to support the attainment demonstration for 2012 Los Angeles County Lead SIP and has preliminarily determined that this modeling is consistent with CAA requirements, Appendix W, and EPA guidance for lead attainment demonstration modeling. We therefore propose to approve the modeling and attainment demonstration in the 2012 Los Angeles County Lead SIP.

E. RFP Demonstration

1. Requirements for RFP

CAA section 172(c)(2) requires that attainment plans shall provide for RFP. RFP is defined in section 171(1) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' While for some pollutants, historically, RFP has been met through generally linear incremental progress toward attainment by the applicable attainment date, EPA believes that RFP for lead nonattainment areas should be met by ''adherence to an ambitious compliance schedule'' which is expected to periodically yield significant emission reductions, and as appropriate, linear progress.[25]

EPA recommends that SIPs for lead nonattainment areas provide a detailed schedule for compliance of RACM

[22] SCAQMD's monitoring network lead design values for 2012, based on data from 2010, 2011 and 2012.

[23] Final results listed in Table 3 are rounded according to 40 CFR part 50, Appendix R; specifically subsection 4(a) which addresses comparison with the Lead NAAQS, as well as 5(a), (b), and (c) which addresses rounding conventions.

[24] The maximum modeled 3-month rolling average across all years of meteorological data (Exide 2006–2009, and Quemetco 2005–2009).

[25] 73 FR 66964, at p. 67038.

(including RACT) in the affected areas and accurately indicate the corresponding annual emission reductions to be achieved.[26] EPA expects that a detailed schedule would provide for periodic yields in significant emissions reductions.[27] In reviewing the SIP, EPA believes that it is appropriate to expect early implementation of less technology-intensive control measures (e.g., controlling fugitive dust emissions at the stationary source, as well as required controls on area sources) while phasing in the more technology-intensive control measures, such as those involving the purchase and installation of new hardware. We believe the expeditious implementation of RACM/RACT at affected sources within the nonattainment area is an appropriate approach to assure attainment of the lead NAAQS in an expeditious manner.[28]

2. RFP Demonstration in the 2012 Los Angeles County Lead SIP

The RFP demonstration is contained in Chapter 6 of the 2012 Los Angeles County Lead SIP. The demonstration uses the 2010 actual emissions inventory as the base year inventory and 2012–2015 projected emissions based on Rule 1420.1 allowable emissions limits. Below we summarize the RFP demonstration in the 2012 Los Angeles County Lead SIP for both the Exide and Quemetco facilities.[29]

To demonstrate the emissions reductions associated with adherence to an ambitious compliance schedule and expeditious implementation of control measures, SCAQMD has addressed this requirement through the schedules in Rule 1420.1. Rule 1420.1 contains compliance deadlines of July 1, 2011 for implementation of all requisite control measures and emissions limits, and January 1, 2012 for the ambient monitoring limit of 0.15 μg/m^3. The emissions reductions associated with Rule 1420.1 are presented in Table 4 below. By the time the 2012 Los Angeles County Lead SIP was submitted to EPA in June of 2012, most compliance deadlines in South Coast Rule 1420.1 were already in effect.

TABLE 4—2012 LOS ANGELES COUNTY LEAD SIP RFP DEMONSTRATION

[Emissions in lb/yr]

Facility	2010 Emissions (actual emissions)	2012 Emissions (after implementation of south coast rule 1420.1)	2015 Emissions
Exide	655.5	[a] 437.4	≤437.4
Quemetco	96.2	[a b] 98.1	[a b] 107.7

[a] Total emissions based on requirements in South Coast Rule 1420.1.
[b] 2010 emissions were grown based on the growth factor in the South Coast 2007 Air Quality Management Plan.

RFP for Exide is demonstrated through the achievement of a 30 percent emissions reduction (i.e., 655.5 tpy – 437.4 tpy = 218.1 lbs/yr) resulting from implementation of South Coast Rule 1420.1. Quemetco's actual emissions in 2010 were 96.21 lbs/year, well below the 422.3 lbs/yr allowed based on requirements in Rule 1420.1.[30] With continued implementation of Quemetco's control measures, emissions are expected to stay well below 422.3 lbs/yr, as indicated in Table 4.

Rule 1420.1 was determined to meet RACM (see 78 FR 5305, January 25, 2013 and that determination is affirmed in today's action), and the emissions reductions resulting from implementation of Rule 1420.1 serve to meet the RFP requirements of the lead NAAQS.

3. Proposed Action on the RFP Demonstration

We propose to find that the State has demonstrated that the 2012 Los Angeles County Lead SIP meets the requirements of section 172(c)(2) and relevant EPA guidance for meeting RFP.

F. Contingency Measures

1. Requirements for Contingency Measures

Under CAA section 172(c)(9), all lead attainment plans must include contingency measures to be implemented if an area fails to meet RFP (''RFP contingency measures'') and contingency measures to be implemented if an area fails to attain the lead NAAQS by the applicable attainment date (''attainment contingency measures''). These contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly without significant additional action by the State or EPA if the area fails to meet RFP requirements or fails to meet its attainment date. They must also be measures not relied on to demonstrate RFP or attainment in the plan and should provide SIP-creditable emissions reductions generally equivalent to about one year's worth of RFP. Finally, the SIP should contain a trigger mechanism for the contingency measures and specify a schedule for their implementation. *See* CAA section 172(c)(9).

Contingency measures can include federal measures and local measures already scheduled for implementation that provide emissions reductions in excess of those needed to provide for RFP or expeditious attainment. EPA has approved numerous SIPs under this interpretation. See, e.g., 62 FR 15844, April 3, 1997; 62 FR 66279, December 18, 1997; 66 FR 30811, June 8, 2001; 66 FR 586 and 66 FR 634, January 3, 2001. EPA recognizes that certain actions, such as the notification of sources, modification of permits, etc., may be needed before a measure could be implemented. However, states must show that their contingency measures can be implemented with only minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review.

After EPA determines that a lead nonattainment area has failed to

[26] Lead Q&A, p. 2.

[27] *Ibid.*

[28] See 73 FR 66964 (November 12, 2008) at 67038–67039.

[29] See *2012 Los Angeles County Lead SIP,* pages 6–14 to 6–17.

[30] Between 2006 and 2008, Quemetco significantly reduced actual emissions at their facility. In response to requirements under California Assembly Bill 2588 (The Air Toxics ''Hot Spots'' Information and Assessment Act), Quemetco submitted a Health Risk Assessment (HRA) to SCAQMD in December 2005. To reduce toxic emissions of metals (including lead) and particles identified in the HRA, Quemetco installed a wet electrostatic precipitator (WESP) that became fully operational and approved by SCAQMD in October 2008. The WESP, combined with other facility changes, significantly reduced lead emissions compared to prior years (e.g., 643 lbs reported by Quemetco for 2006).

maintain RFP or timely attain the lead NAAQS, EPA generally expects all actions needed to affect full implementation of the contingency measures to occur within 60 days after EPA notifies the state of such failure.[31] The state should ensure that the measures are fully implemented as expeditiously as practicable after the requirement takes effect.

If a State chooses to implement contingency measures earlier than would be triggered by a failure to demonstrate RFP or to attain, EPA does not believe the State needs to adopt additional contingency measures as a backfill for the early activation of those contingency measures.[32] However, if the area fails to demonstrate RFP or to attain, then the State will need to adopt additional contingency measures.[33]

2. Contingency Measures in the 2012 Los Angeles County Lead SIP

The attainment plan for the Los Angeles County lead nonattainment area includes contingency measures to be implemented if the area fails to meet RFP requirements or to attain by its attainment date. The contingency measures for the Los Angeles County lead nonattainment area can be found in Chapter 6 of the 2012 Los Angeles County Lead SIP.[34] They are described below.

SCAQMD included facility-specific contingency measures for Exide and Quemetco in the 2012 Los Angeles County Lead SIP.[35] This is appropriate, given that these sources have historically been the major cause of NAAQS violations in the Los Angeles County lead nonattainment area.

Exide

For the Exide facility, SCAQMD has submitted conditions 8A and 8B of the Exide compliance plan that was submitted to SCAQMD on December 20, 2011, and approved by SCAQMD on January 27, 2012 to EPA for inclusion in the SIP.[36] These measures state that as of March 31, 2012, if monitored ambient lead concentrations exceed 0.15 μg/m^3 on a rolling 30-day average at any SCAQMD or SCAQMD-approved ambient monitor, Exide shall implement, individually or in combination, mitigation measures to address the specific problem causing the ambient value to exceed 0.15 μg/m^3 on a rolling 30-day average.

The specific mitigation measures are described below. The mitigation measures can be implemented individually or in combination based on the specific situation surrounding the exceedance of the trigger concentration.

Condition 8A: Install an additional room ventilation baghouse or dust collector, equipped with a second stage high efficiency particulate air (HEPA) filter, with sufficient blower capacity to move a minimum of 50,000 cubic feet per minute (CFM) of air from one or more of the following locations:

a. The battery crusher room in the north end of the RMPS building.

b. The truck loading and unloading dock on the south end of the RMPS building.

c. The furnace room in the smelter building.

d. The cupola feed room in the south end of the smelter building.

As an alternative to adding additional ventilation with individual baghouses or dust collectors, Exide may install a single larger air pollution control system with at least 200,000 CFM of blower capacity to cover all four of these locations.

Condition 8B: Install second stage HEPA filters on one or more of the following air pollution control systems:

a. The hard lead refinery baghouse (device C47).

b. The soft lead refinery baghouse (device C46).

c. The MAC baghouses venting the RMPS building (devices C156 and C157).

d. The cupola furnace feed room baghouse (device C48).

According to the requirements of South Coast Rule 1420.1, Exide must submit these measures to SCAQMD for approval within 15 days of a triggering occurrence.[37]

These measures are in addition to the measures specified in South Coast Rule 1420.1. The trigger mechanism is an ambient lead concentration exceeding 0.15 μg/m^3 on a rolling 30-day average, which is more stringent than a NAAQS violation of 0.15 μg/m^3 on a rolling 3-month average.[38]

Quemetco

In accordance with the Helms memo on early implementation of contingency measures, Quemetco's contingency measure is a control measure that is not needed for RFP or attainment.[39] Quemetco has installed a wet electrostatic precipitator (WESP) device as a secondary control device for air contaminants such as lead present in the gas stream as condensable particulates. For Quemetco, the proper design and operation of the WESP serves as the contingency measure. The WESP has already been implemented, thus no trigger or implementation schedule is needed. The WESP goes beyond what is required under South Coast Rule 1420.1, and the reductions provided by the measure are not included in or needed for the RFP or attainment demonstrations.

3. Proposed Action on the Contingency Measures

We propose to find that the State has demonstrated that the 2012 Los Angeles County Lead SIP meets the requirements of section 172(c)(9) and relevant EPA guidance for contingency measures that would be triggered for failure to make RFP and for failure to attain.

V. EPA's Proposed Action and Request for Public Comments

A. EPA's Proposed Approvals

For the reasons discussed above, EPA is proposing to approve California's attainment SIP for the Los Angeles County lead nonattainment area for the 2008 lead NAAQS. This SIP submittal addresses CAA requirements and EPA regulations for expeditious attainment of the 2008 lead NAAQS for the Los Angeles County lead nonattainment area.

For the reasons discussed in this proposed rulemaking, EPA is proposing to approve under CAA section 110(k)(3) the following elements of the South Coast lead attainment SIP:

1. The SIP's base year emissions inventory as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.117(e)(1);

2. the attainment demonstration, including air quality modeling, that demonstrates attainment as expeditiously as practicable, as meeting

[31] 73 FR 66964, at p. 67039.

[32] See Memorandum, G.T. Helms, EPA Office of Air Quality Planning and Standards, USEPA, to Air Branch Chiefs, EPA Regions I–X, ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' dated August 13, 1993. *http://www.epa.gov/ttn/oarpg/t1/memoranda/19930813_helms_contingency_measures_early_implementation.pdf* and EPA's Lead Q&A.

[33] Ibid.

[34] See 2012 Los Angeles County Lead SIP, pp. 6–3 to 6–14.

[35] See 2012 Los Angeles County Lead SIP, Chapter 6, pages 6–10 through 6–13.

[36] See letter, Jay Chen, P.E., Senior Engineering Manager, Engineering and Compliance, SCAQMD, to Corey Vodvarka, Plant Manager, Exide Technologies, dated January 27, 2012 and Exide compliance plan dated December 15, 2011, as modified January 20, 2012 in the docket for today's action.

[37] Chen, p. 3.

[38] For current information about recent controls that have been installed or will be installed at Exide see *www.aqmd.gov/prdas/AB2588/Exide/Exide.html.*

[39] See footnote 21.

the requirements of CAA section 172(c)(1);

3. the RACM/RACT demonstration, as meeting the requirements of CAA section 172(c)(1);

4. the RFP demonstration, as meeting the requirements of CAA section 172(c)(2);

5. and contingency measures as meeting the requirements of the CAA section 172(c)(9).

B. Request for Public Comments

We are taking public comments for thirty days following the publication of this proposed rule in the **Federal Register**. We will take all comments into consideration in our final rule.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submittal that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, October 7, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

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

Dated: November 26, 2013.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2013–29583 Filed 12–10–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 411

[CMS–6061–ANPRM]

RIN 0938–AR88

Medicare Program; Medicare Secondary Payer and Certain Civil Money Penalties

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking (ANPRM) solicits public comment on specific practices for which civil money penalties (CMPs) may or may not be imposed for failure to comply with Medicare Secondary Payer reporting requirements for certain group health and non-group health plans arrangements.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on February 10, 2014.

ADDRESSES: In commenting, please refer to file code CMS–6061–ANPRM. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed).

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6061–ANPRM, P.O. Box 8013, Baltimore, MD 21244–8013. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6061–ANPRM, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Suzanne Mattes, (410) 786–2536.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov/.* Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, please phone 1–800–743–3951.

I. Background

A. Imposition of Civil Money Penalties (CMPs)

In 1981, the Congress added section 1128A to the Social Security Act (the Act) (section 2105 of Pub. L. 97–35) to authorize the Secretary of Health and Human Services (Secretary) to impose civil money penalties (CMPs) and assessments on certain health care facilities, health care practitioners, and other suppliers for noncompliance with rules of the Medicare and Medicaid programs. CMPs and assessments provide an alternative enforcement tool for agencies use to ensure compliance with statutory and regulatory requirements and are in addition to potential criminal or civil penalties.

Since 1981, the Congress has significantly increased both the number and the types of circumstances under which the Secretary may impose CMPs. Some CMP authorities address fraud, misrepresentation, or falsification, while others address noncompliance with programmatic or regulatory requirements. The Secretary has delegated the authority for certain provisions to either the Office of Inspector General (OIG) or CMS (See the October 20, 1994 (58 FR 52967) notice titled ''Office of Inspector General; Health Care Financing Administration; Statement of Organization, Functions, and Delegations of Authority'').

B. Section 111 of the MMSEA Amendments to MSP Provisions

Under the Medicare law, as enacted in 1965, Medicare was the primary payer for certain designated health care services except those covered by workers' compensation. In 1980, Congress added section 1862(b) of the Act which defined when Medicare is the secondary payer to certain primary plans. These provisions are known as the Medicare Secondary Payer (MSP) provisions. Section 1862(b) of the Act prohibits Medicare from making payment if payment has been made or can reasonably be expected to be made by the following primary plans when certain conditions are satisfied: Group health plans; workers' compensation plans; liability insurance (including self-insurance); or no-fault insurance. For workers' compensation, liability insurance (including self-insurance), or no-fault insurance for which payment has not been made or cannot be expected to be made promptly, Medicare may make a conditional payment subject to Medicare payment rules. Any conditional payments made by Medicare are subject to repayment once the primary plan makes payment.

Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) (Pub. L. 110–173) added paragraphs (7) and (8) to section 1862(b) of the Act which established new mandatory reporting requirements for certain group health plan (GHP) arrangements and for liability insurance (including self-insurance), no-fault insurance, and workers' compensation (collectively referred to as ''non-GHP'' or NGHP) arrangements.

Section 1862(b)(7) of the Act (42 U.S.C. 1395y(b)(7)) added new reporting rules for GHP, but did not eliminate any existing statutory provisions or regulations. Section 1862(b)(7) of the Act also includes, in part, authority for Medicare to impose CMPs against GHPs responsible reporting entities which are determined to be noncompliant. An entity serving as an insurer or third party administrator for a GHP, and, in the case of a GHP that is self-insured and self-administered, a plan administrator or fiduciary, must report under these requirements. Section 1862(b)(7) of the Act provides that, notwithstanding any other provision of law, the reporting requirement may be implemented by program instruction or otherwise.

Section 1862(b)(8) of the Act (42 U.S.C. 1395y(b)(8)) added new reporting rules for NGHP arrangements (applicable plans), but did not eliminate any existing statutory provisions or regulations. Section 1862(b)(8) of the Act also includes, in part, authority for CMS to impose CMPs against NGHPs which are determined to be noncompliant. Section 1862(b)(8) of the Act defines the term ''applicable plan'' to mean the following laws, plans, or other arrangements, including the fiduciary or administrator for such law, plan, or arrangement: (1) Liability insurance (including self-insurance); (2) no fault-insurance; and (3) workers' compensation laws or plans. Section 1862(b)(8) of the Act also requires applicable plans to notify CMS when they pay liability insurance (including self-insurance), no-fault insurance, and/or workers' compensation claims on behalf of Medicare beneficiaries. Information shall be submitted within a time specified by the Secretary after the claim is addressed or resolved (or partially addressed or resolved) through a settlement, judgment, award, or other payment, regardless of whether or not there is a determination or admission of liability.

C. Medicare IVIG (Intravenous Immunoglobulin) Access and Strengthening Medicare and Repaying Taxpayers Act of 2012

Section 1862(b)(8)(E) of the Act describes the enforcement provisions for NGHPs that fail to comply with the reporting requirements. On January 10, 2013, the Medicare IVIG (Intravenous Immunoglobulin) Access and Strengthening Medicare and Repaying Taxpayers Act of 2012 (SMART Act) was enacted (Pub. L. 112–242). The SMART Act amended section 1862(b)(8)(E) of the Act to state that applicable plans that fail to comply with the reporting requirements may be subject to a civil money penalty of up to $1,000 for each day of noncompliance with respect to each claimant (revising the prior mandatory nature of this CMPS provision). Section 1862(b)(8)(E) of the Act only applies to NGHPs.

II. Provisions of the Advanced Notice of Proposed Rulemaking

We are issuing this ANPRM to solicit public comments and proposals for the specification of practices for which CMPs would or would not be imposed in accordance with sections 1862(b)(7)(B) and (b)(8)(E) of the Act (42 U.S.C. 1395y(b)(7)(B) and (8)(E)). We are interested in comments and proposals to specifically define ''noncompliance'' in the context of the phrase, ''. . . for each day of noncompliance with respect to each claimant . . .'' in sections 1862(b)(7) or (b)(8) of the Act. We are seeking public comment and proposals on mechanisms and criteria that we

would employ to evaluate whether and when the agency would impose CMPs.

In addition, we are we are soliciting comments and proposals for methods to determine the dollar amount of a CMP that would be levied for each day that NGHP is a responsible reporting entity noncompliance under section 1862(b)(8) of the Act.

We are also soliciting comments on how we might devise a method(s) and criteria to determine which actions would constitute ''good faith effort(s)'' taken by an entity to identify a Medicare beneficiary for the purposes of reporting under section 1862(b)(8) of the Act.

We are specifically soliciting comments and proposals from insurers, third party administrators for GHPs, other applicable plans, and the public. When submitting comments regarding this issue, we ask that commenters specifically identify to which provision their comments relate (that is, section 1862(b)(7) or (b)(8) of the Act).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 28, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: July 30, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

Editorial Note: This document was received in the Office of the Federal Register on December 5, 2013.

[FR Doc. 2013–29473 Filed 12–10–13; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–261, RM–11707; DA 13–2129]

Television Broadcasting Services; Birmingham, Alabama

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Alabama Educational Television Commission (''AETC''), the licensee of station WBIQ(TV), channel *39, Birmingham, Alabama, requesting to return to its previously allotted channel *10 at Birmingham. AETC currently has a claim on two channels in the DTV Table of Allotments, channels *10 and *39, and seeks a waiver of the Commission's freeze on the filing of petitions for rulemaking by television stations seeking channel substitutions in order to relinquish all claims to channel *39 with the grant of this petition. AETC concludes that the proposed return of WBIQ(TV) to channel *10 will serve the public interest by allowing the station to conserve its resources and by not disrupting service to the public.

DATES: Comments must be filed on or before January 10, 2014, and reply comments on or before January 27, 2014.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: M. Scott Johnson, Esq., Fletcher, Heald, & Hildreth, PLC, 1300 N. 17th Street, Suite 1100, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Adrienne Denysyk, *Adrienne.Denysyk@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 13–261, adopted November 4, 2013, and released November 6, 2012. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via email *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see §§ 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Alabama is amended by adding channel *10 and removing channel *39 at Birmingham.

[FR Doc. 2013–29585 Filed 12–10–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2012–0071; 4500030113]

RIN 1018–AY21

Endangered and Threatened Wildlife and Plants; Listing the Lesser Prairie-Chicken as a Threatened Species With a Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose a revised

special rule under authority of section 4(d) of the Endangered Species Act of 1973, as amended (Act), that provides measures that are necessary and advisable to provide for the conservation of the lesser prairie-chicken (*Tympanuchus pallidicinctus*). In addition, we announce the reopening of the public comment period on the December 11, 2012, proposed rule to list the lesser prairie-chicken as a threatened species under the Act. We also announce the availability of the final Lesser Prairie-Chicken Range-Wide Conservation Plan, which has been prepared by the Lesser Prairie-Chicken Interstate Working Group, and our endorsement of the plan, and request comments on the plan as it relates to our determination of status under section 4(a)(1) of the Act.

DATES: We will accept comments on this proposed rule received or postmarked on or before January 10, 2014. In addition, the comment period on the proposed rule published December 11, 2012 (77 FR 73828) is reopened until January 10, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, 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 January 10, 2014.

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 FWS–R2–ES–2012–0071, which is the docket number for this rulemaking. 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–R2–ES–2012–0071; 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 one of 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 Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Jontie Aldrich, Field Supervisor, Oklahoma Ecological Services Field Office, 9014 East 21st Street, Tulsa, OK 74129; by telephone 918–581–7458 or by facsimile 918–581–7467. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

To allow the public to comment simultaneously on this revised proposed 4(d) special rule and the proposed listing rule, we also announce the reopening of the comment period on the Service's December 11, 2012, proposed rule to list the lesser prairie-chicken as a threatened species under the Act. We intend to finalize the revised proposed 4(d) special rule concurrent with the final listing rule, if the results of our final listing determination conclude that threatened species status is appropriate and if we determine that this revised proposed 4(d) special rule is appropriate following public comment. Any final action resulting from the proposed rules will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, general public, and other interested parties concerning the proposed listing rule and revised proposed 4(d) special rule. We particularly seek comments regarding:

(1) The historical and current status and distribution of the lesser prairie-chicken, its biology and ecology, specific threats (or lack thereof) and regulations that may be addressing those threats and ongoing conservation measures for the species and its habitat.

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence and threats to the species or its habitat.

(3) Application of the Lesser Prairie-Chicken Interstate Working Group's final Lesser Prairie-Chicken Range-Wide Conservation Plan to our determination of status under section 4(a)(1) of the Act, particularly comments or information to help us assess the certainty that the plan will be effective in conserving the lesser prairie-chicken and will be implemented.

(4) Which areas would be appropriate as critical habitat for the species and why areas should or should not be proposed for designation as critical habitat, including whether any threats to the species from human activity would be expected to increase due to the designation and whether that increase in threat would outweigh the benefit of designation such that the designation of critical habitat may not be prudent.

(5) Specific information on:

(a) The amount and distribution of habitat for the lesser prairie-chicken;

(b) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) What 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; and

(f) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(6) Information on the projected and reasonably likely impacts of climate change on the lesser prairie-chicken and its habitat.

(7) Whether measures outlined in this revised proposed 4(d) special rule are necessary and advisable for the conservation and management of the lesser prairie-chicken.

(8) Whether the provision related to the continuation of routine agricultural practices on existing cultivated lands should more clearly differentiate between row crop agriculture and other cropped areas, such as managed grasslands, forage, or other untilled crops.

(9) Whether the provision related to the continuation of routine agricultural practices on existing cultivated lands should be revised to include spatial or temporal restrictions or deferments.

(10) Additional provisions the Service may wish to consider for a 4(d) special rule in order to conserve, recover, and manage the lesser prairie-chicken.

We will consider all comments and information received during our preparation of a final determination on the status of the species and the 4(d) special rule. Accordingly, the final decision may differ from this proposal.

Please note that comments merely stating support for or opposition to the actions under consideration without

providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this revised proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this revised 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, Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

A settlement agreement in *In re Endangered Species Act Section 4 Deadline Litigation,* No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011) was reached with WildEarth Guardians in which we agreed to submit a proposed listing rule for the lesser prairie-chicken to the **Federal Register** for publication by September 30, 2012. On September 27, 2012, the settlement agreement was modified to require that the proposed listing rule be submitted to the **Federal Register** on or before November 29, 2012. We submitted the proposed listing rule to the **Federal Register** on November 29, 2012; on December 11, 2012, we published in the **Federal Register** a proposed rule to list the lesser prairie-chicken as a threatened species under the Act (77 FR 73828). The proposed listing rule had a 90-day comment period, ending March 11, 2013. We held a public meeting and hearing in Woodward, Oklahoma, on February 5, 2013; in Garden City, Kansas, on February 7, 2013; in Lubbock, Texas, on February 11, 2013; and in Roswell, New Mexico, on February 12, 2013. On May 6, 2013, we reopened the public comment period on the proposed listing rule and proposed a special rule under the authority of section 4(d) of the Act (78 FR 26302).

Section 4(b)(6) of the Act and its implementing regulation, 50 C.F.R. 424.17(a), requires that we take one of three actions within 1 year of a proposed listing: (1) Finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement among scientists knowledgeable about the species regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data. On July 9, 2013, we published in the **Federal Register** an announcement of a 6-month extension of the final determination of whether to list the lesser prairie-chicken as a threatened species, and we reopened the public comment period on the proposed rule to list the species (78 FR 41022). As noted in the proposed listing rule (77 FR 73828), we were previously required by the terms of judicially approved settlement agreement to make a final determination on the lesser prairie-chicken proposed listing rule no later than September 30, 2013. With the 6-month extension, we will make a final determination on the proposed rule no later than March 31, 2014.

For information on previous Federal actions pertaining to the lesser prairie-chicken, please refer to the proposed listing rule, which we published in the **Federal Register** on December 11, 2012 (77 FR 73828).

Background

This document discusses only those topics directly relevant to the revised proposed 4(d) special rule for the lesser prairie-chicken. For more information on the lesser prairie-chicken and its habitat, please refer to the December 11, 2012, proposed listing rule (77 FR 73828), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R2–ES–2012–0071) or from the Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

As discussed in the proposed listing rule, the primary factors supporting the proposed threatened species status for the lesser prairie-chicken are the impacts of cumulative habitat loss and fragmentation. These impacts are the result of conversion of grasslands to agricultural uses; encroachment by invasive woody plants; wind energy development; petroleum production; and presence of roads and manmade vertical structures including towers, utility lines, fences, turbines, wells, and buildings.

The Act does not specify particular prohibitions, or exceptions to those prohibitions, for threatened species. Instead, under section 4(d) of the Act, the Secretary of the Interior has the discretion to issue such regulations as [s]he deems necessary and advisable to provide for the conservation of such species. The Secretary also has the discretion to prohibit by regulation with respect to any threatened species, any act prohibited under section 9(a)(1) of the Act. Exercising this discretion, the Service developed general prohibitions (50 CFR 17.31) and exceptions to those prohibitions (50 CFR 17.32) under the Act that apply to most threatened species. Alternately, for other threatened species, the Service may develop specific prohibitions and exceptions that are tailored to the specific conservation needs of the species. In such cases, some of the prohibitions and authorizations under 50 CFR 17.31 and 17.32 may be appropriate for the species and incorporated into a special rule under section 4(d) of the Act, but the 4(d) special rule will also include provisions that are tailored to the specific conservation needs of the threatened species and may be more or less restrictive than the general provisions at 50 CFR 17.31.

At the time of the proposed listing rule, we indicated that we would consider whether to subsequently propose a 4(d) special rule for the lesser prairie-chicken. In that proposed rule, we solicited public comments as to which prohibitions, and exceptions to those prohibitions, are necessary and advisable to provide for the conservation of the lesser prairie-chicken. In recognition of conservation efforts that provide for conservation and management of the lesser prairie-chicken and its habitat in a manner consistent with the purposes of the Act, we then published in the **Federal Register** a proposed 4(d) special rule on May 6, 2013 (78 FR 26302). We are now proposing a revised 4(d) special rule to outline the prohibitions, and exceptions to those prohibitions, necessary and advisable for the conservation of the lesser prairie-chicken.

Since the time of the proposed listing rule and proposed 4(d) special rule, the Lesser Prairie-Chicken Interstate Working Group, in association with the

Western Association of Fish and Wildlife Agencies, finalized the Lesser Prairie-Chicken Range-Wide Conservation Plan. On October 23, 2013, the Service announced our endorsement of the Lesser Prairie-Chicken Range-Wide Conservation Plan (dated September 2013) as a comprehensive conservation program that reflects a sound conservation design and strategy that, when implemented, will provide a net conservation benefit to the lesser prairie-chicken. We would like to consider the conservation measures in this plan in our final listing determination for the lesser prairie-chicken. As such, we are reopening the comment period to allow the public an opportunity to provide comment on the final plan as it applies to our determination of status under section 4(a)(1) of the Act, particularly comments or information to help us assess the certainty that the Lesser Prairie-Chicken Range-Wide Conservation Plan will be effective in conserving the lesser prairie-chicken and will be implemented. The final plan is available on the Internet in Docket No. FWS–R2–ES–2012–0071 at *http://www.regulations.gov.*

Provisions of the Proposed 4(d) Special Rule for the Lesser Prairie-Chicken

Under section 4(d) of the Act, the Secretary may publish a special rule that modifies the standard protections for threatened species with special measures tailored to the conservation of the species that are determined to be necessary and advisable. Under this revised proposed 4(d) special rule, the Service proposes that all of the prohibitions under 50 CFR 17.31 and 17.32 will apply to the lesser prairie-chicken, except as noted below. The revised proposed 4(d) special rule will not remove or alter in any way the consultation requirements under section 7 of the Act.

Lesser Prairie-Chicken Range-Wide Conservation Plan

The Service proposes that take incidental to activities conducted by a participant enrolled in, and operating in compliance with the Lesser Prairie-Chicken Interstate Working Group's Lesser Prairie-Chicken Range-Wide Conservation Plan will not be prohibited. The Service proposes this provision of the revised 4(d) special rule in recognition of the significant conservation planning efforts of the five state wildlife agencies within the range of the lesser prairie-chicken. The Service has worked closely with the Lesser Prairie-Chicken Interstate Working Group in the development of the final Lesser Prairie-Chicken Range-wide Conservation Plan. The plan identifies a two-pronged strategy for lesser prairie-chicken conservation: (1) The coordinated implementation of incentive-based landowner programs and (2) the implementation of an impact framework reducing threats and providing for off-site mitigation opportunities. Table 1 identifies the covered activities, arranged by industry, under the Lesser Prairie-Chicken Range-Wide Conservation Plan.

TABLE 1—ACTIVITIES COVERED UNDER THE LESSER PRAIRIE-CHICKEN RANGE-WIDE CONSERVATION PLAN

Oil and Gas Activities
Seismic and Land Surveying.
Construction.
Drilling, Completion, and Workovers (Re-Completion).
Operations and Maintenance.
Plugging and Remediation.
Agricultural Activities
Brush Management.
Building and Maintaining Fences and Livestock Structures.
Grazing.
Water/windmill.
Disturbance Practices.
Crop Production.
Wind Power, Cell and Radio Towers, and Power Line Activities
Construction.
Operations and Maintenance.
Decommissioning and Remediation.
Road Activities
Construction.
Operations and Maintenance.
Decommissioning and Remediation.
General Activities
OHV Activity.
General Construction.
Hunter harvest (incidental to legal hunting of greater prairie-chickens).
Other Land Management (such as prescribed burns, predator management, and remediation of impacted habitat back to baseline conditions).

On May 6, 2013 (78 FR 26302), the Service proposed a 4(d) rule for the lesser prairie-chicken that stated incidental take of the lesser prairie-chicken would not be considered a violation of section 9 of the Act if the take results from implementation of a comprehensive lesser prairie-chicken conservation program that:

(A) Was developed by or in coordination with the State agency or agencies, or their agent(s), responsible for the management and conservation of

fish and wildlife within the affected State(s);

(B) Has a clear mechanism for enrollment of participating landowners; and

(C) Was determined by the Service to provide a net conservation benefit to the lesser prairie chicken, in consideration of the following:

(1) Comprehensively addresses all of the threats affecting the lesser prairie-chicken within the program area;

(2) Establishes objective, measurable biological goals and objectives for population and habitat necessary to ensure a net conservation benefit, and provides the mechanisms by which those goals and objectives will be achieved;

(3) Includes the administrative and funding mechanisms necessary for effectively implementing all elements of the program, including enrollment of participating landowners, monitoring of program activities, and enforcement of program requirements;

(4) Employs an adaptive management strategy to ensure future program adaptation as necessary and appropriate; and

(5) Includes appropriate monitoring of effectiveness and compliance.

(D) Is periodically reviewed by the Service as meeting the objective for which it was originally established under paragraph (a)(2)(i)(B) of this section.

In working with the Lesser Prairie-Chicken Interstate Working Group, we later reviewed the Lesser Prairie-Chicken Range-wide Conservation Plan in light of the criteria that were published in the May 6, 2013, proposed 4(d) rule. The plan includes a strategy to address threats to the prairie-chicken throughout its range, establishes measurable biological goals and objectives for population and habitat, provides the framework to achieve those goals and objectives, demonstrates the administrative and financial mechanisms necessary for successful implementation, and includes adequate monitoring and adaptive management provisions. For these reasons, on October 23, 2013, the Service announced our endorsement of the Lesser Prairie-Chicken Range-Wide Conservation Plan (dated September 2013; any subsequent versions of the Lesser Prairie-Chicken Range-Wide Conservation Plan will be considered under the same criteria identified above) as a comprehensive conservation program that reflects a sound conservation design and strategy that, when implemented, will provide a net conservation benefit to the lesser prairie-chicken. Ultimately, the Lesser Prairie-Chicken Range-Wide Conservation Plan is one that, when implemented, addresses the conservation needs of the lesser prairie-chicken.

The Service is including this provision of the revised proposed 4(d) rule to encourage participants of the Service-endorsed Lesser Prairie-Chicken Range-Wide Conservation Plan to improve habitat conditions and the status of the species across its entire range. The Service has determined that the Lesser Prairie-Chicken Range-Wide Conservation Plan is expected to provide a net conservation benefit to the lesser prairie-chicken population. Conservation, as defined in section 3(3) of the Act, means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.'' The final Lesser Prairie-Chicken Range-Wide Conservation Plan must also be periodically reviewed by the Service and determined that it continues to provide a net conservation benefit to the lesser prairie-chicken. As a result of this provision, the Service expects that rangewide conservation actions will be implemented with a high level of certainty that the program will provide for the conservation of the lesser prairie-chicken.

Agricultural Activities Conducted in Accordance With NRCS's Lesser Prairie-Chicken Initiative and Related NRCS Lesser Prairie-Chicken Conservation Activities

The Service proposes that take of the lesser prairie-chicken will not be prohibited provided the take is incidental to the conditioned conservation practices that are carried out in accordance with a conservation plan developed by the U.S. Department of Agriculture's NRCS in connection with NRCS's LPCI and related NRCS activities focused on lesser prairie-chicken conservation that provide financial or technical assistance, and which were developed in coordination with the Service.

The LPCI and related NRCS activities provide financial and technical assistance to participating landowners to implement practices beneficial to the lesser prairie-chicken that also contribute to the sustainability of landowners' agricultural operations. Conservation practices, such as brush management, prescribed grazing, range planting, prescribed burning, and restoration of rare and declining habitats, are used to treat upland wildlife habitat concerns identified as limiting factors for the lesser prairie-chicken during the conservation planning process. This conservation initiative promotes implementation of specific conservation practices to manage, enhance, and expand their habitats within the context of sustainable ranching.

The vast majority of lesser prairie-chicken habitat occurs on privately owned and operated lands across the five-state range; therefore, the voluntary actions of private landowners are key to maintaining, enhancing, restoring, and reconnecting habitat for the species. The overall goal of the LPCI is to increase lesser prairie-chicken abundance and distribution through habitat improvements by addressing local and landscape threats. Over the long term, it is anticipated that the LPCI will facilitate the expansion of lesser prairie-chicken range into suitable portions of the historic range as habitat conditions improve and threats are reduced or eliminated.

The Service issued a conference report to the NRCS in connection with the NRCS's LPCI on June 30, 2011 (*http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1044884.pdf*), in which the Service determined that the proposed action, which incorporates the procedures, practice standards, and conservation measures of the LPCI, is not likely to jeopardize the continued existence of the lesser prairie-chicken. On November 22, 2013, the Service issued a Conference Opinion for the NRCS's LPCI and associated procedures, conservation practices, and conservation measures. Conference procedures under section 7 of the Act are required only when a Federal agency (action agency) proposes an activity that is likely to jeopardize the continued existence of a species that has been proposed for listing under the Act or when the proposed activity is likely to destroy or adversely modify proposed critical habitat. However, conference procedures may also be used to assist an action agency in planning a proposed action so that potential conflicts may be identified and resolved early in the planning process. During the conference, the Service may provide recommendations on ways to avoid or minimize adverse effects of the proposed action. The conclusions reached during a conference and any subsequent recommendations are then provided to the action agency in a conference report.

The November 22, 2013, conference opinion builds upon, refines, and updates the 2011 conference report in several ways, including the addition of

four conservation practices to the 23 evaluated in the amended conference report, the establishment of a new method of determining when the conservation measures are to be applied, an estimate of incidental take, and an associated Incidental Take Statement that covers take of lesser prairie-chicken by cooperators who implement the described conservation practices and measures.

In the conference opinion, the Service states that implementation of the NRCS conservation practices and their associated conservation measures described in the conference opinion are anticipated to result in a positive population response by the species by reducing or eliminating adverse effects. Furthermore, the Service states that overwhelming conservation benefits of implementation of the proposed action within selected priority areas, maintenance of existing habitat, and enhancement of marginal habitat will outweigh short-term negative impacts to individual lesser prairie-chickens. Implementation of the LPCI is expected to result in more of the threats that adversely affect populations being managed, more habitat under the appropriate management prescriptions, and more information being developed and disseminated on the compatibility of sustainable ranching operations on the persistence of this species across the landscape. Through the conference opinion, the Service ultimately finds that effective implementation of conservation practice standards and associated conservation measures for the LPCI are anticipated to result in a positive population response by the species as threats are reduced, most notably in addressing habitat fragmentation and improvement of habitat conditions across the landscape.

Therefore, this provision of the revised proposed 4(d) special rule for conservation practices associated with NRCS's LPCI and related NRCS activities focused on lesser prairie-chicken conservation will promote conservation of the species by encouraging landowners and ranchers to continue managing the remaining landscape in ways that meet the needs of their operation while simultaneously providing suitable habitat for the lesser prairie-chicken. By reducing threats to the species including habitat fragmentation and by promoting the improvement of habitat conditions across the species' landscape, the LPCI and related NRCS activities focused on lesser prairie-chicken conservation are expected to provide for the conservation of the lesser prairie-chicken.

Continuation of Routine Agricultural Practices on Existing Cultivated Lands

The Service proposes that take of the lesser prairie-chicken will not be prohibited provided the take is incidental to activities that are conducted during the continuation of routine agricultural practices, as specified below, on cultivated lands that are in row crop, hay, or forage production. These lands must meet the definition of cropland as defined in 7 CFR 718.2, and, in addition, must have been cultivated, meaning tilled, planted, or harvested, within the previous 5 years. Thus, this provision does not include take coverage for any new conversion of grasslands into agriculture.

Lesser prairie-chickens are known to travel from native rangeland and Conservation Reserve Program lands (CRP), which provide cover types that support lesser prairie-chicken nesting and brood rearing, to forage within cultivated fields supporting small grains, alfalfa, and hay production. Lesser prairie-chickens are also known to maintain lek sites up to a half mile (0.8 kilometers) from rangelands and CRP fields within these cultivated areas, and they may be present during farming operations. Thus, existing cultivated lands, although not a native habitat type, may provide food resources for lesser prairie-chickens during key times in the life cycle of the species. These existing cultivated lands are compatible with the conservation of the lesser prairie-chicken.

Routine agricultural activities proposed to be covered by this provision include:

(1) Plowing, drilling, disking, mowing, or other mechanical manipulation and management of lands in cultivation, provided that the harvest of cultivated lands is conducted by methods that allow wildlife to flush and escape, such as starting operations in the middle of the field and working outward, or by modifying equipment to include flush bar attachments.

(2) Routine activities in direct support of cultivated agriculture, including replacement, upgrades, maintenance, and operation of existing infrastructure such as irrigation conveyance structures and roads.

Similar to the discussion above for conservation practices carried out through the LPCI, this provision of the revised proposed 4(d) special rule for agricultural activities will promote conservation of the species by encouraging landowners and farmers to continue managing the remaining landscape in ways that meet the needs of their operation while simultaneously providing habitat and food resources for the lesser prairie-chicken. In addition to providing food sources during the species' life cycle, existing cultivated agricultural land may promote conservation of the species by discouraging inappropriate agricultural practices that are incompatible with the lesser prairie-chicken's habitat needs within the landscape.

Proposed Determination

Section 4(d) of the Act states that ''the Secretary shall issue such regulations as [s]he deems necessary and advisable to provide for the conservation'' of species listed as a threatened species. Conservation is defined in the Act to mean ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.'' Additionally, section 4(d) states that the Secretary ''may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1).''

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, the Secretary may find that it is necessary and advisable not to include a taking prohibition, or to include a limited taking prohibition. See *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* and 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002). In addition, as affirmed in *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988), the rule need not address all the threats to the species. As noted by Congress when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. [S]he may, for example, permit taking, but not importation of such species,'' or [s]he may choose to forbid both taking and importation but allow the transportation of such species, as long as the measures will ''serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Section 9 prohibitions make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, shoot, wound, kill, trap, capture, or collect; or attempt any of these), import or export, ship in

interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as an endangered species, without written authorization. It also is illegal under section 9(a)(1) of the Act to possess, sell, deliver, carry, transport, or ship any such wildlife that is taken illegally. Prohibited actions consistent with section 9 of the Act are outlined for threatened species in 50 CFR 17.31(a) and (b). This revised proposed 4(d) special rule proposes that all prohibitions in 50 CFR 17.31(a) and (b) will apply to the lesser prairie-chicken, except in three instances.

First, we propose that none of the provisions in 50 CFR 17.31 would apply to conservation practices that are conducted by a participant in, and operating in compliance with, Lesser Prairie-Chicken Interstate Working Group's Lesser Prairie-Chicken Range-Wide Conservation Plan. The plan reflects a sound conservation design and strategy and is expected to provide a net conservation benefit for the lesser prairie-chicken. Actions in the comprehensive plan will ultimately contribute to the conservation of the species. Conservation is defined in section 3(3) of the Act as ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.'' As a result of this provision, the Service expects that rangewide conservation actions will be implemented with a high level of certainty that the program will provide for the conservation of the lesser prairie-chicken.

Second, we also propose that none of the provisions in 50 CFR 17.31 would apply to the conditioned conservation practices that are carried out in accordance with a conservation plan developed by the NRCS in connection with the LPCI. According to the proposed listing rule, the primary factors supporting the proposed threatened status for the lesser prairie-chicken are the impacts of cumulative habitat loss and fragmentation. Allowing the continuation of agricultural operations consistent with these criteria encourages landowners to continue managing the remaining landscape in ways that meet the needs of their operation while simultaneously providing suitable habitat for the lesser prairie-chicken. Implementation of conservation practice standards and associated conservation measures for the LPCI are anticipated to result in a positive population response by the species as threats are reduced, most notably in addressing habitat fragmentation and improvement of habitat conditions across the landscape. Therefore, conservation practices carried out through the LPCI will ultimately contribute to the conservation of the species.

Finally, we propose that none of the provisions in 50 CFR 17.31 would apply to actions that result from activities associated with the continuation of routine agricultural practices, as specified above, on existing cultivated lands that are in row crop, hay, or forage production. These lands must meet the definition of cropland as defined in 7 CFR 718.2, and, in addition, must have been cultivated, meaning tilled, planted, or harvested, within the previous 5 years. This provision of the revised proposed 4(d) special rule for agricultural activities will promote conservation of the species by encouraging landowners and farmers to continue managing the remaining landscape in ways that meet the needs of their operation while simultaneously providing habitat and food resources for the lesser prairie-chicken.

Based on the rationale explained above, the provisions included in this revised proposed 4(d) special rule are necessary and advisable to provide for the conservation of the lesser prairie-chicken. Nothing in this proposed 4(d) special rule changes in any way the recovery planning provisions of section 4(f) and consultation requirements under section 7 of the Act or the ability of the Service to enter into partnerships for the management and protection of the lesser prairie-chicken.

Peer Review

In accordance with our joint policy 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 revised proposed rule. The purpose of such review is to ensure that our determination of status for this species is based on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this revised proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the reopening of the public comment period, on our use and interpretation of the science used in developing our proposed rule to list the lesser prairie-chicken and this proposed 4(d) special rule.

We will consider all comments and information we receive during the comment period on this revised proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Required Determinations

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: (a) Be logically organized; (b) use the active voice to address readers directly; (c) use clear language rather than jargon; (d) be divided into short sections and sentences; and (e) 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 **ADDRESSES**. To better help us revise the proposed 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.

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 the Office of Management and Budget (OMB) under the Paperwork Reduction Act. 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.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). We intend to incorporate this revised proposed 4(d) special rule into our final determination concerning the listing of the species or withdrawal of the proposal if new information is provided that supports that decision.

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.

By letter dated April 19, 2011, we contacted known tribal governments throughout the historical range of the lesser prairie-chicken. We sought their input on our development of a proposed rule to list the lesser prairie-chicken and encouraged them to contact the Oklahoma Ecological Services Field Office if any portion of our request was unclear or to request additional information. We did not receive any comments regarding this request.

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0071 or upon request from the Field Supervisor, Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

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 further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 78 FR 26302 (May 6, 2013), as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.41 by revising paragraph (a) to read as follows:

§ 17.41 Special rules—birds.

(a) Lesser prairie-chicken (*Tympanuchus pallidicinctus*).

(1) *Prohibitions.* Except as noted in paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 apply to the lesser prairie-chicken.

(2) *Exemptions from prohibitions.* Incidental take of the lesser prairie-chicken will not be considered a violation of section 9 of the Act if the take occurs:

(i) On privately owned, State, or county land from activities that are conducted by a participant enrolled in, and operating in compliance with, the Lesser Prairie-Chicken Interstate Working Group's Lesser Prairie-Chicken Range-Wide Conservation Plan, as endorsed by the U.S. Fish and Wildlife Service.

(ii) On privately owned agricultural land from the following conservation practices that are carried out in accordance with a conservation plan developed by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) in connection with NRCS's Lesser Prairie-Chicken Initiative and related NRCS activities that provide financial or technical assistance to support lesser prairie-chicken conservation, and which were developed in coordination with the U.S. Fish and Wildlife Service:

(A) Upland wildlife habitat management;
(B) Prescribed grazing;
(C) Restoration and management of rare and declining habitats;
(D) Access control;
(E) Forage harvest management;
(F) Prescribed burning;
(G) Brush management;
(H) Firebreaks;
(I) Cover crops;
(J) Critical area planting;
(K) Forage and biomass planting;
(L) Range planting;
(M) Watering facilities;
(N) Spring development;
(O) Pumping plants;
(P) Water wells;
(Q) Pipelines;
(R) Grade stabilization structures;
(S) Fences;
(T) Obstruction removal;
(U) Herbaceous weed control;
(V) Ponds;
(W) Tree and Shrub Planting;
(X) Heavy Use Protection;
(Y) Woody Residue Treatment;
(Z) Well Decommissioning;
(AA) Conservation Cover.

(iii) As a result of the continuation of routine agricultural practices, as specified below, on cultivated lands that are in row crop, hay, or forage production that meet the definition of cropland at 7 CFR 718.2, and, in addition, must have been cultivated, meaning tilled, planted, or harvested, within the previous 5 years. Activities covered by this provision include:

(A) Plowing, drilling, disking, mowing, or other mechanical manipulation and management of lands in cultivation, provided that the harvest of cultivated lands is conducted by methods that allow wildlife to flush and escape, such as starting operations in the middle of the field and working outward, or by modifying equipment to include flush bar attachments.

(B) Routine activities in direct support of cultivated agriculture, including replacement, upgrades, maintenance, and operation of existing infrastructure such as irrigation conveyance structures and roads.

* * * * *

Dated: December 6, 2013.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–29587 Filed 12–10–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2013–0116; 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To Reclassify Eriodictyon altissimum as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to reclassify *Eriodictyon altissimum* (Indian Knob mountain balm) as a threatened species under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and

commercial information, we find that reclassifying *E. altissimum* as threatened is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to *E. altissimum* or its habitat at any time.

DATES: The finding announced in this document was made on December 11, 2013.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2013–0116. Supporting documentation we used in preparing this finding is included in the docket at *http://www.regulations.gov* and available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Stephen P. Henry, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805–644–1766; facsimile 805–644–3958. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

We proposed to list *Eriodictyon altissimum* as an endangered species under the Act (16 U.S.C. 1531 *et seq.*) on December 23, 1991 (56 FR 66400), based primarily on loss of habitat that was anticipated to result from residential development, surface mining, and oil well drilling. A final rule listing *E. altissimum* as endangered was published in the **Federal Register** on December 15, 1994 (59 FR 64613). In September 1998, we finalized a recovery plan for *E. altissimum,* three other federally endangered species (the Morro shoulderband snail (*Helminthoglypta walkeriana*), *Cirsium fontinale* var. *obispoense* (Chorro Creek bog thistle), and *Clarkia speciosa* ssp. *immaculata* (Pismo clarkia)), and one federally threatened species (*Arctostaphylos morroensis* (Morro manzanita)) (Service 1998).

We published a notice of review and request for public comments concerning the status of *Eriodictyon altissimum* under section 4(c)(2) of the Act on March 22, 2006 (71 FR 14538). A second notice was published on April 3, 2006 (71 FR 16584) to clarify the contact offices. We notified the public of completion of the 5-year review on May 21, 2010 (75 FR 28636). The 5-year review resulted in a recommendation to change the status of the species from endangered to threatened. We acknowledged in the review that the recovery criteria had only been partially met. However, we still made the recommendation to downlist because the status of the species appeared to be self-sustaining and stable (Service 2009, p. 11). We also made the recommendation based on a substantial reduction of the primary threat at the time of listing (i.e., habitat loss as a result of development); this threat was reduced as a result of conserving lands where the species occurred in the Los Osos and Indian Knob areas. Therefore, based on the best scientific and commercial information available at that time, we concluded that the species now best met the definition of threatened rather than endangered (Service 2009, p. 11).

On December 21, 2011, we received a petition dated December 19, 2011, from the Pacific Legal Foundation, requesting the Service to delist the Inyo California towhee (*Pipilo crissalis eremophilus*), and to reclassify from endangered to threatened *Eriodictyon altissimum, Astragalus jaegerianus* (Lane Mountain milk-vetch), *Hesperocyparis abramsiana* (=*Cupressus abramsiana*) (Santa Cruz cypress), arroyo toad (*Anaxyrus californicus*), and Modoc sucker (*Catostomus microps*). The petition was based on the analysis and recommendations contained in the most recent 5-year reviews for these taxa. On June 4, 2012 (77 FR 32922), we published in the **Federal Register** a 90-day finding for the 2011 petition to reclassify these six taxa. In our 90-day finding, we determined the 2011 petition provided substantial information indicating the petitioned actions may be warranted, and we initiated status reviews for each species. This 12-month finding also constitutes our 5-year status review for *E. altissimum.* The 12-month findings for *H. abramsiana* and Inyo California towhee published in the **Federal Register** on September 3, 2013 (78 FR 54221), and November 4, 2013 (78 FR 65938), respectively; the other petitioned species will be addressed separately and findings published in the **Federal Register** in the future.

Background

A scientific analysis was completed and presented in detail in a species report for *Eriodictyon altissimum* (Service 2013, entire), which is available at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0116. The species report was prepared by Service biologists to provide a thorough discussion of the species' ecology, biological needs, and analysis of the threats that may be impacting the species. The species report includes discussion of the following: Species description, taxonomy, life history, habitat, soils, distribution, abundance, age and size distribution, role of fire in regeneration, and an assessment of threats currently acting on the species. This detailed information is summarized in the following paragraphs of this *Background* section and the *Summary of Factors Affecting the Species* section.

Eriodictyon altissimum is a relatively weak-stemmed evergreen shrub that was originally placed in the waterleaf family (Hydrophyllaceae) (Halse 1993, pp. 683–708), but is now included in the borage family (Boraginaceae) (Kelley *et al.* 2012, pp. 450–511). While some individuals can achieve heights in excess of 13 feet (ft) (4 meters (m)), most are observed in the height range of 5 to 6 ft (1.5 to 2 m). Little specific scientific information exists in the literature for *E. altissimum;* as such, much of the information in the species report includes inferences from other species in the genus *Eriodictyon.*

Like most species in the genus, *Eriodictyon altissimum* displays an open growth pattern and embodies those characteristics typical of a pioneer (early successional) species (e.g., shade-intolerant, poor competitor). It is a rapid-growing, short-lived shrub commonly observed along roadsides or trails, or within open areas of chaparral (CNPS 1978, p. 1; Wells 1962, p. 186; Vanderwier 2006, 2009, pers. obs.). While pollination ecology has not been specifically studied for *E. altissimum,* other *Eriodictyon* species are pollinated by wasps, butterflies, and a variety of bee taxa (Moldenke 1976, p. 356).

Eriodictyon altissimum, like the closely related *E. capitatum,* likely evolved in communities where fire is an integral ecological process; therefore, fires are presumed to play an important role in the persistence and reproduction of populations (Service 2002, p. 67969). Similar to other species in the genus, *E. altissimum* is thought to be a pioneer, or early successional, species and similarly adapted to periodic fire in its associated community (Service 1998, p. 23). A variety of short-lived subshrubs (including *Eriodictyon* spp.) germinate the first year following a fire and form an important element of stand structure in the first few years of succession. Fire cues, such as heat and charred wood, have been found to significantly

increase the germination of *Eriodictyon* species (Keeley 1987, p. 438; Service 2002, p. 67969). Absent fire to cue seed germination, *Eriodictyon* species most often reproduce, or spread, via rhizomes.

Eriodictyon altissimum is a constituent of the maritime chaparral community found along the central California coast where a Mediterranean climate (warm dry summers, cool wet winters) prevails. The species occurs in two areas in western San Luis Obispo County: (1) Near the community of Los Osos (inclusive of Montaña de Oro State Park), approximately 11 miles (mi) (17 kilometers (km)) west of the city of San Luis Obispo (City); and (2) the Indian Knob area, approximately 5 mi (8 km) south-southeast of the City. The Los Osos area supports three extant occurrences (Ridge Trail, Hazard South, and Water Tank). It also supports habitat for two occurrences which, due to surveys conducted since the publication of the 2009 5-year review, we now consider to be extirpated (Broderson and Morro Dunes) (Service 2013, p. 5; Table 1). The Indian Knob area supports two occurrences (Indian Knob and Baron Canyon) (Service 2013, p. 4).

An accurate metric regarding the abundance, or number of plants, of *Eriodictyon altissimum* at any given occurrence is difficult to determine because this species, as with others in the genus *Eriodictyon,* commonly produces aboveground stems asexually from rhizomes (Wells 1962, p. 184; Howard 2012, p. 4; Service 1998, p. 21). Some aboveground stems that arise from rhizomes are often counted as genetically distinct individuals; however, they may actually represent a genetically identical expression (clone) of the source plant, as is the case in the closely related *E. capitatum* (Lompoc yerba santa) (Elam 1994, pp. 146–194), a species found in habitat similar to where *E. altissimum* grows.

Eriodictyon altissimum may also exhibit self-incompatibility (a general term for genetic mechanisms which prevent self-fertilization) similar to *E. capitatum.* Low seed production in *E. capitatum* has been attributed to the combined effects of self-incompatibility and single-clone populations (Elam 1994, pp. 146–194). That is, single clone (one genotype) populations produce low numbers of fertile seeds relative to multiclonal (several genotype) populations.

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as any species or subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species because of any one or a combination of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Determining whether the status of a species has improved to the point that it can be downlisted or delisted requires consideration of whether the species is endangered or threatened because of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is an ''endangered species'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is a ''threatened species'' if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The word ''range'' in the ''significant portion of its range'' phrase refers to the range in which the species currently exists. For the purposes of this analysis, we first evaluate the status of the species throughout all its range, then consider whether the species is in danger of extinction or likely to become so in any significant portion of its range. In the case of *Eriodictyon altissimum,* the latter step is unnecessary, since it is designated as endangered throughout all of its range.

The following sections provide a summary of the threats impacting *Eriodictyon altissimum.* These threats include: loss of habitat (Factor A), competition with nonnative species (Factors A and E), lack of fire (Factors A and E), small population size and limited distribution (Factor E), and climate change (Factor A). Additionally, the existing regulatory mechanisms are inadequate to protect the species from these threats (Factor D).

Loss of Habitat

At the time of listing, the primary threat to *Eriodictyon altissimum* was loss of habitat that was anticipated to result from residential development, surface mining, and oil well drilling (Factor A) (59 FR 64613, December 15, 1994). This primary threat remained at the time the recovery plan was completed in 1998, with habitat loss predicted from surface mining and oil well drilling in the Indian Knob area and residential development in the Los Osos area. Since the completion of the recovery plan, the threats from loss of habitat have been reduced. As discussed in the species report, the 2009 5-year review, and the *Recovery and Recovery Plan Implementation* section below, four of five extant occurrences are now protected in perpetuity. Furthermore, habitat occupied by *E. altissimum* in Los Osos that was once at risk from proposed residential development as part of the Morro Palisades development project is now conserved as part of the Morro Dunes Ecological Reserve, which is owned and managed by the California Department of Fish and Wildlife. Currently, the only occurrence at potential risk from development activities is the Baron Canyon occurrence. Therefore, we no longer consider habitat loss from residential development, surface mining, and oil well drilling activities to pose a substantial threat to the continued existence of *E. altissimum.* See additional discussion in the ''Threats at the Time of Listing'' section of the species report (Service 2013, pp. 9–11).

Competition With Nonnative Species

The invasion of nonnative species into the habitat of *Eriodictyon altissimum* can affect both the species and its habitat. Habitat degradation resulting from the spread of invasive, nonnative plant species was not identified as a specific threat to *E. altissimum* in the 1994 listing rule. At the time the recovery plan was prepared in 1998, we had not yet identified invasive plant species as a threat requiring management; however, the recovery plan did provide information on encroachment of several nonnative species into the coastal dune scrub and maritime chaparral communities that support *E. altissimum.* The recovery plan identified *Eucalyptus globulus* (blue gum), *E. camaldulensis* (red gum), *Carpobrotus edulis* (fig-marigold), *Conocosia pugioniformis* (narrowleaf iceplant), *Ehrharta calycina* (veldt

grass), and other nonnative grasses (e.g., *Bromus* spp. (brome), *Lolium* spp. (ryegrass), *Avena* spp. (oats)) as affecting the Los Osos area. The 2009 5-year review for *Eriodictyon altissimum* noted that habitat surrounding the Broderson occurrence had historically been affected by competition from invasive, nonnative plants, particularly *Ehrharta calycina,* but did not state that nonnative plants posed a significant threat to *Eriodictyon altissimum.*

Since the time of the 2009 5-year review, we have received additional information documenting impacts of nonnative plants on *Eriodictyon altissimum* and its habitat. The primary invasive, nonnative species of concern is *Ehrharta calycina,* a perennial, nonnative species that spreads rapidly from a persistent seedbank as well as vegetatively. *Ehrharta calycina* substantially changes the plant community composition in invaded habitats, altering fire potential by buildup of dense thatch during the summer months, and increasing the rate of organic matter accumulation (TNC 2005, p. 6; CalIPC 2012). The density of veldt grass in habitat in the Los Osos area has increased greatly in past decades (SWAP 2000). It is extremely difficult to eradicate once it has become established (Bossard *et al.* 2000 pp. 164–170). Based on reports from local biologists, *Ehrharta calycina* is having a negative effect on habitat that supports *Eriodictyon altissimum* in the Los Osos area (CalIPC 2000, SWAP 2001; MBNEP 2010; Chestnut 2012b, pers. comm.), which is the portion of the species range that supports three of the five extant occurrences. *Ehrharta calycina* is also prevalent in coastal dune scrub that transitions into maritime chaparral at the site of the extirpated Broderson occurrence, and it is encroaching into and modifying the maritime chaparral near the location of the extirpated Morro Dunes occurrence (Vanderwier 2012, pers. obs.).

Ehrharta calycina responds aggressively after fires or other disturbance activities (such as mechanical clearing) (CalIPC 2011, p. 4; Chestnut 2012a, pers. comm.); thus, seedlings of *Eriodictyon altissimum* would likely be in direct competition with, and could be overwhelmed by, *Ehrharta calycina.* This competition could result in poor seedling survival and low recruitment rates of *Eriodictyon altissimum.* At least one local botanist (Chestnut 2012a, 2012b, pers. comm.) considers that, based on its encroachment into the chaparral habitat that supports *Eriodictyon altissimum,* the presence of *Ehrharta calycina* in and around the Los Osos area is at this time significantly impacting the extant occurrences of *Eriodictyon altissimum;* he also states that the encroachment of *Ehrharta calycina* would continue or expand in the case of a major fire. Other local conservation organizations are documenting the spread of *Ehrharta calycina* into the Los Osos and Indian Knob areas, and express concern over the way this invasive species is converting chaparral habitat to grasslands and the potential it has outcompete endemic species (SWAP 2001, pp. 1–2; MBNEP 2010, p. 2). There is no long-term strategy being implemented to control or manage *Ehrharta calycina* (Chestnut 2012a, pers. comm.), though Montaña de Oro State Park, which contains two occurrences of *Eriodictyon altissimum,* is monitoring the spread of this invasive species, and has conducted some limited removal efforts in the past (CDPR 2013, no page number).

Because this nonnative, invasive grass occurs at all five occurrences in the Los Osos area that currently or historically have supported *Eriodictyon altissimum,* and because there is no management plan in place, we consider *Ehrharta calycina* to pose a significant threat to the continued existence of *Eriodictyon altissimum.* See additional discussion in the ''Competition from Nonnative Plant Species'' section of the species report (Service 2013, pp. 11–14).

Small Population Size and Limited Distribution

Eriodictyon altissimum is known from a very limited area, with only five extant occurrences in two geographic areas approximately 13 mi (20.9 km) apart. At the time of listing, effects related to small population size were not discussed, though the 2009 5-year review did recognize that species that have very few locations or are from small and highly variable populations are considered to be vulnerable to stochastic extinction (Shaffer 1981, pp. 131–134; Primack 1998, pp. 279–308). Species with few populations or few individuals are vulnerable to the threat of naturally occurring random events, as these events can cause extinction through mechanisms operating at either the genetic, population, or landscape level (Shaffer 1981, pp. 131–134; Primack 1998, pp. 279–308). When such species occur within a limited geographic distribution, they also face a greater likelihood that all of the populations or individuals within the populations will be affected by the same event (Factor E). Five occurrences of *E. altissimum* are currently considered extant, and three of these consist of fewer than 50 individuals (Service 2013, Table 1). All occur within just 13 mi (20.9 km) of each other. Therefore, *E. altissimum* may be at risk from threats related to small population size and limited distribution.

In the absence of information identifying threats to the species and linking those threats to the rarity of the species, we do not consider rarity or small populations alone to be a threat. However, *E. altissimum* possesses life-history characteristics that make it vulnerable to threats due to small population size (i.e., its clonal nature and suspected self-incompatibility) (see *Background* section above). Plants present in a population that consists of a single clone probably only receive compatible pollen through long-distance gene flow, whereas plants in multiclonal populations are more likely to receive some compatible pollen from nearby genotypes in the population (Elam 1994, pp. 146–194). If *E. altissimum* is also self-incompatible, the distance between occurrences could make it difficult for cross-pollination to occur, resulting in limited seed set that could have a negative effect on the establishment of a viable seed bank and species recovery after fires. Loss of genetic diversity due to small population sizes can result in reduced fitness of individuals and may reduce the adaptive capability of a species to respond to changing environmental conditions (Gilpin and Soulé 1986, pp. 32–33; Lesica and Allendorf 1995, p. 756).

Therefore, based on the limited distribution of the species, and its likely limited genetic diversity, we consider threats related to small population size and limited distribution to impact *Eriodictyon altissimum.* See additional discussion in the ''Small Population Size and Limited Distribution'' section of the species report (Service 2013, pp. 13–14).

Altered Fire Regime

Understanding fire frequency is essential to understanding the habitat and life-history requirements for *Eriodictyon altissimum.* At the time of listing and in the recovery plan, we assumed that fire was necessary for the persistence of *E. altissimum* and its habitat (59 FR 64613, December 15, 1994; Service 1998, p. 23). At historical fire frequencies, chaparral species are generally resilient to fire because they are well known to regenerate from either resprouting of perennial root crowns or germination of seeds in the soil when heated or exposed to smoke (obligate seeders and sprouters) (Lambert *et al.* 2010, p. 31). However, alterations to the historical fire frequency through either

increasing or decreasing the time between events can affect a species' viability and persistence by killing individual plants or altering the characteristics of the habitat that supports them (Zedler *et al.* 1983, pp. 815–816; Tyler 1996, pp. 2182–2183; Van Dyke *et al.* 2001, p. 2; Lambert *et al.* 2010, p. 31), including *E. altissimum.*

We do not possess specific information on the role fire plays in the persistence of *Eriodictyon altissimum* or the post-fire behavior for this species. However, inference from other species in the genus and other co-occurring species indicate that fire is likely a necessary habitat component. Absence of fire to cue seed bank germination and maintain a mosaic pattern of vegetation with open areas that favor *E. altissimum* may contribute to its limited distribution and reduced numbers. Keeley (1992, p. 441) also noted the importance of variable fire regimes to maintain equilibrium in species composition. Seed viability in a seed bank after a fire is also an important factor (Lambert *et al.* 2010, p. 31). For example, in the co-occurring *Arctostaphylos morroensis,* post-fire densities can be relatively high (e.g., 45,000 seeds per square meter), but seed viability is generally very low (1–5 percent) (Odion and Tyler 2002).

Determining fire frequency is an important means of assessing ecosystem tolerances to fire return intervals. Alterations to the historic fire frequency, either increasing or decreasing the time between events, can affect a species' viability and persistence. Too long of a fire return interval could lead to the development of climax, closed canopy chaparral stands that would eventually have an adverse effect on populations of *Eriodictyon altissimum* by precluding expansion into otherwise suitable habitat and development of even-aged, senescent stands (stands in which the individuals are so old that their reproductive potential has been reduced) (Ne'eman *et al.* 1999, pp. 235–242). Fire events that are too frequent could kill individuals before they have had an opportunity to flower, set seed, and contribute to a seedbank. However, such calculations can be challenging as until the 20th century, records were not systematically kept (Keeley *et al.* 2012, p. 41). It is believed that the fire cycle was historically relatively long and likely was limited more by the number of ignition events than by fuels (Keeley *et al.* 2012, p. 119). Estimates of historic fire return intervals for the Monterey Bay area range from as short as 10 years to as long as 100 years or more (Greenlee and Langenheim 1990, p. 124) or between 50–85 years for fires recorded in coastal southern California and northern Baja California Mexico (Moritz *et al.* 2004, p. 68).

According to historical fire records, no natural or prescribed fires have occurred in the vicinity of the Indian Knob and Baron Canyon occurrences of *Eriodictyon altissimum* in the past 50 years (California Division of Forestry and Fire Protection 2012); therefore, the fire return interval for this area is unknown. It is possible that since the discovery of *E. altissimum* in 1961, we are still within a single fire frequency return interval in this area. Because of the lack of recent fire and the subsequent buildup of fuels, these occurrences could be very susceptible to intense wildfire (USDA 1984, pp. 46, 54).

Multiple prescribed and natural burns have historically occurred in the Los Osos area; however, few were in close proximity to *Eriodictyon altissimum* occurrences. The northern perimeter of a prescribed fire conducted in 2003 came within an estimated 0.2 mi (0.08 km) of the Water Tank occurrence (Veneris 2012, pers. comm.). In recent years, California State Parks has considered conducting prescribed burns in Montaña de Oro State Park in the vicinity of the Ridge Trail and Hazard South occurrences; however, broadcast burning is not considered feasible near these occurrences due to the adjacent residential communities, heavy fuel loads, and potential impacts to the federally threatened *Arctostaphylos morroensis* (Morro manzanita) (Walgren 2012, pers. obs.). This manzanita species has not recovered well from a prescribed burn in Montaña de Oro State Park in 1998 (Odion and Tyler 2002).

According to Chestnut (2012a, pers. comm.), the plants in the Indian Knob area (most likely the Baron Canyon occurrence) have been affected by the construction of Baron Canyon Ranch, an estate home development. He states that landscaping, fire suppression treatments and similar development-driven activities are continuing to occur in this portion of the population with minimal oversight, based on his direct observations from the conserved lands at Guidetti Ranch adjacent to the Baron Ranch. The area around Indian Knob is largely undeveloped, although residential areas near Baron Canyon and other areas to the west could cause additional limitations for conducting prescribed burns in the future. The local community has previously expressed strong resistance to the idea of controlled burns in proximity to their properties, mostly due to concerns about fire escaping control and damaging structures (Vanderwier 2013, pers. obs.). Therefore, based on high fuel loads within chaparral habitat, proximity of residential communities, and possible impacts to federally listed species, attempts to restore the natural fire regime in *E. altissimum* habitat are not likely.

Little is known about the specific effects of fire on the life history of *Eriodictyon altissimum.* However, based on the best available scientific and commercial information, including characteristics of species with similar habitat and life-history characteristics, *E. altissimum* is likely dependent on fire for reproduction and persistence. The lack of recent fire and constraints on prescribed burns, therefore, pose a significant threat to the continued existence of the species. We also note that the level of impact this threat is having on *E. altissimum* could increase over time if prescribed burning and other fire management measures continue to be limited. See additional discussion in the ''Lack of Fire'' section of the species report (Service 2013, pp. 14–17).

Climate Change

The term ''climate change'' refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, usually decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species, including *Eriodictyon altissimum.* Specific effects of climate change on *E. altissimum* and its habitat depend on the magnitude of future changes. Analysis through Climate Wizard (2012) projects an increase in temperature and a decrease in rainfall; however, these changes are expected to be moderated somewhat by the species' proximity to the coastline.

We recognize that climate change is ongoing and will likely affect a wide range of plant and animal species, as well as their habitats. However, we lack adequate information to make specific projections regarding the effects of climate change on *Eriodictyon altissimum* at this time. See additional discussion in the ''Climate Change'' section of the species report (Service 2013, pp. 17–18).

Existing Regulatory Mechanisms

Eriodictyon altissimum receives protection from multiple Federal, State, and local laws, particularly the Act, the California Endangered Species Act, and

the California Coastal Act. Due to the status of *E. altissimum* as a State listed species and existing habitat conservation, we expect that *E. altissimum* will continue to receive protections even absent those of the Act. However, none of the existing regulations address the threat of nonnative, invasive grasses, nor do they address the need for restoration of a natural fire regime to support *E. altissimum* and its habitat.

Federal, State, and local regulations provide important protections for *Eriodictyon altissimum,* particularly through habitat conservation. However, other impacts to the species, such as competition with nonnative plants, small population size, and limited distribution can not necessarily be reduced or eliminated through the use of existing regulatory mechanisms. See additional discussion in the ''Regulatory Mechanisms'' section of the species report (Service 2013, pp. 20–23).

Combined Factors

The threats to the long-term persistence of *Eriodictyon altissimum* are compounded by their interactions with each other, particularly the interactions between the invasive, nonnative grass *Ehrharta calycina* and altered fire regimes. In addition to competing with and displacing native vegetation, nonnative grass species can increase both the volume of readily ignitable fuel and the seasonal duration when fuels are susceptible to ignition (Lambert *et al.* 2010, p. 31) in maritime chaparral where *Eriodictyon altissimum* is found. The presence of *Ehrharta calycina* could change the frequency of fire due to increased biomass of fuels, changes in the distribution of flammable fuels biomass, and increased fuels flammability (Lambert *et al.* 2010, p. 29), thus causing more intense and damaging fires. Furthermore, *Ehrharta calycina* quickly germinates and re-establishes after fires and other disturbances (CalIPC 2011, p. 4). As such, it could out-compete seedlings of *Eriodictyon altissimum* that would emerge after a fire, particularly in the Los Osos area, where *Ehrharta calycina* is prevalent.

As invasive, nonnative species increase fire severity, the increased fires may promote the establishment and dominance of those species while making restoration to the original habitat conditions more difficult (CalIPC 2011, p. 4) as a result of changes in soil chemistry. The preponderance of seeds produced by the invasive, nonnative species can result in the site becoming quickly colonized by those species; in contrast, it may take 1 to 3 years before typical chaparral species (e.g., *Arctostaphylos morroensis*) are mature enough to produce seed (Odion and Tyler 2002, no page numbers). If an assertive, nonnative plant species control program is not instituted immediately after a fire that occurs within the range of *Eriodictyon altissimum,* it is possible the spread of *Ehrharta calycina* could swamp emerging *Eriodictyon altissimum* seedlings and other native chaparral species, resulting in the depletion of the seed bank and possible subsequent extirpation of occurrences, as well as alteration of the chaparral habitat that supports *Eriodictyon altissimum.* Therefore, based on the best available scientific and commercial information, we find that the cumulative and combined effects of altered fire regimes and invasive, nonnative plants pose a threat to *Eriodictyon altissimum* and its habitat. This is compounded further by the small population sizes and limited distribution of *Eriodictyon altissimum,* making the species particularly vulnerable to stochastic events arising from the effects of altered fire regimes and invasive plant species.

Recovery and Recovery Plan Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include: ''Objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [section 4 of the Act], that the species be removed from the list.'' However, revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.'' Therefore, recovery criteria should indicate when a species is no longer an endangered species or threatened species because of any of the five statutory factors.

Still, while recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of or remove a species from the Federal List of Endangered and Threatened Plants (50 CFR 17.12) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

In 1998, we finalized a recovery plan that included *Eriodictyon altissimum* (Service 1998), as well as other listed species. At that time, we only considered criteria for downlisting to threatened status, as so little was known about the species' genetics, biology, demography, or response to fire (Service 1998, p. 41). The plan stated that delisting criteria would be discussed at a future date, depending on the success of recovery efforts and of gathering additional management and life-history information (Service 1998, p. iii). According to the recovery plan, *E. altissimum* can be considered for downlisting when all three of the following criteria have been achieved: (1) At least five occurrences from throughout its range are on lands secure from human-induced threats; (2) surrounding habitat is protected in amounts adequate to permit management of the vegetation community using prescribed fire, if it is deemed beneficial to the species; and (3) populations are projected to be self-sustaining and either stable or increasing as determined by long-term monitoring and research results. These criteria are discussed in detail in the species report and summarized below.

Downlisting Criterion 1: At least five occurrences from throughout the species' range are on land secure from human-induced threats.

In the 2009 5-year review, we only recognized six occurrences of *Eriodictyon altissimum,* all of which were considered extant. Five of those occurrences were on lands that were conserved and managed, but the status of the sixth occurrence (Broderson) was uncertain. Though there were five occurrences conserved, due to concern over the uncertain status of the sixth occurrence, we judged that Criterion 1 had only been partially met (Service 2009, pp. 5–6).

Since that time, multiple surveys were conducted in areas historically known to support *Eriodictyon altissimum.* We now recognize seven occurrences of *E. altissimum;* however,

due to increased survey data, we now consider two occurrences known at the time of listing to be extirpated (Service 2013, p. 4). Of the 5 extant occurrences, only four occurrences of *E. altissimum* are on land secured from development. The fifth extant occurrence of *E. altissimum* (Baron Canyon) is on private land in the Indian Knob area and is not currently protected from development. Development appears to have continued in the vicinity of this occurrence, and there also appears to be clearing of habitat nearby (Vanderwier 2012, pers. obs.).

Since the time of listing, important progress has been made in meeting Recovery Criterion 1. However, now that two occurrences of *Eriodictyon altissimum* are considered extirpated, there are only four extant occurrences of *E. altissimum* on conserved lands, one fewer than at the time of the 2009 5-year review. Therefore, we do not consider this downlisting criterion to have been achieved.

Downlisting Criterion 2: Surrounding habitat is protected in amounts adequate to permit management of the vegetation community using prescribed fire, if it is deemed beneficial to the species.

In the 2009 5-year review, we considered this criterion to be no longer adequate and appropriate to the recovery of the species because: (1) The proximity of several occurrences to urban areas makes it unlikely that jurisdictions would implement prescribed burns in these areas; and (2) other methods (e.g., mechanical clearing of chaparral) may be available for managing the vegetation in a fashion that would allow maintenance of open areas needed for the continued survival of *Eriodictyon altissimum* (Service 2009, pp. 6–7).

Since the publication of the 5-year review, we have received substantial new information from the public and concerned scientists about the habitat that supports *E. altissimum.* Based on that information and on a thorough reevaluation of the best available scientific information, we have reconsidered the importance of fire to *Eriodictyon altissimum* and the chaparral habitat that supports it, and believe that fire rather than mechanical clearing is necessary to maintain proper habitat conditions and increase germination rates of *E. altissimum* (Service 2013, pp. 2–3, 16–17). Therefore, we now do consider this recovery criterion to be appropriate.

We do, however, still have concerns about the feasibility of conducting controlled burns within *E. altissimum* habitat. All of the occurrences of *E. altissimum* occur within 1 mi (1.6 km) of existing residential development. The Ridge Trail occurrence is the farthest from development at approximately 0.8 mi (1.3 km) south of residences. Habitat to the south of the Ridge Trail and Hazard South occurrences is protected within Montaña de Oro State Park. California State Parks has conducted prescribed burns within this 8,000-ac (3,200-ha) park but away from *E. altissimum* and its habitat; however, the locations of those burns are not adjacent to residential areas. It is unlikely that prescribed fire could be used at any of the Los Osos occurrences because of their proximity to residential areas and heavy fuel loads. The Water Tank occurrence is the closest to development, being within 150 ft (46 m) of a water tank and approximately 300 ft (107 m) from residences. This occurrence is bounded immediately to the north and east by the residential development, to the west and south by protected habitat within the Bayview Unit of the Morro Dunes Ecological Reserve and the County's Broderson parcel for a distance of at least 1 mi (1.62 km), and to the south by at least 7 mi (11.3 km) of chaparral and other habitat protected within Montaña de Oro State Park. The Indian Knob and Baron Canyon occurrences are also within close proximity to large residential estates.

While the Ridge Trail and Indian Knob occurrences are within a landscape that is likely large enough in size to allow for the use of prescribed burns for *Eriodictyon altissimum,* the public is concerned about the threat of fire, whether it is from natural causes or prescribed as a management tool (Vanderwier 2013, pers. obs.). We will continue to investigate the potential for fire to be used in habitat that supports *E. altissimum,* and also consider other management options to meet the challenges posed by the use of controlled burns. Therefore, for these occurrences, we consider that prescribed burns could be used as a management tool for habitat that supports *E. altissimum;* however, because it has not been used at any of the occurrences, we do not consider this downlisting criterion to have been achieved.

Downlisting Criteron 3: Populations are projected to be self-sustaining and either stable or increasing as determined by long-term monitoring and research results.

At the time of the 2009 5-year review was being drafted, efforts were increased to survey for occurrences of *Eriodictyon altissimum;* these were the first surveys in over 20 years at the Broderson and Morro Dunes occurrences. However, despite searches conducted by local botanists and agency personnel familiar with the locations (McLeod 1986; Walgren 2009, pers. obs.; Vanderwier 2006, 2009, pers. obs.; County of San Luis Obispo 2010, p. 28; Vanderwier 2012, pers. obs.), *E. altissimum* was not detected at these two locations. Since it has not been detected at the Broderson occurrence since 1979 or at the Morro Dunes occurrence since 1985, we now consider those two occurrences to be extirpated. Furthermore, the number of individuals reported for each of the extant Los Osos occurrences (Ridge Trail, Hazard South, and Water Tank) has not increased since their detection in the area in 1972 (Service 2013, Table 1). Additionally, anecdotal information indicates that the Indian Knob occurrence did not increase noticeably between the 1990s and 2006 (Vanderwier 2006. pers. obs.). As we do not possess data from long-term monitoring or research, it is not possible for us to know if the currently extant occurrences are self-sustaining, stable, or increasing. We do conclude, however, that two of the occurrences (Broderson and Morro Dunes) considered extant at the time of listing are likely now extirpated. Therefore, we conclude that this downlisting criterion has not been achieved, a conclusion that we also reached in the 2009 5-year review (Service 2009, p. 7).

Overall, these and other data that we have analyzed indicate that though some progress has been made toward meeting the first downlisting criteria (habitat protection), the other two downlisting criteria (surrounding habitat is protected in amounts adequate to permit management of the vegetation community using prescribed fire, and populations are projected to be self-sustaining and either stable or increasing as determined by long-term monitoring and research results) have not been met.

Additional information on recovery and recovery plan implementation are described in the ''Recovery Progress'' section of the species report (Service 2013, pp. 39–43).

Finding

An assessment of the need for a species' protection under the Act is based on whether a species is in danger of extinction or likely to become so because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E)

other natural or manmade factors affecting its continued existence. As required by section 4(a)(1) of the Act, we conducted a review of the status of this plant and assessed the five factors to evaluate whether *Eriodictyon altissimum* is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. We reviewed information presented in the 2011 petition, information available in our files and gathered through our 90-day finding in response to this petition, and other available published and unpublished information. We also consulted with species experts and land management staff with California Department of Fish and Wildlife (CDFW), California Department of Parks and Recreation (CDPR), the County of San Luis Obispo, the City of San Luis Obispo, and local biologists who are actively managing *Eriodictyon altissimum.*

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the exposure causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant the threat is. If the threat is significant, it may drive, or contribute to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act.

Due to increased conservation and management, the primary threat impacting *Eriodictyon altissimum* at the time of listing has been largely reduced and is no longer posing a substantial threat to the species and its habitat. The 2009 5-year review recognized the threat from loss of habitat that was anticipated to result from residential development, surface mining, and oil well drilling has largely receded; thus, we recommended reclassification of *E. altissimum* from endangered to threatened. However, since that time, we have received substantial new information about threats impacting *E. altissimum.* Additionally, surveys of *E. altissimum* since 2009 indicate two occurrences considered extant in 2009 are likely extirpated, reducing the number of extant occurrences to five.

New information received since the 2009 5-year review indicates threats to *Eriodictyon altissimum* from invasive, nonnative species (Service 2013, pp. 11–13). Observations by local botanists and other knowledgeable persons indicate that the habitat surrounding the Los Osos area occurrences is being negatively affected by competition from invasive, nonnative plant species, in particular *Ehrharta calycina* (Factor A). *Ehrharta calycina* in the Los Osos area has the ability to spread rapidly if a fire occurs, thus potentially outcompeting *Eriodictyon altissimum* in post-fire conditions (Factor E). Because invasive, nonnative species (particularly *Ehrharta calycina*) currently affect three of five extant occurrences, and due to the lack of management to counter the spread of *Ehrharta calycina* and other invasive, nonnative grasses, we find this threat impacts *Eriodictyon altissimum* and that it is contributing to the overall impacts that place this species in danger of extinction throughout all of its range.

Altered fire regime (Factors A and E) is also affecting the continued existence of *Eriodictyon altissimum.* Fire has largely been absent in *E. altissimum* habitat across its range in recent years, resulting in a buildup of fuel in an already highly fire-susceptible habitat. Furthermore, restrictions on controlled burning within habitat that supports *E. altissimum* are likely to continue due to the presence of other listed species and residential development within *E. altissimum* habitat. Both *E. altissimum* and its habitat require periodic fire, though the specific fire return interval is uncertain for *E. altissimum.* Therefore, we find that the altered fire regime is negatively affecting *E. altissimum* and is contributing to the overall impacts that place this species in danger of extinction throughout all of its range.

Altered fire regimes and invasive, nonnative species work in synergy to increase threats to *Eriodictyon altissimum* (Factors A and E). The proliferation of nonnative grasses in chaparral habitat increases the likelihood of high intensity wildfire, while increases in high intensity wildfires increase the ability of nonnative grasses to invade recently burned areas and outcompete native chaparral species, such as *E. altissimum.* Therefore, we find that the combination of fire and invasive, nonnative grasses exacerbate the overall degree of impacts that threaten the continued survival and recovery of *E. altissimum.*

Eriodictyon altissimum is also threatened by small population size, particularly given the clonal nature and suspected self-incompatibility of the species (Factor E). The remaining three occurrences in the Los Osos area currently consist of fewer than 50 individuals and the entire range of the species is estimated to be 90 mi^2 (233 km^2) or less; thus, the combined effect of small population size and a limited distribution makes *E. altissimum* vulnerable to stochastic events that could result in the extirpation of these occurrences (Factor E). Additionally, though existing regulatory mechanisms are providing important protections to *E. altissimum* and its habitat, there are not any mechanisms in place that can address the threat of altered fire regime and invasive, nonnative grasses (Factor D). Climate change (Factors A and E) may also impact the species; however, we lack specific data to project how climate change will affect *E. altissimum* and its coastal chaparral habitat. We did not find any evidence that threats attributable to Factor B (overutilization for commercial, recreational, scientific, or educational purposes) or Factor C (disease or predation) are currently impacting the species.

In conclusion, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. After review of the information pertaining to the five statutory factors, we find that ongoing threats are of sufficient imminence, intensity, and magnitude to indicate that *Eriodictyon altissimum* is presently in danger of extinction throughout all of its range. Therefore, we find that *E. altissimum* continues to meet the definition of an endangered species (i.e., is likely to become in danger of extinction throughout all or a portion of its range).

National Environmental Policy Act

We determined we do not need to prepare an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this finding is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2013–0116 or upon request from the Deputy Field Supervisor, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this finding are the staff members of the Pacific Southwest Regional Office and the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 27, 2013.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–29410 Filed 12–10–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS–R7–MB–2013–0109; FF09M21200–123–FXMB1231099BPP0L2]

RIN 1018–BA02

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2014 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes migratory bird subsistence harvest regulations in Alaska for the 2014 season. These regulations would enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking proposes region-specific regulations that would go into effect on April 2, 2014, and expire on August 31, 2014.

DATES: We will accept comments received or postmarked on or before February 10, 2014. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 27, 2014.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R7–MB–2013–0109.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R7–MB–2013–0109; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept email or faxes. 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 Public Comment Procedures section below for more information).

FOR FURTHER INFORMATION CONTACT: Donna Dewhurst, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 786–3499.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

To ensure that any action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in the **ADDRESSES** section. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information, such as your address, telephone number, or email address—will be posted on the Web site. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on *http://www.regulations.gov.*

In addition, comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on *http://www.regulations.gov.* Search for FWS–R7–MB–2013–0109, which is the docket number for this rulemaking.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service; 4501 N. Fairfax Drive, Room 4107, Arlington, VA 22203–1610.

Public Availability of Comments

As stated above in more detail, before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Why is this rulemaking necessary?

This rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. This rule proposes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2014. This rule proposes a list of migratory bird season openings and closures in Alaska by region.

How do I find the history of these regulations?

Background information, including past events leading to this rulemaking, accomplishments since the Migratory

Bird Treaties with Canada and Mexico were amended, and a history, was originally addressed in the **Federal Register** on August 16, 2002 (67 FR 53511) and most recently on February 21, 2013 (78 FR 11988).

Recent **Federal Register** documents, which are all proposed rules setting forth the annual harvest regulations, are available at *http://alaska.fws.gov/ambcc/regulations.htm* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

What is the process for issuing regulations for the subsistence harvest of migratory birds in Alaska?

The U.S. Fish and Wildlife Service (Service or we) is proposing migratory bird subsistence harvest regulations in Alaska for the 2014 season. These regulations would enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These proposed regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

We opened the process to establish regulations for the 2014 spring and summer subsistence harvest of migratory birds in Alaska in a proposed rule published in the **Federal Register** on April 9, 2013 (78 FR 21200), to amend 50 CFR part 20. While that proposed rule dealt primarily with the regulatory process for hunting migratory birds for all purposes throughout the United States, we also discussed the background and history of Alaska subsistence regulations, explained the annual process for their establishment, and requested proposals for the 2014 season. The rulemaking processes for both types of migratory bird harvest are related, and the April 9, 2013, proposed rule explained the connection between the two.

The Alaska Migratory Bird Co-management Council (Co-management Council) held meetings on April 3–4, 2013, to develop recommendations for changes that would take effect during the 2014 harvest season. These recommendations were presented first to the Flyway Councils and then to the Service Regulations Committee (SRC) at the committee's meeting on July 23–25, 2013.

Who is eligible to hunt under these regulations?

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial migratory bird subsistence harvest to about 13 percent of Alaska residents. High-populated, roaded areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska were excluded from eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on criteria set forth in 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and Yakutat, with a combined population of 2,459, based on the latest census information at that time.

In 2007, we enacted the Alaska Department of Fish and Game's request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This action excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village, and Ferry, with a combined population of 2,812.

In 2012, we received a request from the Native Village of Eyak to include Cordova, Alaska, for a limited season that would legalize the traditional gathering of gull eggs and early season waterfowl.

What is different in the region-specific regulations for 2014?

In 2011, we received a request by the Fairbanks Native Association asking that regulations be developed that would allow residents who live in excluded areas be able to participate in the spring/summer subsistence migratory bird harvest. This would permit tribal members currently living in excluded areas to openly and traditionally continue their Native traditional hunting practices and provide for the cultural and traditional needs for spring/summer waterfowl. This proposal request was tabled by the Co-management Council until exact wording could be worked out by the Invitation Subcommittee of the Council. Language was proposed to amend 50 CFR 92.5, Subpart D, and recommended for passage by the Co-management Council at their April 2013 meeting.

Upon legal review by individuals in the Department of the Interior's Office of the Solicitor and the Service's Law Enforcement Division, the language was amended by the Service working with the Invitation Subcommittee. The primary legal concerns were deviations from the language in the Letter of Submittal de-emphasizing that the purpose of allowing residents who live in excluded areas to be able to participate in the spring/summer subsistence migratory bird harvest is to assist immediate family members still residing in a village in an included area. This revision was approved via phone poll by the Co-management Council in July 2013. The revised language was approved by the SRC on July 25, 2013.

In 2012, the Native Village of Eyak requested to add residents of Cordova, Alaska, onto the list of included subsistence communities based on criteria set forth in 50 CFR 92.5(c). They stated that this would allow for the legal traditional gathering of gull eggs and early season hunting of migratory waterfowl (and cranes) to subsistence residents. The Copper River barrier islands afford traditional location for gull egg gathering and early spring migratory waterfowl hunting. The harvest season requested would be in Prince William Sound Game Management Units 6C and 6D (barrier islands only), to open a waterfowl hunting season, April 2–30, and a gull egg gathering season, May 1–31, primarily for the residents of Cordova. Special registration permits would be required and hunting would be done from boats or ATVs. The Native Village of Eyak worked closely with the Service's Migratory Bird Management Office to restrict harvest to protect and conserve dusky Canada geese, trumpeter swans, and shorebirds. This subsistence harvest would require the possession of special registration permits to help ensure harvesting is conducted only by residents of included areas. The SRC approved inclusion of Cordova at their meeting on July 25, 2013.

How will the service ensure that the subsistence harvest will not raise overall migratory bird harvest or threaten the conservation of endangered and threatened species?

We have monitored subsistence harvest for the past 25 years through the use of annual household surveys in the most heavily used subsistence harvest areas, such as the Yukon–Kuskokwim Delta. In recent years, more intensive

surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered from regions still reporting some subsistence harvest of listed or candidate species.

Spectacled and Steller's Eiders

Spectacled eiders *(Somateria fischeri)* and the Alaska-breeding population of Steller's eiders *(Polysticta stelleri)* are listed as threatened species. Their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to hunting, although harvest surveys and Service documentation indicate both species have been taken in several regions of Alaska.

The Service has dual objectives and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these objectives continue to be challenging, they are not irreconcilable, providing the proposed regulations continue to protect threatened species, measures to remedy documented threats are implemented, and the subsistence community and other conservation partners commit to working together. With these dual objectives in mind, the Service, working with North Slope partners, developed measures in 2009, to further reduce the potential for shooting mortality or injury of closed species. These conservation measures included: (1) Increased waterfowl hunter outreach and community awareness through partnering with the North Slope Migratory Bird Task Force; (2) continued enforcement of the migratory bird regulations that are protective of listed eiders; and (3) in-season Service verification of the harvest to detect taking of any threatened eider species.

This proposed rule continues to focus on the North Slope from Barrow to Point Hope because Steller's eiders from the listed Alaska breeding population are known to breed and migrate there. These proposed regulations are designed to address several ongoing eider management needs by clarifying for subsistence users that (1) Service law enforcement personnel have authority to verify species of birds possessed by hunters, and (2) it is illegal to possess any species of bird closed to harvest. This rule also describes how the Service's existing authority of emergency closure would be implemented, if necessary, to protect Steller's eiders. We are always willing to discuss regulations with our partners on the North Slope to ensure protection of closed species as well as provide subsistence hunters an opportunity to harvest migratory birds in a way that maintains the culture and traditional harvest of the community. The regulations pertaining to bag checks and possession of illegal birds are deemed necessary to verify that no closed eider species are taken during the legal subsistence hunt.

The Service is aware of and appreciates the considerable efforts by North Slope partners to raise awareness and educate hunters on Steller's eider conservation via the bird fair, meetings, radio shows, signs, school visits, and one-on-one contacts. We also recognize that no listed eiders have been documented shot from 2009 through 2012, even though Steller's eiders nested in the Barrow area from 2010 through 2013. One Steller's eider and one spectacled eider were found shot during the summer of 2013, and are under investigation. The Service acknowledges progress made with the other eider conservation measures including partnering with the North Slope Migratory Bird Task Force for increased waterfowl hunter awareness, continued enforcement of the regulations, and in-season verification of the harvest. Our primary strategy to reduce the threat of shooting mortality of threatened eiders is to continue working with North Slope partners to conduct education, outreach, and harvest monitoring. In addition, the emergency closure authority provides another level of assurance if an unexpected amount of Steller's eider shooting mortality occurs (50 CFR 92.21 and 50 CFR 92.32).

In-season harvest monitoring information would be used to evaluate the efficacy of regulations, conservation measures, and outreach efforts. Conservation measures are being continued by the Service and the North Slope Borough, with the amount of effort and emphasis being based on regulatory adherence. Specifically, local communities have continued to develop greater responsibility for taking actions to ensure Steller's and spectacled eider conservation and recovery, and based on last year's observations, local hunters have demonstrated greater compliance with hunting regulations.

The longstanding general emergency closure provision at 50 CFR 92.21 specifies that the harvest may be closed or temporarily suspended upon finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any migratory bird population. With regard to Steller's eiders, the regulation at 50 CFR 92.32, carried over from the past 3 years, would clarify that we would take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, and that action could include temporary or long-term closures of the harvest in all or a portion of the geographic area open to harvest. If mortality of threatened eiders occurs, we would evaluate each mortality event by criteria such as cause, quantity, sex, age, location, and date. We would consult with the Co-management Council when we are considering an emergency closure. If we determine that an emergency closure is necessary, we would design it to minimize its impact on the subsistence harvest.

Yellow-Billed Loon

Yellow-billed loons (*Gavia adamsii*) are a candidate species for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Their migration and breeding distribution overlaps with where the spring and summer migratory bird hunt is open in Alaska. Yellow-billed loons are closed to hunting, but harvest surveys have indicated that on the North Slope and St. Lawrence Island some take does occur. Most of the yellow-billed loons reported harvested on the North Slope were found to be entangled loons salvaged from subsistence fishing nets as described below. The Service would continue outreach efforts in both areas in 2014, engaging partners to decrease the take of yellow-billed loons.

Consistent with the request of the North Slope Borough Fish and Game Management Committee and the recommendation of the Co-management Council, this rule proposes to continue the provisions originally established in 2005, to allow subsistence use of yellow-billed loons inadvertently entangled in subsistence fishing (gill) nets on the North Slope. Yellow-billed loons are culturally important to the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons would be allowed to be kept if found entangled in fishing nets in 2014, under this provision. This proposed provision does not authorize intentional harvest of yellow-billed loons, but allows use of those loons inadvertently entangled during normal subsistence fishing activities.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (16 U.S.C. 1536) requires the Secretary of the Interior to ''review other programs administered by her and utilize such programs in furtherance of the purposes of the Act'' and to ''insure that any action authorized, funded, or carried 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 [critical] habitat. . . .'' Prior to issuance of annual spring and summer subsistence regulations, we would consult under section 7 of the Endangered Species Act of 1973, as amended (Act), to ensure that the 2014 subsistence harvest is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitats, and that the regulations are consistent with conservation programs for those species. Consultation under section 7 of the Act for the annual subsistence take regulations may cause us to change these regulations. Our biological opinion resulting from the section 7 consultation is a public document available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, at 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to ''issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.''

Required Determinations

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

The Department of the Interior certifies that this rule would not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. This proposed rule would legalize a pre-existing subsistence activity, and the resources harvested would be consumed by the harvesters or persons within their local community.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Would not have an annual effect on the economy of $100 million or more. It proposes to legalize and regulate a traditional subsistence activity. It would not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities that would be regulated under this proposed rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this proposed rule would derive from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska qualify as small businesses. We have no reason to believe that this proposed rule would lead to a disproportionate distribution of benefits.

(b) Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This proposed rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this proposed rule would not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. The proposed rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Co-management Council would require travel expenses for some Alaska Native organizations and local governments. In addition, they would assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In a Notice of Decision (65 FR 16405; March 28, 2000), we identified 7 to 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game would also incur expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska would be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this proposed rule would not have significant takings implications. This proposed rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism

summary impact statement. We discuss effects of this proposed rule on the State of Alaska in the Unfunded Mandates Reform Act section above. We worked with the State of Alaska to develop these proposed regulations. Therefore, a federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this proposed rule, has determined that it would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations With Native American Tribal Governments

Consistent with Executive Order 13175 (65 FR 67249; November 6, 2000), ''Consultation and Coordination with Indian Tribal Governments'', and Department of Interior policy on Consultation with Indian Tribes (December 1, 2011), we will send letters to all 229 Alaska Federally recognized Indian tribes. Consistent with Congressional direction (Pub. L. 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Pub. L. 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267), we will be sending letters to approximately 200 Alaska Native corporations and other tribal entities in Alaska soliciting their input as to whether or not they would like the Service to consult with them on the 2014 migratory bird subsistence harvest regulations.

We implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They would develop recommendations for among other things: seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies would involve village councils to the maximum extent possible in all aspects of management. To ensure maximum input at the village level, we required each of the 11 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice annually to review and/or submit proposals to the Statewide body.

Paperwork Reduction Act

This proposed rule has been examined under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and does not contain any new collections of information that require Office of Management and Budget (OMB) approval. OMB has renewed our collection of information associated with the voluntary annual household surveys used to determine levels of subsistence take. The OMB control number is 1018–0124, which now expires June 30, 2016. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.) Consideration

The annual regulations and options are considered in the environmental assessment, ''Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2014 Spring/Summer Harvest,'' September 20, 2013. Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at *http://www.regulations.gov.*

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive Order; it would allow only for traditional subsistence harvest and would improve conservation of migratory birds by allowing effective regulation of this harvest. Further, this proposed rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, we propose to amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart A—General Provisions

■ 2. Amend § 92.5 by revising paragraph (d) to read as follows:

§ 92.5 Who is eligible to participate?

* * * * *

(d) *Participation by permanent residents of excluded areas.* Immediate family members who are residents of excluded areas may participate in the customary spring and summer subsistence harvest in a village's subsistence area with permission of the village council, to assist indigenous inhabitants in meeting their nutritional and other essential needs or for the teaching of cultural knowledge. A letter of invitation will be sent by the village council to the hunter with a copy to the Executive Director of the Co-management Council, who will inform law enforcement.

* * * * *

Subpart D—Annual Regulations Governing Subsistence Harvest

■ 3. Amend subpart D by adding § 92.31 to read as follows:

§ 92.31 Region-specific regulations.

The 2014 season dates for the eligible subsistence harvest areas are as follows:

(a) *Aleutian/Pribilof Islands Region.*

(1) Northern Unit (Pribilof Islands):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.

(iv) Special Tundra Swan Closure: All hunting and egg gathering closed in units 9(D) and 10.

(3) Western Unit (Umnak Island west to and including Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) *Yukon/Kuskokwim Delta Region.*

(1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. This 30-day period would occur between June 1 and August 15 of each year. A press release announcing the actual closure dates would be

forwarded to regional newspapers and radio and television stations.

(3) Special Black Brant and Cackling Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates would be forwarded to regional newspapers and radio and television stations.

(c) *Bristol Bay Region.*

(1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) *Bering Strait/Norton Sound Region.*

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) *Kodiak Archipelago Region,* except for the Kodiak Island roaded area, which is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larsen Bay. Waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

(f) *Northwest Arctic Region.*

(1) Season: April 2–June 9 and August 15–August 31 (hunting in general); waterfowl egg gathering May 20–June 9 only; seabird egg gathering May 20–July 12 only; hunting molting/non-nesting waterfowl July 1–July 31 only.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) *North Slope Region.*

(1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30′ W and south of the latitude line 70°45′ N to the west bank of the Ikpikpuk River, and everything south of the latitude line 69°45′ N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area would consist of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30′ W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30′ W and north of the latitude line 70°45′ N to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45′ N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 6–June 6 and July 7–August 31 for king and common eiders; April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: yellow-billed loons. Annually, up to 20 yellow-billed loons total for the region may be inadvertently entangled in subsistence fishing nets in the North Slope Region and kept for subsistence use.

(5) North Coastal Zone (Cape Thompson north to Point Hope and east along the Arctic Ocean coastline around Point Barrow to Ross Point, including Iko Bay, and 5 miles inland).

(i) No person may at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of subpart C and D of this part.

(ii) Upon request from a Service law enforcement officer, hunters taking, attempting to take, or transporting migratory birds taken during the subsistence harvest season must present them to the officer for species identification.

(h) *Interior Region.*

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14 only.

(2) Closure: June 15–July 15.

(i) *Upper Copper River Region* (Harvest Area: Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) *Gulf of Alaska Region.*

(1) Prince William Sound Area West (Harvest area: Unit 6[D]), (Eligible Chugach communities: Chenega Bay, Tatitlek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Prince William Sound Area East (Harvest area: Units 6[C]and [B]—Barrier Islands between Strawberry Channel and Softtuk Bar), (Eligible Chugach communities: Cordova):

(i) Season: April 2–April 30 (hunting); May 1–May 31 (gull egg gathering).

(ii) Closure: May 1–August 31 (hunting); April 2–30 and June 1–August 31 (gull egg gathering).

(iii) Species Open for Hunting: greater white-fronted goose; snow goose; gadwall; Eurasian and American wigeon; blue-winged and green-winged teal; mallard; northern shoveler; northern pintail; canvasback; redhead; ring-necked duck; greater and lesser scaup; king and common eider; harlequin duck; surf, white-winged, and black scoter; long-tailed duck; bufflehead; common and Barrow's goldeneye; hooded, common, and red-breasted merganser; and sandhill crane. Species open for egg gathering: glaucous-winged, herring, and mew gulls.

(iv) Use of Boats/All-Terrain Vehicles: No hunting from motorized vehicles or any form of watercraft.

(v) Special Registration: All hunters or egg gathers must possess an annual permit; available from the Cordova offices of the Native Village of Eyak and the U.S. Forest Service.

(3) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of

Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) *Cook Inlet* (Harvest area: portions of Unit 16[B] as specified below) (Eligible communities: Tyonek only):

(1) Season: April 2–May 31—That portion of Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31—That portion of Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) *Southeast Alaska.*

(1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting (50 CFR Part 100.3(a)):

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands):

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay (Icy Cape to Point Riou), and coastal lands and islands bordering the Gulf of Alaska from Point Manby southeast to Dry Bay):

(i) Season: glaucous-winged gull egg gathering: May 15–June 30.

(ii) Closure: July 1–August 31.

■ 4. Amend subpart D by adding § 92.32 to read as follows:

§ 92.32 Emergency regulations to protect Steller's eiders.

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller's eiders *(Polysticta stelleri),* the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or Statewide long-term closures of all subsistence migratory bird hunting. These closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller's eiders to be taken no longer exists.

Dated: November 22, 2013.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–29300 Filed 12–10–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120328229–3656–01]

RIN 0648–BC09

Atlantic Highly Migratory Species; 2006 Consolidated Highly Migratory Species Fishery Management Plan; Amendment 7; Reopening of Comment Period

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

ACTION: Proposed rule; Reopening of comment period.

SUMMARY: On August 21, 2013, NMFS published the proposed rule for Draft Amendment 7 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) to control bluefin incidental catch (landings and dead discards) in the pelagic longline fishery, enhance reporting in all categories, and ensure U.S. compliance with the ICCAT-recommended quota. As described in the proposed rule, the proposed measures include Allocation measures, Area-Based measures, Bluefin Quota Controls, Enhanced Reporting measures, and other measures that modify rules with respect to how the various quota categories utilize quota. In the proposed rule, NMFS announced the end of the comment period as October 23, 2013, which would allow an approximately 60-day comment period. On September 18, 2013, NMFS extended the comment period through December 10, 2013, in order to provide additional opportunities for the public and other interested parties to comment on the proposed rule, and to provide adequate time for constituents to consider potential changes to the regulatory environment resulting from any new recommendations by the International Commission for the Conservation of Atlantic Tunas at its November 2013 meeting. However, due to the government shutdown and NMFS' inability to respond to constituents on this complex rule during that time frame and based on the comments received to date requesting an extension due to the complexity and interplay of the measures covered in the DEIS, NMFS is reopening the comment period for this action until January 10, 2014, to provide additional opportunity for informed public comment.

DATES: The deadline for comments on the proposed rule published at 78 FR 52032 has been reopened from December 10, 2013 to January 10, 2014.

ADDRESSES: You may submit comments on the proposed rule, as published on August 21, 2013 (78 FR 52032), identified by ''NOAA–NMFS–2013–0101,'' by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0101,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Do not submit electronic comments to individual NMFS staff.
- *Mail:* Submit written comments to: Thomas Warren, Highly Migratory Species Management Division, NMFS, 55 Great Republic Drive, Gloucester, MA 01930. Please mark the outside of the envelope ''Comments on Amendment 7 to the HMS FMP.''
- *Fax:* 978–281–9347, Attn: Thomas Warren.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and generally will be posted for public viewing on *www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Supporting documents including the draft Environmental Impact Statement (EIS), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) for this action are available from the Highly Migratory Species Management Division Web site at http://www.nmfs.noaa.gov/sfa/hms/FMP/AM7.htm or by sending your request to Thomas Warren at the mailing address or phone numbers specified above.

FOR FURTHER INFORMATION CONTACT: Thomas Warren or Brad McHale at 978–281–9260; Craig Cockrell or Jennifer Cudney at 301–427–8503.

SUPPLEMENTARY INFORMATION: The North Atlantic tuna fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Under the Magnuson-Stevens Act, NMFS must manage fisheries to maintain optimum yield on a continuing basis while preventing overfishing. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate to carry out recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS. Management of these species is described in the 2006 Consolidated HMS FMP, which is implemented by regulations at 50 CFR part 635. Copies of the 2006 Consolidated HMS FMP and previous amendments are available from the Highly Migratory Species Management Division Web page at *http://www.nmfs.noaa.gov/sfa/hms/FMP/AM7.htm* or from NMFS on request (see **FOR FURTHER INFORMATION CONTACT**).

NMFS is amending the 2006 Consolidated HMS FMP to address bluefin tuna (BFT) management due to recent trends and characteristics of the bluefin fishery (78 FR 52032). This action is necessary to meet domestic management objectives of the Magnuson-Stevens Fishery Management Act including preventing overfishing, achieving optimum yield, and minimizing bycatch to the extent practicable, as well as the objectives of the ATCA and obligations pursuant to binding recommendations of ICCAT. NMFS takes these actions to reduce bluefin dead discards and account for dead discards in all categories; optimize fishing opportunities in all categories; enhance reporting and monitoring; and adjust other aspects of the 2006 Consolidated HMS FMP as necessary. As described in the proposed rule, the proposed management measures include: (1) Allocation measures that would make modifications to how the U.S. bluefin quota is allocated among the quota categories; (2) area-based measures that would implement restrictions on the use of pelagic longline gear in various time and area combinations, modify gear restrictions, or provide conditional access to current pelagic longline closed areas; (3) bluefin Quota Controls that would strictly limit the total catch (landings and dead discards) of bluefin in the Longline category using different strategies; (4) enhanced reporting measures that would implement a variety of new bluefin reporting requirements; and (5) other measures that would make modifications to the rules that control how the various quota categories utilize quota, and implement a northern albacore tuna quota.

Public Comment Reopening

In the proposed rule, NMFS announced the end of the comment period as October 23, 2013, which allowed an approximate 60-day comment period. On September 18, 2013 (78 FR 57340) NMFS extended the comment period through December 10, 2013, to provide constituents additional time to consider the proposed rule in light of any new recommendations by International Commission for the Conservation of Atlantic Tunas at the November 2013 meeting. However, due to the government shut down and NMFS' inability to respond to constituents on this complex rule during that time frame and based on the comments received to date requesting an extension due to the complexity and interplay of the measures covered in the DEIS, NMFS is reopening the comment period for this action until January 10, 2014, to provide additional opportunity for informed public comment.

These comments will assist NMFS in determining final management measures to conserve and manage the BFT resource and fisheries, consistent with the Magnuson-Stevens Act, ATCA, and the 2006 Consolidated HMS FMP.

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: December 6, 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.

[FR Doc. 2013–29549 Filed 12–6–13; 4:15 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 238
Wednesday, December 11, 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

Farm Service Agency

Information Collection; Disaster Assistance (General)

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension and revision of a currently approved information collection in support of Disaster Assistance programs. The information collection is needed to identify disaster areas and establish eligibility for both primary counties and those counties contiguous to such counties for certain assistance from FSA. The total burden hours have been revised to reflect the number of Secretarial requests for natural disaster assistance during the 2013 fiscal year.

DATES: We will consider comments that we receive by February 10, 2014.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to: *www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Dan McGlynn, Acting Director, Production, Emergencies and Compliance Division, Farm Service Agency, USDA, Mail Stop 0517, 1400 Independence Avenue SW., Washington, DC 20250–0517.You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Dan McGlynn at the above addresses.

FOR FURTHER INFORMATION CONTACT: Steve Peterson, Branch Chief, Disaster Assistance Branch, (202) 720–7641.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Disaster Assistance Program (General).

OMB Number: 0560–0170.

Expiration Date of Approval: 04/30/2014.

Type of Request: Extension with revision.

Abstract: The information collection is necessary for FSA to effectively administer the regulations relating to identifying disaster areas for the purpose of making emergency loans available. Emergency Loans are available to qualified and eligible farmers and ranchers who have suffered eligible weather-related physical or production losses or both in such areas. Before emergency loans can become available, the information needs to be collected to determine if the disaster areas meet the criteria of having a qualifying loss in order to be considered as an eligible county.

Type of Respondents: Farmers and ranchers.

Estimate of Average Time To Respond: 0.483 hour per response.

Estimated Number of Respondents: 926.

Estimated Number of Report Filed per Respondent: 1.

Estimated Total Annual Number of Responses: 1015.

Estimated Total Annual Burden hours: 489.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed on December 3, 2013.

Candace Thompson,

Acting Administrator, Farm Service Agency.

[FR Doc. 2013–29512 Filed 12–10–13; 8:45 am]

BILLING CODE 3410–05–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: Northeast Multispecies Days-at-Sea Leasing Program.

OMB Control Number: 0648–0475.

Form Number(s): NA.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 1,000.

Average Hours per Response: Application to lease: 5 minutes; application to downgrade: 1 hour.

Burden Hours: 88.

Needs and Uses: This request is for an extension of this information collection.

National Marine Fisheries Service (NMFS) Northeast Region manages the Northeast Multispecies fishery of the Exclusive Economic Zone (EEZ) of the Northeastern United States through the Northeast Multispecies Fishery Management Plan (FMP). The New England Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The NE Multispecies Days-at-Sea (DAS) leasing program was implemented in 2004 as a result of Amendment 13 (69 FR 22906) which substantially reduced the number of DAS available for the NE multispecies vessels. To mitigate some of the adverse impact associated with the reduction in DAS, the NE Multispecies Leasing Program was developed to enable

vessels to increase their revenue by either leasing additional DAS from another vessel to increase their participation on the fishery, or by leasing their unused allocated DAS to another vessel. Information is submitted with the two types of request, and tracked by NMFS.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and occasion.

Respondent's Obligation: Required to obtain or retain benefits.

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: December 5, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–29502 Filed 12–10–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[12/3/2013 through 12/05/2013]

Firm name	Firm address	Date accepted for investigation	Product(s)
Winding Glen Woodcraft, Inc. dba Christiana Cabinetry.	504 Rosemont Avenue, Atglen, PA 19310.	12/4/2013	The firm manufactures kitchen furniture and cabinetry.
INTEK Corporation	290 Independence Drive, Union, MO 63084.	12/3/2013	The firm is a manufacturer of electric heating elements and modules.
Archer Machine	482 Sokokis Ave., P.O. Box 536, Limington, ME 04049.	12/4/2013	The firm manufactures commercial valve and valve components.
Shelby Industries, LLC	175 McDaniels Road, Shelbyville, KY 40065.	12/5/2013	The firm manufactures winches, couplers, jacks and accessory items for trucks.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: December 5, 2013.

Michael DeVillo,

Eligibility Examiner.

[FR Doc. 2013–29536 Filed 12–10–13; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1921]

Grant of Authority; Establishment of a Foreign-Trade Zone Under the Alternative Site Framework Northwest Iowa

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Northwest Iowa Development Corporation (the Grantee) has made application to the Board (B–4–2013, docketed 1/15/2013), requesting the establishment of a foreign-trade zone under the ASF with a service area of Cherokee, Lyon, O'Brien, Osceola, Plymouth and Sioux Counties, Iowa, adjacent to the Sioux Falls Customs and Border Protection port of entry, proposed Site 1 would be categorized as a magnet site, and proposed Sites 2 and 3 would be categorized as usage-driven sites;

Whereas, notice inviting public comment has been given in the **Federal Register** (78 FR 4382–4383, 1/22/2013) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the

examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 288, as described in the application, and subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit, to an ASF sunset provision for magnet sites that would terminate authority for Site 1 if not activated within five years from the date of approval, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 2 and 3 if no foreign-status merchandise is admitted for a *bona fide* customs purpose within three years from the date of approval.

Signed at Washington, DC, this 26th day of November 2013.

Penny Pritzker,

Secretary of Commerce, Chairman and Executive Officer, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–29461 Filed 12–10–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–105–2013]

Notification of Proposed Production Activity, Crosman Corporation (Airguns), Bloomfield and Farmington, New York

Crosman Corporation (Crosman) submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) FTZ Board for its facilities in Bloomfield and Farmington, New York within a proposed foreign-trade zone in Ontario County, New York (FTZ Docket B–80–2013, 78 FR 53127–53128, 8/28/2013). The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on December 4, 2013.

The Crosman facilities would be located within a subzone of the proposed Ontario County zone. The facilities are used for the inspection, assembly, kitting, testing and packaging of airguns. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Crosman from customs duty payments on the foreign status materials/components used in export production. On its domestic sales, Crosman would be able to choose the duty rates during customs entry procedures that apply to airguns, break barrel airguns, variable pump airguns, CO_2 airguns, and airsoft guns (duty rate ranges from duty-free to 3.9%) for the foreign status materials/components noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The materials/components sourced from abroad include: Liquid crystal and laser optical sights and mounts; gun cases and holsters with outer surface of plastic or textile material; telescopic sights for rifles; portable electrical lamps and flashlights; pistols, rifles and other guns which eject missiles by release of compressed air or gas, or by release of a spring mechanism or rubber held under tension; stocks and other parts for airgun rifles and pistols; imitation jewelry, such as dog tags; protective eyewear; nickel-cadmium storage batteries; fiber optic sights; spectacle lenses; and, electrical transformers with a power output not exceeding 50W (duty rate ranges from 1.5 to 17.6%). The request indicates that gun cases and holsters classified under HTSUS Subheading 4202.92 will be admitted to the zone in privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on such items.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 21, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: December 6, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–29595 Filed 12–10–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–104–2013]

Foreign-Trade Zone (FTZ) 100—Dayton, Ohio; Notification of Proposed Production Activity; THOR Industries, Inc. (Commercial Bus Manufacturing); Jackson Center, Ohio

The Greater Dayton Foreign-Trade Zone, Inc., grantee of FTZ 100, submitted a notification of proposed production activity to the FTZ Board on behalf of THOR Industries, Inc. (THOR), located in Jackson Center, Ohio. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 26, 2013.

THOR already has authority to produce recreational vehicles within FTZ Subzone 100D. The current request would add a finished product and a foreign-status component to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status component and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt THOR from customs duty payments on the foreign status components used in export production. On its domestic sales, THOR would be able to choose the duty rates during customs entry procedures that apply to commercial buses (duty rate of 2%) for the foreign status inputs noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The component sourced from abroad is: Chassis (duty rate of 25%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 21, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: December 5, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–29594 Filed 12–10–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–65–2013]

Foreign-Trade Zone 61—San Juan, Puerto Rico Application for Subzone, Parapiezas Corporation Amendment of Application

The Puerto Rico Trade & Export Company, grantee of FTZ 61, has amended its application requesting subzone status for the facility of Parapiezas Corporation (78 FR 28800, 5/16/2013). The grantee is now requesting that the proposed subzone consist of a new location at 869 Street, Intersection PR–22 Bo. Palmas, in Cataño, Puerto Rico. The subzone location initially proposed is no longer being requested. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 61.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 10, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 27, 2014.

A copy of the amended application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: December 6, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–29591 Filed 12–10–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–995]

Grain-Oriented Electrical Steel From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Yasmin Nair at (202) 482–3813 or Angelica Mendoza at (202) 482–3019, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2013, the Department of Commerce (the Department) initiated a countervailing duty investigation on grain-oriented electrical steel (GOES) from the People's Republic of China (PRC).[1] Currently, the preliminary determination is due no later than December 28, 2013.

Postponement of the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, if the petitioner makes a timely request for an extension in accordance with 19 CFR 351.205(e), section 703(c)(1)(A) of the Act allows the Department to postpone the preliminary determination until no later than 130 days after the date on which the Department initiated the investigation.

On December 2, 2013, the petitioners[2] submitted a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) to postpone the preliminary determination.[3] Therefore, in accordance with section 703(c)(1)(A) of the Act, we are fully extending the due date for the preliminary determination to not later than 130 days after the day on which the investigation was initiated. As a result, the deadline for completion of the preliminary determination is now March 3, 2014.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: December 4, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2013–29590 Filed 12–10–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Grain-Oriented Electrical Steel from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 78 FR 65265 (October 31, 2013).

[2] AK Steel Corporation (AK Steel), Allegheny Ludlum, LLC (Allegheny Ludlum), as well as the United Steelworkers, which represents employees of Allegheny Ludlum that are engaged in the production of GOES in the United States (collectively, the petitioners).

[3] *See* Letter from the Petitioners, entitled ''Investigation of Grain-Oriented Electrical Steel from the People's Republic of China: Request to Postpone Preliminary Determination,'' dated December 3, 2013.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; California Central Valley Angler Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 10, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Office, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Cindy Thomson, (831) 420–3911 or *Cindy.Thomson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) plans to collect data to increase the agency's understanding of the fishing patterns, preferences, and

expenditures of anglers who fish in the rivers of California's Central Valley. NMFS has engaged in major habitat restoration in the Central Valley to promote recovery of three ESA-listed salmonids (Sacramento River winter Chinook, Central Valley spring Chinook, Central Valley steelhead). The survey is intended to estimate the economic impact of the Central Valley recreational fishery and potential recreational benefits associated with habitat restoration such as improved fish passage. Information to be collected pertains to anglers' recreational fishing patterns, expenditures and demographics, and factors affecting trip frequency and location (e.g., travel distance, amenities, landscape features as well as quality of fishing). The data collected will provide NMFS, as well as state agency partners such as the California Department of Fish and Wildlife, with information useful for understanding the economic importance of Central Valley fisheries and potential recreational benefits associated with salmonid habitat restoration.

II. Method of Collection

A random sample of recreational anglers who fish on Central Valley rivers will be asked to complete a voluntary mail-based survey questionnaire.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 417.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comment are invited regarding: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 5, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–29459 Filed 12–10–13; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to practice before the Commission by former members and employees of the Commission.

DATES: Comments must be submitted on or before February 10, 2014.

ADDRESSES: Comments may be mailed to John P. Dolan, Office of General Counsel, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581. You may also submit comments, regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, by any of the following methods:

Agency Web site, via its Comments Online process: http://comments.cftc.gov. Follow the instructions for submitting comments through the Web site.

Mail: Send to Melissa Jurgens, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

Hand delivery/Courier: Same as Mail above.

Federal eRulemaking Portal: http://www.regulations.gov/search/index.jsp. Follow the instructions for submitting comments. Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION OR A COPY CONTACT: John P. Dolan at (202) 418–5220; fax: (202) 418–5524; email: *jdolan@cftc.gov* and refer to OMB Control No. 3038–0025.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

[1] 17 CFR 145.9.

• Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

• The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

• Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Title: Practice by Former Members and Employees of the Commission (OMB Control No. 3038–0025). This is a request for extension of a currently approved information collection.

Abstract: Commission Rule 140.735–6 governs the practice before the Commission of former members and employees of the Commission and is intended to ensure that the Commission is aware of any existing conflict of interest. The rule generally requires former members and employees who are employed or retained to represent any person before the Commission within two years of the termination of their CFTC employment to file a brief written statement with the Commission's Office of General Counsel.

Burden statement: The respondent burden for this collection is estimated to average .10 hours per response to file the brief written statement. This estimate 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; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 3.

Estimated number of responses: 4.5.

Estimated total annual burden on respondents: .10 hours.

Frequency of collection: On occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: December 6, 2013.

Melissa D. Jurgens,

Secretary of the Commission.

[FR Doc. 2013–29521 Filed 12–10–13; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the National Commission on the Structure of the Air Force

AGENCY: Director of Administration and Management, DoD.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce a Federal advisory committee closed meeting of the National Commission on the Structure of the Air Force (''the Commission'').

DATES: *Dates of Closed Meeting:* Wednesday, December 4, 2013 from 12:00 p.m. to 5:30 p.m.; Thursday, December 5, 2013 from 8:00 a.m. to 5:00 p.m.; and Friday, December 6, 2013, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: 2521 South Clark Street, Suite 200, Crystal City, VA 22202 and, as necessary, a secure video teleconferencing line.

FOR FURTHER INFORMATION CONTACT: Mrs. Marcia Moore, Designated Federal Officer, National Commission on the Structure of the Air Force, 1950 Defense Pentagon, Room 3A874, Washington, DC 20301–1950. Email: *marcia.l.moore12.civ@mail.mil.* Desk (703) 545–9113. Facsimile (703) 692–5625.

SUPPLEMENTARY INFORMATION: Due to difficulties finalizing the meeting agenda for the scheduled meeting of the National Commission on the Structure of the Air Force for December 4–6, 2013, the requirements of 41 CFR 102–3.150(a) were not met. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of Meeting: This meeting was held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The 3-day meeting was held to conduct a wargame among staff and Commissioner participants while exploring issues concerning the mix of the Active and Reserve Components and how to better invest in and manage human capital assets.

Relative to the force structure mix among the Active Component, Reserve Component, and the Air National Guard, the objectives of the wargame are to (1) assess the advantages and disadvantages of contending approaches to the future structure of the U.S. Air Force; (2) identify current policies, procedures, practices and legislation that need to change in order to make the future structure of the U.S. Air Force more effective; and (3) understand stakeholder interests in the future structure of the U.S. Air Force and assess their anticipated responses to the Commissions' findings and recommendations. Commissioners will pose as key stakeholders, which include the Secretary of Defense, the Joint Chiefs of Staff, the Secretary of the U.S. Air Force, the Chief of Staff of the U.S. Air Force, and the Combatant Commanders. As a result of the wargame, Commissioners will have a sharper understanding of the policies under consideration, a more rigorous analysis of the implications of their emerging findings, and a more credible basis for their recommendations.

Three teams will be formed and each will be assigned to develop a unique mix among the Active Component, Reserve Component, and the Air National Guard. One team will be instructed to develop a future U.S. Air Force with 65% Active Component and 35% Reserve Component. This force mix matches the force mix planned for fiscal year 2015. A second team will build a future U.S. Air Force with 55% Active Component and 45% Reserve Component. The third team will plan a future U.S. Air Force with 35% Active Component and 65% Reserve Component and Air National Guard. The team assignments, assumptions, and resources are designed solely for analytical purposes and must not be construed to imply the Commissioner's preference for any particular force structure as stated in this notice. The outcomes of the Active Component and Reserve Component force mix in the wargame will provide insight—not final answers. The insights gained from the wargame will highlight issues requiring further analysis. The first day of the wargame will be dedicated to reviewing how the wargame will be conducted. All teams are to be given the same set of assumptions, such as their resources will be constrained by the Budget Control Act and sequestration in accordance with the most stressing forecast developed by the DoD Office of Cost Assessment and Program Evaluation. Classified data will also be

taken from the U.S. Air Force's Alternative Program Objective Memorandum for fiscal year 2015. The teams' strategies will be governed by the fiscal year 2014 Defense Planning Guidance and Integrated Scenario Construct, which are both classified documents. The teams will be given the same quantitative boundaries, a decision support tool to define trade-offs among variables, and a re-balancing tool to balance the total force mix across the range of choices for all mission sets and Core Functions of the U.S. Air Force.

The second day of the meeting involves a crisis planning exercise for a hypothetical war scenario that occurs in 2018. The scenario employed will be adapted from the Chairman of the Joint Chief of Staff's Strategic Seminar involving a crisis that rapidly devolves into a multi-theater conflict. Each team will play the role of the U.S. Air Force as force provider to the Combatant Commands. The scenario requires maintaining a sizable force in the contiguous United States for homeland defense. The last day of the meeting will be reserved for the Commissioners to deliberate and answer the following questions:

Should the Air National Guard and Air Force Reserve be integrated into a single component?

Can the forms of mobilization be further reduced and rationalized?

Would it be effective to consider dissimilar designs for Reserve Component units conducting the same missions as Active Components?

Can additional functions be transferred to the civilian or contractor work forces?

Would a base realignment and closure process be prudent?

What legislative changes are needed?

What additional issues were identified by the wargame?

Meeting Accessibility: In accordance with section 10(d) of the FACA, 5 U.S.C. 552b, and 41 CFR 102–3.155, the DoD determined that the December 4–6, 2013 meeting will be closed to the public in its entirety. Specifically, the Director of Administration and Management, with the coordination of the DoD FACA Attorney, has determined in writing that this meeting will be closed to the public because it discussed classified information and matters covered by 5 U.S.C. 552b(c)(1).

Written Comments: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments to the Commission in response to the stated agenda of the open and/or closed meeting or the Commission's mission. The Designated Federal Officer (DFO) will review all submitted written statements before forwarding to the Commission. Written comments should be submitted to Mrs. Marcia Moore, DFO, via facsimile or electronic mail, the preferred modes of submission. Each page of the comment must include the author's name, title or affiliation, address, and daytime phone number. All contact information may be found in the **FOR FURTHER INFORMATION CONTACT** section. While written comments are forwarded to the Commissioners upon receipt, note that all written comments on the Commission's charge, as described in the 'Background' section, must be received by 5:00 p.m. on December 13, 2013 to be considered by the Commissioners for the final report. This deadline for emailed and faxed comments has been extended from November 29, 2013. The postmark deadline to mail comments was November 8, 2013.

Background

The National Commission on the Structure of the Air Force was established by the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). The Department of Defense sponsor for the Commission is the Director of Administration and Management, Mr. Michael L. Rhodes. The Commission is tasked to submit a report, containing a comprehensive study and recommendations, by February 1, 2014 to the President of the United States and the Congressional defense committees. The report will contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study. The comprehensive study of the structure of the U.S. Air Force will determine whether, and how, the structure should be modified to best fulfill current and anticipated mission requirements for the U.S. Air Force in a manner consistent with available resources.

The evaluation factors under consideration by the Commission are for a U.S. Air Force structure that—(a) meets current and anticipated requirements of the combatant commands; (b) achieves an appropriate balance between the regular and reserve components of the Air Force, taking advantage of the unique strengths and capabilities of each; (c) ensures that the regular and reserve components of the Air Force have the capacity needed to support current and anticipated homeland defense and disaster assistance missions in the United States; (d) provides for sufficient numbers of regular members of the Air Force to provide a base of trained personnel from which the personnel of the reserve components of the Air Force could be recruited; (e) maintains a peacetime rotation force to support operational tempo goals of 1:2 for regular members of the Air Forces and 1:5 for members of the reserve components of the Air Force; and (f) maximizes and appropriately balances affordability, efficiency, effectiveness, capability, and readiness.

Dated: December 5, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–29483 Filed 12–10–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License for a U.S. Government-Owned Invention

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e), and 37 CFR 404.7 (a)(1)(i), announcement is made of the intent to grant an exclusive, revocable license, to U.S. Patent No. 6,904912, issued June 14, 2005, entitled ''Automated Inhalation Toxicology Exposure System,'' and U.S. Patent No. 7,377,276, issued May 27, 2008, entitled, ''Automated Inhalation Toxicology Exposure System and Method,'' and related foreign rights. The intended licensee is Biaera Technologies, LLC, with its principal place of business at 277 Eastern Boulevard North, Suite 3, Hagerstown, MD 21740.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within

15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–29462 Filed 12–10–13; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant a Partially Exclusive License; Aviation Devices and Electronic Components, L.L.C.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Aviation Devices and Electronic Components, L.L.C. located at 1810 Mony Street, Ft. Worth, Texas 76102, a revocable, nonassignable, partially exclusive license throughout the United States (U.S.) in the fields of Adhesives, Sealants, Gaskets, Pastes and Tapes the Government-Owned inventions described in U.S. Patent No. 8,262,938: issued January 21, 2011, Navy Case No. PAX53 entitled ''Active Aluminum Rich Coatings''//U.S. Patent No. 8,277,688: issued October 2, 2012, Navy Case No. PAX81 entitled ''Aluminum Alloy Coated Pigments and Corrosion-Resistant Coatings''//U.S. Patent Application No: 13/564,341 filed August 1, 2012, Navy Case No. PAX115 entitled ''Oxide Coated Metal Pigments and Film-Forming Compositions''//U.S. Patent Application No.: 13/628,323 filed September 27, 2012, Navy Case No. PAX121 entitled ''Coated Aluminum Alloy Pigments and Corrosion-Resistant Coatings''.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than December 26, 2013.

ADDRESSES: Written objections are to be filed with the Naval Air Warfare Center Aircraft Division, Technology Transfer Office, Attention Michelle Miedzinski, Code 5.0H, 22473 Millstone Road, Building 505, Room 117, Patuxent River, Maryland 20670.

FOR FURTHER INFORMATION CONTACT: Dan Swanson, 406–994–7736, *dss@montana.edu,* TechLink, 2310 University Way, Building 2–2, Bozeman, MT 59715. TechLink is an authorized Department of Defense Partnership Intermediary.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: December 4, 2013.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–29518 Filed 12–10–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of Navy

Notice of Intent To Grant an Exclusive License; STIC–ADHESIVE Products Co., Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to STIC–ADHESIVE Products Co., Inc. located at 3950 Medford Street, Los Angeles, CA 90063, a revocable, nonassignable, exclusive license throughout the Republic of Korea in all fields of use the Government-Owned inventions described in Patent Cooperation Treaty (PCT) Application No. PCT/US2012/040371: Filed June 01, 2012 entitled ''Aluminum Alloy Coated Pigments and Corrosion-Resistant Coatings'', Navy Case No. PAX81//PCT Application No. PCT/US2013/046094: Filed June 17, 2013 entitled ''Oxide Coated Metal Pigments and Film-Forming Compositions'', Navy Case No. PAX115//PCT Application No. PCT/US2013/045190: Filed June 13, 2013 entitled ''Coated Aluminum Alloy Pigments and Corrosion Resistant Coatings'', Navy Case No. PAX121.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than December 26, 2013.

ADDRESSES: Written objections are to be filed with the Naval Air Warfare Center Aircraft Division, Technology Transfer Office, Attention Michelle Miedzinski, Code 5.0H, 22473 Millstone Road, Building 505, Room 117, Patuxent River, Maryland 20670.

FOR FURTHER INFORMATION CONTACT: Dan Swanson, 406–994–7736, *dss@montana.edu,* TechLink, 2310 University Way, Building 2–2, Bozeman, MT 59715. TechLink is an authorized Department of Defense Partnership Intermediary.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: December 4, 2013.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–29516 Filed 12–10–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of Navy

Notice of Intent To Grant an Exclusive License; Aviation Devices and Electronic Components, L.L.C.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Aviation Devices and Electronic Components, L.L.C. located at 1810 Mony Street, Ft. Worth, Texas 76102, a revocable, nonassignable, exclusive license throughout all the contracting states of the European Patent Convention, Japan, India, Mexico, Canada, Brazil, Russian Federation, Australia, Indonesia, Taiwan, Thailand, Israel and South America in all fields of use the Government-Owned inventions described in Patent Cooperation Treaty (PCT) Application No. PCT/US2012/040371: filed June 01, 2012 entitled ''Aluminum Alloy Coated Pigments and Corrosion-Resistant Coatings'', Navy Case No. PAX81//PCT Application No. PCT/US2013/046094: filed June 17, 2013 entitled ''Oxide Coated Metal Pigments and Film-Forming Compositions'', Navy Case No. PAX115//PCT Application No. PCT/US2013/045190: filed June 13, 2013 entitled ''Coated Aluminum Alloy Pigments and Corrosion Resistant Coatings'', Navy Case No. PAX121.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than December 26, 2013.

ADDRESSES: Written objections are to be filed with the Naval Air Warfare Center Aircraft Division, Technology Transfer Office, Attention Michelle Miedzinski, Code 5.0H, 22473 Millstone Road, Building 505, Room 117, Patuxent River, Maryland 20670.

FOR FURTHER INFORMATION CONTACT: Dan Swanson, 406–994–7736, *dss@montana.edu,* TechLink, 2310 University Way, Building 2–2, Bozeman, MT 59715. TechLink is an authorized Department of Defense Partnership Intermediary.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: December 4, 2013.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–29517 Filed 12–10–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

[FE Docket No. 13–116–LNG]

Eos LNG LLC; Application for Long-Term Authorization To Export Liquefied Natural Gas Produced From Domestic Natural Gas Resources to Non-Free Trade Agreement Countries for a 25-Year Period

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application) filed on August 23, 2013, by Eos LNG LLC (Eos), requesting long-term, multi-contract authorization to export LNG produced from domestic sources in a volume equivalent to approximately 584 billion cubic feet per year (Bcf/yr) of natural gas, or 1.6 Bcf per day (Bcf/d). Eos seeks authorization to export the LNG for a 25-year term from the proposed Eos LNG Terminal (Project), to be located at the Port of Brownsville in Brownsville, Texas. Eos requests authorization to export LNG to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas (non-FTA countries) with which trade is not prohibited by U.S. law or policy. Eos requests that this authorization commence on the earlier of the date of first export or 8 years from the date the authorization is granted. Eos requests this authorization both on its behalf and as agent for other parties who hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717b.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, February 10, 2014.

ADDRESSES: Electronic Filing by email: *fergas@hq.doe.gov.*

Regular Mail

U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)

U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Marc Talbert, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–7991.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

Eos is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. Eos states that it qualifies as an African American minority-owned business. Eos's principal executives are Kent Strong, Eza Gadson, and Andrew Kunian. Eos states that it has recruited an LNG team to manage logistics and commercial operations of the venture.

Eos proposes to develop, own, and operate a natural gas liquefaction facility and LNG export terminal at the Port of Brownsville in Brownsville, Texas. The Application includes a copy of a signed option agreement between Eos and the Brownsville Navigation District for the lease by Eos of a 15 acre tract of land. Eos states that the site will be based on a floating liquefaction unit on a barge (FLNG) and an existing LNG tanker (utilized solely for storage) that are anchored to a dock at the Port of Brownsville. Eos states that LNG tankers owned by third parties will be loaded via ship to ship transfer from Eos's LNG storage tanker, then will set sail to buyers in Europe and Asia. Eos states that the FLNG is an autonomous floating structure that does not rely on any shore-based utilities to function. Eos states that the FLNG will be constructed in a shipyard and towed to its designated site, where it will be integrated with the gas source. Eos states that mooring and connection infrastructure requirements associated with the FLNG are minimal.

Current Application

Eos requests that DOE/FE grant a long term (in excess of two years), multi-contract authorization to export LNG from export terminals to be constructed in Brownsville, Texas to any non-FTA country which has developed or in the future develops the capacity to import LNG, and with which trade is not prohibited by U.S. law or policy. Eos requests this authorization for a volume of LNG equivalent to approximately 1.6 Bcf/d of natural gas (584 Bcf/yr) for a 25-year term, up to 14.6 trillion cubic feet, beginning on the date of the first export or 8 years from the date of issuance of the authorization requested by this Application, whichever is sooner.

Eos states that rather than enter into Liquefaction Tolling Agreements (LTAs), its business model will be to buy natural gas at the domestic price of the Henry Hub futures contract and sell it internationally at the prevailing market rate. However, if the profitability of this model declines, Eos states that it will maintain the option to convert to an LTA model, under which individual customers who hold title to the domestic natural gas will have the right to deliver that gas to Eos's terminal and receive LNG in return.

Eos requests long term, multi-contract authorization to engage in exports of LNG on its own behalf or as agent for others. Eos contemplates that the title holder at the point of export may be Eos or one of Eos's customers, or another party that has purchased LNG from an LTA customer pursuant to a long term contract. Eos requests authorization to register each LNG title holder for whom Eos seeks to export as agent, and proposes that this registration include a written statement by the title holder acknowledging and agreeing to comply with all applicable requirements included by DOE/FE in Eos's export authorization, and to include those requirements in any subsequent purchase or sale agreement entered into by that title holder. In addition to its registration of any LNG title holder for whom Eos seeks to export as agent, Eos states that it will file under seal with DOE/FE any relevant long term commercial agreements between Eos and such LNG title holder, including LTAs, once they have been executed. Eos states that DOE/FE has previously found that this commitment conforms to the requirements of 10 CFR 590.202(b), which calls upon applicants to supply transaction information ''to the extent practicable.''

Eos states that the natural gas supply underlying the proposed exports will

come from the interconnected and highly liquid domestic market for natural gas. Eos states that while some of the proposed export supply may be secured through long term contracts, large volumes are likely to be acquired on the spot market. Eos states that the biggest market hub in North America, the Henry Hub, is located in southern Louisiana, and the Houston Ship Channel and Katy Hub provide flexibility to natural gas shippers in Texas. Eos states that it will be able to source the gas from these locations. Eos states that, alternatively, it will be able to contract directly with exploration and production companies such as Chesapeake Energy, Anadarko, Devon Energy, Encana, Southwest Energy, EOG Resources, and EQT Resources. Eos anticipates that several natural gas basins will supply the Project, including the Permian, Eagle Ford, Barnett, Woodford, and Haynesville-Bossier basins. Eos states that these basins are served by several pipelines that can transfer the natural gas to the Project.

Eos states that pursuant to the National Environmental Policy Act (NEPA), the Federal Energy Regulatory Commission (FERC) will be the lead agency for environmental review. Eos requests conditional authorization to export LNG from the Project, pending FERC authorization to site, construct, and operate it. Eos states that such conditional authorizations are routinely issued by DOE/FE, which may review an application to determine whether a proposed authorization is in the public interest concurrent with FERC's environmental impact review. Eos states that it requests that DOE/FE authorize the requested export of LNG produced from domestically sourced natural gas conditioned upon FERC's authorization of the Project pursuant to NEPA.

Public Interest Considerations

Eos states that as a result of technological advances, huge reserves of domestic shale gas that were previously uneconomic to develop are now producing natural gas in many regions of the United States. Eos states that the United States is now estimated to have more natural gas resources than it can use in a century. Eos states that large volumes of domestic shale gas reserves and continued low production costs will enable the United States to export LNG while also meeting domestic demand for natural gas for decades.

Eos states that as U.S. natural gas reserves and production have risen, U.S. natural gas prices have fallen to the point where they are the lowest in the world. Eos states that LNG prices in Asia are indexed to crude oil prices and are generally higher than elsewhere in the world. Eos states that the lack of international natural gas pipelines in Asia means that, from a practical standpoint, the industrialized Asian countries, including Japan, Korea, and Taiwan, are dependent upon LNG imports for their natural gas supplies. Eos states that while Europe receives pipeline gas from various sources, the long supply chains and inflexibility of European markets have made diversification of supply a high priority. Eos states that competitively priced LNG supplies from the United States will play a significant role in this diversification. Eos states that domestic natural gas prices in the United States are projected to remain low relative to European and Asian markets far into the future, making exports of LNG by vessel a viable long term opportunity for the United States.

Eos states that a grant of the Application will serve the public interest in several respects. These include: (1) Support to United States energy security; (2) significant environmental benefits due to substitution of cleaner burning natural gas for coal or oil; (3) direct and indirect job creation; (4) significant economic stimulus, including growing the tax base and increasing overall economic activity; and (5) material improvement in the United States's balance of trade. Eos states that these benefits will be obtained with only a minimal effect on domestic natural gas prices. Eos states that at current and forecasted rates of demand, U.S. natural gas reserves will meet demand for 100 years. Eos states that the requested export authorization will allow the United States to benefit now from natural gas resources that may not otherwise be produced for many decades.

Finally, Eos asks that, in its review of the Application, DOE/FE consider the status of Eos as an African-American minority-owned enterprise. Eos refers to Executive Orders 10925 and 11625 in support of this request. According to Eos, Executive Order 10925 stated that ''it is the policy of the executive branch of the Government to encourage by positive measures equal opportunity for all qualified persons within the Government.'' Eos states that Executive Order 11625 sought the participation of all Federal departments and agencies in an increased minority enterprise effort and directed each Federal department and agency to continue all current efforts to foster and promote minority business enterprises. In particular, Eos asks that DOE/FE consider the adoption by the Federal Communications Commission of a policy of granting preferences to minority-owned businesses applying for radio and television licenses. This policy, according to Eos, was upheld by the Supreme Court in *Metro Broadcasting* v. *FCC,* 497 US 547 (1990).

Additional details can be found in Eos's Application, which is posted on the DOE/FE Web site at: *http://www.fossil.energy.gov/programs/gasregulation/authorizations/2013_applications/EOS_LNG_LLC_-_FE._DK._-_13-116-LNG.html.*

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a), and the authority contained in DOE Delegation Order No. 00–002.00N (July 11, 2013) and DOE Redelegation Order No. 00–002.04F (July 11, 2013). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be relevant or appropriate, these issues will include the impact of LNG exports associated with this Application, and the cumulative impact of any other application(s) previously approved, on domestic need for the gas proposed for export, adequacy of domestic natural gas supply, U.S. energy security, and any other issues, including the impact on the U.S. economy (GDP), consumers, and industry, job creation, U.S. balance of trade, international considerations, and whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose the Application should address these issues in their comments and/or protests, as well as any other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Due to the complexity of the issues raised by the Applicant, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to

intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR Part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov* with FE Docket No. 13–116–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Division of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 13–116–LNG. *Please Note:* If submitting a filing via email, please include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision, and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Division of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on December 5, 2013.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2013–29545 Filed 12–10–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 13–118–LNG]

Barca LNG LLC; Application for Long-Term Authorization To Export Liquefied Natural Gas Produced From Domestic Natural Gas Resources to Non-Free Trade Agreement Countries for a 25-Year Period

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application) filed on August 23, 2013, by Barca LNG LLC (Barca), requesting long-term, multi-contract authorization to export LNG produced from domestic sources in a volume equivalent to approximately 584 billion cubic feet per year (Bcf/yr) of natural gas, or 1.6 Bcf per day (Bcf/d). Barca seeks authorization to export the LNG for a 25-year term from the proposed Barca LNG Terminal (Project), to be located at the Port of Brownsville in Brownsville, Texas. Barca requests authorization to export LNG to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas (non-FTA countries) with which trade is not prohibited by U.S. law or policy. Barca requests that this authorization commence on the earlier of the date of first export or 8 years from the date the authorization is granted. Barca requests this authorization both on its behalf and as agent for other parties who hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717b.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the **PUBLIC COMMENT PROCEDURES** section no later than 4:30 p.m., eastern time, February 10, 2014.

ADDRESSES: Electronic Filing by email: *fergas@hq.doe.gov.*

Regular Mail

U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)

U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Marc Talbert, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–7991.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

Barca is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. Barca states that it expects to qualify as a Service-Disabled Veteran Owned Business, as discussed below. Barca's principal executives are Brendan Kelley, Mason Bridges, and Andrew Kunian.

Barca proposes to develop, own, and operate a natural gas liquefaction facility and LNG export terminal at the Port of Brownsville in Brownsville, Texas. The Application includes a copy of a signed option agreement between Barca and the Brownsville Navigation District for the lease by Barca of a 15 acre tract of land. Barca states that the site will be based on a floating liquefaction unit on a barge (FLNG) and an existing LNG tanker (utilized solely for storage) that are anchored to a dock at the Port of Brownsville. Barca states that LNG tankers owned by third parties will be loaded via ship to ship transfer from Barca's LNG storage tanker, then will set sail to buyers in Europe and Asia. Barca states that the FLNG is an autonomous floating structure that does not rely on shore-based utilities to function. Barca states that the FLNG will be constructed in a shipyard and towed to its designated site, where it will be integrated with the gas source. Barca states that mooring and connection infrastructure requirements associated with the FLNG are minimal.

Current Application

Barca requests that DOE/FE grant a long term (in excess of two years), multi-contract authorization to export LNG from export terminals to be constructed in Brownsville, Texas to any non-FTA country which has developed or in the future develops the capacity to import LNG, and with which trade is not prohibited by U.S. law or policy. Barca requests this authorization for a volume of LNG equivalent to approximately 1.6 Bcf/d of natural gas (584 Bcf/yr) for a 25-year term, up to 14.6 trillion cubic feet, beginning on the date of the first export or 8 years from the date of issuance of the authorization requested by this Application, whichever is sooner.

Barca states that rather than enter into Liquefaction Tolling Agreements (LTAs), its planned business model is to buy natural gas at the domestic price of the Henry Hub futures contract and sell it internationally at the prevailing market rate. However, if the profitability of this model declines, Barca states that it will maintain the option to convert to an LTA model, under which individual customers who hold title to the domestic natural gas will have the right to deliver that gas to Barca's terminal at the Project and receive LNG in return.

Barca requests long term, multi-contract authorization to engage in exports of LNG on its own behalf or as agent for others. Barca contemplates that the title holder at the point of export may be Barca or one of Barca's customers, or another party that has purchased LNG from an LTA customer pursuant to a long term contract. Barca requests authorization to register each LNG title holder for whom Barca seeks to export as agent, and proposes that this registration include a written statement by the title holder acknowledging and agreeing to comply with all applicable requirements included by DOE/FE in Barca's export authorization, and to include those requirements in any subsequent purchase or sale agreement entered into by that title holder. In addition to its registration of any LNG title holder for whom Barca seeks to export as agent, Barca states that it will file under seal with DOE/FE any relevant long term commercial agreements between Barca and such LNG title holder, including LTAs, once the agreements have been executed. Barca states that DOE/FE has previously found that this commitment conforms to the requirements of 10 CFR 590.202(b), which calls upon applicants to supply transaction information ''to the extent practicable.''

Barca states that the natural gas supply underlying the proposed exports will come from the interconnected and highly liquid domestic market for natural gas. Barca states that while some of the proposed export supply may be secured through long term contracts, large volumes are likely to be acquired on the spot market. Barca states that the biggest market hub in North America, the Henry Hub, is located in southern Louisiana, and the Houston Ship Channel and Katy Hub provide flexibility to natural gas shippers in Texas. Barca states that it will be able to source natural gas from these locations. Barca states that, alternatively, it will be able to contract directly with exploration and production companies such as Chesapeake Energy, Anadarko, Devon Energy, Encana, Southwest Energy, EOG Resources, and EQT Resources. Barca anticipates that several natural gas basins will supply the Project, including the Permian, Eagle Ford, Barnett, Woodford, and Haynesville-Bossier basins. Barca states that these basins are served by several pipelines that can transfer natural gas to the Project.

Barca states that pursuant to the National Environmental Policy Act (NEPA), the Federal Energy Regulatory Commission (FERC) will be the lead agency for environmental review. Barca requests conditional authorization to export LNG from the Project, pending FERC authorization to site, construct and operate it. Barca states that such conditional authorizations are routinely issued by the DOE/FE, which may review an application to determine whether a proposed authorization is in the public interest concurrent with FERC's environmental impact review. Barca states that it requests that DOE/FE authorize the requested export of LNG produced from domestically sourced natural gas conditioned upon FERC's authorization of the Project pursuant to NEPA.

Public Interest Considerations

Barca states that as a result of technological advances, huge reserves of domestic shale gas that were previously uneconomic to develop are now producing natural gas in many regions of the United States. Barca states that the United States is now estimated to have more natural gas resources than it can use in a century. Barca states that large volumes of domestic shale gas reserves and continued low production costs will enable the United States to export LNG while also meeting domestic demand for natural gas for decades.

Barca states that as U.S. natural gas reserves and production have risen, U.S. natural gas prices have fallen to the point where they are the lowest in the world. Barca states that LNG prices in Asia are indexed to crude oil prices and are generally higher than elsewhere in the world. Barca states that the lack of international natural gas pipelines in Asia means that, from a practical standpoint, the industrialized countries, including Japan, Korea, and Taiwan, are dependent upon LNG imports for their natural gas supplies. Barca states that while Europe receives pipeline gas from various sources, the long supply chains and inflexibility of European markets have made diversification of supply a high priority. Barca states that competitively priced LNG supplies from the United States will play a significant role in this diversification. Barca states that domestic natural gas prices in the United States are projected to remain low relative to European and Asian markets far into the future, making exports of LNG by vessel a viable long term opportunity for the United States.

Barca states that a grant of the Application will serve the public interest in several respects. These include: (1) Support to United States energy security; (2) significant environmental benefits due to substitution of cleaner burning natural gas for coal or oil; (3) direct and indirect job creation; (4) significant economic stimulus, including growing the tax base and increasing overall economic activity; and (5) material improvement in the United States's balance of trade. Barca states that these benefits will be obtained with only a minimal effect on

domestic natural gas prices. Barca states that at current and forecasted rates of demand, U.S. natural gas reserves will meet demand for 100 years. Barca states that the requested export authorization will allow the United States to benefit now from natural gas resources that may not otherwise be produced for many decades.

Barca states that, on or around December 1, 2013, one of its principal executives (Mason Bridges) will be classified as a service-disabled veteran by the U.S. Department of Veterans Affairs and that another principal, Brendan Kelly, is already so classified. Accordingly, Barca states that it will qualify as a Service-Disabled Veteran Owned Business under the Veterans Entrepreneurship and Small Business Development Act of 1999, the Veterans Benefit Act of 2003, and Executive Order 13360.

Additional details can be found in Barca's Application, which is posted on the DOE/FE Web site at: *http://www.fossil.energy.gov/programs/gasregulation/authorizations/2013_applications/Barca_LNG_LLC_-_FE._DK._-_13-118-LNG.html.*

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a), and the authority contained in DOE Delegation Order No. 00–002.00N (July 11, 2013) and DOE Redelegation Order No. 00–002.04F (July 11, 2013). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be relevant or appropriate, these issues will include the impact of LNG exports associated with this Application, and the cumulative impact of any other application(s) previously approved, on domestic need for the gas proposed for export, adequacy of domestic natural gas supply, U.S. energy security, and any other issues, including the impact on the U.S. economy (GDP), consumers, and industry, job creation, U.S. balance of trade, international considerations, and whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose the Application should address these issues in their comments and/or protests, as well as any other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Due to the complexity of the issues raised by the Applicant, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR Part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov* with FE Docket No. 13–118–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Division of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 13–118–LNG. *Please Note:* If submitting a filing via email, please include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision, and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Division of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on December 5, 2013.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2013–29541 Filed 12–10–13; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0332; FRL–9903–91–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Small Industrial-Commercial-Institutional Steam Generating Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NSPS for Small Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subpart Dc) (Renewal)'' (EPA ICR Number 1564.09, OMB Control Number 2060–0202), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through March 31, 2014. Public comments were previously requested via the **Federal Register** (78 FR 33409) on June 4, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 10, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0332, to: (1) EPA online, using *www.regulations.gov* (our preferred method), by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP (40 CFR part 60, subpart A), and any changes or additions to the Provisions specified at 40 CFR part 60, subpart Dc. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

Form Numbers: None.

Respondents/affected entities: Owners or operators of small industrial-commercial-institutional steam generating units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Dc)

Estimated number of respondents: 268 (total).

Frequency of response: Initially, semiannually, and occasionally.

Total estimated burden: 181,964 hours (per year). ''Burden'' is defined at 5 CFR 1320.3(b).

Total estimated cost: $28,557,971 (per year), includes $10,758,723 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the respondent and Agency burden from the most recently approved ICR due to an increase in the number of new or modified sources. This ICR assumes an industry growth rate of 11 respondents per year, which results in an average increase of 33 respondents since the last ICR renewal period. The industry growth also results in an increase in O&M costs. In addition, this ICR corrects the number of new sources that are expected to use COMS for PM monitoring, which results in an increase in capital costs.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 2013–29504 Filed 12–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0342; FRL–9904–08–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Lime Manufacturing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Lime Manufacturing (40 CFR Part 63, subpart AAAAA) '' (EPA ICR No. 2072.05, OMB Control No. 2060–0544), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). This is a proposed extension of the ICR, which is currently approved through March 31, 2014. Public comments were previously requested via the **Federal Register** (78 FR 33409) on June 4, 2013, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently-valid OMB control number.

DATES: Additional comments may be submitted on or before January 10, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0342, to: (1) EPA online using *www.regulations.gov* (our preferred method), by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart AAAAA. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. At a minimum, reports are required semiannually.

Form Numbers: None.

Respondents/affected entities: Lime manufacturing plants.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart AAAAA).

Estimated number of respondents: 65 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 15,424 hours (per year). ''Burden'' is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,820,338 (per year), includes $311,610 in either annualized capital and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the respondent and Agency burden from the most recently approved ICR due to an increase in the number of new or modified sources. This ICR assumes an industry growth rate of one respondent per year, which results in an average increase of three respondents since the last ICR renewal period. The burden increase also occurred due to a correction on burden calculation. In the previous ICR, the hours required for acquisition, installation, and utilization of technology and systems; reading instructions, and required activities were omitted.

There is also an increase in capital and O&M costs. The previous ICR used annualized costs which underestimated the initial costs associated with a performance test. This ICR uses the actual costs associated with a Method 5 performance test.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 2013–29503 Filed 12–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0026; FRL–9903–52]

Pesticide Products; Registration Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received several applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before January 10, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the EPA File Symbol of interest as shown in the body of this document, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received several applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under the Agency's public participation process for registration actions, there will generally be an additional opportunity for a public comment period on the proposed decision. Please see the Agency's public participation Web site for additional information on this process *(http://www.epa.gov/pesticides/regulating/registration-public-involvement.html).* EPA received the following applications to register pesticide products containing an active ingredient not included in any currently registered products:

1. *EPA File Symbols:* 73314–O (technical product) and 73314–RN (end-use product). *Docket ID number:* EPA–HQ–OPP–2013–0665. *Applicant:* Novozymes BioAg, Inc., 13100 W. Lisbon Road, Suite 600, Brookfield, WI 53005. *Active ingredient: Chromobacterium subtsugae* strain SB3872. *Product type:* Microbial insecticide. *Proposed uses:* Commercial ground and aerial applications to food and non-food crops, lawns, golf courses; seed treatments; residential home and garden uses.

2. *EPA File Symbols:* 89600–E and 89600–R. *Docket ID number:* EPA–HQ–OPP–2013–0718. *Applicant:* Anatis Bioprotection, Inc., 278, rang Saint-André, St-Jacques-le-Mineur, Quebec JOJ 1Z0, Canada (represented by Technology Sciences Group, Inc., 712 Fifth St., Suite A, Davis CA 95616). *Active ingredient: Beauveria bassiana* strain ANT–03. *Product type:* Microbial insecticide. *Proposed uses:* Foliar-applied insecticide to protect turf, horticultural or agricultural plants in the field or greenhouse.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 2, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2013–29592 Filed 12–10–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2013–0057]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP088400XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

DATES: Comments must be received on or before January 6, 2014 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2013–0057 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2013–0057 on any attached document.

Reference: AP088400XX.

Purpose And Use: Brief description of the purpose of the transaction:

To support the export of U.S.-manufactured aircraft to the United Arab Emirates.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for long-haul passenger air service between the United Arab Emirates and destinations throughout the world.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties: Principal Supplier: The Boeing Company.

Obligor: Emirates Airline.

Guarantor(s): None.

Description Of Items Being Exported: Boeing 777 aircraft.

Information On Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Cristopolis Dieguez,

Program Specialist, Office of the General Counsel.

[FR Doc. 2013–29505 Filed 12–10–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of a Matter To Be Added to the Agenda for Consideration at an Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the following matter will be added to the ''Discussion Agenda'' for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m. on

Tuesday, December 10, 2013, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, DC:

Memorandum and resolution re: The Resolution of Systemically Important Financial Institutions:
The Single Point of Entry Strategy.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: December 9, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–29678 Filed 12–9–13; 4:15 pm]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www2.fmc.gov/agreements/*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.; 011314–002.
Title: CSAV/Trans Global Cooperative Working Agreement.
Parties: Compania Sud Americana de Vapores S.A. and Trans Global Shipping NV.
Filing Party: Walter H. Lion Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue, New York, New York 10016.
Synopsis: The amendment changes the party Swordfish Shipping Inc. to Trans Global Shipping NV and changes the agreement's termination date.

Agreement No.: 012194–002.
Title: The G6 Alliance Agreement.
Parties: American President Lines, Ltd. and APL Co. Pte, Ltd. (Operating as one Party); Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; and Orient Overseas Container Line, Limited and Orient Overseas Container Line Inc. (Operating as one party).
Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1627 I Street NW. Suite 1100; Washington, DC 20006.
Synopsis: The amendment would expand the geographic scope to include the transpacific trade to the U.S. West Coast and the transatlantic trade to all coasts, and make other corresponding revisions.

Agreement No.: 012234.
Title: NYKCool/Trans Global Shipping Space Charter Agreement.
Parties: NYKCool AB and Trans Global Shipping NV.
Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1627 I Street NW. Suite 1100; Washington, DC 20006.
Synopsis: The Agreement authorizes the parties to share space on each other's vessels and reach related arrangements in connection with the carriage of cargo in the trade between ports in Chile and U.S. Atlantic Coast ports.

Agreement No.: 012235.
Title: NYKCool/Trans Global Shipping/CSAV West Coast Agreement.
Parties: CSAV Sud Americana de Vapres S.A.; NYKCool AB; and Trans Global Shipping NV.
Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1627 I Street NW. Suite 1100; Washington, DC 20006.
Synopsis: The Agreement authorizes the parties to cooperate with respect to vessel services, share space on each other's vessels, and reach related arrangements in connection with the carriage of cargo in the trade between ports in Chile and U.S. West Coast ports.

Agreement No.: 012236.
Title: Swordfish Shipping Inc./Trans Global Shipping Space Charter Agreement.
Parties: Swordfish Shipping Inc. and Trans Global Shipping NV.
Filing Party: Walter H. Lion, Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue; New York, NY 10016.
Synopsis: The Agreement authorizes the parties to charter space to each other in the trade ports in Chile and United States Atlantic ports.

Agreement No.: 201159–001.
Title: Memorandum of Settlement of Local Conditions in the Port of New York and New Jersey.
Parties: New York Shipping Association, Inc. and the International Longshoremen's Association.
Filing Parties: William M. Spelman; The Lambos Firm, LLC; 303 South Broadway, Suite 410; Tarrytown, NY 10591; and Andre Mazzola; Marrinan & Mazzola Mardon P.C.; 26 Broadway, 17 Floor; New York, NY 10004.
Synopsis: The Agreement establishes local conditions for the Port of New York-New Jersey covering the period from October 1, 2012 through September 30, 2018.

By Order of the Federal Maritime Commission.

Dated: December 6, 2013.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–29563 Filed 12–10–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

A.T.I. North Point, Inc. dba A.T.I. N.P.B., Inc. (NVO), 7 Market Place, New Hope, PA 18938. Officer: Anthony Ferlazzo, President (QI). Application Type: New NVO License.

American Forwarding & Logistics, LLC (NVO & OFF), 3330 NW 53rd Street, Suite 307, Fort Lauderdale, FL 33309. Officers: Ulrike Bracken, Manager (QI), Philip Stachow, Managing Member. Application Type: QI Change.

Cromarti Logistics LLC (NVO), 2810 Grants Lake Blvd., Suite 904, Sugar Land, TX 77479. Officer: Abraham Garza, Member (QI). Application Type: New NVO License.

E–Z Cargo Inc (NVO & OFF), 501 New County Road, Secaucus, NJ 07094. Officers: Alevtina Michina, Vice President (QI), Andrey Gavrilets, President. Application Type: New NVO & OFF License.

Dominicana Pronto Envios Corporation (NVO & OFF), 1100 Barnett Drive, Suite 54, Lake Worth, FL 33461. Officer: Johnny G. Romero, President (QI). Application Type: New NVO & OFF License.

F.H.L. Logistics, Inc. (NVO & OFF), 1354 NW 78th Avenue, Miami, FL 33178. Officers: Abigail Encio, Vice President (QI), Jose L. Tabares, President. Application Type: QI Change.

GPL Logistics, Inc (NVO), 18725 E. Gale Avenue, Suite 250, City of Industry, CA 91748. Officers: Clark Liang, President (QI), Dongmei Pan,

Secretary. Application Type: New NVO License.

Helmsman Freight Solutions, LLC (NVO & OFF), 7600 NW 82nd Place, Miami, FL 33166. Officers: Arturo Corona, Vice President and Sales Manager (QI), Teresita Del Calvo, Manager. Application Type: New NVO & OFF License.

Intership, Inc dba Helm Express (NVO & OFF), 6816 E. Orem Drive, Houston, TX 77048. Officer: Yasser Shaikh, President (QI). Application Type: Adding Trade Names iShip and Peninsula Freight & Logistics.

Isewan U.S.A. Inc. (NVO & OFF), 5701 Westpark Drive, Suite 201, Charlotte, NC 28217. Officers: Carl T. Evans, President (QI), Mitsuo Mori, Secretary. Application Type: QI Change.

LCL Logistix USA Inc (NVO & OFF), 646 State Highway 18N, Building A, Suite 102, East Brunswick, NJ 08816. Officers: Arif H. Butt, General Manager (QI), Unni Krishnan Nair, President. Application Type: New NVO & OFF License.

Martik LLC (OFF), 19390 Collins Avenue, Suite 1224, Sunny Isles, FL 33160. Officers: Diana P. Alzate, Managing Member (QI), Oscar Julian Alzate, Managing Member. Application Type: New OFF License.

Matt Global Freight Co. LLC (NVO & OFF), 3517 Langrehr Road, Suite 111, Baltimore, MD 21244. Officers: Mathew Chacko, President (QI), Ann T. Mathews, Vice President. Application Type: Add NVO Service.

Mega Cargo, Inc. (NVO & OFF), 27855 SW 202 Avenue, Homestead, FL 33031. Officers: Mariolys Zayas, Vice President/Secretary/Treasurer (QI), Ariel Travieso, President. Application Type: New NVO & OFF License.

Military Relocation Services, Inc. (NVO & OFF), 815 S. Main Street, Jacksonville, FL 32207. Officers: Stephen F. Crooks, Vice President (QI), Scott Kelly, President. Application Type: Adding NVO Service.

Perfect Marine & Logistics, LLC. (OFF), 7324 Southwest Freeway, Suite 1045, Houston, TX 77074. Officers: Jigneshkumar Ratani, President (QI), Manojkumar B. Ratani, Vice President. Application Type: New OFF License.

Portos Logistics, LLC (NVO & OFF), 5516 NW 72nd Avenue, Suite 5516, Miami, FL 33166. Officer: Jesus A. Herrera, Manager Member (QI). Application Type: New NVO & OFF License.

Rich Pacific USA, Inc. (NVO & OFF), 17540 Colima Road, Rowland Heights, CA 91748. Officers: Jinyi Zhao, Vice President (QI), David Liu, President. Application Type: QI Change.

Solid Trans International Inc (NVO & OFF), 1401 S. Santa Fe Avenue, Compton, CA 90221. Officers: Kuo-Hao (Howard) Hsu, CEO (QI). Application Type: New NVO & OFF License.

Stella Maris International Trading, Inc. (NVO & OFF), 1601 Sahlman Drive, Tampa, FL 33605. Officers: Fernando Perez, Vice President (QI), Nadya Ojeda-Perez, President. Application Type: Adding OFF Service.

Taino Multiservices Express, Corp. (NVO), 2828 NW 17th Avenue, Suite C, Miami, FL 33142. Officers: Carmen M. Arias Olivier, President (QI), Sandra M. Vargas Llaverias, OMGR. Application Type: New NVO License.

TOP Since Logistics, Inc. (NVO & OFF), 1255 Corporate Center Drive, Suite 210, Monterey Park, CA 91754. Officers: Zyn Rhen (Ray) Yeoh, Vice President (QI), Wei (Winnie) Wen, President. Application Type: QI Change.

World of Logistics USA Inc (NVO), 10350 Lands End Drive, Suite 1803, Houston, TX 77099. Officers: Syed S. Nawaz, President (QI), Tallat Shahnawaz, Secretary. Application Type: New NVO License.

By the Commission.

Dated: December 6, 2013.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–29554 Filed 12–10–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary license has been reissued pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.: 003009F.

Name: Super Freight International, Inc.

Address: 650 N. Edgewood Avenue, Wood Dale, IL 60191.

Date Reissued: October 4, 2013.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2013–29532 Filed 12–10–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations and Terminations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked or terminated for the reason shown pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 000016F.

Name: Major Forwarding Company, Inc.

Address: 159–15 Rockaway Blvd., Jamaica, NY 11434.

Date Revoked: October 21, 2013.

Reason: Voluntary Surrender of License.

License No.: 015677N.

Name: OHL Solutions, Inc. dba Activsea USA.

Address: 147–80 184th Street, Jamaica, NY 11413.

Date Revoked: November 12, 2013.

Reason: Voluntary Surrender of License.

License No.: 16854N.

Name: YT Youngtrans, Inc. dba Youngtrans.

Address: 167–55 148th Ave. Jamaica, NY 11434.

Date Revoked: November 18, 2013.

Reason: Voluntary Surrender of License.

License No.: 018071N.

Name: Sinotrans Express Inc.

Address: 10501 Valley Blvd., Suite 1818, El Monte, CA 91731.

Date Revoked: September 22, 2013.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2013–29519 Filed 12–10–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board

under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before February 10, 2014.

ADDRESSES: You may submit comments, identified by FR Y–11/11S, FR 2314/2314S, FR Y–7N/7NS, FR Y–7Q, or FR 2886b, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

1. Report title: Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies and the Abbreviated Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies.

Agency form number: FR Y–11 and FR Y–11S.

OMB control number: 7100–0244.

Frequency: Quarterly and annually.

Reporters: Holding companies.

Estimated annual reporting hours: FR Y–11 (quarterly): 11,125; FR Y–11 (annual): 1,380; FR Y–11S: 255.

Estimated average hours per response: FR Y–11 (quarterly): 6.8; FR Y–11 (annual): 6.8; FR Y–11S: 1.

Number of respondents: FR Y–11 (quarterly): 409; FR Y–11 (annual): 203; FR Y–11S: 255.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Overall, the Federal Reserve does not consider these data to be confidential. However, a respondent may request confidential treatment pursuant to sections (b)(4), (b)(6), and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6), (b)(8)). The applicability of these exemptions would need to be determined on a case-by-case basis.

Abstract: The FR Y–11 reporting forms collect financial information for individual non-functionally regulated U.S. nonbank subsidiaries of domestic holding companies (i.e., bank holding companies, savings and loan holding companies, and securities holding companies). Holding companies file the FR Y–11 on a quarterly or annual basis or the FR Y–11S annually predominantly based on asset size thresholds, and for the FR Y–11S, based on an additional threshold related to the percentage of consolidated assets of the top-tier organization. The FR Y–11 data are used with other holding company data to assess the condition of holding companies that are heavily engaged in nonbanking activities and to monitor the volume, nature, and condition of their nonbanking operations.

Current actions: In order to reduce reporting burden, the Federal Reserve proposes to increase the asset size thresholds for filing the annual FR Y–11 and FR Y–11S and to eliminate the threshold based on the percentage of consolidated assets of the top-tier organization for the FR Y–11S. The Federal Reserve also proposes to clarify when FR Y–11 (quarterly/annually) and FR Y–11S reports must be filed if a subsidiary is divested or liquidated.

2. Report title: Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations and the Abbreviated Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

Agency form number: FR 2314 and FR 2314S.

OMB control number: 7100–0073.

Frequency: Quarterly and annually.

Reporters: U.S. state member banks, holding companies, and Edge or agreement corporations.

Estimated annual reporting hours: FR 2314 (quarterly): 14,546; FR 2314 (annual): 1,452; FR 2314S: 308.

Estimated average hours per response: FR 2314 (quarterly): 6.6; FR 2314 (annual): 6.6; FR 2314S: 1.

Number of respondents: FR 2314 (quarterly): 551; FR 2314 (annual): 220; FR 2314S: 308.

General description of report: This information collection is mandatory (12 U.S.C. 324, 602, 625, 1844(c)). Overall, the Federal Reserve does not consider these data to be confidential. However, a respondent may request confidential treatment pursuant to sections (b)(4), (b)(6), and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6), (b)(8)). The applicability of these exemptions would need to be determined on a case-by-case basis.

Abstract: The FR 2314 reporting forms collect financial information for non-functionally regulated direct or indirect foreign subsidiaries of U.S. state member banks (SMBs), Edge and agreement corporations, and holding companies (i.e., bank holding companies, savings and loan holding companies, and securities holding companies). Parent organizations (SMBs, Edge and agreement corporations, or holding companies) file the FR 2314 on a quarterly or annual basis or the FR 2314S annually based predominantly on asset size thresholds, and for the FR 2314S, based on an additional threshold related to the percentage of consolidated assets of the top-tier organization. The FR 2314 data are used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular.

Current actions: In order to reduce reporting burden, the Federal Reserve proposes to increase the asset size thresholds for filing the annual FR 2314 and FR 2314S and to eliminate the threshold based on the percentage of consolidated assets of the top-tier organization for the FR 2314S. The Federal Reserve also proposes to clarify when the FR 2314 (quarterly/annually) and FR 2314S reports must be filed if a subsidiary is divested or liquidated.

3. Report title: Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations and the Abbreviated Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations.

Agency form number: FR Y–7N, FR Y–7NS.

OMB control number: 7100–0125.

Frequency: Quarterly and annually.

Reporters: Foreign bank organizations (FBOs).

Estimated annual reporting hours: FR Y–7N (quarterly): 4,978; FR Y–7N (annual): 660; FR Y–7NS: 93.

Estimated average hours per response: FR Y–7N (quarterly): 6.8; FR Y–7N (annually): 6.8; FR Y–7NS: 1.

Number of respondents: FR Y–7N (quarterly): 183; FR Y–7N (annually): 97; FR Y–7NS: 93.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c), 3106(c) and 3108)). Overall, the Federal Reserve does not consider these data to be confidential. However, individual respondents may request confidential treatment for any of these reports pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 522(b)(4) and (b)(6)). The applicability of these exemptions would need to be determined on a case-by-case basis.

Abstract: The FR Y–7N and FR Y–7NS collect financial information for non-functionally regulated U.S. nonbank subsidiaries held by FBOs other than through a U.S. bank holding company (BHC), U.S. financial holding company (FHC), or U.S. bank. FBOs file the FR Y–7N quarterly or annually or the FR Y–7NS annually predominantly based on asset size thresholds.

Current actions: In order to reduce reporting burden, the Federal Reserve proposes to increase the asset thresholds for filing the annual FR–7N and FRY–7NS. The Federal Reserve also proposes to clarify when FR Y–7N (quarterly/annually) and FR Y–7NS reports must be filed if a subsidiary is divested or liquidated.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. Report title: Capital and Asset Report for Foreign Banking Organizations.

Agency form number: FR Y–7Q.

OMB control number: 7100–0125.

Frequency: Quarterly and annually.

Reporters: FBOs.

Estimated annual reporting hours: FR Y–7Q (quarterly): 545; FR Y–7Q (annually): 43.

Estimated average hours per response: FR Y–7Q (quarterly): 1.25; FR Y–7Q (annually): 1.

Number of respondents: FR Y–7Q (quarterly): 109; FR Y–7Q (annually): 43.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c), 3106(c) and 3108)). Overall, the Federal Reserve does not consider these data to be confidential. However, individual respondents may request confidential treatment for any of these reports pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 522(b)(4) and (b)(6)). The applicability of these exemptions would need to be determined on a case-by-case basis.

Abstract: The FR Y–7Q collects consolidated regulatory capital information from all FBOs either quarterly or annually. FBOs that have effectively elected to become FHCs file the FR Y–7Q quarterly, and effective March 31, 2014, FBOs with total consolidated worldwide assets of $50 billion or more will file the FR Y–7Q quarterly. All other FBOs file the FR Y–7Q annually.

2. Report title: Consolidated Report of Condition and Income for Edge and Agreement Corporations.

Agency form number: FR 2886b.

OMB control number: 7100–0086.

Frequency: Quarterly.

Reporters: Edge and agreement corporations and investment (nonbanking) Edge and agreement corporations.

Estimated annual reporting hours: Banking: Edge and agreement corporations (quarterly): 424; Banking: Edge and agreement corporations (annually): 15; Investment: Edge and agreement corporations (quarterly): 1,114; Investment: Edge and agreement corporations (annually): 115.

Estimated average hours per response: Banking: Edge and agreement corporations (quarterly): 15.15; Banking: Edge and agreement corporations (annually): 15.15; Investment: Edge and agreement corporations (quarterly): 9.6; Investment: Edge and agreement corporations (annually): 9.6.

Number of respondents: Banking: Edge and agreement corporations (quarterly): 7; Banking: Edge and agreement corporations (annually): 1; Investment: Edge and agreement corporations (quarterly): 29; Investment: Edge and agreement corporations (annually): 12.

General description of report: This information is mandatory (12 U.S.C. 602, 625). In addition, with respect to the contact information collected in the Patriot Act Contact Information section, the Board's regulation's (12 CFR 211.5(m)) instruct Edge and agreement corporations to comply with the information sharing regulations that the Department of the Treasury issued pursuant to Section 314(a) of the USA Patriot Act of 2001, Public Law 107–56, 115 Stat. 307 (31 U.S.C. 5318(h)); and implemented at 31 CFR 1010.520(b).

For Edge corporations engaged in banking, current Schedules RC–M (with the exception of item 3) and RC–V are held confidential pursuant to Section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)). For investment Edge corporations, only information collected on Schedule RC–M (with the exception of item 3) are given confidential treatment pursuant to Section (b)(4) of the FOIA (5 U.S.C. 552(b)(4)).

In addition, the information provided in the Patriot Act Contact Information section may be withheld as confidential under FOIA to prevent unauthorized individuals from falsely posing as an institution's point-of-contact in order to gain access to the highly sensitive and confidential communications sent by email between the Financial Crimes Enforcement Network or federal law enforcement officials and the Patriot Act point-of-contact. The identity and contact information of private individuals, which is collected and maintained for law enforcement purposes under the Patriot Act, may be exempt from disclosure pursuant to exemption 7(C) of FOIA (5 U.S.C. 552(b)(7)(C)). Lastly, the language indicating that the Emergency Contact information will not be released to the public will be removed.

Abstract: The FR 2886b comprises a balance sheet, income statement, two schedules reconciling changes in capital and reserve accounts, and 11 supporting schedules. The reporting form parallels the Consolidated Reports of Condition and Income (Call Report) (FFIEC 031 and FFIEC 041; OMB No. 7100–0036) that commercial banks file and the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128) filed by large holding companies. Except for examination reports, it provides the only financial data available for these corporations.

The Federal Reserve is solely responsible for authorizing, supervising, and assigning ratings to Edge and agreement corporations. The Federal Reserve uses the data collected on the FR 2886b to identify present and potential problems and monitor and develop a better understanding of activities within the industry. Most Edge corporations are wholly owned by U.S. banks or holding companies and are consolidated into the financial statements of their parent organizations. However, eight banking Edge corporations are owned by foreign banks or nonbanking organizations.

Board of Governors of the Federal Reserve System, December 3, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–29507 Filed 12–10–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 26, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *James R. Kennedy, Jr., as trustee of the Kennedy Control Trust, both of Dubuque, Iowa, to acquire voting shares of, and the Kennedy Control Trust to join the Kennedy Family Group consisting of: Sarah A. Roby, Catherine E. Roby, both of Cumming, Iowa; Susan M. Kennedy, Jessica L. Kennedy, both of West, Des Moines, Iowa; Joseph J. Kennedy, Ellen M. Kennedy, Sean J. Kennedy, Thomas J. Kennedy, all of Robins, Iowa; Daniel J. Kennedy, Marion, Iowa; Erica R. Kennedy, and Adam H. Kennedy,* both of Dyersville, Iowa; to retain voting shares of Fidelity Company, and thereby to indirectly voting shares of Fidelity Bank & Trust, both in Dubuque, Iowa, and Community State Bank, Tipton, Iowa.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Bill J. Gotch, Myrna F. Gotch, Jennifer L. Gotch, and Brett J. Gotch,* all of South Sioux City, Nebraska; to acquire voting shares of Siouxland National Corporation, and thereby indirectly acquire voting shares of Siouxland National Bank, both in South Sioux City, Nebraska.

Board of Governors of the Federal Reserve System, December 6, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–29506 Filed 12–10–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through January 31, 2017, the current PRA clearance for its shared enforcement authority with the Consumer Financial Protection Bureau (''CFPB'') for information collection requirements contained in the CFPB's Regulation O. That clearance expires on January 31, 2014.

DATES: Comments must be filed by January 10, 2014.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Regulation O PRA Comment, FTC File No. P134812'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/regulationopra2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Rebecca Unruh, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580, (202) 326–3565.

SUPPLEMENTARY INFORMATION: On August 27, 2013, the FTC sought public comment on the information collection requirements associated with Regulation

O (August 27, 2013 Notice [1]). Due to the federal government shutdown (October 1, 2013–October 16, 2013), the FTC extended the comment period to compensate for that interval and ensure that interested persons had a full opportunity to file comments.[2] No comments were received in either instance. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 et seq., the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule. All comments should be filed as prescribed herein, and must be received on or before January 10, 2014.

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

Burden Statement

The FTC is seeking clearance for its assumed share of the estimated PRA burden regarding the disclosure requirements under the FTC and CFPB Rules. The FTC's assumed share of estimated PRA burden, explained in the August 27, 2013 Notice, is 32,500 hours, $1,866,975 for labor costs, and $250,000 for non-labor costs.[3]

Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 10, 2014. Write ''Regulation O PRA Comment, FTC File No. P134812'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[4] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/regulationopra2,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Regulation O PRA Comment, FTC File No. P134812'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 10, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2013–29589 Filed 12–10–13; 8:45 am]

BILLING CODE 6750–01–P

[1] 78 FR 52915.

[2] 78 FR 75649, 75650 (November 1, 2013) (comment period for Regulation O extended to November 13, 2013).

[3] 78 FR at 52917.

[4] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

FEDERAL TRADE COMMISSION

[File No. 132 3087]

Goldenshores Technologies, LLC and Erik M. Geidl; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 6, 2014.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/goldenshorestechnologiesconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Goldenshores, File No. 132 3087'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/goldenshorestechnologiesconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Kerry O'Brien (415–848–5189), FTC, Western Region, San Francisco, 600

Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 5, 2013), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 6, 2014. Write ''Goldenshores, File No. 132 3087'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/goldenshorestechnologiesconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Goldenshores, File No. 132 3087'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 6, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing consent order from Goldenshores Technologies, LLC, and Erik M. Geidl (''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and decide whether it should withdraw from the agreement or make the proposed order final.

Since at least February 2011, respondents have marketed a mobile application called the ''Brightest Flashlight Free'' mobile application (''Brightest Flashlight App'') to consumers for use on their Android mobile devices. The Brightest Flashlight App purportedly works by activating all lights on a mobile device, including, where available, the device's LED camera flash and screen to provide outward-facing illumination. As of May 2013, users have downloaded the Brightest Flashlight App tens of millions of times.

The Commission's complaint alleges two violations of Section 5(a) of the FTC Act, which prohibits deceptive and unfair acts or practices in or affecting commerce, by respondents. First, according to the complaint, respondents represent in the Brightest Flashlight App's privacy policy statement and end-user license agreement (''EULA'') that respondents may periodically collect, maintain, process, and use information from users' mobile devices to provide software updates, product support, and other services to users related to the Brightest Flashlight App, and to verify users' compliance with respondents' EULA. The complaint alleges that this claim is deceptive because respondents fail to disclose, or adequately disclose, that, when users run the Brightest Flashlight App, the application transmits, or allows the transmission of, their devices' precise geolocation along with persistent device identifiers to various third parties, including third party advertising networks.

Second, the complaint alleges that respondents falsely represent in the Brightest Flashlight EULA that consumers have the option to refuse the terms of the Brightest Flashlight EULA, including those relating to the collection and use of device data, and thereby prevent the Brightest Flashlight App from ever collecting or using their device's data. In fact, regardless of whether consumers accept or refuse the terms of the EULA, the Brightest Flashlight App transmits, or causes the transmission of, device data as soon as the consumer launches the application and before they have chosen to accept

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

or refuse the terms of the Brightest Flashlight EULA.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts or practices in the future. Specifically, Part I prohibits respondent from misrepresenting (1) the extent to which ''covered information'' is collected, used, disclosed, or shared and (2) the extent to which users may exercise control over the collection, use, disclosure, or sharing of ''covered information'' collected from or about them, their computers or devices, or their online activities. ''Covered information'' is defined as ''(a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver's license or other state-issued identification number; (g) a financial institution account number; (h) credit or debit card information; (i) a persistent identifier, such as a customer number held in a ''cookie,'' a static Internet Protocol (''IP'') address, a mobile device ID, or processor serial number; (j) precise geolocation data of an individual or mobile device, including but not limited to GPS-based, WiFi-based, or cell-based location information (''geolocation information''); (k) an authentication credential, such as a username and password; or (l) any other communications or content stored on a consumer's mobile device.''

Part II requires respondents to give users of their mobile applications a clear and prominent notice and to obtain express affirmative consent prior to collecting their geolocation information. Part III requires respondents to delete any ''covered information'' in their possession, custody, or control that they collected from users of the Brightest Flashlight App prior to the entry of the order.

Parts IV, V, VI, VII, and VIII of the proposed order require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013–29531 Filed 12–10–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–14–0739]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Kim Lane, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

CDC Oral Health Management Information System (OMB No. 0920–0739, exp. 4/30/2014)—Revision—National Center for Chronic Disease Prevention and Public Health Promotion (NCDDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC works with state health departments to improve the oral health of the nation. Targeted efforts include building and/or maintaining effective public health capacity for the implementation, evaluation, and dissemination of best practices in oral disease prevention and advancement of oral health. Through a cooperative agreement program (Program Announcement DP13–1307), CDC will provide funding to 21 states over a five-year period. New cooperative agreements went into effect in September 2013 and build on previous funded collaborations involving CDC and state programs. Of the 21 awardees, 3 are funded at the Basic level (Component 1, infrastructure) and 18 are funded at the Enhanced level (Component 2) which includes additional activities. The cooperative agreement funding will be used to strengthen state-based oral health infrastructure and capacity, implement and expand evidence-based interventions that increase community-clinical linkages, such as school-based dental sealant programs; increase and maintain environmental systems level changes that support healthy behaviors, such as community water fluoridation; implement strategies that improve the delivery of targeted clinical preventive services; and promote beneficial health systems changes. CDC funding will also help states reduce health disparities among high-risk populations including, but not limited to, those of lower socio-economic status, rural populations, Hispanic, African American and other ethnic groups.

CDC is currently approved to collect annual progress and activity reports from state-based oral health programs. An electronic reporting system has been in place since 2007 and was enhanced in 2008 to capture information about grantees' success stories and environmental scanning activities. The information collected in the management information system (MIS) improved CDC's ability to disseminate information about successful public health approaches that can be replicated or adapted for use in other states.

CDC plans to implement changes to the existing information collection. Through a Revision request, CDC will increase the number of awardees from 20 to 21; describe changes in the MIS platform and data elements that will align the monitoring and evaluation framework for oral health awardees with the framework used for a number of other programs in the National Center for Chronic Disease Prevention and

Health Promotion (NCCDPHP); and implement a revised method of estimating burden. For awardees funded at the Basic level, the estimated burden for the initial data entry needed to populate the system is 6 hours. Thereafter, the estimated burden for system maintenance and annual reporting is 3 hours. For awardees funded at the Enhanced level, the estimated burden for the initial data entry needed to populate the system is 13 hours. Thereafter, the estimated burden for system maintenance and annual reporting is 9 hours. The revised method provides a more accurate depiction of burden per respondent in comparison to the method presented in previous requests for OMB approval, which was based on a long-term average burden per response. There is no change in the frequency of reporting. Reports will be submitted to CDC annually, but states may enter updates into the MIS at any time.

The MIS will provide a central repository of information, such as the work plans of the state oral health programs (their goals, objectives, performance milestones and indicators), as well as state oral health performance activities including programmatic and financial information. CDC will use the information collected to monitor awardee activities and to provide any technical assistance or follow-up support that may be needed.

Participation in the progress reporting system is a condition of award for funded state oral health programs. All information will be collected electronically and there are no costs to respondents other than their time. OMB approval is requested for three years.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Program Awardees Basic Level	Initial MIS Population	1	1	6	6
	Annual Progress Report	3	1	3	9
Program Awardees Enhanced Level	Initial MIS Population	6	1	13	78
	Annual Progress Report	18	1	9	162
Total					255

Kimberly S. Lane,

Deputy Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–29515 Filed 12–10–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received within 60 days of this notice.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Questionnaire and Data Collection Testing, Evaluation, and Research for the Health Resources and Services Administration.

OMB No.: 0915-xxxx—New.

Abstract: HRSA conducts cognitive interviews, focus groups, usability tests, field tests/pilot interviews, and experimental research in laboratory and field settings, both for applied questionnaire development and evaluation, as well as more basic research on response errors in surveys.

HRSA staff use various techniques to evaluate interviewer administered, self-administered, telephone, Computer Assisted Personal Interviewing (CAPI), Computer Assisted Self-Interviewing (CASI), Audio Computer-Assisted Self-Interviewing (ACASI), and web-based questionnaires.

The most common questionnaire evaluation method is the cognitive interview. The interview structure consists of respondents first answering a draft survey question and then providing textual information to reveal the processes involved in answering the test question. Specifically, cognitive interview respondents are asked to describe how and why they answered the question as they did. Through the interviewing process, various types of question-response problems that would not normally be identified in a traditional survey interview, such as interpretive errors and recall accuracy, are uncovered. By conducting a comparative analysis of cognitive interviews, it is also possible to determine whether particular interpretive patterns occur within particular sub-groups of the population. Interviews are generally conducted in small rounds of 20 to 30 interviews; ideally, the questionnaire is re-worked between rounds, and revisions are tested iteratively until interviews yield relatively few new insights.

Cognitive interviewing is inexpensive and provides useful data on questionnaire performance while minimizing respondent burden. Cognitive interviewing offers a detailed depiction of meanings and processes

used by respondents to answer questions—processes that ultimately produce the survey data. As such, the method offers an insight that can transform understanding of question validity and response error.

Documented findings from these studies represent tangible evidence of how the question performs. Similar methodology has been adopted by other federal agencies, as well as by academic and commercial survey organizations.

There are no costs to respondents other than their time.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Type of information collection	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Mail/email [1]	20,000	1	20,000	0.5	10,000
Telephone	20,000	1	20,000	0.5	10,000
Web-based	20,000	1	20,000	0.5	10,000
Focus Groups	20,000	1	20,000	2.0	40,000
In-person	20,000	1	20,000	1.0	20,000
Automated [2]	20,000	1	20,000	1.0	20,000
Cognitive Testing	60,000	1	60,000	2.0	120,000
Total	180,000		180,000		230,000

[1] May include telephone non-response follow-up in which case the burden will not change.
[2] May include testing of database software, CAPI software, or other automated technologies.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Dated: December 5, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–29508 Filed 12–10–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received within 60 days of this notice.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Ryan White HIV/AIDS Program: Program Allocation and Expenditure Forms.

OMB No. 0915–0318—Extension.

Abstract: HRSA's HIV/AIDS Bureau (HAB) administers the Ryan White HIV/AIDS Program authorized under Title XXVI of the Public Health Service Act as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009. The purpose of this legislation is to provide emergency assistance to localities that are disproportionately affected by the human immunodeficiency virus (HIV) epidemic and to make financial assistance available for the development, organization, coordination, and operation of more effective and cost-efficient systems for the delivery of essential services to persons with HIV disease. It also provides grants to states for the delivery of services to HIV positive individuals and their families. Under the law, grantees receiving funds under Parts A, B, and C must spend at least 75 percent of funds on ''core medical services.'' The proposed forms will collect information from grantees documenting the use of funds to ensure compliance with the Act.

Need and Proposed Use of the Information: The Ryan White HIV/AIDS Program Allocation and Expenditure Reports enable the Health Resources and Services Administration's HIV/AIDS Bureau to track spending requirements for each program. Grantees funded under Parts A, B, C, and D of the Ryan White HIV/AIDS Program (codified under Title XXVI of the Public

Health Service Act) are required to report financial data to HRSA at the beginning and end of their grant cycle. All Parts of the Ryan White HIV/AIDS Program specify HRSA's responsibilities in the administration of grant funds. Accurate allocation and expenditure records of the grantees receiving Ryan White HIV/AIDS Program funding are critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities.

The forms require grantees to report on how funds are allocated and spent on core and non-core services, and on various program components, such as administration, planning and evaluation, and quality management. The two forms are identical in the types of information they collect. However, the allocation report provides data on how grantees allocate funding at the beginning of their grant cycle and the second report or the expenditure reports track actual expenditures (including carryover dollars) at the end of their grant cycle.

The primary purposes of these forms are to: (1) Provide information on the number of grant dollars spent on various services and program components; and (2) oversee compliance with the intent of congressional appropriations in a timely manner. In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, information collected on these reports is critical for HRSA, state and local grantees, and individual providers to evaluate the effectiveness of these programs.

Likely Respondents: All Ryan White HIV/AIDS Program Grantees (Part A, Part B, Part C, and Part D)

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Program under which grantee is funded	Number of grantee respondents	Responses per grantee	Total responses	Average burden per response (in hours)	Total burden hours
Part A	56	2	112	8	896
Part B	59	2	118	12	1,416
Part A MAI	56	2	112	4	448
Part B MAI	59	2	118	4	472
Part C	361	2	722	7	5,054
Part D	90	2	180	7	1,260
Total	681		1,362		9,546

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Dated: December 5, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–29511 Filed 12–10–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received within 30 days of this notice.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Stem Cell Therapeutic Outcomes Database.

OMB #0915–0310—Revision.

Abstract: The Stem Cell Therapeutic and Research Act of 2005, Public Law (Pub. L.) 109–129, as amended by the Stem Cell Therapeutic and Research Reauthorization Act of 2010, Public Law 111–264 (the Act), provides for the collection and maintenance of human blood stem cells for the treatment of patients and research. HRSA's Healthcare Systems Bureau has established the Stem Cell Therapeutic Outcomes Database. Operation of this database necessitates certain record

keeping and reporting requirements in order to perform the functions related to hematopoietic stem cell transplantation under contract to the U.S. Department of Health and Human Services (HHS). The Act requires the Secretary to contract for the establishment and maintenance of information related to patients who have received stem cell therapeutic products and to do so using a standardized, electronic format. Data is collected from transplant centers by the Center for International Blood and Marrow Transplant Research and is used for ongoing analysis of transplant outcomes. HRSA uses the information in order to carry out its statutory responsibilities. Information is needed to monitor the clinical status of transplantation and to provide the Secretary of HHS with an annual report of transplant center-specific survival data. The increase in burden, as reflected in this revised submission request, is due to an increase in the annual number of transplants and increasing survivorship after transplantation.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

ESTIMATES OF AVERAGE ANNUALIZED HOUR BURDEN

Form name	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Baseline Pre-Transplant Essential Data (TED)	200	38	7,600	1	7,600
Product Form (includes Infusion, HLA, and Infectious Disease Marker inserts)	200	29	5,800	1	5,800
100-Day Post-TED	200	38	7,600	0.85	6,460
6-Month Post-TED	200	31	6,200	1	6,200
12-Month Post-TED	200	27	5,400	1	5,400
Annual Post-TED	200	104	20,800	1	20,800
Total	200		53,400		52,260

Dated: December 5, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–29510 Filed 12–10–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received within 30 days of this notice.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Combating Autism Act Initiative Evaluation OMB No. 0915–0335 [Revision].

Abstract: In response to the growing need for research and resources devoted to autism spectrum disorders (ASD) and other developmental disabilities (DD), the U.S. Congress passed the Combating Autism Act (CAA) in 2006. The Act included funding for the U.S. Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA), to increase awareness, reduce barriers to screening and diagnosis, promote evidence-based interventions, and train health care professionals to screen for, diagnose or rule out, and provide evidence-based interventions for ASD and other DD. In 2011, the Combating Autism Reauthorization Act (CARA) was signed into law, reauthorizing funding for the CAA's programs for an additional 3 years at the existing funding levels. Through the CARA, HRSA is tasked with increasing awareness of ASD and other DD, reducing barriers to screening and diagnosis, promoting evidence-based interventions, and training health care professionals in the use of valid and reliable screening and diagnostic tools.

Need and Proposed Use of the Information: HRSA's activities under the CARA legislation are delegated to the Maternal and Child Health Bureau (MCHB), which is implementing the Combating Autism Act Initiative (CAAI) in response to the legislative mandate. The purpose of this evaluation is to design and implement an evaluation to assess the effectiveness of MCHB's activities in meeting the goals and objectives of the CAAI and to provide sufficient data to inform MCHB and the Congress as to the utility of the grant programs funded under the Initiative. The evaluation will focus on indicators related to: (1) Increasing awareness of ASD and other DD among health care providers, other MCH professionals, and the general public; (2) reducing barriers to screening and diagnosis; (3) supporting research on evidence-based interventions; (4) promoting the

development of evidence-based guidelines and tested/validated intervention tools; (5) training professionals; and (6) building capacity for systems of services in states.

Likely Respondents: Grantees funded by HRSA under the CAAI will be the respondents for this data collection activity. The programs to be evaluated are listed below.

1. Training Programs

- Leadership Education in Neurodevelopmental Disabilities (LEND) training programs with forty-three grantees;
- Developmental Behavioral Pediatrics (DBP) training programs with ten grantees; and
- A National Combating Autism Interdisciplinary Training Resource Center grantee.

2. Research Networks Program

- Three Autism Intervention Research Networks that focus on intervention research, guideline development, and information dissemination; and
- 20 R40 Maternal and Child Health (MCH) Autism Intervention Research Program grantees that support research on evidence-based practices for interventions to improve the health and well-being of children and adolescents with ASD and other DD.

3. State Implementation Program Grants for Improving Services for Children and Youth With ASD and Other DD

- Nine grantees will implement state autism plans and develop models for improving the system of care for children and youth with ASD and other DD;
- Four grantees will design state plans for improving the system for children and youth with ASD and other DDs; and
- A State Public Health Coordinating Resource Center grantee.

The data gathered through this evaluation will be used to:

- Evaluate the grantees' performance in achieving the objectives of the CAAI during the three year grant period;
- Assess the short- and intermediate-term impacts of the grant programs on children and families affected by ASD and other DD; and
- Measure the CAAI outputs and outcomes for the Report to Congress.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Grant program/form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
LEND interview Protocol	43	1	43	1	43
DBP Interview Protocol	10	1	10	1	10
State Implementation Program Interview Protocol [1]	13	1	13	1	13
State Implementation Program Questionnaire	13	1	13	.75	9.75
Research Network Interview Protocol	3	1	3	1	3
Research Program R40 Interview Protocol	20	1	20	1	20
Research Network Questionnaire	3	1	3	3	9
Resource Centers Interview Protocol	2	1	2	1	2
Total	107		107		109.75

[1] Although a total of 22 state grants have been awarded to date, states that were awarded grants in 2008 and 2009 were interviewed during the previous evaluation. We are seeking clearance to interview only the 13 states that were awarded grants in 2011.

Dated: December 5, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–29509 Filed 12–10–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID SBIR Phase II Clinical Trial Implementation Cooperative Agreement (U44) and Clinical Trial Planning Grant (R34).

Date: January 7, 2014.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3131, 6700–B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Betty Poon, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–6891, *poonb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: December 4, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–29468 Filed 12–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Vitamin D Trials.

Date: January 30, 2014.

Time: 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca J. Ferrell, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 5, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–29466 Filed 12–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; CKD Better Outcomes R34 Planning Grants.

Date: January 6, 2014.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterro binsonc@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: December 4, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–29467 Filed 12–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in 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 Nursing Research.

Date: January 13–14, 2014.

Open: January 13, 2014, 1:00 p.m. to 5:00 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, C Wing, Room 10, Bethesda, MD 20892.

Closed: January 14, 2014, 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, C Wing, Room 10, Bethesda, MD 20892.

Contact Person: Ann R. Knebel, DNSC, RN, FAAN Deputy Director, National Institute of Nursing Research, National Institutes of Health, 31 Center Drive, Building 31, Room 5B05, Bethesda, MD 20892, 301–594–1580, *bryany@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nih.gov/ninr/a_advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS).

Dated: December 4, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–29469 Filed 12–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0975]

Waterway Suitability Assessment for Construction and Operation of Liquefied Gas Terminals; Orange, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: In accordance with Coast Guard regulations, INVISTA, S.a.r.l. has submitted a Letter of Intent and Preliminary Waterway Suitability Assessment to the Coast Guard Captain of the Port, Port Arthur, TX regarding the company's plans to construct, own and operate a waterfront facility handling and storing Liquefied Hazardous Gas (LHG) at its Orange, Texas facility. The Coast Guard is notifying the public of this action to solicit public comments on the proposed increase in LHG marine traffic on the Sabine-Neches Waterway.

DATES: Comments and related material must be received on or before January 10, 2014.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0975 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* 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. Deliveries accepted 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 three methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Commander Brandon M. Link, U.S. Coast Guard; telephone 409–719–5095, email *brandon.m.link@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:

Public Participation and Request for Comments

We encourage you to submit comments and related material in response to this notice. 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–2013–0975), and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comments. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. 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,* type the docket number (USCG–2013–0975) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this notice.

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 them 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 comments and documents: To view comments, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0975) 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.

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 notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public meeting: We do not now plan to hold a public meeting, but you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

Under 33 CFR 127.007(a), an owner or operator planning new construction to expand or modify marine terminal operations in an existing facility handling Liquefied Natural Gas (LNG) OR Liquefied Hazardous Gas (LHG), where the construction, expansion, or modification would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the waterway associated with the facility, must submit a Letter of Intent (LOI) to the COTP of the zone in which the facility is located. Under 33 CFR 127.007(e), an owner or operator planning such an expansion must also file or update a Waterway Suitability Assessment (WSA) that addresses the proposed increase in LNG or LHG marine traffic in the associated waterway. INVISTA, S.a.r.l. located in Orange, Texas submitted an LOI and WSA on November 11, 2013 regarding the company's proposed construction and operation of LHG capabilities at its Orange, Texas facility.

Under 33 CR 127.009, after receiving an LOI, the COTP issues a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG or LHG marine traffic to the appropriate jurisdictional authorities. The LOR is based on a series of factors outlined in 33 CFR 127.009 that related to the physical nature of the affected waterway and issues of safety and security associated with LNG or LHG marine traffic on the affected waterway.

The purpose of this notice is to solicit public comments on the proposed increase in LHG marine traffic on the Sabine-Neches Waterway. The Coast Guard believes that input from the public may be useful to the COTP with respect to development of the LOR. Additionally, the Coast Guard intends to task the Area Maritime Security Committee, Port Arthur, Texas and the Southeast Texas Waterways Advisory Council (SETWAC) with forming a

subcommittee comprised of affected port users and stakeholders. The goal of these subcommittees will be to gather information to help the COTP assess the suitability of the associated waterway for increased LHG marine traffic as it relates to navigational safety and security.

On January 24, 2011, the Coast Guard published Navigation and Vessel Inspection Circular (NVIC) 01–2011, ''Guidance Related to Waterfront Liquefied Natural Gas (LNG) Facilities.'' NVIC 01–2011 provides guidance for owners and operators seeking approval to build and operate LNG facilities. While NVIC 01–2011 is specific to LNG, it provides useful process information and guidance for owners and operators seeking approval to build and operate LHG facilities as well. The Coast Guard will refer to NVIC 01–2011 for process information and guidance in evaluating INVISTA's WSA. A copy of NVIC 01–2011 is available for viewing in the public docket for this notice and also on the Coast Guard's Web site at *http://www.uscg.mil/hq/cg5/nvic/2010s.asp.*

This notice is issued under authority of 33 U.S.C. 1223–1225, Department of Homeland Security Delegation Number 0170.1(70), 33 CFR 127.009, and 33 CFR 103.205.

Dated: November 18, 2013.

J.M. Twomey,

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

[FR Doc. 2013–29472 Filed 12–10–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection Bureau

Notice of Issuance of Final Determination Concerning Certain Ethernet Switches

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of certain Ethernet switches. Based upon the facts presented, CBP has concluded that Malaysia, where the switches were assembled, is the country where the last substantial transformation occurred. Therefore, the country of origin of the switches is Malaysia for purposes of U.S. Government procurement.

DATES: The final determination was issued on December 3, 2013. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before January 10, 2014.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325–0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on December 3, 2013, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of Ethernet switches which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H241177, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the last substantial transformation took place in Malaysia, where the switches were assembled. Therefore, the country of origin of the switches is Malaysia for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the Federal Register.

Dated: December 3, 2013.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

HQ H241177
December 3, 2013
MAR OT:RR:CTF:VS H241177 HkP
CATEGORY: Origin
Josephine Aiello LeBeau, Esq.
Anne Seymour, Esq.
Wilson Sonsini Goodrich & Rosati, PC
1700 K Street NW., Fifth Floor
Washington, DC 20006–3817
RE: U.S. Government Procurement; Country of Origin of Local Area Network Switches; Substantial Transformation

Dear Ms. LeBeau and Ms. Seymour:

This is in response to your letter, dated March 13, 2013, requesting a final determination on behalf of Arista Networks, Inc. (''Arista''), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (''CBP'') Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government. Your letter was forwarded to this office by the National Commodity Specialist Division on April 8, 2013.

This final determination concerns the country of origin of Arista's 7000, 7100, 7200, series (''7 Series'') local area network (''LAN'') switches. We note that as a U.S. importer, Arista is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

Arista plans to import fully functional 7 Series Ethernet switches from Singapore.[1] The switches are designed to interconnect servers and storage appliances in data centers. Each switch consists of one or more printed circuit board assembly (''PCBA''), chassis, top cover, power supply, and fans. The switches operate using Arista's Extensible Operating System (''EOS™'') software.

Arista's EOS software is designed to provide switching functionality, secure administration, increase reliability, and to optimize network management. Specifically, EOS software provides the following capabilities and benefits to Ethernet switches: in-service software upgrade, software fault containment, fault repair, security exploit containment, and scalable management interface. According to your submission, the units imported from Singapore could not function as network switches without this software, which was developed in the United States at considerable cost to Arista. Since 2005, more than 140 software engineers have continued to develop the software and more than 80 percent of Arista's Research and Development spending has been on EOS software development.

Manufacturing operations are performed in China, Malaysia and Singapore. Software downloading operations, using U.S.-origin software, take place only in Singapore.

The following operations occur in China:

The chassis and top cover are manufactured from sheet metal.

The following operations occur in Malaysia:

1. A printed circuit board is populated with various electronic components to make a PCBA.
2. The PCBA is tested to ensure functionality.
3. The power supply and fans are installed in the chassis.
4. The PCBA is installed in the chassis.

[1] CBP previously issued Headquarters Ruling Letter H175415, dated October 7, 2011, to Arista concerning the country of origin of non-functioning 7048, 7050, 7100, 7124, and 7500 series Ethernet switches imported from China and programmed in the United States with U.S.-origin software.

5. The chassis and top cover are assembled together.
6. The serial numbers of the components are entered into the data tracking system, and the switch is packaged and shipped to Singapore.

The following operations occur in Singapore:

1. Custom configuration changes, such as substitution of DC for AC power supplies and/or installation of optional hardware modules, are made.
2. U.S.-origin EOS™ software is downloaded onto the flash memory on the PCBA.
3. The switch is tested, packaged, and prepared for shipping.

The EOS software program dedicates the hardware to its specific applications and the only reprogramming operations that may be done are updating the software to a different version.

ISSUE:

What is the country of origin of the Arista's 7 Series Ethernet switches for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In *Data General v. United States,* 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its ''memory'' which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S. project engineer with many years of experience in ''designing and building hardware.'' In addition, the court noted that while replicating the program pattern from a ''master'' PROM may be a quick one-step process, the development of the pattern and the production of the ''master'' PROM required much time and expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a ''substantial transformation'' than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In *Texas Instruments v. United States,* 681 F.2d 778, 782 (CCPA 1982), the court observed that the substantial transformation issue is a ''mixed question of technology and customs law.''

In C.S.D. 84–85, 18 Cust. B. & Dec. 1044, CBP stated:

We are of the opinion that the rationale of the court in the *Data General* case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming; . . . [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that defines its use generally constitutes substantial transformation. *See also* Headquarters Ruling Letter ('HQ') 558868, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitute substantial transformation); and, HQ 733085, dated July 13, 1990; *but see* HQ 732870, dated March 19, 1990 (formatting a blank diskette does not constitute substantial transformation because it does not add value, does not involve complex or highly technical operations and did not create a new or different product); and, HQ 734518, dated June 28, 1993, (motherboards are not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imported it).

You believe that under the manufacturing scenario described in the FACTS section above, Arista's 7 Series Ethernet switches are products of Singapore. You argue that without the EOS software, the units exported from Singapore lack the intelligence to perform as network switches. In fact, you claim that the EOS software gives the Malaysian switches their essential character by providing network switching and routing functionality, management functions, network performance monitoring, security and access control, and by allowing interaction with other switches. Further, programming the switches with the EOS software creates a permanent change in the PCBAs that cannot be undone by third parties during the normal course of business. The only reprogramming operation that may be performed during the normal course of business is either updating the installed software or entering licensing keys that enable the activation of additional EOS software features.

In support of your position, you make a two-pronged argument. The first is that the switches are substantially transformed by programming. As indicated above, CBP has previously found that programming may effect a substantial transformation.

The second prong of your argument is that, when there are multiple manufacturing locations, the country of origin is the country where the last substantial transformation occurs. In this case, you claim that programming is the last substantial transformation that the switches undergo, hence, the country of origin is Singapore. You cite HQ H170315 (July 28, 2011) and HQ H203555 (April 23, 2012) as support.

HQ H203555 concerned the country of origin of oscilloscopes made according to five possible manufacturing scenarios. Regardless of the scenario, components were assembled into subassemblies, which were then made into complete oscilloscopes, in Singapore. Boards important to the function of the oscilloscopes, incorporated into the subassemblies in Singapore, were assembled in Malaysia only or in Malaysia and Singapore. In all cases, U.S.-origin firmware was downloaded onto the fully assembled oscilloscopes in Singapore. For all scenarios, CBP found that there were three countries where programming and/or assembly operations took place, the last of which was Singapore. However, no one country's operations dominated the manufacturing operations of the oscilloscopes. The boards assembled in Malaysia were important to the function of the oscilloscopes, as was the U.S. firmware and software used to program the oscilloscopes in Singapore. Further, the assembly in Singapore completed the oscilloscopes. Therefore, the last substantial transformation occurred in Singapore, which was the country of origin for procurement purposes.

HQ H170315 concerned the country of origin of satellite telephones. CBP was asked to consider six scenarios involving the manufacture of PCBs in one country and the programming of the PCBs with second country software either in the first country or in a third country where the phones were assembled. In scenarios I, II, and VI, CBP found that the country of origin of the phones was Malaysia because, as the country where the assembly and programming of the boards

which conveyed the essential character of the phones took place, that was the place where the last substantial transformation occurred. Moreover, subsequent assembly operations in Singapore did not substantially transform the programmed boards into a new and different article. In scenarios III through V, the boards were assembled in Malaysia or Malaysia and Singapore. Handset programming took place wholly, or in part, in Singapore, where the phones were also assembled to completion. For those scenarios, CBP found that the country of origin of the phones was Singapore.

We note that none of the rulings cited in Arista's submission (some discussed above) are instructive because they do not address situations in which assembly is performed in one country and software is developed in a second country and downloaded in a third country. The rulings refer to situations in which assembly and software downloading are performed in one country using programs developed in the same or another country, or to situations in which assembly is performed in one country and downloading is performed in another country using programs developed in the same country in which the software is downloaded onto the article.

In this case, the switches are assembled to completion in Malaysia and then shipped to Singapore, where EOS software developed in the United States at significant cost to Arista and over many years is downloaded onto them. It is claimed that the U.S.-origin EOS software enables the imported switches to interact with other network switches through network switching and routing, and allows for the management of functions such as network performance monitoring and security and access control; without this software, the imported devices could not function as Ethernet switches.

We find that the software downloading performed in Singapore does not amount to programming. Programming involves writing, testing and implementing code necessary to make a computer function in a certain way. *See Data General supra. See also* ''computer program'', *Encyclopædia Britannica* (2013), (9/19/2013) *http://www.britannica.com/EBchecked/topic/130654/computer-program,* which explains, in part, that ''a program is prepared by first formulating a task and then expressing it in an appropriate computer language, presumably one suited to the application.''

While the programming occurs in the U.S., the downloading occurs in Singapore. Given these facts, we find that the country where the last substantial transformation occurs is Malaysia, that is, where the major assembly processes are performed. The country of origin for purposes of U.S. Government procurement is Malaysia.

HOLDING:

Based on the facts provided, the last substantial transformation occurs in Malaysia. As such, the switches will be considered products of Malaysia for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR § 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

[FR Doc. 2013–29470 Filed 12–10–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Docave Computer Software

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of certain computer software known as DocAve Software. Based upon the facts presented, CBP has concluded that the software build operations performed in the United States substantially transform software modules developed in China. Therefore, the country of origin of DocAve Software is the United States for purposes of U.S. Government procurement.

DATES: The final determination was issued on December 4, 2013. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before January 10, 2014.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325–0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on December 4, 2013, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR Part 177, subpart B), CBP issued a final determination concerning the country of origin of certain computer software known as DocAve Software, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H243606, was issued under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the software build operations performed in the United States substantially transform non-TAA country software modules developed in China. Therefore, the country of origin of DocAve Software is the United States for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: December 4, 2013.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

HQ H243606

December 4, 2013

Larry Hampel, Esq.

Albert B. Krachman, Esq.
Blank Rome, LLP
Watergate
600 New Hampshire Avenue, NW
Washington, DC 20037

RE: Trade Agreements Act; Substantial Transformation; Country of Origin of Software

Dear Mr. Hampel and Mr. Krachman:

This is in response to your letter dated June 24, 2013, requesting a final determination on behalf of AvePoint, Inc. (''AvePoint''), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (CBP) Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of computer software. As the U.S. importer of the subject

merchandise, AvePoint is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

AvePoint manufactures DocAve Software (''DocAve''), a comprehensive suite of applications for Microsoft® SharePoint®. SharePoint is a multipurpose set of Web technologies backed by a common technical infrastructure that is used to provide intranet portals, document & file management, collaboration, social networks, extranets, Web sites, enterprise search, and business intelligence. It also has system integration, process integration, and workflow automation capabilities. DocAve products simplify the deployment, monitoring, and enforcement of SharePoint governance policies. DocAve products have a browser-based user interface and a fully distributed architecture that integrates backup, administration and data management technologies for all SharePoint products. Its applications can be executed separately, but they function within a unified platform and are provided as an integrated package.

According to the information submitted, DocAve software is developed in seven steps, described as follows:

(1) **Research:** A list of ideas and potential features to be included in the software is compiled. A product roadmap is developed and test cases are written to govern and ensure that all the requirements of the application and software design are met. Twenty percent of total product development hours is allocated to this step (18% of which is performed in the U.S. and 2% in China).

(2) **Development of Graphic User Interface (''GUI''):** A prototype GUI based on designs created in Step 1 is developed and tested. Ten percent of total product development hours is allocated to this step, all of which is performed in the U.S.

(3) **Development/Writing of Software Specifications and Architecture:** The chief architects create a detailed software design in order to modularize the software so that its development can be easily distributed and managed by different development teams. Ten percent of total product development hours is allocated to this step, all of which is performed in the U.S.

(4) **Programming of Source Code:** Software modules are distributed to different development teams in the U.S. and China. Each module is self-contained and can be developed separately, but cannot run independently and is not executable code. Twenty-five percent of total product development hours is allocated to this step (5% of which is performed in the U.S. and 20% in China).

(5) **Software Build:** Separate source code modules are transferred to the repository server hosted in the U.S., which is the only place where a development team has access to the entire source code. The team integrates the modules with each other by compiling the source code into object code (a sequence of statements or instructions in a computer language) and works out incompatibilities or bugs by re-writing or correcting source code, as needed, makes the software into executable files, and constructs an installation package that is easily installed. The U.S. team creates all the lines of the object code, makes all the software executable files in various versions and languages. This step may be performed multiple times if testing indicates the need for correction. Fifteen percent of total product development hours is allocated to this step, all of which is performed in the U.S.

(6) **Testing and Validation**: The software package is tested based on functional specifications defined in Step 1. Once the test case pass rate is met, the software is ready for release. Fifteen percent of total product development hours is allocated to this step (5% of which is performed in the U.S. and 10% in China).

(7) **Preparing Software/Burning Media for Distribution:** The U.S. project management team coordinates with marketing and sales teams to make the software publicly available. Five percent of total product development hours is allocated to this step, all of which is performed in the U.S.

In sum, steps 2, 3, 5, and 7 (development of the GUI, development/writing of specification and architecture software, software build, and preparation of software for distribution) are performed entirely in the U.S. Steps 1, 4, and 6 (research, programming of the source code, and testing and validation) are performed in the U.S. and China. In terms of total product development hours, which encompass all seven steps, 68% is allocated to work performed in the United States, and 32% to work performed in China. We note that there were no documents submitted in support of the estimated percentages of work hours involved in the overall manufacturing process. For the purposes of this ruling, we presume that the figures provided are correct.

ISSUE:

What is the country of origin of AvePoint's DocAve Software for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1). The Federal Procurement Regulations define ''U.S.-made end product'' as:

[A]n article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

In *Data General v. United States,* 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. The PROMs had no capacity to store and retrieve information until they were programmed in the U.S. by U.S. engineers who interconnected the discrete components in a defined logical pattern. The programming bestowed upon each circuit its electronic function, that is, its ''memory'' which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S. project engineer with many years of experience in ''designing and building hardware.'' While replicating the program pattern from a ''master'' PROM may be a quick one-step process, the development of the pattern and the production of the ''master'' PROM required much time and expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a ''substantial transformation'' than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

You believe that the country of origin of DocAve Software is the United States because it is the country in which the software build occurs, a process which you liken to assembly and believe is sufficient in itself to effect a substantial transformation of all the software inputs. You note that some of the pre-build design and architecture, and some of the post- or re-build test design and validation decisions also take place in the U.S. Specifically, the design concept and user-driven features of the software are the result of work performed in the U.S., and their functional implementation is achieved only through the compilation of source code modules and the integration of executable modules through numerous build and test sequences, also performed in the U.S. Additionally, you note that while testing is largely performed in China, the decisions on critical functions and features pass rates are taken by the U.S. project management team. As a result of the software development and production processes performed in the U.S., you believe that a new commercial product (DocAve Software) is created that differs from any of its components, which individually are not capable of achieving the purpose or function of the completed software.

Based on the reasoning in *Data General supra,* we find that the software build performed in the U.S. substantially transforms the software modules developed in China and the U.S. into a new article with a new name, character and use, that is, DocAve Software. During the software build process, the source code modules developed in the U.S. and China are transferred to a server in the U.S, where the U.S. software development team creates DocAve Software by compiling the source code into object code, and works out incompatibilities or bugs by re-writing or correcting source code as needed. Moreover, the U.S. team creates all the lines of the object code, makes all the software executable files in various versions and languages, and constructs the installation package as an easily installable unit. In addition, 90% of the software development research is performed in the U.S., as are aspects of programming of the source code and testing and validation, such that 68% of the development of DocAve Software is attributed to work performed in the United States. Given these facts, we find that the country of origin of DocAve Software is the United States for purposed of U.S. Government procurement.

Please be advised that whether the software may be marked ''Made in the U.S.A.'' or with similar words, is an issue under the authority of the Federal Trade Commission (''FTC''). We suggest that you contact the FTC, Division of Enforcement, 6th and Pennsylvania Avenue NW, Washington, DC 20508, on the propriety of markings indicating that articles are made in the United States.

HOLDING:

Based on the facts provided, the software build operations performed in the United States substantially transforms the software modules developed in China and the U.S. into a new article with a new name, character and use, that is, DocAve Software. As such, DocAve Software is considered a product of the United States for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell, Executive Director
Regulations and Rulings
Office of International Trade

[FR Doc. 2013–29586 Filed 12–10–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–47]

60-Day Notice of Proposed Information Collection: Application for FHA Insured Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 10, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or

speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Kevin Stevens, Deputy Director, HMID, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Kevin Stevens at *Kevin.L.Stevens@hud.gov,* or telephone 202–708–2121. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Mr. Stevens.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Application for FHA Insured Mortgage.

OMB Approval Number: 2502–0059.

Type of Request: Extension of currently approved collection.

Form Number: HUD–92900–A, HUD–92900–B, HUD–92900–LT, HUD–92561, Addendum to HUD–1, Model Notice for Informed Consumer Choice Disclosure, Model Pre-Insurance Review/Checklist.

Description of the need for the information and proposed use: Specific forms and related documents are needed to determine the eligibility of the borrower and proposed mortgage transaction for FHA's insurance endorsement. Lenders seeking FHA's insurance prepare certain forms to collect data.

Respondents (i.e. affected public): Business.

Estimated Number of Respondents: 11,604.

Estimated Number of Responses: 1,239,416.

Frequency of Response: on occasion.

Average Hours per Response: 55 minutes.

Total Estimated Burdens: 534,971.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 5, 2013.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner

[FR Doc. 2013–29548 Filed 12–10–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–C–103]

30-Day Notice of Proposed Information Collection: Assessment of Native American, Alaska Native and Native Hawaiian Housing Needs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Correction Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment. This notice replaces the notice HUD published on November 27, 2013.

DATES: *Comments Due Date:* January 10, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 1, 2012. There have been some revisions in the information collection plan since that date. The updated information collection is desctibed below.

A. Overview of Information Collection

Title of Information Collection: Assessment of Native American, Alaska Native and Native Hawaiian Housing Needs.

OMB Approval Number: 2528–0288.

Type of Request: Revision of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: The Department is conducting this study under contract with The Urban Institute and its subcontractors, NORC, Econometrica and SSI. The project is a housing needs assessment that will produce national level estimates of housing needs in tribal areas in the United States. HUD provides funding though several programs to Native American and Alaskan Native populations, most notably through the Indian Housing Block Grant. The level of housing need is of particular interest to HUD and the Congress has mandated this study. HUD has not published a study on housing needs, in general, for this population since 1996. The survey covered by this data collection is a household survey of Native Hawaiians living in Hawaii.

Respondents: Native Hawaiian heads of households currently resident in the state of Hawaii. The respondents for this survey will be drawn from the Applicant Wait List maintained by the state of Hawaii's Department of Hawaiian Home Lands (DHHL). The individuals on the DHHL list are eligible for the homestead benefit (that is, people who are at least 50% blood quantum Native Hawaiian) and are not currently direct recipients of federal housing assistance targeted to Native Hawaiians. The goal is 500 total completed interviews. In order to reach that goal, the target a will be sample 625 respondents. In-person household interviews will be conducted.

Estimation of the Total Number of Hours Needed To Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response:

Respondents	Number of respondents	Number responses per respondent	Average burden/ response (in hours)	Total burden hours
Household Survey (waiting list)	500	1	60 minutes (1.00 hour).	500
Total				500

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapters 35.

Dated: December 5, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–29540 Filed 12–10–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–105]

30-Day Notice of Proposed Information Collection: Public Housing Energy Audits and Utility Allowances

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* January 10, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 25, 2013.

A. Overview of Information Collection

Title of Information Collection: Public Housing Energy Audits and Utility Allowances.

OMB Approval Number: 2577–062.

Type of Request: Reinstatement, with change, of previously approved collection.

Form Number: HUD–50078.

Description of the need for the information and proposed use: 24 CFR 965.301, Subpart C, Energy Audit and Energy Conservation Measures, requires PHAs to complete energy audits once every five years and undertake cost-effective energy conservation measures. 24 CFR Part 965, Subpart E, Resident Allowances for Utilities, requires PHAs to establish, review and revise utility allowances for PHA-furnished utilities and for resident-purchased utilities.

Respondents (i.e. affected public): Public Housing Agencies.

Section reference	Number of respondents	Number of responses per respondent	Total annual number of responses	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
965.302—Energy Audits	680	1	680	3.5	2,380
965.308—Energy Performance Contracts	22	1	22	100	2,200
965.402—Benefit/Cost Analysis	5	1	1	3	15
965.502—Establish utility allowances	5	1	5	20	100
965.507—Review utility allowances	13,100	1	3,100	2	6,200
965.507—Revise utility allowances	21,240	1	1,240	20	24,800
965.506—Establishment of Surcharges for Excess Consumption	200	1	200	1	200
Optional Benchmarking (50078 available for this purpose)	350	1	350	1.5	525

Section reference	Number of respondents	Number of responses per respondent	Total annual number of responses	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
965–508–Individual Relief Criteria	1,000	1	1,000	1	1,000
Total Paperwork Burden for OMB Control #2577–0062					37,420

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapters 35.

Dated: December 4, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–29543 Filed 12–10–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–49]

60-Day Notice of Proposed Information Collection: The Multifamily Accelerated Processing Guide

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 10, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Wendy Carter, Office of Housing, Technical Support Division, HTDT, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Wendy Carter at *Wendy.n.Carter@hud.gov* or telephone 202–402–2546. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Carter.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: The Multifamily Accelerated Processing Guide.

OMB Approval Number: 2502–0541.

Type of Request: Extension.

Form Number: None.

Description of the need for the information and proposed use: The Multifamily Accelerated Processing Guide, November 2011 is being renewed by the Department. The MAP Guide is a procedural guide that permits approved Federal Housing Administration (FHA) Lenders to prepare, process, and submit loan applications for FHA multifamily mortgage insurance.

Respondents: Business or other for profit.

Estimated Number of Respondents: 90.

Estimated Number of Responses: 1045.

Frequency of Response: On Occasion.

Average Hours per Response: 436.

Total Estimated Burdens: 419,775.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 5, 2013.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2013–29544 Filed 12–10–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5690–N–16]

60-Day Notice of Proposed Information Collection: Restrictions on Assistance to Noncitizens

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information for Applicant/Tenant's Consent to the Release of Information and the Authorization for the Release of Information/Privacy Act Notice. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 10, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Restrictions on Assistance to Noncitizens.

OMB Approval Number: 2501–0014.

Type of Request: Extension of currently approved collection.

Form Number: HUD–9886, HUD–9886–ARA, HUD–9886–CAM, HUD–9886–CHI, HUD–9886–CRE, HUD–9886–FRE, HUD–9886–HMO, HUD–9886–KOR, HUD–9886–RUS, HUD–9886–SPA, HUD–9886–VIE.

Description of the need for the information and proposed use: HUD is prohibited from making financial assistance available to other than citizens or persons of eligible immigration status. This is a request for an extension of the current approval for HUD to require a declaration of citizenship or eligible immigration status from individuals seeking certain housing assistance.

Respondents (i.e. affected public): Individuals or households, State, Local, or Tribal Government.

Reporting burden	Number of respondents	Annual response	×	Hours per responses	=	Burden hours
New admissions	4,055	864,434		0.16		138,309
Recertifications	4,055	29,648		0.08		2,372

Total Estimated Burden Hours: 140,681.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 as amended.

Dated: December 4, 2013.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2013–29542 Filed 12–10–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–48]

60-Day Notice of Proposed Information Collection: HUD Multifamily Energy Assessment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 10, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Harry Messner, Office of Asset Management, Policy and Participation Standards Division, Department of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Harry.Messner@hud.gov* or telephone 202–402–2626. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Mr. Messner.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: HUD Multifamily Energy Assessment.

OMB Approval Number: 2502–0568.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–9614.

Description of the need for the information and proposed use: The purpose of this information collection is to assist owners of multifamily housing projects with assessing energy needs in an effort to reduce energy costs and improve energy conservation.

Respondents: Business and Other for profit.

Estimated Number of Respondents: 12,290.

Estimated Number of Responses: 18,435.

Frequency of Response: Monthly.

Average Hours per Response: 8 hours.

Total Estimated Burdens: 99,856.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 5, 2013.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2013–29547 Filed 12–10–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2013–N240; FXES11130200000–145–FF02ENEH00]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activities. The Act and the National Environmental Policy Act also require that we invite public comment before issuing these permits.

DATES: To ensure consideration, written comments must be received on or before January 10, 2014.

ADDRESSES: Marty Tuegel, Section 10 Coordinator, by U.S. mail at Division of Endangered Species, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM at 505–248–6920. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; 505–248–6651.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

The Act (16 U.S.C. 1531 et seq.) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number (e.g., Permit No. TE–123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE–078189

Applicant: Adkins Consulting Inc., Durango, Colorado.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of southwestern willow flycatcher (*Empinodax traillii extimus*) within New Mexico.

Permit TE–819477

Applicant: Parametrix, Inc., Albuquerque, New Mexico.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys and temporarily hold for the purposes of collecting biological data Jemez Mountain salamanders (*Plethodon neomexicanus*) within New Mexico.

Permit TE–045236

Applicant: SWCA, Inc., Albuquerque, New Mexico.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys; construction monitoring; capture and relocation of Jemez Mountain salamanders

(*Plethodon neomexicanus*) within New Mexico.

Permit TE–071287

Applicant: Bruce Christman, Albuquerque, New Mexico.

Applicant requests a renewal to an expired permit for research and recovery purposes to conduct presence/absence surveys and temporarily hold for the purposes of collecting biological data Jemez Mountain salamanders (*Plethodon neomexicanus*) within New Mexico.

Permit TE–19661B

Applicant: Tetra Tech, Inc., Portland, Oregon.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for Rio Grande silvery minnow (*Hybognathus amarus*) within the Middle Rio Grande River, New Mexico.

Permit TE–116382

Applicant: Peoria Tribe of Indians of Oklahoma, Miami, Oklahoma.

Applicant requests an amendment to a current permit for research and recovery purposes to hold and propagate Neosho mucket (*Lampsilis rafinesqueana*) and release into the wild in Oklahoma.

Permit TE–833851

Applicant: City of Austin Watershed Protection Department, Austin, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys; abundance surveys using mark/recapture; hormone sampling; collection of up to 3 individuals as voucher specimens from new locations; and collection of tail clips for genetic sampling of the Austin blind salamander (*Eurycea waterlooensis*) within Texas.

Permit TE–13850A

Applicant: Jarrod Edens, Edmond, Oklahoma.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys for American burying beetle (*Nicrophorus americanus*) within Oklahoma, Texas, and Arkansas.

Permit TE–819558

Applicant: U.S.D.A. Forest Service, National Forests and Grasslands in Texas, Lufkin, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of interior least tern (*Sterna antillarum*) and American burying beetle (*Nicrophorus americanus*) and the following activities for red-cockaded woodpecker (*Picoides borealis*) in Texas: presence/absence surveys; roost searches; tree activity status checks; handling of juvenile and chicks; banding of adults; banding of nestlings; translocating; trapping; installing artificial cavities, and cavity exams.

Permit TE–676811

Applicant: U.S. Fish and Wildlife Service-Region 2, Albuquerque, New Mexico.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys and recovery the following species within New Mexico, Oklahoma, and Texas:

- Austin blind salamander (*Eurycea waterlooensis)*
- Chupadera springsnail (*Pyrgulopsis chupadarae*)
- Jemez Mountains salamander (*Plethodon neomexicanus*)
- Neosho mucket (*Lampsilis Rafinesqueana*)

Permit TE–819451

Applicant: Travis County Transportation and Natural Resources, Austin, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of the following species in Texas:

- Bee Creek Cave harvestman (*Texella reddelli*)
- Black-capped vireo (*Vireo atricapilla*)
- Bone Cave harvestman (*Texella reyesi*)
- Braken Bat Cave meshweaver (*Cicurina venii*)
- Coffin Cave mold beetle (*Batrisodes texanus*)
- Cokendolpher Cave harvestman (*Texella cokendolpheri*)
- Golden-cheeked warbler (*Dendroica chrysoparia*)
- Government Canyon Bat Cave meshweaver (*Cicurina vespera*)
- Government Canyon Bat Cave spider (*Neoleptoneta microps*)
- Ground beetle (*Rhadine exilis)*
- Ground beetle *(Rhadine infernalis*)
- Helotes mold beetle (*Batrisodes venyivi*)
- Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
- Madla Cave meshweaver (*Cicurina madla*)
- Robber Baron Cave meshweaver (*Cicurina baronia*)
- Tooth Cave ground beetle (*Rhadine persephone*)
- Tooth Cave pseudoscorpion (*Tartarocreagris texana*)
- Tooth Cave spider (*Neoleptoneta (=Leptoneta) myopica*)

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: November 22, 2013.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region.

[FR Doc. 2013–29460 Filed 12–10–13; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Draft Supplemental Environmental Assessment and Finding of No Significant Impact for Flood Control Improvements to the Rio Grande Canalization Project in Vado, New Mexico; Notice of Availability

AGENCY: United States Section, International Boundary and Water Commission (USIBWC), United States and Mexico.

ACTION: Notice of Availability of Draft Supplemental Environmental Assessment (SEA) and Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy

Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508); and the USIBWC's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the USIBWC hereby gives notice that the Final Environmental Assessment and Finding of No Significant Impact for *Flood Control Improvements to the Rio Grande Canalization Project in Vado, New Mexico* are available.

FOR FURTHER INFORMATION CONTACT: Gilbert Anaya, Environmental Management Division; United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4703, email: *gilbertanaya@ibwc.state.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Action

The USIBWC is considering relocating the Rio Grande river channel in the Canalization Project Levee System in a 1.08 mile stretch in Vado, New Mexico and create new levees where no flood control measures exist in an effort to meet current flood control requirements. The Preferred Alternative would relocate the river channel approximately 100 feet west due to the river channel moving east against the Burlington Northern Santa Fe (BNSF) railroad. The preferred alternative would then create a new levee that would tie into existing levee structures to the north and south of the project area. These improvements will be subject to availability of funds.

The Supplemental Environmental Assessment assesses potential environmental impacts of the No Action Alternative and the Preferred Alternative. Two additional alternatives were considered but were not evaluated as they were determined to be more costly, more difficult to achieve, less reliable, and more difficult to maintain. Potential impacts on natural, cultural, and other resources were evaluated. A Finding of No Significant Impact was issued for the Preferred Alternative based on a review of the facts and analyses contained in the Environmental Assessment when taking the proposed mitigation into account.

Alternatives Considered

A No Action Alternative was evaluated for the flood control improvements to the Rio Grande Canalization Project Levee System. This alternative would retain the existing configuration of the system, and the level of protection currently associated with this system. Under severe storm events, current containment capacity may be insufficient to fully control Rio Grande flooding, with risks to personal safety and potential property damage, as well as risks to the railroad system.

Design alternatives were conducted and evaluated in the final design memorandum entitled ''*Rehabilitation Improvements for the Vado East Levee, Doña Ana County, New Mexico,*'' dated July 29, 2011. The final design memorandum evaluated three alternatives as described below.

Preferred Alternative. The Preferred Alternative would allow the levees to meet the design criteria to contain flood flows and to comply with FEMA specifications for the levees in the Rio Grande Canalization Project Levee System. This would be accomplished by creating a flood containment levee 1.08 miles in length that would continue from the current levee system to the north and south of the project area. Fill material, obtained from commercial sources would be used to create a levee to meet the 3 foot freeboard criterion established by the Federal Emergency Management Agency (FEMA). In order to create the levee in this area, the river channel would have to be relocated 100 feet to the west and the floodplain would have to be re-established on the eastern side of the river.

Flood Wall Alternative. This alternative would construct a flood wall that would tie into the existing levee system to the north and south of the project. The flood wall would require dredging the river channel along the section that is currently against the railroad easement and construction of a concrete or metal wall that would extend 888 feet along the river and existing flood plain to the current levees. The wall would be 8 feet tall above the flood plain and require pilings to be driven 40 feet in the ground.

Sheet Pile Wall Alternative. This alternative would construct a sheet pile wall instead of the flood wall. This wall would follow the same requirements but would consist of interlocked metal sheets driven into the ground instead of a concrete wall. Therefore, the pilings would also have to be driven 40 feet into the ground but would instead of a few like in the flood wall; all of the pilings across the entire length would have to be driven down to bedrock.

Availability

Single hard copies of the Final Environmental Assessment and Finding of No Significant Impact may be obtained by request at the above address. Electronic copies may also be obtained from the USIBWC Web page: *www.ibwc.gov/Organization/Environmental/EIS_EA_Public_Comment.html.*

Dated: November 27, 2013.

Luisa Alvarez,

General Counsel.

[FR Doc. 2013–29047 Filed 12–10–13; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1206 (Final)]

Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan; Scheduling of the Final Phase of an Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1206 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Japan of diffusion-annealed, nickel-plated flat-rolled steel products, provided for primarily in subheadings 7210.90.60 and 7212.50.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* November 19, 2013.

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174), Office of Investigations, U.S.

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as flat-rolled, cold reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (i.e., ''diffusion-annealed''); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness. For purposes of this investigation, ''nickel-based alloys'' include all nickel alloys with other metals in which nickel accounts for at least 80 percent of the alloy by volume. (78 FR 69371, November 19, 2013)

International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of diffusion-annealed, nickel-plated flat-rolled steel products from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on March 27, 2013, by Thomas Steel Strip Corporation, Warren, OH.

Participation in the investigation and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on March 18, 2014, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on April 1, 2014, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 26, 2014. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 28, 2014, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 25, 2014. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 8, 2014. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before April 8, 2014. On April 24, 2014, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 28, 2014, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Dated: December 5, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–29484 Filed 12–10–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–903]

Certain Antivenom Compositions and Products Containing the Same; Institution of Investigation Pursuant to United States Code

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 30, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of BTG

International Inc. of West Conshohocken, Pennsylvania. A letter supplementing the complaint was filed on November 19, 2013. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain antivenom compositions and products containing the same by reason of infringement of U.S. Patent No. 8,048,414 (''the '414 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2013).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 27, 2013, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain antivenom compositions and products containing the same by reason of infringement of one or more of claims 1–9, 13, 15–19, 21 and 22 of the '414 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: BTG International Inc., Five Tower Bridge, Suite 800, 300 Barr Harbor Drive, West Conshohocken, PA 19428.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Veteria Laboratories, Lucerna #7 Col., Juárez C.P., México D.F. 06600.
BioVeteria Life Sciences, LLC, 1042 Willow Creek Road, Suite A101–482, Prescott, AZ 86301.
Instituto Bioclon S.A. de C.V., Calzada de Tlalpan No. 4687, Col. Toriello Guerra, Tlalpan, Ciudad De Mexico D.F. 14050.
Laboratorios Silanes SA de CV, Amores 1304, Col. Del. Valle, Mexico D.F., C.P. 03100.
The Silanes Group, Amores 1304, Col. Del. Valle, Mexico D.F., C.P. 03100.
Rare Disease Therapeutics, Inc., 2550 Meridian Boulevard, Franklin, TN 37067.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: November 27, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary.

[FR Doc. 2013–29522 Filed 12–10–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0011]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Application To Make and Register a Firearm

ACTION: 30-Day Notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (78 FR 43920, July 22, 2013), allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 10, 2014. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory

Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Make and Register a Firearm.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 1 (5320.1). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Business or other for-profit, and individuals or households.

Need for Collection

The form is used by persons applying to make and register a firearm that falls within the purview of the National Firearms Act. The information supplied by the applicant on the form helps to establish the applicant's eligibility. The changes to the form are to allow applicants to pay the transfer tax by credit or debit card, and combine information currently captured on another form.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 9,662 respondents will take an average of approximately 1.69 hours to complete.

(6) An estimate of the total burden (in hours) associated with the collection: There are an estimated 16,374 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: December 5, 2013.

Jerri Murray,

Department Clearance Office for PRA, U.S. Department of Justice.

[FR Doc. 2013–29476 Filed 12–10–13; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0015]

Agency Information Collection Activities; Proposed Collection; Comments Requested:Application for Tax Exempt Transfer and Registration of Firearm

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 10, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, National Firearms Act Branch at *nfaombcomments@atf.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application For Tax Exempt Transfer and Registration of Firearm.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5 (5320.5). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Business or other for-profit, and Individual or households.

Need for Collection

ATF F 5 (5320.5) is used to apply for permission to transfer a National Firearms Act (NFA) firearm exempt from transfer tax based on statutory exemptions. The information on the form is used by NFA Branch personnel to determine the legality of the application under Federal, State, and local law. The change to the form is to combine information that is currently captured on another form.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 9,688 respondents will take an average of 33 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 5,287 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: December 5, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–29481 Filed 12–10–13; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0014]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Application for Tax Paid Transfer and Registration of Firearm

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 10, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, National Firearms Act Branch at *nfaombcomments@atf.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Tax Paid Transfer and Registration of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 4 (5320.4). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individual or households.

Need for Collection

ATF F 4 (5320.4) is required to apply for the transfer and registration of a National Firearms Act (NFA) firearm. The information on the form is used by NFA Branch personnel to determine the legality of the application under Federal, State and local law. The changes to the form are to allow the applicant to pay the transfer tax by credit or debit card, clarify instructions, and combine information that is currently captured on another form.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 65,085 respondents will take an average of 1.68 hours to complete the form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 109,552 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: December 5, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–29480 Filed 12–10–13; 8:45 am]

BILLING CODE 4410–FY–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2014–009]

Advisory Committee on the Presidential Library-Foundation Partnerships

AGENCY: National Archives and Records Administration (NARA).

ACTION: Meeting Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on Presidential Library-Foundation Partnerships. The meeting will be held to discuss NARA's budget and its strategic planning process as it relates to Presidential Libraries. The meeting will be open to the public.

DATES: The meeting will be held on Wednesday, January 8, 2014, from 1:00 p.m. to 4:00 p.m.

ADDRESSES: John F. Kennedy Presidential Library and Museum, Columbia Point (Smith Hall), Boston, MA 02125.

FOR FURTHER INFORMATION CONTACT: Denise LeBeck at 301–837–3250 or *denise.lebeck@nara.gov.*

SUPPLEMENTARY INFORMATION: You may enter from the John F. Kennedy Presidential Library and Museum's main entrance. Photo identification may be required. There is ample and free parking available.

Tentative Agenda

- Opening remarks
- Approval of minutes
- Budget and strategic planning
- Adjournment

Dated: December 5, 2013.

Patrice Little Murray,

Acting Committee Management Officer.

[FR Doc. 2013–29537 Filed 12–10–13; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

[NARA–2014–010]

State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTP–PAC)

AGENCY: National Archives and Records Administration (NARA).

ACTION: Meeting Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), the National Archives and Records Administration (NARA) announces a meeting of the State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTP–PAC). The meeting will be held to discuss matters relating to the Classified National Security Information Program for State, Local, Tribal, and Private Sector Entities. The meeting will be open to the public.

DATES: The meeting will be held on January 24, 2014, from 10:00 a.m. to 12:00 noon.

ADDRESSES: National Archives and Records Administration; 700 Pennsylvania Avenue NW., Jefferson Room; Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Robert J. Skwirot, Senior Program Analyst, ISOO, National Archives Building; 700 Pennsylvania Avenue NW., Washington, DC 20408, at (202) 357–5398, or at *robert.skwirot@nara.gov.* Contact ISOO at *ISOO@nara.gov.*

SUPPLEMENTARY INFORMATION: Due to space limitations and access procedures, you must submit to ISOO no later than Friday, January 17, 2014, the name and telephone number of individuals planning to attend. ISOO will provide additional instructions for gaining access to the location of the meeting.

Dated: December 5, 2013.

Patrice Little Murray,

Acting Committee Management Officer.

[FR Doc. 2013–29538 Filed 12–10–13; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On November 5, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. After considering all comments received, the permit was issued on December 6, 2013 to: Ron Naveen, Permit No. 2014–024.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–29533 Filed 12–10–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On November 4, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. After considering all comments received, the permit was issued on December 6, 2013 to: Lynn Reed, Permit No. 2014–023.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–29534 Filed 12–10–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–036; NRC–2008–0616]

Entergy Operations, Inc.; Combined License Application for River Bend Unit 3, Exemption From the Requirements To Update a Final Safety Analysis Report Submitted as Part of a Combined License Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a September 30, 2013, request from Entergy Operations, Inc. (EOI) which requested an exemption from Final Safety Analysis Report (FSAR) updates included in their Combined License (COL) application. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption, but stipulated that the updates to the FSAR must be submitted prior to, or coincident with, the resumption of the COL application review or by December 31, 2014, whichever comes first.

ADDRESSES: Please refer to Docket ID NRC–2008–0616 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0616. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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 ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at

the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Klos, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone: 301–415–5136; email: *John.Klos@nrc.gov.*

SUPPLEMENTARY INFORMATION: The following sections include the text of the exemption in its entirety as issued to EOI.

1.0 Background

On September 25, 2008, EOI submitted to the NRC a COL application for one Economic Simplified Boiling-Water Reactor to be constructed and operated near St. Francisville, Louisiana in West Feliciana Parish. The NRC accepted for docketing the River Bend Station Unit 3 (RBS3) COL application on December 4, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML083370275, Docket No. 52–036). On January 9, 2009, EOI requested that the NRC temporarily suspend review of the application and the NRC granted EOI's request (ADAMS Accession No. ML090080277) while the application remained docketed. On December 3, 2012 (ADAMS Accession No. ML12342A231), EOI submitted updates to the Final Safety Analysis Report (FSAR), per Section 50.71(e)(3)(iii) of Title 10 of the *Code of Federal Regulations* (10 CFR). On September 30, 2013 (ADAMS Accession No. ML13275A066), EOI requested an exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit COL FSAR updates.

2.0 Request/Action

Section 50.71(e)(3)(iii) requires that an applicant for a COL under Subpart C of 10 CFR Part 52, must update their FSAR annually during the period from docketing the application to the Commission making its 10 CFR 52.103(g) finding.

Pursuant to 10 CFR 50.71(e)(3)(iii) the next annual update of the FSAR concerning the RBS3 COL application would be due in December 2013 as EOI included an update to the FSAR in a letter dated December 3, 2012 (ADAMS Accession No. ML12342A231). By letter dated January 9, 2009, EOI requested that the NRC suspend review of the RBS3 COL. The NRC granted EOI's request for suspension (ADAMS Accession No. ML090080277) and all review activities related to the RBS3 COL application were suspended while the application remained docketed. In a letter dated, September 30, 2013 (ADAMS Accession No. ML13275A066), EOI requested that the RBS3 COL application be exempt from the 10 CFR 50.71(e)(3)(iii) requirements until the time that EOI requests the NRC to resume the review of the RBS3 COL application review is made by EOI. Prior to, or coincident with this reactivation request, EOI commits to submit an updated FSAR.

EOI's requested exemption is interpreted as a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow EOI to submit the next FSAR update at a later date, but still in advance of NRC's reinstating its review of the application and in any event, by December 31, 2014. The current FSAR update requirement could not be changed, absent the exemption.

3.0 Discussion

Pursuant to 10 CFR 50.12 the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, including 10 CFR 50.71(e)(3)(iii) when: (1) The exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(iii)) and if ''the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most up to date information regarding the COL application, in order to perform an efficient and effective review. The rule targeted those applications that are being actively reviewed by the NRC. Because EOI requested the NRC to suspend its review of the RBS3 COL application, compelling EOI to submit its FSAR on an annual basis is not necessary as the FSAR will not be changed or updated until the review is restarted. Requiring the updates would result in undue hardship on EOI, and the purpose of 10 CFR 50.71(e)(3)(iii) would still be achieved if the update is submitted prior to restarting the review and in any event by December 31, 2014.

The requested exemption to defer submittal of the next update to the FSAR included in the RBS3 COL application would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii). As evidenced by the proper submittal of annual updates on December 6, 2010 (ADAMS Accession No. ML103440074), December 7, 2011 (ADAMS Accession No. ML11343A568), and December 3, 2012 (ADAMS Accession No. ML12342A231), EOI has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) prior to requesting suspension of the review. EOI's exemption request asks the NRC to grant exemption from 10 CFR 50.71(e)(3)(iii) until a reactivation request is made by EOI for the RBS3 COL application. Because such a request is seen as open-ended and therefore not temporary, the NRC included a December 31, 2014, deadline as part of its review of the exemption request.

For the reasons stated above, the application of 10 CFR 50.71(e)(3)(iii) in this particular circumstance can be deemed unnecessary and the granting of the exemption would allow only temporary relief from a rule that the applicant had made good faith efforts to comply with, therefore special circumstances are present.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow EOI to submit the next RBS3 FSAR update on or before December 31, 2014, in lieu of the required scheduled submittal in December 2013. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50 . The NRC staff has determined that granting EOI the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR 50.71(e)(3)(iii), is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the

schedule for submittal to the NRC of revisions to an application under 10 CFR Part 52, for which a license has not been granted. In addition, since the review of the application has been suspended, any update to the application submitted by EOI will not be reviewed by the NRC at this time. Based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption thus, neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety. Plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed and a license decision is made, the probability of postulated accidents is not increased. Additionally, based on the nature of the requested exemption, as described above, no new accident precursors are created by the exemption; thus neither probability, nor the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow EOI to submit the next FSAR update prior to, or coincident with requesting the NRC to resume the review and, in any event, on or before December 31, 2014. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii) are present ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)). The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most up-to date information in order to perform its review of a COL application efficiently and effectively. Because the requirement to annually update the FSAR was intended for active reviews and the RBS3 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption, and EOI were then required to update its FSAR by December 31, 2014, or prior to any request to restart of their review, the purpose of the rule would still be achieved.

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(v) are present whenever the exemption would provide only temporary relief from the regulation and the applicant has made good faith efforts to comply with this regulation. Because of the assumed and imposed new deadline of December 31, 2014, EOI's exemption request seeks only temporary relief from the requirement that it file an update to the FSAR included in the RBS3 COL application. Therefore, since the relief from the requirements of 10 CFR 50.71(e)(3)(iii) would be temporary and the applicant has made good faith efforts to comply with the rule, and the underlying purpose of the rule is not served by application of the rule in this circumstance, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(v) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

Eligibility for Categorical Exclusion From Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there is no significant hazards considerations because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated FSAR by EOI and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting FSAR updates to the NRC.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1) and (2), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances are present. Therefore, the Commission hereby grants EOI a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the River Bend Station Unit 3 COL application to allow submittal of the next FSAR update prior to, or coincident with any request to the NRC to resume the review, and in any event, no later than December 31, 2014.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of December 2013.

For The Nuclear Regulatory Commission.

Ronaldo Jenkins,

Chief, Licensing Branch 3, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–29558 Filed 12–10–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–024; NRC–2008–0233]

Entergy Operations, Inc.; Combined License Application for Grand Gulf Unit 3; Exemption From the Requirements To Update a Final Safety Analysis Report Submitted as Part of a Combined License Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a September 30, 2013, request from Entergy Operations, Inc. (EOI) which requested an exemption from Final Safety Analysis Report (FSAR) updates included in their Combined License (COL) application. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption, but stipulated that the updates to the FSAR must be submitted prior to, or coincident with, the resumption of the COL application review or by December 31, 2014, whichever comes first.

ADDRESSES: Please refer to Docket ID NRC–2008–0233 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0233. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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 ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Klos, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5136; email: *John.Klos@nrc.gov.*

SUPPLEMENTARY INFORMATION: The following sections include the text of the exemption in its entirety as issued to EOI.

1.0 Background

On February 27, 2008, EOI submitted to the NRC a COL application for one Economic Simplified Boiling-Water Reactor to be constructed and operated at the Grand Gulf Nuclear Station (GGNS) site in Claiborne County, Mississippi. The NRC accepted for docketing the Grand Gulf Nuclear Station Unit 3 (GGNS3) COL application on April 17, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML081050460, Docket No. 52–024). On January 9, 2009, EOI requested that the NRC temporarily suspend review of the application and the NRC granted EOI's request (ADAMS Accession No. ML090080523) while the application remained docketed. On December 3, 2012 (ADAMS Accession No. ML12342A231), EOI submitted updates to the Final Safety Analysis Report (FSAR), per Title 10 of the *Code of Federal Regulations* (10 CFR) Subsection 50.71(e)(3)(iii). On September 30, 2013 (ADAMS Accession No. ML13275A065), EOI requested an exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit COL FSAR updates.

2.0 Request/Action

10 CFR 50.71(e)(3)(iii) requires that an applicant for a COL under Subpart C of 10 CFR Part 52, must update their FSAR annually during the period from docketing the application to the Commission making its 52.103(g) finding.

Pursuant to 10 CFR 50.71(e)(3)(iii) the next annual update of the FSAR included in the GGNS3 COL application would be due in December 2013 as EOI included an update to the FSAR in a letter dated December 3, 2012 (ADAMS Accession No. ML12342A231). By letter dated January 9, 2009, (ADAMS Accession No. ML090080523) EOI requested that the NRC suspend review of the GGNS3 COL. The NRC granted EOI's request for suspension and all review activities related to the GGNS3 COL application were suspended while the application remained docketed. In a letter dated, September 30, 2013 (ADAMS Accession No. ML13275A065), EOI requested that the GGNS3 COL application be exempt from the 50.71(e)(3)(iii) requirements until the time that EOI requests the NRC to resume the review of the GGNS3 COL application. Prior to, or coincident with this reactivation request, EOI commits to submit an updated FSAR.

EOI's requested exemption is interpreted as a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow EOI to submit the next FSAR update at a later date, but still in advance of NRC's reinstating its review of the application and in any event, by December 31, 2014. The current FSAR update schedule could not be changed, absent the exemption.

3.0 Discussion

Pursuant to 10 CFR 50.12 the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, including Section 50.71(e)(3)(iii) when: (1) The exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)) and if ''the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most up to date information regarding the COL application, in order to perform an efficient and effective review. The rule targeted those applications that are being actively reviewed by the NRC. Because EOI requested the NRC to suspend its review of the GGNS3 COL application, compelling EOI to submit

its FSAR on an annual basis is not necessary as the FSAR will not be changed or updated until the review is restarted. Requiring the updates would result in undue hardship on EOI, and the purpose of 50.71(e)(3)(iii) would still be achieved if the update is submitted prior to, or coincident with, restarting the review and in any event by December 31, 2014.

The requested exemption to defer submittal of the next update to the FSAR included in the GGNS3 COL application would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii). As evidenced by the proper submittal of annual updates on January 9, 2009 (ADAMS Accession No. ML090130174), December 6, 2010 (ADAMS Accession No. ML103440074), December 7, 2011 (ADAMS Accession No. ML11343A568), and December 3, 2012 (ADAMS Accession No. ML12342A231), EOI has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) prior to requesting suspension of the review. EOI's exemption request asks the NRC to grant exemption from 10 CFR 50.71(e)(3)(iii) until a reactivation request is made by EOI for the GGNS3 COL application. Because such a request is seen as open-ended and therefore not temporary, the NRC included a December 31, 2014 deadline as part of its review of the exemption request.

For the reasons stated above, the application of 50.71(e)(3)(iii) in this particular circumstance can be deemed unnecessary and the granting of the exemption would allow only temporary relief from a rule that the applicant had made good faith efforts to comply with, therefore special circumstances are present.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow EOI to submit the next GGNS3 FSAR update on or before December 31, 2014 in lieu of the required scheduled submittal in December 2013. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting EOI the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR 50.71(e)(3)(iii), is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR Part 52, for which a license has not been granted. In addition, since the review of the application has been suspended, any update to the application submitted by EOI will not be reviewed by the NRC at this time. Based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption thus, neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety. Plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed and a license decision is made, the probability of postulated accidents is not increased. Additionally, based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption as described above, no new accident precursors are created by the exemption, thus neither the probability nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow EOI to submit the next FSAR update prior to, or coincident with requesting the NRC to resume the review and, in any event, on or before December 31, 2014. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii) are present ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)). The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most up to date information in order to perform its review of a COL application efficiently and effectively. Because the requirements to annually update the FSAR was intended for active reviews and the GGNS3 COL application is now suspended, the application of this regulation in this particular circumstances is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption, and EOI were then required to update the FSAR by December 31, 2014 or prior to, or coincident with, any request to restart their review, the purpose of the rule would still be achieved.

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(v) are present whenever the exemption would provide only temporary relief from the regulation and the applicant has made good faith efforts to comply with this regulation. Because of the assumed and imposed new deadline of December 31, 2014, EOI's exemption request seeks only temporary relief from the requirement that it file an update to the FSAR included in the GGNS3 COL application. Therefore, since the relief from the requirements of 10 CFR 50.71(e)(3)(iii) would be temporary and the applicant has made good faith efforts to comply with the rule, and the underlying purpose of the rule is not served by application of the rule in this circumstance, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(v) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

Eligibility for Categorical Exclusion From Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there is no significant hazards considerations because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements:

The exemption request involves submitting an updated FSAR by EOI and

(G) Scheduling requirements

The proposed exemption relates to the schedule for submitting FSAR updates to the NRC.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1) and (2), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances are present. Therefore, the Commission hereby grants EOI a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the GGNS3 COL application to allow submittal of the next FSAR update prior to, or coincident with any request to the NRC to resume the review, and in any event, no later than December 31, 2014.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of December 2013.

For the Nuclear Regulatory Commission.

Ronaldo Jenkins,

Chief, Licensing Branch 3, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–29562 Filed 12–10–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–024; NRC–2008–0233]

Entergy Operations, Inc.; Combined License Application for Grand Gulf Unit 3; Exemption From the Requirements To Revise a Combined License Application To Comply With Enhancements to Emergency Preparedness Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a September 30, 2013 request from Entergy Operations, Inc. (EOI) which requested an exemption from addressing enhancements to the Emergency Preparedness (EP) rules in their Combined License (COL) application. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption but stipulated that the revised application must be submitted prior to, or coincident with, requesting the NRC to resume its review of the COL application, or by December 31, 2014, whichever comes first.

ADDRESSES: Please refer to Docket ID NRC–2008–0233 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0233. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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 ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Klos, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5136; email: *John.Klos@nrc.gov.*

SUPPLEMENTARY INFORMATION: The following sections include the text of the exemption in its entirety as issued to EOI.

1.0 Background

On February 27, 2008, EOI submitted to the NRC a COL application for one Economic Simplified Boiling-Water Reactor to be constructed and operated at the Grand Gulf Nuclear Station (GGNS) site in Claiborne County, Mississippi. The NRC accepted for docketing the Grand Gulf Nuclear Station Unit 3 (GGNS3) COL application on April 17, 2008, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML081050460, Docket No. 52–024). On January 9, 2009, EOI requested that the NRC temporarily suspend review of the application and the NRC granted EOI's request (ADAMS Accession No. ML090080523) while the application remained docketed. On September 30, 2013 (ADAMS Accession No. ML13275A065), EOI requested an exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5, as referenced by 10 CFR 52.79(a)(21), to submit an update by December 31, 2013,

to the COL application, addressing the enhancements to Emergency Preparedness (EP) rules by December 31, 2013.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix E, Section I.5 requires that an applicant for a COL under Subpart C of 10 CFR Part 52 whose application was docketed prior to December 23, 2011, must revise their COL application to comply with the EP rules published in the **Federal Register** (76 FR 72560) on November 23, 2011. 10 CFR Part 50, Appendix E, Section I.5 gives those COL applicants close to receiving their COL the option to defer addressing the changes to the EP rules, however a license amendment request must be submitted no later than December 31, 2013. An applicant that does not receive a COL before December 31, 2013, shall revise its COL application to comply with these changes no later than December 31, 2013.

Because EOI will not hold a COL prior to December 31, 2013, it is therefore, required to revise its application to be compliant with the new EP rules by December 31, 2013. By letter dated January 9, 2009, EOI requested that the NRC suspend review of the GGNS3 COL application. The NRC granted EOI's request for suspension of all review activities while the application remained docketed (ADAMS Accession No. ML090080523). In a letter dated, September 30, 2013 (ADAMS Accession No. ML13275A065), EOI requested an exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5 until the time that EOI requests reactivation of the GGNS3 COL application review. Prior to, or coincident with this reactivation request, EOI commits to submit an upgrade of the GGNS3 COL application addressing the enhancements to Emergency Preparedness Regulations.

EOI's requested exemption is seen as an open-ended, one-time schedule change from the requirements of 10 CFR Part 50, Appendix E, Section I.5. Therefore the NRC included an imposed December 31, 2014 deadline as part of its review of the exemption request. The exemption would allow EOI to comply with the new EP rule at a later date, but still in advance of NRC's reinstating its review of the application and in any event, by December 31, 2014. The current schedule to comply with the new EP rule by December 31, 2013, could not be changed, absent the exemption.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, including 10 CFR Part 50, Appendix E, Section I.5, when: (1) The exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)).

The purpose of 10 CFR Part 50 Appendix E, Section I.5 was to ensure that applicants and new COL holders updated their COL application or Combined License to allow the NRC to review them efficiently and effectively, and to bring the applicants or licensees into compliance prior to COL approval and receipt of license, or operate the facility. The target of Section I.5 of the rule were those applications that were in the process of being actively reviewed by the NRC staff when the rule came into effect on November 23, 2011. Because EOI requested the NRC to suspend its review of the GGNS3 COL application, compelling EOI to revise its COL application in order to meet the December 31, 2013 compliance deadline would only bring on unnecessary burden and hardship for the applicant to meet the compliance date. So long as it is recognized that the COL application must be updated to comply with the enhancements to the EP rules, prior to the NRC approving EOI's COL application, it makes no difference if they revise the COL application now, when they request the review be restarted, or December 31, 2014. For this reason the application of Appendix E, Section I.5 can be deemed unnecessary, and therefore special circumstances are present.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5. The exemption would allow EOI to revise its COL application and comply with the new EP rules on or before December 31, 2014, in lieu of December 31, 2013, the date required by 10 CFR Part 50, Appendix E, Section I.5. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting EOI the requested one-time exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5 will be only temporary, and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of the enhancements to Emergency Preparedness found in 10 CFR Part 50, Appendix E is to amend certain EP requirements which are aimed at enhancing protective measures in the event of a radiological emergency; address, in part, enhancements identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent Emergency Plan implementation among licensees; and modify certain requirements to be more effective and efficient. Since plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed, and a license is issued, the exemption does not increase the probability of postulated accidents. Additionally, based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow EOI to submit the revised COL application prior to, or coincident, with a request of the NRC to resume the review, and in any event, on or before December 31, 2014. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)). The underlying purpose of 10 CFR Part 50, Appendix E, Section I.5 is to ensure that applicants are in compliance with the new EP rules in a time that allows the NRC to effectively review their revised COL application prior to issuance of the license. Because

the requirement to comply with the new EP rules was intended for active reviews and the GGNS3 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption, and EOI were then required to comply by December 31, 2014 or prior to any request to restart their review, the purpose of the rule would still be achieved. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR Part 50, Appendix E, Section I.5 exist.

Eligibility for Categorical Exclusion From Environmental Review:

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there is no significant hazards considerations because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated COL application by EOI and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting a COL application update to the NRC.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1) and (2), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances are present. Therefore, the Commission hereby grants EOI a one-time exemption from the requirements of 10 CFR 50, Appendix E, Section I.5 pertaining to the Grand Gulf Unit 3 COL application to allow submittal of the revised COL application that complies with the new EP rules prior to, or coincident with, any request to the NRC to resume the review, and in any event, no later than December 31, 2014.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of December 2013.

For the Nuclear Regulatory Commission.

Ronaldo Jenkins,

Branch Chief, Licensing Branch 3, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–29560 Filed 12–10–13; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–022 and 52–023; NRC–2013–0261]

Duke Energy Progress; Shearon Harris Units 2 and 3; Exemption From Requirements To Revise Combined License Applications To Address Enhancements to Emergency Preparedness Rules

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a July 29, 2013, request from Duke Energy Progress (DEP). On May 2, 2013, DEP requested that the NRC suspend review of its combined license (COL) application until further notice. On July 29, 2013, DEP requested an exemption from certain regulatory requirements which, if granted, would allow them to revise their COL application in order to address enhancements to the Emergency Preparedness (EP) rules within six months of requesting the NRC to resume the review of their COL application, rather than by December 31, 2013, as the regulations currently require. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption, but stipulated that the revised application must be submitted prior to requesting the NRC resume its review of the COL application or by December 31, 2014, whichever comes first.

ADDRESSES: Please refer to Docket ID NRC–2013–0261 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0261. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *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 ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Anthony Minarik, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6185; email: *Anthony.Minarik@nrc.gov.*

SUPPLEMENTARY INFORMATION: The following sections include the text of the exemption in its entirety as issued to DEP.

1.0 Background

On February 18, 2008, Agencywide Documents Access and Management System (ADAMS) Accession No. ML080580078) Duke Energy Progress, Incorporated (DEP), submitted to the U.S. Nuclear Regulatory Commission (NRC/the Commission) a Combined License (COL) application for two units of Westinghouse Electric Company's AP1000 advanced pressurized water reactors to be constructed and operated at the existing Shearon Harris Nuclear Plant (Harris) site (Docket Numbers 052000–22 and 052000–23). The NRC docketed the Harris Units 2 and 3 COL application on April 23, 2008. On May 2, 2013 (ADAMS Accession No. ML13123A344), DEP requested that the NRC suspend review of the Harris Units 2 and 3 COL application. The NRC granted DEP's request for suspension and all review activities related to the Harris Units 2 and 3 COL application were suspended while the application remained docketed. On July 29, 2013 (ADAMS Accession No. ML13212A361), DEP requested an exemption from the requirements part 50 Appendix E Section I.5 of Title 10 of the *Code of Federal Regulations* (10 CFR), as referenced by 10 CFR 52.79(a)(21), to submit an update to the COL application, addressing the enhancements to the EP rules by December 31, 2013.

2.0 Request/Action

10 CFR part 50 appendix E, Section 1.5 requires that an applicant for a COL under Subpart C of 10 CFR part 52 whose application was docketed prior to December 23, 2011, must revise their COL application to comply with the EP rules published in the **Federal Register** (76 FR 72560) on November 23, 2011. An applicant that does not receive a COL before December 31, 2013 shall revise its COL application to comply with these changes no later than December 31, 2013.

Because DEP will not hold a COL prior to December 31, 2013, it is therefore required to revise its application to be compliant with the new EP rules by December 31, 2013. By letter dated May 2, 2013 (ADAMS Accession No. ML13123A344), DEP requested that the NRC suspend review of the Harris Units 2 and 3 COL application. The NRC granted DEP's request for suspension of all review activities while the application remained docketed. In a letter dated July 29, 2013 (ADAMS Accession No. ML13212A361), DEP requested an exemption from the requirements of 10 CFR part 50 appendix E, section I.5 until the time that DEP requests the NRC to resume the review of the Harris Units 2 and 3 COL application. DEP's requested exemption is interpreted as a one-time schedule change from the requirements of 10 CFR part 50 appendix E, section I.5. In its request, DEP asked the NRC to grant the exemption from 10 CFR Part 50 Appendix E Section I.5 until 6 months after reactivating the Harris Units 2 and 3 COL application review. Because such a request is seen as open-ended, the NRC included an imposed December 31, 2014, deadline as part of its review of the exemption request. The exemption would allow DEP to comply with the new EP rule at a later date, but still in advance of the NRC resuming its review of the application and in any event, by December 31, 2014. The current requirement to comply with the new EP rule by December 31, 2013, could not be changed, absent the exemption.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including 10 CFR part 50 appendix E, SECTION I.5, when: (1) The exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: ''[A]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)).

The purpose of 10 CFR part 50 appendix E, section I.5 was to ensure that applicants and new COL holders updated their COL applications or Combined License to allow the NRC to review them efficiently and effectively, and to bring the applicants or licensees into compliance prior to receiving a license, or, for licensees, prior to operating the plant. The targets of section I.5 of the rule were those applications that were being actively reviewed by the NRC staff when the rule went into effect on November 23, 2011. Because DEP requested the NRC suspend its review of the Harris Units 2 and 3 COL application, compelling DEP to revise its COL application in order to meet the December 31, 2013 compliance deadline would result in unnecessary burden and hardship for the applicant to meet the compliance date. As long as it is recognized that the COL application must be updated to comply with the enhancements to the EP rules prior to the NRC approving their COL application, it makes no difference if they revise the COL application now, when they request the review be restarted, or December 31, 2014. For this reason the application of 10 CFR Part 50 Appendix E, Section I.5, for the suspended Harris 2 and 3 COL application is deemed unnecessary, and therefore special circumstances are present.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR part 50 appendix E Section I.5. The exemption would allow DEP to revise its COL application, and comply with the new EP rules on or before December 31, 2014, in lieu of December 31, 2013, the date required by 10 CFR part 50 appendix E, Section I.5. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting DEP the requested one-time exemption from the requirements of 10 CFR part 50 appendix E, Section I.5 will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of the enhancements to Emergency Preparedness found in 10 CFR part 50, appendix E, is to amend certain EP requirements to enhance protective measures in the event of a radiological emergency; address, in part, enhancements identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent Emergency Plan implementation among licensees; and modify certain requirements to be more effective and efficient. Since plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed and a license is issued, the exemption does not increase the probability of postulated accidents. Additionally, based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow DEP to submit the revised COL application prior to requesting the NRC to resume the review and, in any event, on or before December 31, 2014. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii) are present whenever ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)). The underlying purpose of 10 CFR part 50 appendix E, section I.5 is to ensure that applicants are in compliance with the new EP rules in a time that allows the NRC to effectively review their revised COL application prior to issuance of the license. Because the Harris Units 2 and 3 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption, and DEP were then required to comply by December 31, 2014 or prior to any request to restart of their review, the purpose of the rule would still be achieved. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR part 50, appendix E, section I.5 exist.

Eligibility for Categorical Exclusion From Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there are no significant hazards considerations because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated COL application by DEP and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting a COL application update to the NRC.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances are present. Therefore, the Commission hereby grants DEP a one-time exemption from the requirements of 10 CFR part 50, appendix E, section I.5 pertaining to the Harris Units 2 and 3 COL application to allow submittal of the revised COL application that complies with the enhancements to the EP rules prior to any request to the NRC to resume the review, and in any event, no later than December 31, 2014.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of November 2013.

For the Nuclear Regulatory Commission.

Lawrence Burkhart,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–29582 Filed 12–10–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–036; NRC–2008–0616]

Entergy Operations, Inc.; Combined License Application for River Bend Station Unit 3, Exemption From the Requirements To Revise a Combined License Application To Comply With Enhancements to Emergency Preparedness Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a September 30, 2013, request from Entergy Operations, Inc. (EOI) which requested an exemption from addressing enhancements to the Emergency Preparedness (EP) rules in their Combined License (COL) application. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption but stipulated that the revised application must be submitted prior to, or coincident with, requesting the NRC to resume its review of the COL application, or by December 31, 2014, whichever comes first.

ADDRESSES: Please refer to Docket ID NRC–2008–0616 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0616. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may 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 ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Klos, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5136; email: *John.Klos@nrc.gov.*

SUPPLEMENTARY INFORMATION: The following sections include the text of the exemption in its entirety as issued to EOI.

1.0 Background

The NRC accepted for docketing the River Bend Station Unit 3 (RBS3) COL application on December 4, 2008, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML083370275, Docket No. 52–036). On January 9, 2009, EOI requested that the NRC temporarily suspend review of the application and the NRC granted EOI's request (ADAMS Accession No. ML090080277) while the application remained docketed. On September 30, 2013 (ADAMS Accession No. ML13275A066), EOI requested an exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5, as referenced by 10 CFR 52.79(a)(21), to submit an update by December 31, 2013, to the COL application, addressing the enhancements to EP rules by December 31, 2013.

2.0 Request/Action

Part 50, Appendix E, Section I.5 of Title 10 of the *Code of Federal Regulations* (10 CFR), requires that an applicant for a COL under Subpart C of 10 CFR part 52 whose application was docketed prior to December 23, 2011, must revise their COL application to comply with the EP rules published in the **Federal Register** on November 3, 2011 (76 FR 72560). Part 50, Appendix E, Section I.5 gives those COL applicants close to receiving their COL the option to defer addressing the changes to the EP rules, however a license amendment request must be submitted no later than December 31, 2013. An applicant that does not receive a COL before December 31, 2013, shall revise its COL application to comply with these changes no later than December 31, 2013.

Because EOI will not hold a COL prior to December 31, 2013, it is therefore, required to revise its application to be compliant with the new EP rules by December 31, 2013. By letter dated January 9, 2009, EOI requested that the NRC suspend review of the RBS3 COL application. The NRC granted EOI's request for suspension of all review activities while the application remained docketed (ADAMS Accession No. ML090080277). In a letter dated, September 30, 2013 (ADAMS Accession No. ML13275A066), EOI requested an exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5 until the time that EOI requests reactivation of the RBS3 COL application review. Prior to, or coincident with this reactivation request, EOI commits to submit an upgrade of the RBS3 COL application, addressing the enhancements to Emergency Preparedness Regulations.

EOI's requested exemption is seen as an open-ended, one-time schedule change from the requirements of 10 CFR part 50, Appendix E, Section I.5. Therefore the NRC included an imposed December 31, 2014, deadline as part of its review of the exemption request. The exemption would allow EOI to comply with the new EP rule at a later date, but still in advance of NRC's reinstating its review of the application and in any event, by December 31, 2014. The current schedule to comply with the new EP rule by December 31, 2013, could not be changed, absent the exemption.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including 10 CFR part 50, Appendix E, Section I.5, when: (1) The exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)).

The purpose of 10 CFR Part 50 Appendix E, Section I.5 was to ensure that applicants and new COL holders updated their COL application or Combined License to allow the NRC to review them efficiently and effectively, and to bring the applicants or licensees into compliance prior to COL approval and receipt of license, or operate the facility. The target of Section I.5 of the rule were those applications that were in the process of being actively reviewed by the NRC staff when the rule came into effect on November 23, 2011.

Because EOI requested the NRC to suspend its review of the RBS3 COL application, compelling EOI to revise its COL application in order to meet the December 31, 2013 compliance deadline would only bring on unnecessary burden and hardship for the applicant to meet the compliance date. So long as it is recognized that the COL application must be updated to comply with the enhancements to the EP rules, prior to the NRC approving EOI's COL application, it makes no difference if they revise the COL application now, when they request the review be restarted, or December 31, 2014. For this reason the application of Appendix E, Section I.5 can be deemed unnecessary, and therefore special circumstances are present.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5. The exemption would allow EOI to revise its COL application and comply with the new EP rules on or before December 31, 2014, in lieu of December 31, 2013, the date required by 10 CFR Part 50, Appendix E, Section I.5. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50 . The NRC staff has determined that granting EOI the requested one-time exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5 will be only temporary, and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of the enhancements to Emergency Preparedness found in 10 CFR Part 50, Appendix E are to amend certain EP requirements which are aimed at enhancing protective measures in the event of a radiological emergency; address, in part, enhancements identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent Emergency Plan implementation among licensees; and modify certain requirements to be more effective and efficient. Since plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed, and a license is issued, the exemption does not increase the probability of postulated accidents. Additionally, based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow EOI to submit the revised COL application prior to, or coincident, with a request of the NRC to resume the review, and in any event, on or before December 31, 2014. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)). The underlying purpose of 10 CFR Part 50, Appendix E, Section I.5 is to ensure that applicants are in compliance with the new EP rules in a time that allows the NRC to effectively review their COL application prior to issuance of the license. Because the requirement to comply with the new EP rules was intended for active reviews and the RBS3 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption, and EOI were then required to comply by December 31, 2014, or prior to any request to restart their review, the purpose of the rule would still be achieved. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR Part 50, Appendix E, Section I.5 exist.

Eligibility for Categorical Exclusion From Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions: When contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there is no significant hazards considerations because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated COL application by EOI and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting a COL application update to the NRC.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1) and (2), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances are present. Therefore, the Commission hereby grants EOI a one-time exemption from the requirements of 10 CFR Part 50, Appendix E, Section I.5 pertaining to the River Bend Station Unit 3 COL application to allow submittal of the revised COL application that complies with the new EP rules prior to, or coincident with, any request to the NRC to resume the review, and in any event, no later than December 31, 2014.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of December 2013.

For the Nuclear Regulatory Commission.

Ronaldo Jenkins,

Branch Chief, Licensing Branch 3, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–29559 Filed 12–10–13; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–022 and 52–023; NRC–2013–0261]

Duke Energy Progress; Shearon Harris Units 2 and 3; Exemption From the Requirement To Submit an Annual Update to the Final Safety Analysis Report Included in a Combined License Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an August 7, 2013, request from Duke Energy Progress (DEP). On May 2, 2013, DEP requested that the NRC suspend review of its combined license (COL) application until further notice. On August 7, 2013, DEP requested an exemption from certain regulatory requirements that require them to submit updates to the Final Safety Analysis Report (FSAR) included in their COL application until six months after requesting the NRC to resume its review of their COL application. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption, but stipulated that the updates to the FSAR must be submitted prior to requesting the NRC resume its review of the COL application, or by December 31, 2014, whichever comes first.

ADDRESSES: Please refer to Docket ID NRC–2013–0261 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0261. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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 ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Anthony Minarik, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone: 301–415–6185; email: *anthony.minarik@nrc.gov*.

SUPPLEMENTARY INFORMATION: The following sections include the text of the exemption in its entirety as issued to DEP.

1.0 Background

On February 18, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML080580078) Duke Energy Progress, Inc. (DEP), submitted to the U.S. Nuclear Regulatory Commission (NRC) a Combined License (COL) application for two units of Westinghouse Electric Company's AP1000 advanced pressurized water reactors to be constructed and operated at the existing Shearon Harris Nuclear Plant (Harris) site. (Docket Numbers 052000–22 and 052000–23). The NRC docketed the Shearon Harris Units 2 and 3 COL APPLICATION on April 23, 2008. On April 15, 2013, DEP submitted Revision 5 to the COL application (ADAMS Accession No. ML13112A761), including updates to the Final Safety Analysis Report (FSAR), per subsection 50.71(e)(3)(iii) of Title 10 of the *Code of Federal Regulations* (10 CFR). On May 2, 2013 (ADAMS Accession No. ML13123A344), DEP requested that the NRC suspend review of the Shearon Harris Nuclear Plant Units 2 and 3 COL application. On August 7, 2013 (ADAMS Accession No. ML13220B004), DEP requested an exemption from the 10 CFR 50.71(e)(3)(iii) requirements to submit COL application Final Safety Analysis Report (FSAR) updates.

2.0 Request/Action

10 CFR 50.71(e)(3)(iii) requires that an applicant for a COL under Subpart C of 10 CFR part 52, submit updates to their FSAR annually during the period from docketing the application to the Commission making its 52.103(g) finding.

Pursuant to 10 CFR 50.71(e)(3)(iii) the next annual update of the FSAR included in the Harris Units 2 and 3 COL application would be due in April of 2014 as DEP had submitted Revision 5 to the COL application which included an update to the FSAR, in a letter dated April 15, 2013 (ADAMS Accession No. ML13112A761). By letter dated May 2, 2013, (ADAMS Accession No. ML13123A344) DEP requested that the NRC suspend review of the Harris Units 2 and 3 COL application. The NRC granted DEP's request for suspension and all review activities related to the Harris Units 2 and 3 COL application were suspended while the application remained docketed. In a letter dated August 7, 2013 (ADAMS Accession No. ML13220B004), DEP requested that the Harris Units 2 and 3 COL application be exempt from the 10 CFR 50.71(e)(3)(iii) requirements until the time that DEP requests the NRC to resume the review of the Harris Units 2 and 3 COL application.

DEP's requested exemption is interpreted as a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). In its request, DEP asked

the NRC to grant the exemption from 10 CFR 50.71(e)(3)(iii), until six months after restarting the Harris Units 2 and 3 COL application review. Because such a request is seen as open-ended, the NRC included an imposed December 31, 2014, deadline as part of its review of the exemption request. The exemption would allow DEP to submit the next FSAR update at a later date, but still in advance of NRC's reinstating its review of the application and in any event, by December 31, 2014. The current requirement to submit an FSAR update could not be changed, absent the exemption.

3.0 Discussion

Pursuant to 10 CFR 50.12 the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, including Section 50.71(e)(3)(iii) when: (1) The exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)) and if ''[t]he exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most up to date information regarding the COL application, in order to perform an efficient and effective review. The rule targeted those applications that are being actively reviewed by the NRC. Because DEP requested the NRC suspend its review of the Harris Units 2 and 3 COL application, compelling DEP to submit its FSAR on an annual basis is not necessary as the FSAR will not be changed or updated until the review is restarted. Requiring the updates would result in undue hardship on DEP, and the purpose of 50.71(e)(3)(iii) would still be achieved if the update is submitted prior to restarting the review and in any event by December 31, 2014.

The requested exemption to defer submittal of the next update to the FSAR included in the Harris Units 2 and 3 COL application would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii). As evidenced by the proper submittal of annual updates on June 23, 2009 (ADAMS Accession No. ML091810540), April 12, 2010 (ADAMS Accession No. ML101120592), April 14, 2011 (ADAMS Accession No. ML11117A708), April 12, 2012 (ADAMS Accession No. ML12122A656) and April 15, 2013 (ADAMS Accession No. ML13112A761), DEP has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) prior to requesting suspension of the review. In its request DEP asked the NRC to grant exemption from 10 CFR 50.71(e)(3)(iii) until 6 months after reactivating the Harris Units 2 and 3 COL application review. With no specific end date, the NRC could not consider this exemption temporary, so the NRC included a December 31, 2014 deadline as part of its review of the exemption request.

For the reasons stated above, the application of § 50.71(e)(3)(iii) in this particular circumstance can be deemed unnecessary and the granting of the exemption would allow only temporary relief from a rule that the applicant had made good faith efforts to comply with, therefore special circumstances are present.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow DEP to submit the next Harris Units 2 and 3 COL application FSAR update on or before December 31, 2014, in lieu of the required scheduled submittal in April 2014. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting DEP the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR part 52, for which a license has not been granted. In addition, since the review of the application has been suspended, any update to the application submitted by DEP will not be reviewed by the NRC at this time. Plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed, and a license is issued. Additionally, based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow DEP to submit the next FSAR update prior to requesting the NRC to resume the review and, in any event, on or before December 31, 2014. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii) are present ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)). The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to ensure that the NRC has the most up-to date information in order to perform its review of a COL application efficiently and effectively. Because the requirement to annually update the FSAR was intended for active reviews and the Harris Units 2 and 3 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption, and DEP were then required to update its FSAR by December 31, 2014, or prior to any request to restart of their review, the purpose of the rule would still be achieved.

Special circumstances in accordance with 10 CFR 50.12(a)(2)(v) are present whenever the exemption would provide only temporary relief from the regulation and the applicant has made good faith efforts to comply with this regulation. Because of the assumed and imposed new deadline of December 31, 2014, DEP's exemption request seeks only temporary relief from the requirement that it file an update to the FSAR included in the Harris Units 2 and 3 COL application. Additionally

DEP submitted the required annual updates to its FSAR throughout the application process until asking for suspension of its review.

Therefore, since the relief from the requirements of 10 CFR 50.71(e)(3)(iii) would be temporary and the applicant has made good faith efforts to comply with the rule, and the underlying purpose of the rule is not served by application of the rule in this circumstance, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and 50.12(a)(2)(v) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

Eligibility for Categorical Exclusion From Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as follows:

(c) The following categories of actions are categorical exclusions:

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

(i) There is no significant hazards consideration;

The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. Therefore, there is no significant hazards consideration because granting the proposed exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

(ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;

The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

(iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;

Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

(iv) There is no significant construction impact;

The proposed action involves only a schedule change which is administrative in nature; the application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

(v) There is no significant increase in the potential for or consequences from radiological accidents; and

The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of accidents.

(vi) The requirements from which an exemption is sought involve:

(B) Reporting requirements;

The exemption request involves submitting an updated FSAR by DEP and

(G) Scheduling requirements;

The proposed exemption relates to the schedule for submitting FSAR updates to the NRC.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances are present. Therefore, the Commission hereby grants DEP a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the Shearon Harris Nuclear Power Plant Units 2 and 3 COL application to allow submittal of the next FSAR update prior to any request to the NRC to resume the review, and in any event no later than December 31, 2014.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of November 2013.

For the Nuclear Regulatory Commission.

Lawrence Burkhart,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–29584 Filed 12–10–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 482, OMB Control No. 3235–0565, SEC File No. 270–508.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Like most issuers of securities, when an investment company (''fund'') [1] offers its shares to the public, its promotional efforts become subject to the advertising restrictions of the Securities Act of 1933 (15 U.S.C. 77) (the ''Securities Act''). In recognition of the particular problems faced by funds that continually offer securities and wish to advertise their securities, the Commission has previously adopted advertising safe harbor rules. The most important of these is rule 482 (17 CFR 230.482) under the Securities Act, which, under certain circumstances, permits funds to advertise investment performance data, as well as other information. Rule 482 advertisements are deemed to be ''prospectuses'' under Section 10(b) of the Securities Act.[2]

Rule 482 contains certain requirements regarding the disclosure that funds are required to provide in qualifying advertisements. These requirements are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. For example, a fund is required to include disclosure advising investors to consider the fund's investment objectives, risks, charges and expenses, and other information described in the fund's prospectus, and highlighting the availability of the fund's prospectus and, if applicable, its summary prospectus. In addition, rule

[1] ''Investment company'' refers to both investment companies registered under the Investment Company Act of 1940 (''Investment Company Act'') (15 U.S.C. 80a–1 *et seq.*) and business development companies.

[2] 15 U.S.C. 77j(b).

482 advertisements that include performance data of open-end funds or insurance company separate accounts offering variable annuity contracts are required to include certain standardized performance information, information about any sales loads or other nonrecurring fees, and a legend warning that past performance does not guarantee future results. Such funds including performance information in rule 482 advertisements are also required to make available to investors month-end performance figures via Web site disclosure or by a toll-free telephone number, and to disclose the availability of the month-end performance data in the advertisement. The rule also sets forth requirements regarding the prominence of certain disclosures, requirements regarding advertisements that make tax representations, requirements regarding advertisements used prior to the effectiveness of the fund's registration statement, requirements regarding the timeliness of performance data, and certain required disclosures by money market funds.

Rule 482 advertisements must be filed with the Commission or, in the alternative, with the Financial Industry Regulatory Authority (''FINRA'').[3] This information collection differs from many other federal information collections that are primarily for the use and benefit of the collecting agency.

Rule 482 contains requirements that are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. The Commission is concerned that in the absence of such provisions fund investors may be misled by deceptive rule 482 advertisements and may rely on less-than-adequate information when determining in which funds they should invest money. As a result, the Commission believes it is beneficial for funds to provide investors with balanced information in fund advertisements in order to allow investors to make better-informed decisions.

The Commission estimates that 59,245 responses to rule 482 are filed annually by 3,430 investment companies offering approximately 16,428 portfolios, or approximately 3.6 responses per portfolio annually. The burden associated with rule 482 is presently estimated to be 5.16 hours per response. The hourly burden is therefore approximately 305,704 hours.[4]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. The provision of information under rule 482 is necessary to obtain the benefits of the safe harbor offered by the rule. The information provided under rule 482 will not be kept confidential. 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 5, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29501 Filed 12–10–13; 8:45 am]

BILLING CODE 8011–01–P

[3] See rule 24b–3 under the Investment Company Act (17 CFR 270.24b–3), which provides that any sales material, including rule 482 advertisements, shall be deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act upon filing with FINRA.

[4] 59,245 responses × 5.16 hours per response = 305,704 hours.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–6, OMB Control No. 3235–0564, SEC File No. 270–506.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 17(a) of the Investment Company Act of 1940 (the ''Act'') generally prohibits affiliated persons of a registered investment company (''fund'') from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.[1] Rule 17a–6 (17 CFR 270.17a–6) permits a fund and a ''portfolio affiliate'' (a company that is an affiliated person of the fund because the fund controls the company, or holds five percent or more of the company's outstanding voting securities) to engage in principal transactions that would otherwise be prohibited under section 17(a) of the Act under certain conditions. A fund may not rely on the exemption in the rule to enter into a principal transaction with a portfolio affiliate if certain prohibited participants (e.g., directors, officers, employees, or investment advisers of the fund) have a financial interest in a party to the transaction. Rule 17a–6 specifies certain interests that are not ''financial interests,'' including any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. A board making this finding is required to record the basis for the finding in its meeting minutes. This recordkeeping requirement is a collection of information under the Paperwork Reduction Act of 1995 (''PRA'').[2]

The rule is designed to permit transactions between funds and their portfolio affiliates in circumstances in which it is unlikely that the affiliate would be in a position to take advantage of the fund. In determining whether a financial interest is ''material,'' the board of the fund should consider whether the nature and extent of the interest in the transaction is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement. The information collection requirements in rule 17a–6 are intended to ensure that

[1] 15 U.S.C. 80a–17(a).

[2] 44 U.S.C. 3501.

Commission staff can review, in the course of its compliance and examination functions, the basis for a board of director's finding that the financial interest of an otherwise prohibited participant in a party to a transaction with a portfolio affiliate is not material.

Based on staff discussions with fund representatives, we estimate that funds currently do not rely on the exemption from the term ''financial interest'' with respect to any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. Accordingly, we estimate that annually there will be no principal transactions under rule 17a–6 that will result in a collection of information.

The Commission requests authorization to maintain an inventory of one burden hour to ease future renewals of rule 17a–6's collection of information analysis should funds rely on this exemption to the term ''financial interest'' as defined in rule 17a–6.

The estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 17a–6. 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 5, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29500 Filed 12–10–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30819; 812–13825]

American Beacon Funds, et al.; Notice of Application

December 5, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements. The order would supersede a prior order (''Prior Order'').[1]

APPLICANTS: American Beacon Funds and American Beacon Select Funds (collectively, the ''Trusts'') and American Beacon Advisors, Inc. (''American Beacon'' and collectively, ''Applicants'').

DATES: *Filing Dates:* The application was filed on September 20, 2010, and amended on December 10, 2012, March 13, 2013 and November 1, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 27, 2013, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: 4151 Amon Carter Blvd., MD 2450, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. The Trusts currently offer separate series (each a ''Fund''), each of which has its own investment objectives, policies and restrictions.[2] A Manager registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') will serve as the investment adviser to each Fund pursuant to a separate investment management agreement (each a ''Management Agreement'' and collectively, the ''Management Agreements'') with the Fund. Each Management Agreement was or will be approved by each respective Fund's shareholders and the relevant Trust's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust or the Manager (''Independent Trustees''). The terms of each Management Agreement comply with sections 15(a) and 15(c) of the Act and

[1] Investment Company Act Rel. Nos. 21995 (May 30, 1996) (notice) and 22040 (Jun. 25, 1996) (order).

[2] All existing registered investment companies that currently intend to rely on the order are named as Applicants. Applicants request relief with respect to the existing and future Funds of the Trusts and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by American Beacon or any entity controlling, controlled by, or under common control with American Beacon (each, a ''Manager'') or its successors; (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the application (each a ''Sub-Advised Fund'' and collectively, the ''Sub-Advised Funds''). For purposes of the requested order, ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Sub-Advised Fund contains the name of a Sub-Adviser (as defined below), the name of the Manager that serves as the primary adviser to the Sub-Advised Fund will precede the name of the Sub-Adviser.

rule 18f–2 under the Act. Applicants are not seeking any exemptions from the provisions of the Act with respect to the Management Agreements.

2. Under the terms of each Management Agreement, the Manager, subject to the oversight of the Board, has the primary responsibility for the management of the Funds in accordance with each Fund's investment objective, policies and restrictions. For its services to each Fund, the Manager receives a management fee from that Fund as specified in the applicable Management Agreement. The terms of each Management Agreement also permit the Manager, subject to the approval of the relevant Board, including a majority of the Independent Trustees, and the shareholders of the applicable Fund (if required by applicable law), to delegate portfolio management responsibilities of all or a portion of the Fund to one or more sub-advisers (''Sub-Advisers''). The Manager has entered into sub-advisory agreements (''Sub-Advisory Agreements'') with various Sub-Advisers to provide investment advisory services to the Subadvised Funds.[3] Each Sub-Adviser is, and each future Sub-Adviser will be, an investment adviser as defined in section 2(a)(20) of the Act as well as registered, or not subject to registration, with the Commission as an ''investment adviser'' under the Advisers Act. The Manager evaluates, allocates assets to and oversees the Sub-Advisers, and makes recommendations about their hiring, termination and replacement to the relevant Board, at all times subject to the authority of the relevant Board.

3. Under each Management Agreement, the Manager receives a management fee (''Management Fee'') from each Fund. Currently, with respect to certain Sub-Advised Funds, the Management Fee is comprised of two components which are (a) a fee for the Manager, and (b) the applicable subadvisory compensation (''Two Component Management Fee''). For these Sub-Advised Funds, the Manager collects the fees from each Sub-Advised Fund and pays such fees to the applicable Sub-Advisers. For certain other Sub-Advised Funds, currently the Manager receives a one component Management Fee (''Unitary Management Fee'') and pays subadvisory compensation from the Management Fee. With respect to certain other Sub-Advised Funds, the Management Fee is comprised solely of a fee for the Manager and those Sub-Advised Funds each pays the sub-advisory compensation directly to the Sub-Adviser pursuant to a Sub-Advisory Agreement among the Sub-Adviser, the Manager and the Fund (''Tri-Party Sub-Advisory Agreement''). In the future, new Funds will compensate Sub-Advisers pursuant to either a Tri-Party Sub-Advisory Agreement or a Unitary Management Fee arrangement.[4]

4. Applicants request an order to permit the Manager, subject to Board approval, to select certain Sub-Advisers to manage all or a portion of the assets of a Fund pursuant to a Sub-Advisory Agreement and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested order would supersede the Prior Order. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Trust, a Fund or the Manager, other than by reason of serving as a Sub-Adviser to a Fund (''Affiliated Sub-Adviser'').

5. Applicants also request an order exempting the Sub-Advised Funds from certain disclosure provisions described below that may require the Applicants to disclose fees paid by the Manager or a Sub-Advised Fund to each Sub-Adviser. Applicants seek an order to permit each Sub-Advised Fund to disclose (as a dollar amount and a percentage of each Sub-Advised Fund's net assets): (a) The aggregate fees paid to the Manager and any Affiliated Sub-Advisers; and (b) the aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (collectively, the ''Aggregate Fee Disclosure''). A Subadvised Fund that employs an Affiliated Sub-Adviser will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

6. A Sub-Advised Fund will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Adviser is hired for any Sub-Advised Fund, that Sub-Advised Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Information Statement;[5] and (b) the Sub-Advised

[3] As of the date of the application, the Manager had allocated investment responsibility for each Sub-Advised Fund as follows: (a) American Beacon Acadian Emerging Markets Managed Volatility Fund—Acadian Asset Management LLC; (b) American Beacon Balanced Fund—the Manager, Barrow, Hanley, Mewhinney & Strauss, LLC (''Barrow''), Brandywine Global Investment Management, LLC (''Brandywine''), and Hotchkis and Wiley Capital Management, LLC (''Hotchkis''); (c) American Beacon Bridgeway Large Cap Value Fund—Bridgeway Capital Management, Inc.; (d) American Beacon Earnest Partners Emerging Markets Equity Fund—EARNEST Partners, LLC; (e) American Beacon Emerging Markets Fund—Brandes Investment Partners, LP, Morgan Stanley Investment Management Inc., and The Boston Company Asset Management, LLC (''TBCAM''); (f) American Beacon Flexible Bond Fund—Brandywine, GAM International Management, Ltd., and Pacific Investment Management Company LLC; (g) American Beacon High Yield Bond Fund—Franklin Advisers, Inc., Logan Circle Partners, L.P., and PENN Capital Management Company, Inc.; (h) American Beacon Holland Large Cap Growth Fund—Holland Capital Management, LLC; (i) American Beacon Intermediate Bond Fund—the Manager and Barrow; (j) American Beacon International Equity Fund—Causeway Capital Management LLC, Lazard Asset Management LLC, and Templeton Investment Counsel, LLC; (k) American Beacon Large Cap Value Fund—Barrow, Brandywine, Hotchkis and Massachusetts Financial Services, Co.; (l) American Beacon Mid-Cap Value Fund—Barrow, Lee Munder Capital Group, LLC, and Pzena Investment Management, LLC; (m) American Beacon Retirement Income and Appreciation Fund—the Manager and Calamos Advisors, LLC; (n) American Beacon SGA Global Growth Fund—Sustainable Growth Advisers, LP; (o) American Beacon SiM High Yield Opportunities Fund—Strategic Income Management, LLC; (p) American Beacon Small Cap Value Fund—Barrow, Brandywine, Dreman Value Management, LLC, Hotchkis, Opus Capital Group, LLC and TBCAM; (q) American Beacon Small Cap Value II Fund—Dean Capital Management, LLC; Fox Asset Management LLC, and Signia Capital Management, LLC; (r) American Beacon Stephens Mid-Cap Growth Fund—Stephens Investment Management Group, LLC (''SIMG''); (s) American Beacon Small Cap Growth Fund—SIMG; (t) American Beacon The London Company Income Equity Fund—The London Company of Virginia, LLC; (u) American Beacon Treasury Inflation Protected Securities Fund—NISA Investment Advisors, LLC and Standish Mellon Asset Management Company, LLC; (v) American Beacon Zebra Global Equity Fund—Zebra Capital Management, LLC (''Zebra'') and (w) American Beacon Zebra Small Cap Equity Fund—Zebra.

[4] Promptly after the issuance of the requested order, the Manager intends to use its reasonable best efforts to cause the Board and each applicable Sub-Adviser that receives payment from the Manager pursuant to a Two Component Management Fee to agree to enter into a Tri-Party Sub-Advisory Agreement under which each such Sub-Adviser would be paid directly by such Fund as well as to make a corresponding change to the Management Agreement to eliminate the Two Component Management Fee. The changes will not result in any change in the nature or level of the actual investment advisory services provided to each Sub-Advised Fund or in any increase in the total management and advisory fees payable by a Sub-Advised Fund. Applicants will not rely on the relief requested from section 15(a) of the Act until the Board has approved all such changes.

[5] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser; (b) inform the shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Sub-Advised Funds.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the

Continued

Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Manager, subject to the review and approval of the Board, to select the Sub-Advisers who have distinguished themselves through successful performance in the particular market sectors in which the Sub-Advised Funds invest. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Adviser is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants state that without the delay inherent in holding shareholder meetings, a Sub-Advised Fund will be able to act more quickly and with less expense to hire a Sub-Adviser regardless of the number of Sub-Advisers employed by the Sub-Advised Fund and materially amend a Sub-Advisory Agreement when the Board and the Manager believe that the appointment of a Sub-Adviser or the amendment of a Sub-Advisory Agreement would benefit the Sub-Advised Fund. Applicants note that each Management Agreement and any Sub-Advisory Agreement with an Affiliated Sub-Adviser (if any) will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

7. Applicants assert that the requested disclosure relief would benefit shareholders of the Sub-Advised Funds because it would improve the Manager's ability to negotiate the fees paid to Sub-Advisers. Applicants state that the Adviser may be able to negotiate rates that are below a Sub-Adviser's ''posted'' amounts, if the Adviser is not required to disclose the Sub-Advisers' fees to the public. Applicants submit that the requested relief will encourage Sub-Advisers to negotiate lower subadvisory fees with the Adviser if the lower fees are not required to be made public.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Sub-Advised Fund may rely on the order requested in the application, the operation of the Sub-Advised Fund in the manner described in the application will be approved by a majority of the Sub-Advised Fund's outstanding voting securities as defined in the Act or, in the case of a Sub-Advised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before such Sub-Advised Fund's shares are offered to the public.

2. The prospectuses for each Sub-Advised Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. In addition, each Sub-Advised Fund will hold itself out to the public as employing the manager-of-managers structure described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility, subject to oversight by the applicable Board, to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. The Manager will provide general management services to each Sub-Advised Fund, including overall supervisory responsibility for the general management and investment of each Sub-Advised Fund's assets and, subject to the review and approval of the applicable Board, will: (a) Set each Sub-Advised Fund's overall investment strategies; (b) evaluate, select and recommend Sub-Advisers to manage all or a part of each Sub-Advised Fund's assets; (c) allocate and, when appropriate, reallocate the assets of each Sub-Advised Fund among Sub-Advisers; (d) monitor and evaluate the performance of the Sub-Advisers; and (e) implement procedures reasonably designed to ensure that the Sub-Advisers comply with each Sub-Advised Fund's investment objective, policies and restrictions.

4. At all times, at least a majority of each Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

5. The Manager will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Sub-Advised Fund.

6. Whenever a Sub-Adviser change is proposed for a Sub-Advised Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Sub-Advised Fund and its shareholders, and does not involve a conflict of interest from which the Manager or Affiliated Sub-Adviser derives an inappropriate advantage.

Exchange Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

7. No trustee or officer of a Sub-Advised Fund or director or officer of the Manager, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Adviser except for ownership of interests in the Manager or any entity that controls, is controlled by or is under common control with the Manager; or ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by or is under common control with a Sub-Adviser.

8. Sub-Advised Funds will inform shareholders of the hiring of a new Sub-Adviser in reliance on the order within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

10. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

11. Whenever a Sub-Adviser is hired or terminated, the Manager will provide the Board with information showing the expected impact on the profitability of the Manager.

12. The Manager will provide the Board, no less frequently than quarterly, with information about the profitability of the Manager on a per Sub-Advised Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

13. Each Sub-Advised Fund will disclose in its registration statement the Aggregate Fee Disclosure.

14. Any changes to a Sub-Advisory Agreement that would result in an increase in the total management and advisory fees payable by a Sub-Advised Fund will be required to be approved by the shareholders of the Sub-Advised Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29499 Filed 12–10–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71005; File No. SR–CBOE–2013–096]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Short Term Option Series Program

December 6, 2013.

I. Introduction

On October 2, 2013, Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rules 5.5(d) and 24.9(a)(2)(A) to make certain modifications to the Exchange's Short Term Option Series Program (''Weeklys Program''). The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposed to amend Exchange Rules 5.5(d) and 24.9(a)(2)(A) to: (i) Allow for the Exchange to list options in the Weeklys Progam (''Weekly options'') on each of the next five Fridays that are business days and are not Fridays in which monthly options series or quarterly options series expire (''Short Term Option Expiration Dates'') at one time; and (ii) state that additional series of Weekly options may be listed up to, and including on, the day of expiration.

The proposed rule change would give the Exchange the ability to list a total of five Weekly options expirations at one time, not including monthly or quarterly option expirations. Currently, the Exchange's rules provide that the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') options expiring ''on each of the next five consecutive Fridays that are business days.'' [4] Because a Friday expiration may coincide with an existing expiration of a monthly or quarterly series of an option in the same class as the Weekly options series, the current requirement that the Fridays be consecutive may mean that the Exchange cannot open five Short Term Option Expiration Dates because of existing monthly or quarterly expirations. The proposed rule change would allow the Exchange to open the five Weekly options expirations closest to the Short Term Option Opening Date, not including monthly or quarterly option expirations.

The proposed rule change also adds language to Rules 5.5(d) and 24.9(a)(2)(A) to state that additional series of Weekly options may be added up to, and including on, the expiration date of the series.[5] Currently, Exchange rules state that the Exchange ''may open up to 20 initial series for each option class that participates in the Short Term Option Series Program'' and ''up to 10 additional series for each option class that participates in the Short Term Option Series Program.'' [6] However, the Exchange's rules are silent on when series may be added. Therefore, the Exchange is proposing to add language stating that additional Weekly options series may be added up to and on the day of expiration.

The Exchange asserts that the proposed revisions to the Weeklys Program will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes and series.[7] In addition, the Exchange stated that it believes that, given the short lifespan of Weekly options, the ability to list new series of options intraday is appropriate.[8]

III. Discussion and Commission Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 70685 (October 15, 2013), 78 FR 62858 (''Notice''). The Commission notes that on October 15, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change to make certain amendments that removed the phrase ''for each series'' from the proposed rule language relating to Short Term Option Expiration Dates.

[4] *See* Exchange Rules 5.5(d) and 24.9(a)(2)(A).

[5] The Exchange also proposed to add language stating that the proposed provisions in Rules 5.5(d)(4) and 24.9(a)(2)(A)(iv) will not contradict current provisions in CBOE Rules. More specifically, the proposed provisions would not contradict 5.5.04 and 24.9.01(c) respectively. The Exchange stated that it believes this addition will eliminate any confusion about when additional series may be added in the Weeklys Program in comparison to other Exchange listing programs.

[6] *See* Exchange Rules 5.5(d)(3), 5.5.(d)(4), 24.9(a)(2)(A)(iii), and 24.9(a)(2)(A)(iv).

[7] *See* Notice, *supra* note 3 at 62859.

[8] *See id.*

exchange.[9] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed change may provide the investing public and other market participants with greater flexibility to closely tailor their investment and hedging decisions in a greater number of option series, thus allowing investors to better manage their risk exposure.

In approving this proposal, the Commission notes that the Exchange has represented that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with the Exchange's proposed amendments to the Weeklys Program.[11] That Commission also notes that the Exchange represented that the Options Clearing Corporation (''OCC'') has the ability to accommodate series in the Weeklys Program added intraday.[12] The Commission expects the Exchange to monitor the frequency of additional series listed as a result of this proposal and record the reasons therefor, and monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, OCC's, and vendors' automated systems.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change, as modified by Amendment No. 1 (SR–CBOE–2013–096), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29551 Filed 12–10–13; 8:45 am]

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[9] In approving this proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Notice, *supra* note 3 at 62860.

[12] *See id.* at 62859, n. 10.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70998; File No. SR–NYSEARCA–2013–133]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposes To Amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services To Specify the Exclusion of Odd Lot Transactions From Consolidated Average Daily Volume Calculations for a Limited Period of Time for Purposes of Certain Transaction Pricing on the Exchange Through January 31, 2014

December 5, 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 November 22, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the ''Fee Schedule'') to specify the exclusion of odd lot transactions from consolidated average daily volume (''CADV'') calculations for a limited period of time for purposes of certain transaction pricing on the Exchange. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to specify the exclusion of odd lot transactions from CADV calculations for a limited period of time for purposes of certain transaction pricing on the Exchange. The Exchange proposes to implement the Fee Schedule on December 9, 2013.

The Exchange provides an ETP Holder with the opportunity to qualify for one or more pricing Tiers based on its level of activity during a particular month. Each Tier has a corresponding fee or credit that applies to the ETP Holder's transactions during the month. Generally, a qualifying ETP Holder would be subject to a lower transaction fee or a higher transaction credit, depending on the particular Tier. Many of these Tiers use a specific percentage of CADV as a threshold that an ETP Holder's activity must meet or exceed in order to qualify for the particular Tier. For example, an ETP Holder must, among other things, provide liquidity an average daily volume (''ADV'') of 0.70% or more of CADV during the month to qualify for Tier 1 pricing.[3] As an additional example, transaction pricing for an ETP Holder that is a Lead Market Maker (''LMM'') can depend on the CADV for the security in the previous month.

CADV is a measure of transactions in Tape A, Tape B and Tape C securities reported to the consolidated tape.

[3] To qualify for Tier 1, an ETP Holder must (1) provide liquidity an ADV per month of 0.70% or more of CADV or (2)(a) provide liquidity an ADV per month of 0.15% or more of CADV and (b) be affiliated with an Options Trading Permit (''OTP'') Holder or OTP Firm that provides an ADV of electronic posted executions (including all account types) in Penny Pilot issues on NYSE Arca Options (excluding mini options) of at least 100,000 contracts, of which at least 25,000 contracts must be for the account of a market maker.

Transactions that are not reported to the consolidated tape are not included in CADV for purposes of the Fee Schedule. An odd lot transaction, which is generally an execution of less than 100 shares, is not currently reported to the consolidated tape and is therefore not currently included in CADV.[4] Beginning December 9, 2013, odd lot transactions will be reported to the consolidated tape.[5] The Exchange proposes to amend Footnote 3 in the Fee Schedule to specify that odd lot transactions reported to the consolidated tape will be excluded from CADV through January 31, 2014 for purposes of billing on the Exchange. This proposed change is intended to maintain consistency in the Exchange's current method of determining Tier qualifications for a limited period of time in order to provide ETP Holders with an opportunity to adjust to the potential impact of the inclusion of odd lot transactions in CADV.

As described above, CADV is also used in the Fee Schedule to differentiate between securities with different CADV levels for purposes of LMM pricing. Odd lot transactions are currently excluded when determining the particular LMM Tier that applies because odd lot transactions are not currently reported to the consolidated tape. In contrast to the proposed change described above, the Exchange will not make any adjustment beginning on December 9, 2013 to consolidated tape figures for purposes of determining the applicable LMM Tier.[6] Therefore, beginning December 9, 2013, odd lot transactions reported to the consolidated tape would be included in LMM Tier determinations. These determinations are based on CADV from the previous month and LMMs would therefore be able to adjust their activity immediately on December 9, 2013 based on November 2013 CADV.

The proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because it will maintain consistency in the current manner of measuring ETP Holder activity with respect to transaction pricing on the Exchange for a limited period of time. Absent this change, the denominator of a Tier threshold calculation (*i.e.,* CADV) would increase immediately when odd lot transactions begin to be reported to the consolidated tape and an ETP Holder would therefore need to immediately increase its own activity (*i.e.,* the numerator) to qualify for the Tier compared to when odd lot transactions were not included in the consolidated tape. However, such an increase in ETP Holder activity would not result in any corresponding benefit to the ETP Holder, because the Exchange is not proposing a change to the Tier rates. The Exchange anticipates that the eventual impact on determining Tier qualifications will be minimal when odd lot transactions begin to be included in CADV. Notwithstanding the anticipated minimal impact, however, the Exchange believes that it is reasonable to provide ETP Holders with a limited transition period to adapt to such impact.

The Exchange believes that it is reasonable to include odd lot transactions in LMM Tier determinations immediately on December 9, 2013 because such determinations are based on CADV from the previous month. LMMs would therefore be able to adjust their activity immediately on December 9, 2013 based on November 2013 CADV. This is different than with excluding odd lot transactions from other CADV calculations for a limited period of time because such other CADV calculations are determined based on the actual billing month, not a prior month. Furthermore, the Exchange does not anticipate that including odd lot transactions in these determinations beginning on December 9, 2013 would have a significant impact on the number of securities for which each particular LMM Tier would otherwise apply absent the inclusion of odd lot transactions.[9]

The proposed change is equitable and not unfairly discriminatory because it would apply to all ETP Holders equally. More specifically, odd lot transactions would be excluded from CADV for billing purposes for all ETP Holders for a limited period of time. The proposed change is also equitable and not unfairly discriminatory because the inclusion of odd lots in the CADV calculation beginning on February 1, 2014 would occur at the same time for all ETP Holders, after the same nearly two month transition period. The proposed change is also equitable and not unfairly discriminatory because odd lot transactions would be immediately included in LMM Tier determinations for all ETP Holders that operate as LMMs. Immediately including odd lot transactions reported to the consolidated tape in LMM Tier determinations is equitable and not unfairly discriminatory because LMMs would be able to adjust their activity immediately on December 9, 2013 based on November 2013 CADV. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange 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. Instead, the proposed change would maintain consistency in the Exchange's current method of determining Tier

[4] *See* NYSE Arca Equities Rule 7.5. A round lot is generally an execution of 100 shares or a multiple thereof.

[5] *See* Securities Exchange Act Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR–CTA–2013–05) (Order Approving the Eighteenth Substantive Amendment to the Second Restatement of the CTA Plan). *See also* Securities Exchange Act Release No. 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (File No. S7–24–89) (Order Approving Amendment No. 30 to 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). *See also* Securities Exchange Act Release No. 70898 (November 19, 2013), 78 FR 70386 (November 25, 2013) (SR–NYSE–2013–75). *See also* announcements regarding December 9, 2013 implementation date, available at *https://cta.nyxdata.com/cta/popup/news/2385* and *http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2013-11.* If the inclusion of odd lot transactions in the consolidated tape is delayed to a date after December 9, 2013, the manner of inclusion or exclusion of odd lot transactions described in this proposal for purposes of billing on the Exchange would similarly take effect on such later date.

[6] The Exchange will reflect this in Footnote 3 in the Fee Schedule.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] Based on October 2013 data, the applicable LMM Tier would change for only one security by including odd lot transactions.

[10] 15 U.S.C. 78f(b)(8).

qualifications for a limited period of time in order to give ETP Holders an opportunity to adjust to the inclusion of odd lot transactions in CADV. This proposed change is also designed to maintain competition on the Exchange by eliminating the potential for ETP Holders to immediately fail to qualify for a Tier due to the inclusion of odd lot transactions in the consolidated tape beginning on December 9, 2013. The Exchange believes that competition would not be burdened by including odd lot transactions in LMM Tier determinations because the Exchange anticipates that this would not have a significant impact on the number of securities for which each particular LMM Tier would otherwise apply absent the inclusion of odd lot transactions—*i.e.,* only one security to which an LMM is assigned based on October 2013 data.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee or credit levels at a particular venue to be unattractive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. The billing method described herein is based on objective standards that are applicable to all ETP Holders and reflects the need for the Exchange to offer significant financial incentives to attract order flow. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and is therefore consistent with the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–133 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–2013–133. 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–NYSEArca–2013–133 and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29496 Filed 12–10–13; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70990; File No. SR–MSRB–2013–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Consisting of Amendments to MSRB Rule G–11, on Primary Offering Practices, Relating to Changes in a Bond Authorizing Document

December 5, 2013.

I. Introduction

On September 19, 2013, the Municipal Securities Rulemaking Board (''MSRB'') 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 consisting of amendments to MSRB Rule G–11, Primary Offering Practices, relating to consents to changes in a bond authorizing document. The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The MSRB states in the Notice that municipal entity issuers (''issuers'') or bond owners often request amendments to bond authorizing documents in order to modernize outdated provisions or address other concerns that have arisen after the initial issuance of bonds. These amendments are typically achieved by the consent of owners of a specified

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 70607 (October 3, 2013), 78 FR 62736 (''Notice'').

percentage of the aggregate principal amount of bonds, as determined by the authorizing document. The MSRB asserts that the process of obtaining consents from bond owners and related costs can be significant because the identity of beneficial owners of bonds is frequently unknown to issuers and trustees.[4] To address some of these burdens, issuers frequently have requested underwriters, as temporary owners of bonds during the initial distribution period and representing the aggregate principal amount of bonds underwritten, to provide consents to amendments to authorizing documents. According to the MSRB, this allows issuers to avoid the potential cost and delay of obtaining, by direct solicitation, consents from beneficial owners. However, according to the MSRB, this approach may result in a dealer consenting to changes to authorizing documents that adversely affect the interests of existing bond owners.[5]

The MSRB proposes to amend MSRB Rule G–11, Primary Offering Practices, to prohibit brokers, dealers and municipal securities dealers (''dealers'') from providing consents to any amendment to authorizing documents for municipal securities, either as an underwriter, a remarketing agent, or as agent for or in lieu of bond owners, except in certain limited circumstances set forth in proposed section (l) of Rule G–11.[6]

Subparagraph (l)(i)(A) will except from the prohibition an underwriter that provides bond owner consents to changes in authorizing documents if such documents expressly allowed an underwriter to provide such consents and the offering documents for the issuer's existing securities expressly disclosed that consents could be provided by underwriters of other securities issued under the same authorizing documents.

Subparagraph (l)(i)(B) will except from the prohibition a dealer that owns the relevant securities other than in the capacity of an underwriter or a remarketing agent. The MSRB states that the determination of whether a dealer owns the securities for purposes of this exception will depend on whether it purchased such securities without a view to distribution.

Subparagraph (l)(i)(C) will except a dealer acting as a remarketing agent to whom the relevant securities had been tendered as a result of a mandatory tender, provided that all securities affected by the amendment (other than securities retained by an owner in lieu of a tender and for which such bond owner had delivered consent) had been tendered. If a bond owner elects to exercise its right to ''hold'' bonds subject to a mandatory tender in lieu of tendering, the remarketing agent will be prohibited from providing consents to any amendment to an authorizing document unless it also receives the specific written consent of such bond owner to such change.

Subparagraph (l)(i)(D) will except a dealer that provides consent to changes to authorizing documents solely as agent for and on behalf of bond owners that delivered separate written consents to such amendments. An underwriter providing an ''omnibus'' consent under this subparagraph will not be viewed as substituting its judgment for that of bond owners but rather as an agent facilitating the collection and delivery of consents.

Subparagraph (l)(i)(E) will except a dealer, in its capacity as an underwriter, that provides consent on behalf of prospective purchasers to amendments to authorizing documents if the amendments would not become effective until all existing bond owners affected by the proposed amendments (other than the prospective purchasers for whom the underwriter had provided consent) had also consented.[7]

Lastly, paragraph (l)(ii) will define certain terms for purposes of proposed section (l), specifically the terms ''authorizing document,''[8] ''bond owner,''[9] and ''bond owner consent.''[10]

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder.[11] In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[12]

The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, because it should protect investors by prohibiting consents to amendments to authorizing documents from a dealer who may be only the temporary owner of the bonds and thus may not share a bond owner's prior or long-term economic interest in the bonds, except under limited circumstances set forth in the rule. The Commission notes that the

[4] The MSRB states that many municipal securities are issued in book-entry form and registered as a single ''global'' certificate in the name of a depository. Thus, the identity of beneficial owners of the bonds is frequently unknown to issuers and trustees. Additionally, the MSRB states that identifying such owners and obtaining consents often results in cost and delay in achieving the requisite number of consents.

[5] The MSRB represents, that while existing bond owners may be considered as having agreed to provisions relating to amendments to the authorizing documents at the time of purchase, such bond owners are not likely to have anticipated that a dealer, acting as an underwriter or remarketing agent with no prior or future long-term economic interest in the bonds, could provide such consent unless such ability had been specifically authorized in the authorizing documents and disclosed to bond owners.

[6] The MSRB notes that consents from dealers solely in their capacity as an underwriter or a remarketing agent and required or permitted in connection with their administrative duties under authorizing documents are not subject to the proposed rule change. Further, the MSRB notes that the proposed rule change does not affect other methods used by issuers to obtain consents from owners of newly issued bonds, such as consents received from bond owners upon initial purchase of the bonds.

[7] The MSRB states that this exception recognizes a limited circumstance in which an underwriter's consent to amendments to authorizing documents, provided in lieu and on behalf of new purchasers of bonds, will be permitted. In this case, the underwriter's consent will not become effective until existing owners of all bonds (other than the prospective purchasers for whom the underwriter had provided consent) affected by such amendment and outstanding at the time such consent became effective had also provided consent. The MSRB states that this alternative might be considered when an issuer was in the process of accumulating consents from all owners of outstanding bonds and had not completed acquiring the consents prior to issuing a new series of bonds. In that case, an underwriter's consent on behalf of new purchasers would not become effective until all other bond owners affected by the amendment had also provided their consent and such other consents were currently effective. The MSRB represents that this exception would not affect an underwriter's ability to provide consents as permitted in subparagraph (l)(i)(D) of the proposed rule change.

[8] The MSRB defines the term ''authorizing document'' to mean the trust indenture, resolution, ordinance, or other document under which the securities are issued.

[9] The MSRB defines the term ''bond owner'' as the owner of municipal securities issued under the applicable authorizing document.

[10] The MSRB defines the term ''bond owner consent'' to mean any consent specified in an authorizing document that may be or is required to be given by a bond owner pursuant to such authorizing document.

[11] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78*o*–4(b)(2)(C).

exceptions in the rule to allow dealer consent to changes in authorizing documents are limited in nature so as to protect existing bond holders, while addressing concerns of issuers about obtaining consents to amendments of their authorizing documents in certain situations. In addition, the Commission believes that the proposed rule change will enhance transparency regarding the practice of obtaining bond owner consents from dealers.

At the same time, the Commission notes that the MSRB has represented that the proposed rule change does not grant an affirmative right to dealers to provide consents to changes to authorizing documents and does not alter the dealer's obligations applicable under other MSRB rules, including its fair dealing obligations under Rule G–17. Accordingly, dealers may not simply rely on the exceptions prescribed in the rule but rather are obligated to consider and comply with their Rule G–17 obligations in seeking to provide consents to amendments in authorizing documents at the request of an issuer in accordance with the exceptions provided.

For these reasons, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, Section 15B(b)(2)(C) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–MSRB–2013–08) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29488 Filed 12–10–13; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71000; File No. SR–NSCC–2013–802]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of No Objection To Advance Notice Filing, as Modified by Amendment Nos. 1, 2, and 3, To Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed To Increase Liquidity Resources To Meet Its Liquidity Needs

December 5, 2013.

I. Introduction

On March 21, 2013, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 806(e) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[1] entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'' or ''Title VIII'') and Rule 19b–4(n) of the Securities Exchange Act of 1934 (''Exchange Act''),[2] advance notice SR–NSCC–2013–802 (''Advance Notice'') to institute supplemental liquidity deposits to NSCC's Clearing Fund designed to increase liquidity resources to meet NSCC's liquidity needs (''SLD Proposal'').[3]

On April 19, 2013, NSCC filed with the Commission Amendment No. 1 to the Advance Notice.[4] On May 1, 2013, the Commission published notice of the Advance Notice, as modified by Amendment No. 1, for comment in the **Federal Register**.[5] On May 24, 2013, the Commission published notice of its extension of its review period of the Advance Notice, as modified by Amendment No. 1.[6] The Commission received 12 comment letters, including the NFS Letter, to the SLD Proposal as initially filed and as modified by Amendment No. 1.[7]

On June 11, 2013, NSCC filed with the Commission Amendment No. 2 to the Advance Notice, as previously modified by Amendment No. 1 (''Amended SLD Proposal''), which the Commission published for comment in the **Federal Register** on July 15, 2013.[8] The Commission received nine comment letters to Amendment No. 2.[9]

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4.

[3] NSCC also filed the SLD Proposal contained in the Advance Notice as proposed rule change SR–NSCC–2013–02 (''Proposed Rule Change''). Release No. 34–69313 (Apr. 4, 2013), 78 FR 21487 (Apr. 10, 2013). On April 19, 2013, NSCC filed with the Commission Amendment No. 1 to the Proposed Rule Change. Release No. 34–69620 (May 22, 2013), 78 FR 32292 (May 29, 2013). On June 11, 2013, NSCC filed with the Commission Amendment No. 2 to the Proposed Rule Change, as previously modified by Amendment No. 1. Release No. 34–69951 (Jul. 9, 2013), 78 FR 42140 (Jul. 15, 2013). On October 7, 2013, NSCC filed Amendment No. 3 to the Proposed Rule Change, as previously modified by Amendment Nos. 1 and 2. Release No. 34–70688 (Oct. 15, 2013), 78 FR 62846 (Oct. 22, 2013). On December 5, 2013, the Commission issued an Order Approving the Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, to Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed to Increase Liquidity Resources to Meet Its Liquidity Needs. Release No. 34–70999.

[4] NSCC filed Amendment No. 1 to the Advance Notice and Proposed Rule Change filings to include as Exhibit 2 a comment letter from National Financial Services (''NFS''), a Fidelity Investments (''Fidelity'') company, to NSCC, dated March 19, 2013, regarding the SLD Proposal prior to NSCC filing the SLD Proposal with the Commission (''NFS Letter''). *See* Release No. 34–69451 (Apr. 25, 2013), 78 FR 25496 (May 1, 2013) (''Notice'') and *see* Exhibit 2 to File No. SR–NSCC–2013–802, *http://www.sec.gov/rules/sro/nscc/2013/34-69451-ex2.pdf.*

[5] *See* Notice, 78 FR 25496.

[6] Release No. 34–69605 (May 20, 2013), 78 FR 31616 (May 24, 2013) (''Notice of Amendment No. 1'').

[7] *See* NFS Letter. *See* letters to Elizabeth M. Murphy, Secretary, Commission from: John C. Nagel, Esq., Managing Director and General Counsel, Citadel Securities (''Citadel''), dated April 18, 2013 (''Citadel Letter I'') and June 13, 2013 (''Citadel Letter II''); Peter Morgan, Senior Vice President & Deputy General Counsel, Charles Schwab & Co., Inc. (''Charles Schwab''), dated April 22, 2013 (''Charles Schwab Letter I'') and May 1, 2013 (''Charles Schwab Letter II''); Thomas Price, Managing Director, Operations, Technology & BCP, Securities Industry and Financial Markets Association (''SIFMA''), dated April 23, 2013 (''SIFMA Letter I''); Julian Rainero, Bracewell & Giuliani LLP, on behalf of Investment Technology Group Inc. (''ITG''), dated April 25, 2013 (''ITG Letter I''); Matthew S. Levine, Managing Director, Co-Chief Compliance Officer, Knight Capital Americas LLC (''Knight Capital''), dated April 25, 2013 (''Knight Capital Letter''); Giovanni Favretti, CFA, Managing Director, Deutsche Bank, dated April 25, 2013 (''Deutsche Bank Letter''); Scott C. Goebel, Senior Vice President, General Counsel, Fidelity, dated April 25, 2013 (''Fidelity Letter I''); and Chief Financial Officer & Executive Managing Director, ConvergEx Execution Solutions LLC (''ConvergEx''), dated May 2, 2013 (''ConvergEx Letter I'') and May 22, 2013 (''ConvergEx Letter II'').

[8] Release No. 34–69954 (Jul. 9, 2013), 78 FR 42127 (Jul. 15, 2013) (''Notice of Amendment No. 2'').

[9] *See* letters to Elizabeth M. Murphy, Secretary, Commission from: Thomas Price, Managing Director, Operations, Technology & BCP, SIFMA, dated June 24, 2013 (''SIFMA Letter II'') and August 7, 2013 (''SIFMA Letter III''); Scott C. Goebel, Senior Vice President, General Counsel, Fidelity, dated June 26, 2013 (''Fidelity Letter II''); Peter Morgan, Senior Vice President & Deputy General Counsel, Charles Schwab, dated August 5, 2013 (''Charles Schwab Letter III'') and September 11, 2013 (''Charles Schwab Letter IV''); Paul T. Clark and Anthony C.J. Nuland, Seward & Kissel, LLP (representing Charles Schwab), dated August 5, 2013 (''Charles Schwab Letter V''); John C. Nagel, Esq., Managing Director and General Counsel, Citadel, dated August 5, 2013 (''Citadel Letter III'') and September 5, 2013 (''Citadel Letter IV''); and Mark Solomon, Managing Director and Deputy General Counsel, ITG, dated August 5, 2013 (''ITG Letter II'').

On October 4, 2013, NSCC filed Amendment No. 3 to the Advance Notice (''Final SLD Proposal''), as previously modified by Amendment Nos. 1 and 2, which the Commission published for comment on October 15, 2013.[10] The Commission received two comment letters to the Final SLD Proposal (i.e., Amendment No. 3).[11]

This publication serves as notice of no objection to the Advance Notice, as modified by Amendment Nos. 1, 2, and 3.

II. Background

A. Purpose of the SLD Proposal

NSCC filed the SLD Proposal to ensure that it would maintain sufficient liquid financial resources to withstand, at a minimum, a default by its single clearing member or clearing member family (''Clearing Member'') to which it has the largest exposure (''Cover One''), in compliance with Commission Rule 17Ad–22(b)(3)[12] and a long-standing NSCC policy.

B. Development of the SLD Proposal

As originally filed, the SLD Proposal would have created two related funding obligations: (1) For the 30 Clearing Members that presented NSCC with the largest peak liquidity requirements on days that did not coincide with quarterly options expiration periods (''Regular Periods''), a liquidity deposit calculated based on the Clearing Member's pro rata portion of NSCC's aggregate liquidity requirements from the 30 Clearing Members during Regular Periods (''Regular SLD''); and (2) for a subset of the 30 Clearing Members that present NSCC with a peak liquidity requirement above NSCC's total liquidity resources on days that coincide with quarterly options expiration periods (''Special Periods''), a liquidity deposit calculated based on each Clearing Members' individual contribution to NSCC's liquidity requirement above its liquidity resources during Special Periods (''Special SLD'').[13]

Regular SLD would have been satisfied in cash only; however, a Clearing Member would have received a dollar-for-dollar reduction of its Regular SLD funding obligation to the extent that it contributed to NSCC's line-of-credit (''Credit Facility'').[14] Special SLD could only be satisfied with cash.[15]

On June 11, 2013, in response to comments received, NSCC filed the Amended SLD Proposal so that, in summary: (1) Special Periods were expanded to include monthly options expirations periods along with quarterly options expiration periods; (2) Clearing Members could designate a commercial lender to commit to the Credit Facility on the Clearing Member's behalf, enabling the Clearing Member to receive the dollar-for-dollar reduction of its Regular SLD; (3) any commitments to the Credit Facility made in excess of a Clearing Member's Regular SLD would be allocated ratably among all 30 Clearing Members that would be required to make a Regular SLD funding obligation; and (4) ''liquidity exposure reports'' would be provided to all NSCC members, so that members, particularly Clearing Members, could better assess their liquidity exposure to NSCC.[16]

On October 4 and 7, 2013, in response to further comments received, NSCC filed the Final SLD Proposal.[17] Among other things, the Final SLD Proposal eliminated the Regular SLD funding obligation.

III. Description of the Final SLD Proposal

The Final SLD Proposal would add Rule 4A to NSCC's Rules and Procedures[18] to establish a supplemental liquidity funding obligation designed to cover the liquidity exposure attributable to those Clearing Members that regularly incur the largest gross settlement debits over a settlement cycle during times of increased trading and settlement activity that arise around Special Periods. More specifically, the obligation applies to a subset of the 30 Clearing Members that present NSCC with historic peak liquidity needs on days that coincide with Special Periods above NSCC's current total liquidity resources. For this subset, NSCC will require a liquidity deposit based on the proportion of the historic peak liquidity exposure that is presented by each Clearing Member in excess of NSCC's then-available total liquidity resources. NSCC will hold deposits made in satisfaction of a Special SLD funding obligation in its Clearing Fund for a period of seven days after the end of the Special Period.

Additionally, if a Clearing Member believes its current trading activity will present a liquidity need to NSCC above NSCC's total liquidity resources, it may voluntarily deposit funds with NSCC to cover the shortfall (''Prefund Deposit''). NSCC will hold Prefund Deposit funds for a period of seven days after the end of the Special Period. If a Clearing Member presents NSCC with a liquidity need above total liquidity resources that is not funded by a Special SLD funding obligation or a Prefund Deposit, the Final SLD Proposal will empower NSCC to call from that Clearing Member the amount of the shortfall, or that Clearing Member's share if caused by more than one Clearing Member, and hold it for 90 days (''Call Deposit'').

IV. Summary of Comments Received and NSCC's Responses

The Commission received 23 comment letters to the SLD Proposal[19] from eight commenters,[20] including the NFS Letter.[21] Commenters include bank affiliated and non-bank affiliated NSCC members, as well as one industry trade group, SIFMA.[22] NSCC also submitted two responses to comment letters received.[23] The Commission has reviewed and taken into full consideration all of the comments received.

All eight commenters express support for NSCC's overall goal of maintaining sufficient financial resources to

[10] Release No. 34–70689 (Oct. 15, 2013), 78 FR 62893 (Oct. 22, 2013) (''Notice of Amendment No. 3'').

[11] *See* letters to Elizabeth M. Murphy, Secretary, Commission from: Managing Director and Deputy General Counsel, ITG, dated November 1, 2013 (''ITG Letter III''); and Scott C. Goebel, Senior Vice President, General Counsel, Fidelity, dated November 5, 2013 (''Fidelity Letter III'').

[12] 17 CFR 240.17Ad–22(b)(3).

[13] *See* Notice, 78 FR at 25496.

[14] *Id.* at 25498.

[15] *Id.*

[16] *See* Notice of Amendment No. 2, 78 FR 42127.

[17] NSCC filed the Amendment No. 3 to the Proposed Rule Change on October 7, 2013, three days after the Final Advance Notice.

[18] *See* Exhibit 5 to File No. SR–NSCC–2013–802, *http://www.sec.gov/rules/sro/nscc/2013/34-70689-ex5.pdf.*

[19] Since the SLD Proposal was filed as both the Proposed Rule Change and the Advance Notice, the Commission considered all public comments received on the proposal, regardless of whether the comments were submitted to the Proposed Rule Change or the Advance Notice. *See* NFS Letter, Citadel Letter I, Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, Deutsche Bank Letter, Fidelity Letter I, Fidelity Letter II, Fidelity Letter III, ConvergEx Letter I, and ConvergEx Letter II.

[20] *See* Comments to the Advance Notice (File No. SR–NSCC–2013–802), *http://sec.gov/comments/sr-nscc-2013-802/nscc2013802.shtml* and the Proposed Rule Change (File No. SR–NSCC–2013–02), *http://sec.gov/comments/sr-nscc-2013-02/nscc201302.shtml* (''Comments Received''). For purposes of discussion, the Commission considers the comment submitted by Seward & Kissel on behalf of Charles Schwab as a Charles Schwab comment, *see* Charles Schwab Letter V, *supra* note 9, and the NFS Letter as a Fidelity comment. *See* NFS Letter.

[21] *See* NFS Letter.

[22] *See* Comments Received, *supra* note 20.

[23] *See* letters to Elizabeth M. Murphy, Secretary, Commission from Larry E. Thompson, Managing Director and DTCC General Counsel, dated June 10, 2013 (''NSCC Letter I'') and August 20, 2013 (''NSCC Letter II'').

withstand a default by a Clearing Member (i.e., Cover One).[24] One commenter, who previously supported approval of the Amended SLD Proposal, supports approval of the Final SLD Proposal.[25] The remaining seven commenters oppose the original SLD Proposal and the Amended SLD Proposal, as discussed in more detail below.[26] One of those seven commenters submitted the sole comment letter in opposition to the Final SLD Proposal.[27]

A. Comments Expressing Support for the Provision of Adequate Liquidity at NSCC

As mentioned above, all eight commenters to the SLD Proposal agreed that NSCC must have access to sufficient liquidity and capital to meet the Cover One standard, and some stated NSCC's critical role as a national clearance and settlement system.[28] For example, one commenter states ''that a clearing agency performing central counterparty services is essential to the proper functioning of the capital markets, and that ensuring the clearing agency is well capitalized and financially sound serves to benefit both the clearing agency's members and the capital markets as a whole.'' [29] The commenter goes on to state that it ''appreciates the need for the NSCC, both as a central counterparty and as a financial market utility that has been designated by the Financial Stability Oversight Council as systemically important, to maintain sufficient financial resources to withstand a default by the NSCC member or family of affiliated members to which the NSCC has the largest exposure . . . [and] also understands the NSCC's desire to broaden the base of support for its liquidity needs beyond the small group of firms that has historically supported these needs through participation in the NSCC's revolving credit facility, and believes it is important to enable all of the NSCC's members to help the NSCC maintain sufficient financial resources.'' [30] Another commenter notes that ''NSCC should have the resources it needs to be a source of strength for the national clearing and settlement system. . . .'' [31] Additionally, another commenter states that it ''appreciates the importance of NSCC's critical role as a [c]entral [c]ounterparty . . . and supports NSCC's goal in ensuring that it has access to sufficient capital in the event that is largest participant fails.'' [32]

B. Opposing Comments Received Prior to the Final SLD Proposal

1. Comments Inapplicable to the Final SLD Proposal

The seven commenters opposed to approval of the SLD Proposal objected to the SLD Proposal for various reasons, as discussed below.[33] Additionally, five of the seven commenters that oppose the SLD Proposal, as well as the commenter in support of the Final SLD Proposal, suggested potential alternative mechanisms for NSCC to satisfy its liquidity needs.[34]

Many of the commenters opposed to the original SLD Proposal and Amended SLD Proposal raised concerns with a component of the proposal that NSCC eliminated in the Final SLD Proposal.[35] Those comments included concerns about: (1) The anticipated costs for Clearing Members as a result of implementation of Regular SLD funding obligation, including costs imposed by a quick implementation period; [36] (2) Clearing Members' inability to accurately predict or control their funding obligation and the effects thereof, including broker-dealers' inability to plan for funding and liquidity risks as provided in FINRA Reg. Notice 10–57; [37] (3) distributional effects associated with implementation of the Regular SLD funding obligation, manifested in particular by an anti-competitive and disparate impact on non-bank affiliated Clearing Members compared to bank affiliated Clearing Members with regard to the offsetting commitments to the Credit Facility; [38] and (4) perceived mechanical flaws with the application of the Regular SLD funding obligation.[39]

Since NSCC has eliminated the aspect of the SLD Proposal to which these comments were made, the Commission believes these comments are not relevant for its determination on the Final SLD Proposal.

2. Comments Applicable to the Final SLD Proposal and NSCC's Responses Thereto

Seven of the eight commenters raised concerns with the SLD Proposal that, while not necessarily directly associated with the Special SLD funding obligation, could apply to elements of the Special SLD funding obligation and thus are relevant for the Commission's consideration of the Final SLD Proposal.[40] Four commenters argued that the SLD Proposal is arbitrary and capricious because it applies to no more than 30 Clearing Members.[41] Six

[24] *See* NFS Letter, Citadel Letter III, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter V, SIFMA Letter II, SIFMA Letter III, Knight Capital Letter, Deutsche Bank Letter, Fidelity Letter I, Fidelity Letter II, ConvergEx Letter I, ConvergEx Letter II, ITG Letter II.

[25] *See* Fidelity Letter II, Fidelity Letter III.

[26] *See* NFS Letter, Citadel Letter I, Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, Deutsche Bank Letter, Fidelity Letter I, ConvergEx Letter I, and ConvergEx Letter II.

[27] *See* ITG Letter III.

[28] *See supra* note 24.

[29] *See* SIFMA Letter II.

[30] *Id.*

[31] *See* Charles Schwab Letter III, Charles Schwab Letter V.

[32] *See* ConvergEx Letter II.

[33] *See* Citadel Letter I, Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, Deutsche Bank Letter, ConvergEx Letter I, and ConvergEx Letter II.

[34] Alternatives included, but were not limited to: NSCC should issue long-term debt to increase its liquidity resources; NSCC should increase intra-day margin calls; NSCC should increase Clearing Member fees; NSCC should reduce the settlement cycle; NSCC should reduce the volume of unsettled trades; NSCC should establish a bilateral third-party bank committed facility; and NSCC should change its capital structure. *See* NFS Letter, Citadel Letter II, Citadel Letter III, Charles Schwab Letter II, Charles Schwab Letter III, SIFMA Letter II, SIFMA Letter III, ITG Letter II, Fidelity Letter II, Fidelity Letter III and ConvergEx Letter II. The Commission notes that these comments are beyond the subject of the Final SLD Proposal by NSCC.

[35] *See* Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, Knight Capital Letter, Deutsche Bank Letter, ConvergEx Letter I, ConvergEx Letter II.

[36] *See, e.g.,* ITG Letter I, ITG Letter II, Citadel Letter III.

[37] *See* Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter II, SIFMA Letter I, SIFMA Letter II, ITG Letter II, Knight Capital Letter, Deutsche Bank Letter, ConvergEx Letter II.

[38] *See* Citadel Letter II, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, Knight Capital Letter, ConvergEx Letter I, ConvergEx Letter II.

[39] *See* ITG Letter II.

[40] *See* Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, Deutsche Bank Letter, ConvergEx Letter I, ConvergEx Letter II.

[41] *See* Citadel Letter II, ITG Letter I, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter III, ITG Letter II, ITG Letter III. All four commenters argue that the imposition of a funding obligation to no more than 30 Clearing Members was arbitrary and capricious referred to the Regular SLD funding obligation, in which a Regular SLD funding obligation is satisfied pro rata by 30 Clearing Members irrespective of whether each Clearing Member presented a peak liquidity need above NSCC total available liquidity resources. One of the four commenters claims that the same

commenters argued that the SLD Proposal would have unintended consequences of forcing a number of Clearing Members to terminate their membership and thereby concentrating the broker clearing business in fewer Clearing Members, potentially increasing systemic risk.[42] One commenter stated that historic peak liquidity needs, which would be used by NSCC to determine the liquidity need presented by each Clearing Member, is not necessarily predictive of future liquidity needs.[43] Three commenters argued that NSCC incorrectly calculates its liquidity needs in the SLD Proposal, either because the liquidity need is calculated using Clearing Member gross settlement debits instead of net settlement debits or because the settlement debits were aggregated over a four-day cycle.[44] Seven commenters stated that treatment of funds delivered to NSCC to satisfy a funding obligation under the SLD Proposal for Commission Rule 15c3–1 purposes was unclear.[45]

In response to comments that imposition of a funding obligation is arbitrary and capricious, NSCC revised the SLD Proposal to eliminate the Regular SLD funding obligation component,[46] which would have: (i) Assigned a funding obligation to the 30 Clearing Members that presented NSCC with the largest peak liquidity needs irrespective of whether the peak liquidity need itself would have surpassed NSCC available liquidity resources, and (ii) allocated a funding obligation to each of those 30 Clearing Members driven substantially by the peak liquidity need presented to NSCC by the largest Clearing Member.[47] In response to comments regarding unintended consequences of the SLD Proposal, such as Clearing Members terminating their membership, NSCC stated that the Clearing Member is in the best position to monitor and manage the liquidity risks presented by its own activity.[48] Similarly, NSCC states that the maintenance of adequate liquidity resources at NSCC is a key element in the reduction of systemic risk at a systemically-important financial market utility and also a key component of NSCC's ability to prevent the failure of a Clearing Member from having a cascading effect on other Clearing Members.[49]

NSCC agreed that historic peak liquidity needs are not necessarily predictive of future liquidity needs, and as a result NSCC has proposed a mechanism whereby Clearing Members may voluntarily prefund liquidity needs that the Clearing Member anticipates will surpass total liquidity resources available at NSCC through the Prefund Deposit.[50] Furthermore, in the event a Clearing Member does not elect to prefund potential liquidity needs but does present a liquidity need to NSCC above total liquidity resources that is not accounted for by a Special SLD funding obligation, NSCC has proposed a mechanism to require the Clearing Member to fund the liquidity need through the Call Deposit.[51] With respect to comments that NSCC incorrectly calculates its liquidity need by using gross settlement debits instead of net settlement debits, NSCC responded that, as a central counterparty for its members, its risk exposure is reflected by the gross settlement debits presented to it, not net settlement debits, in the event of a Clearing Member default.[52] Furthermore, NSCC stated that calculating liquidity obligations over a four-day settlement cycle is consistent with NSCC's practical liquidity obligation in the event of a Clearing Member default.[53] Finally, in response to comments that the treatment of funds posted in satisfaction of an SLD funding obligation for Rule 15c3–1 purposes is unclear, NSCC stated that it structured the SLD Proposal so that deposits made pursuant to an SLD funding obligation would constitute Clearing Fund deposits, which have clear regulatory capital treatment under Rule 15c3–1.[54]

Six commenters stated that the SLD Proposal did not provide a sufficient evaluation of its burden on competition and lacked necessary detail so as to elicit meaningful comment.[55] Many of these commenters argued that, while they supported NSCC's need for liquidity resources generally, NSCC did not demonstrate a specific need for additional liquidity in connection with the SLD Proposal.[56] Five commenters argued the SLD Proposal lacked sufficient Clearing Member input prior to submitting the proposal.[57] Three commenters argued that the SLD Proposal did not meet the standard required for an advance notice filing because it did not discuss expected effects on risks to NSCC's Clearing Members or NSCC's management of those risks.[58] Three commenters also argued that the SLD Proposal did not adequately protect investors.[59] One commenter argued that the fact that NSCC submitted the SLD Proposal without Clearing Member input is indicative of a lack of fair representation for Clearing Members in the governance of NSCC.[60] One commenter stated that NSCC did not take into account the potential impact of other central counterparties instituting similar liquidity provisions.[61] Five commenters argued in opposition of cash being the only source by which a Clearing Member could satisfy a supplemental liquidity deposit.[62]

In response to comments received regarding insufficient detail of the SLD Proposal, NSCC provided detail regarding: the specific need for liquidity resources,[63] implementation timeframes for the SLD Proposal,[64] and a suite of

argument persists for the Special SLD Funding Obligation; as such, the Commission will consider the comment here. *See* Charles Schwab Letter V.

[42] *See* Citadel Letter II, Charles Schwab Letter II, Charles Schwab Letter III, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, Knight Capital Letter, ConvergEx Letter II.

[43] *See* ITG Letter II.

[44] *See* Citadel Letter III, ITG Letter II, ConvergEx Letter I, ConvergEx Letter II.

[45] *See* 17 CFR 240.15c3–1. *See, e.g.,* Citadel Letter II, Citadel Letter III, Charles Schwab Letter II, Charles Schwab Letter III, SIFMA Letter II, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, ConvergEx Letter II.

[46] *See* Notice of Amendment No. 3, 78 FR at 62894–95.

[47] *Id.* at 62894.

[48] NSCC Letter I.

[49] *See* NSCC Letter I.

[50] *See* Notice of Amendment No. 3, 78 FR at 62895.

[51] *See* Notice, 78 FR at 25498.

[52] *See* NSCC Letter I.

[53] *Id.*

[54] *Id.*

[55] *See* Citadel Letter II, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter V, SIFMA Letter II, ITG Letter I, ITG Letter II, Knight Capital Letter, ConvergEx Letter I, ConvergEx Letter II.

[56] *See* Citadel Letter II, Citadel Letter III, SIFMA Letter II, SIFMA Letter III, ITG Letter II, ITG Letter III, ConvergEx Letter II.

[57] *See* Citadel Letter III, Charles Schwab Letter I, ITG Letter I, ITG Letter II, Knight Capital Letter, Deutsche Bank Letter.

[58] *See* Citadel Letter II, Charles Schwab Letter II, Charles Schwab Letter III, ConvergEx Letter II.

[59] *See* Deutsche Bank Letter, Charles Schwab Letter II, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter II.

[60] *See* Citadel Letter III.

[61] *See* Charles Schwab Letter II, Charles Schwab Letter III. Additionally, one commenter argued that NSCC attempted to improperly amend the SLD Proposal through a response to comments. *See* Charles Schwab Letter V. The Commission notes that NSCC filed the Final SLD Proposal subsequent to the Commission's receipt of this comment in accordance with the rule filing process. *See* Notice of Amendment No. 3, 78 FR 62893.

[62] *See* NFS Letter, Charles Schwab Letter II, Charles Schwab Letter III, Citadel Letter II, Citadel Letter III, SIFMA Letter I, Fidelity Letter II, ITG Letter II.

[63] *See* NSCC Letter II (stating that ''NSCC has seen continued increases in potential liquidity needs, driven by consolidation in the industry, developments in trading techniques (including a rise in high frequency trading), and a reduction in volatility from the post-[2008] crisis highs which result in reduced Clearing Fund requirements'').

[64] *See* Notice of Amendment No. 3, 78 FR 62893 (stating that the Final SLD Proposal would be implemented on February 1, 2014).

tools, such as monthly and daily reports, to enable Clearing Members to more accurately predict a potential Regular SLD funding obligation.[65] NSCC stated that it would work with Clearing Members to help them understand and develop tools to forecast liquidity exposure and mitigate their peak liquidity exposure.[66] NSCC also stated that it would provide monthly and daily reports to Clearing Members that would show liquidity exposure during relevant periods.[67] NSCC also stated that fluctuating peak activity recently has exceeded NSCC available total liquidity resources.[68] NSCC believes these liquidity needs are largely driven by industry consolidation, developments in trading techniques, including an increased use of high frequency trading, and a reduction in volatility from post-2008 financial crisis levels, generally resulting in a reduction in Clearing Fund requirements.[69] In response to comments received regarding insufficient analysis of the burden on competition that might ensue from implementation of the SLD Proposal, NSCC substantially revised the SLD Proposal twice to expand its analysis of the burden on competition to include, for example, individual subsections specifically addressing competition concerns raised by commenters,[70] and to reduce any disparate impact on Clearing Members stemming from implementation of the SLD Proposal, first to provide a mechanism by which non-bank affiliated Clearing Members could contribute to Credit Facility, and second to eliminate the Regular SLD from the Final SLD Proposal.[71]

In response to comments regarding the lack of Clearing Member input in the SLD Proposal and that the development of the SLD Proposal without Clearing Member input was indicative of a lack of fair representation of all Clearing Members at NSCC, NSCC stated that it engaged in discussions with Clearing Members likely to be impacted by the SLD Proposal, including more than 100 meetings with Clearing Members to enhance Clearing Members' understanding of liquidity risks presented to NSCC and the SLD Proposal generally.[72] The Advance Notice and subsequent amendments were published for comment three times, so Clearing Members had an opportunity to comment, and NSCC also substantially revised the SLD Proposal twice as a direct response to comments received on the SLD Proposal.[73] Finally, on September 18, 2013, NSCC announced to its membership that it was forming the Clearing Agency Liquidity Council (''CALC''), an advisory group to continue the dialogue between NSCC and its Clearing Members regarding liquidity issues in a formal setting.[74] According to NSCC, the CALC intends to explore additional liquidity resources in advance of the 2014 renewal of NSCC's Credit Facility, in order to address, for example, NSCC's liquidity needs outside of Special Periods and the refinancing risk associated with the annual renewal of the Credit Facility.[75] According to NSCC, twenty-four Clearing Members joined the CALC, including all eight commenters to the SLD Proposal, which has met on multiple occasions since its inception.

NSCC responded to comments that the SLD Proposal did not contain sufficient information by amending the SLD Proposal twice to further identify the potential impact of the SLD Proposal on Clearing Members and to make substantive revisions to the SLD Proposal to address those concerns.[76] NSCC responded to comments that the SLD Proposal did not protect investors by stating that the maintenance of adequate liquidity resources at NSCC, a designated systemically-important financial market utility[77] that plays a fundamental role in the United States cash equities market,[78] will protect against the transmission of systemic risk among Clearing Members in the event of a failure of one Clearing Member, thereby promoting the prompt and accurate settlement of securities transactions and the protection of investors.[79] NSCC responded to the comment that it did not take into account other central counterparties imposing similar liquidity requirements by stating that such a concern was unlikely given the difference in liquidity risk between cash market central counterparties (i.e., NSCC), where potential liquidity needs typically are orders of magnitude greater than the market risk that their margin collections are designed to cover, and derivatives central counterparties, where liquidity needs generally are more closely aligned to market risk of members' portfolios and the members' margin requirements.[80] In response to comments opposed to cash being the sole funding source by which a Clearing Member could satisfy a supplemental liquidity deposit, NSCC eliminated Regular SLD, thereby eliminating concern relating to disparate treatment that might ensue by requiring Clearing Members that do not make a commitment to lend to NSCC through the Credit Facility to make their Regular SLD funding obligation in cash, and NSCC states that the CALC will evaluate potential alternative collateral approaches that could be used to fund a portion of a Clearing Member's funding obligation.[81]

C. Comments to the Final SLD Proposal

The Commission received two comments on the Final SLD Proposal. Both commenters supported NSCC's decision to eliminate the Regular SLD funding obligation from the SLD Proposal.[82] One commenter argued for approval of the Final SLD Proposal, since the Final SLD Proposal ''is a helpful development in the process of determining how best to increase NSCC's liquidity resources to meet its liquidity needs.''[83] Moreover, the commenter believes that ''NSCC has addressed the area of greatest [m]ember concern in removing provisions of the

[65] *See* NSCC Letter I, NSCC Letter II, Notice of Amendment No. 2, 78 FR 42127, Notice of Amendment No. 3, 78 FR 62893.

[66] *See* NSCC Letter I.

[67] *See* NSCC Letter I, NSCC Letter II.

[68] *See* NSCC Letter II.

[69] *Id.*

[70] *See* Notice of Amendment No. 2, 78 FR 42127. *See also* NSCC Letter I. NSCC argued that the SLD Proposal would apply fairly across Clearing Members and, while recognizing potential competitive impacts on such members, believed the SLD Proposal addressed important financial resource requirements. NSCC also stated that it was revising the SLD Proposal to address competition concerns.

[71] *See* Notice of Amendment No. 2, 78 FR 42127; Notice of Amendment No. 3, 78 FR 62893. *See also* NSCC Letter I, NSCC Letter II.

[72] *See* NSCC Letter I.

[73] *See* Notice of Amendment No. 2, 78 FR 42127; Notice of Amendment No. 3, 78 FR 62893. *See also* NSCC Letter II.

[74] DTCC Important Notice a7706, *Creation of DTCC Clearing Agency Liquidity Council and Nomination Process* (Sep. 18, 2013), *http://dtcc.com/downloads/legal/imp_notices/2013/nscc/a7706.pdf.*

[75] *See* NSCC Letter II. *See also* Notice of Amendment No. 2, 78 FR 42127, Notice of Amendment No. 3, 78 FR 62893.

[76] *See* Notice of Amendment No. 2, 78 FR 42127; Notice of Amendment No. 3, 78 FR 62893. *See also* NSCC Letter II.

[77] Financial Stability Oversight Council (''FSOC'') 2012 Annual Report, Appendix A, *http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf* (''FSOC Designation'').

[78] *See* 12 U.S.C. 5462(9).

[79] *See* NSCC Letter I, NSCC Letter II. Designation as systemically-important by FSOC means that a failure of or disruption to its functioning could create, or increase, the risk of significant credit or liquidity problems spreading among financial institutions or markets, thereby threatening financial stability. *See* 12 U.S.C. 5462(9). *See also* FSOC Designation, *supra* note 77.

[80] *See* NSCC Letter II.

[81] *Id. See also* discussion below noting that any cash deposit is driven by the Clearing Member's own trading activity.

[82] *See* ITG Letter III, Fidelity Letter III.

[83] *See* Fidelity Letter III.

[SLD] Proposal that collectively deal with the imposition of the Regular [SLD].'' [84] One commenter argued for disapproval of the Final SLD Proposal, stating that flawed concepts remain and approval would unnecessarily inhibit the development of ideas from NSCC's CALC.[85] NSCC did not submit a response to comments received after submission of the Final SLD Proposal.

V. Discussion and Commission Findings

Although Title VIII does not specify a standard of review for an advance notice, the purpose of Title VIII is instructive.[86] The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for and strengthening the liquidity of systemically-important financial market utilities.[87]

Section 805(a)(2) of the Clearing Supervision Act [88] authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act [89] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act on October 22, 2012, (''Clearing Agency Standards'').[90] The Clearing Agency Standards became effective on January 2, 2013, and require clearing agencies that perform central counterparty services to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[91] As such, it is appropriate for the Commission to review advance notices against these risk management standards that the Commission promulgated under Section 805(a) and the objectives and principles of these risk management standards as described in Section 805(b). Commission Rule 17Ad-22(b)(3), adopted as part of the Clearing Agency Standards, requires a central counterparty to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions.[92]

After carefully considering the Final SLD Proposal and the comments received [93] on the SLD Proposal and NSCC responses thereto, the Commission finds that NSCC has demonstrated that its Final SLD Proposal is in furtherance of the objectives and principles of Title VIII and the risk management standards prescribed thereunder by the Commission and accordingly it is appropriate for the Commission to issue a no-objection to the Final SLD Proposal.

The Commission recognizes that some commenters did not support certain aspects of the SLD Proposal. However, the Commission believes that the Final SLD Proposal eliminated most of the aspects of the SLD Proposal which concerns were raised, and no comments convinced the Commission that the Final SLD Proposal was not consistent with Title VIII. The Commission believes that, overall, the increased liquidity resources available to NSCC as a result of the Final SLD Proposal: (i) Will improve financial safety at NSCC by increasing its ability meet its liquidity needs; (ii) reduce systemic risks and support the stability of the broader financial system; and (iii) accordingly is reasonably designed to ensure NSCC maintains sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions. The Commission's analysis of the comments applicable to the Final SLD Proposal and the Final SLD Proposal's consistency with Title VIII of the Dodd-Frank Act and risk management standards prescribed thereunder by the Commission are discussed below.

As stated above, several commenters argued that the original SLD Proposal suffered from certain defects, such as a failure of NSCC to consult with Clearing Members prior to submitted the SLD Proposal,[94] that the SLD Proposal did not adequately address items required by Title VIII,[95] and that NSCC did not demonstrate a specific need for additional liquidity in connection with the SLD Proposal.[96] The Commission believes that the Final SLD Proposal is consistent with Title VIII. NSCC made substantial revisions to the SLD Proposal directly responsive to comments raised during the comment period, the creation of the CALC to continue the dialogue between NSCC and Clearing Members regarding liquidity generally, and a more robust description of the SLD Proposal and its potential effects on the competition between Clearing Members. The Commission notes the stated intention of the CALC to revisit and further impose NSCC's practices with respect to liquidity risk management as also being relevant in this respect.

The Commission notes that all commenters supported NSCC's objective of maintaining sufficient financial resources to withstand a default by a Clearing Member and acknowledged that NSCC must have sufficient liquidity for these purposes. The Commission agrees with commenters and with NSCC that the maintenance of sufficient liquidity resources at NSCC is of

[84] *Id.*

[85] *See* ITG Letter III.

[86] 12 U.S.C. 5461(b).

[87] *Id. See also* FSOC Designation, *supra* note 77.

[88] 12 U.S.C. 5464(a)(2).

[89] 12 U.S.C. 5464(b).

[90] Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

[91] The Clearing Agency Standards are substantially similar to the risk management standards established by the Board of Governors governing the operations of systemically-important financial market utilities that are not clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency. *See* Financial Market Utilities, 77 FR 49507 (Aug. 2, 2012).

[92] 17 CFR 240.17Ad-22(b)(3).

[93] In its assessment of this advance notice of the Final SLD Proposal, the Commission assessed whether the issues raised by the commenters relate to the level or nature of risks presented by the Final SLD Proposal. Comments received that relate to issues that do not relate to the Final SLD Proposal's effect on the level or nature of risks presented by NSCC are not considered within the context of his Notice of No Objection to the Advance Notice under Title VIII; rather, they are considered within an analysis of the Final SLD Proposal's consistency with the Exchange Act and applicable rules and regulations thereunder, which the Commission has done in the Order Approving the Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, to Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed to Increase Liquidity Resources to Meet its Liquidity Needs. *See supra* note 3.

[94] *See* Citadel Letter III, Charles Schwab Letter I, ITG Letter I, ITG Letter II, Knight Capital Letter, Deutsche Bank Letter, Fidelity Letter I.

[95] *See* Citadel Letter II, Charles Schwab Letter II, Charles Schwab Letter III, ConvergEx Letter II.

[96] *See* Citadel Letter II, Citadel Letter III, SIFMA Letter II, SIFMA Letter III, ITG Letter II, ITG Letter III, ConvergEx Letter II. With respect to the comments described above about NSCC requiring cash be deposited as collateral, the Commission believes that NSCC has addressed these comments and has stated that the CALC will evaluate potential alternative collateral approaches.

paramount importance to promote safety and soundness and support the broader stability of the financial system. This is underscored by NSCC's designation as a systemically-important financial market utility for which a failure or disruption of its operations would create or increase risk of significant credit or liquidity problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the U.S.[97]

The Commission also notes that NSCC has stated that fluctuating peak liquidity needs presented to NSCC have exceeded total liquidity resources available to NSCC, emphasizing the need for NSCC to develop a mechanism to help ensure that it maintains adequate liquidity as soon as possible.[98] These liquidity needs are driven by Clearing Members' trading activity, and the Final SLD Proposal is designed as a mechanism to allocate a funding obligation to those Clearing Members with peak liquidity needs that surpass NSCC available liquidity resources.

The Commission takes specific note of comments arguing that implementation of the SLD Proposal could result in an increase of systemic risk by concentrating clearing services into fewer firms if Clearing Members opt to terminate their NSCC membership instead of meeting a Special SLD funding obligation. The Commission has carefully considered those comments, but does not believe a risk of increased concentration is a significant risk under the Final SLD Proposal for several reasons. First, since a Special SLD funding obligation is correlated directly to the liquidity need presented to NSCC as a result of Clearing Members' own [99] trading activity, the Special SLD funding obligation is not an unexpected cost for which the Clearing Member is incapable of controlling. Second, the Special SLD funding obligation applies only in the case where a Clearing Member presents a liquidity need that surpasses the then-current total available liquidity resources, based on a two-year look-back period of the Clearing Member's trading activity. These liquidity resources include the Clearing Fund and the Credit Facility, and historically these liquidity resources have provided NSCC with adequate liquidity resources a substantial portion of the time. While the Commission believes the Final SLD Proposal is important for NSCC to ensure that it has a mechanism to maintain adequate liquidity resources at all times, the Commission also expects based on the representations of NSCC that a Special SLD funding obligation will be required in only a small number of cases and from a select few Clearing Members with trading activity that is substantial enough to create a liquidity need above NSCC's total liquidity resources. Finally, the Commission notes that the Final SLD Proposal would enable a Clearing Member to avoid a Special SLD funding obligation by either managing its own trading activity to avoid such an obligation or using the Prefund Deposit, which would likely avoid a Call Deposit that would enable NSCC to hold the deposited funds for 90 days, so that the Clearing Member has options other than termination of membership available to it to manage its potential liquidity funding obligation.

For the reasons stated above, the Commission believes that the Final SLD Proposal is: (i) Consistent with Commission regulations and risk management standards in Section 805(b) of the Clearing Supervision Act because it promotes robust risk management and improves safety and soundness at NSCC, while reducing systemic risks to the financial system more generally and (ii) consistent with Rule 17Ad–22 (b)(3) because it provides NSCC with a mechanism to maintain sufficient financial resources to withstand, at a minimum, a default by the Clearing Member to which NSCC has the largest exposure.

VI. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[100] that the Commission does not object to the proposed rule change described in the Advance Notice (File No. SR–NSCC–2013–802) and that NSCC be and hereby is authorized to implement the proposed rule change as of the date of this notice or the date of the ''Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 to Institute Supplemental Liquidity Deposits to [NSCC's] Clearing Fund Designed to Increase Liquidity Resources to Meet Its Liquidity Needs,'' SR–NSCC–2013–02, whichever is later.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

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[97] *See* 12 U.S.C. 5462(9).

[98] *See* NSCC Letter II.

[99] For these purposes, a Clearing Members' own trading activity includes trading activity from all clients of the Clearing Member.

[100] 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70993; File No. SR–NYSEArca–2013–101]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade Shares of the WisdomTree Bloomberg U.S. Dollar Bullish Fund, WisdomTree Bloomberg U.S. Dollar Bearish Fund, and the WisdomTree Commodity Currency Bearish Fund Under NYSE Arca Equities Rule 8.600

December 5, 2013.

I. Introduction

On September 26, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of WisdomTree Bloomberg U.S. Dollar Bullish Fund, WisdomTree Bloomberg U.S. Dollar Bearish Fund, and the WisdomTree Commodity Currency Bearish Fund of the WisdomTree Trust. The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the WisdomTree Bloomberg U.S. Dollar Bullish Fund (''DI Bull Fund''), WisdomTree Bloomberg U.S. Dollar Bearish Fund (''DI Bear Fund,'' and together with the DI Bull Fund, collectively, ''DI Funds''), and the WisdomTree Commodity Currency Bearish Fund (''CC Bear Fund'') [4] under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the WisdomTree Trust (''Trust''), a Delaware statutory trust registered with the Commission as an investment company.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70624 (October 8, 2013), 78 FR 62751 (''Notice'').

[4] The DI Funds and the CC Bear Fund are also individually referred to as ''Fund'' and collectively referred to as ''Funds.''

[5] The Trust has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission on behalf of each of the Funds. *See* Post-Effective Amendment No. 216 (DI Bull Fund), No. 217 (DI Bear Fund), and No. 218 (CC Bear

WisdomTree Asset Management, Inc. will be the investment adviser (''Adviser'') to each of the Funds.[6] Mellon Capital Management will serve as sub-adviser for each of the Funds (''Sub-Adviser'').[7] The Bank of New York Mellon is the administrator, custodian, and transfer agent for the Trust. ALPS Distributors, Inc. serves as the distributor for the Trust. Bloomberg Finance L.P. (''Index Sponsor'') is the sponsor of the Bloomberg US Dollar Total Return Index (''Bloomberg USD TR Index'') and the Bloomberg Inverse US Dollar Total Return Index (''Bloomberg Inverse USD TR Index,'' each an ''Index,'' and together with the Bloomberg USD TR Index, collectively, ''Indexes'').[8] According to the Exchange, the Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. The Exchange further represents that the Sub-Adviser is not a broker-dealer, but is affiliated with one or more broker-dealers and has implemented a ''fire wall'' with respect to each such broker-dealer regarding access to information concerning the composition and changes to a Fund's portfolio.[9]

DI Funds—Index Information

The DI Bull Fund will be an actively managed fund that seeks to provide total returns, before expenses, that exceed the performance of the Bloomberg USD TR Index. According to the Exchange, the Bloomberg USD TR Index is based on the Bloomberg US Dollar Index (BDXY), which tracks changes in the value of the U.S. Dollar against a basket of developed and emerging market currencies that are deemed to have the highest liquidity in the currency markets and to represent countries that make the largest contribution to trade flows with the United States.[10] The Exchange states that the Bloomberg USD TR Index additionally incorporates the impact of short-term interest rate differences inherent in achieving such exposure by incorporating the net interest rate differential between the short-term interest rates in the U.S. and in the countries of those leading currencies and the daily federal funds rate. The Exchange states that the Bloomberg USD TR Index is structured to potentially benefit from a general rise in the level of the U.S. Dollar relative to the basket of global currencies.

According to the Exchange, the Bloomberg US Dollar Index and, accordingly, the Bloomberg USD TR Index and the Bloomberg Inverse USD TR Index are constructed as follows. First, to be considered for the Index, currencies must rank high in terms of their countries' or regions' contribution to overall trade in the U.S. or have high standing in terms of rank in foreign exchange trading volume, although they must have influence in both categories. The basket of currencies composing the index will be selected and weighted using the U.S. trade volume reported by the Federal Reserve[11] as a proxy for contribution to trade flows and foreign exchange turnover as reported in the BIS Survey as a proxy for foreign exchange liquidity.[12] Countries and their respective currencies relative to the U.S. Dollar are ranked in terms of their contribution to overall U.S. trade and the percentage of overall transaction volume for their currencies. Exposure to individual currencies whose movement has been largely regulated by their government will be capped at three percent, and currencies with preliminary weights of less than two percent are removed. The final weights are then derived by distributing the weight to the remaining currencies in proportion to the preliminary weights. Currencies that are strictly tied to the U.S. Dollar will be excluded.

The Bloomberg USD TR Index's annual rebalance is done in December every year with a reference date of the third Friday of the month and a rebalance date after the close of the last U.S. trading date of the month. The Bloomberg US Dollar Index value is published real time under the ticker BBDXY on Bloomberg. The Bloomberg USD TR Index (BBDXT) value is generated once a day.

The DI Bear Fund will be an actively managed fund that seeks to provide total returns, before expenses, that exceed the performance of the Bloomberg Inverse USD TR Index. According to the Exchange, the Bloomberg Inverse USD TR Index is based on the Bloomberg US Dollar Index (as described above), which tracks changes in the value of the

Fund) to the Registration Statement on Form N–1A for the Trust, each dated September 6, 2013 under the Securities Act of 1933 (''Securities Act'') and the Investment Company Act of 1940 (''1940 Act'') (File Nos. 333–132380 and 811–21864). In addition, the Exchange notes that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28171 (October 27, 2008) (File No. 812–13458). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Exchange represents that the Trust's application for exemptive relief under the 1940 Act states that the Funds will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities and that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act.

[6] WisdomTree Investments, Inc. is the parent company of the Adviser.

[7] The Sub-Adviser will be responsible for day-to-day management of the Funds and, as such, will typically make all decisions with respect to portfolio holdings. The Adviser will have ongoing oversight responsibility.

[8] The Exchange states that information regarding the Indexes and other indexes provided by the Index Sponsor can be found at *www.bloombergindexes.com.* The Exchange further represents that the Index Sponsor is not a broker-dealer, but is affiliated with one or more broker-dealers and has implemented procedures designed to prevent the illicit use and dissemination of material, non-public information regarding the Indexes and has implemented a ''fire wall'' with regard to its affiliated broker-dealers regarding the Indexes.

[9] *See* NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of or changes to the applicable Fund's portfolio, and it will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.

[10] The Exchange states that data for the global currencies is derived, in part, from the Bank for International Settlements Triennial Central Bank Survey, December 2010 (''BIS Survey''). According to the Exchange, the global currencies included in the Indexes are limited to the top twenty currencies in terms of transaction volume, listed in the BIS Survey, under Table 3: ''Currency distribution of global foreign exchange market turnover,'' reflecting the percentage share of average daily turnover for the applicable month and year (''Table 3''). *See http://www.bis.org/publ/rpfxf10t.htm.* Trade volume data for the currencies selected is derived from the Board of Governors of the Federal Reserve System, Foreign Exchange Rates—H.10 Release. *See http://www.federalreserve.gov/Releases/H10/Summary/* (''Federal Reserve Release''). According to the Exchange, the global currencies selected for the Indexes are limited to the top twenty currencies by trade volume included in the most recent Federal Reserve Release.

According to the Exchange, the Index Sponsor selects for both Indexes the top ten currencies included in both the most recent BIS Survey and Federal Reserve Release, giving equal weighting to both liquidity and trade volume. The currencies selected are given weights in each Index based equally on relative trade volume and relative liquidity as compared with the other included currencies. The Indexes each exclude any currency that is tied directly to the U.S. Dollar (*e.g.,* Hong Kong Dollar) and limit the percentage weighting of the Chinese Yuan Renminbi (''CNY'') to three percent of the total weight of each Index, because the CNY is heavily managed by the Chinese government. The Indexes also exclude any currency that would receive a weighting of less than two percent of the Indexes, based on the relative weighting formula described above.

The Exchange states that, as of December 31, 2012 (the date of the most recent rebalancing of the Indexes), the components of each index were the following: Euro (34.3%); Japanese Yen (16.2%); Canadian Dollar (12.0%); British Pound (9.9%); Mexican Peso (8.5%); Australian Dollar (5.5%); Swiss Franc (4.9%); Korean Won (3.6%); CNY (3.0%); and Singapore Dollar (2.2%).

[11] The Exchange notes that data used by the Index Sponsor to determine trading volumes in each currency will derive from the Federal Reserve Release. *See id.*

[12] The Exchange notes that transactional volume will be derived from the BIS Survey. *See supra* note 10.

U.S. Dollar against a basket of developed and emerging market currencies that have the highest liquidity in the currency markets and the biggest trade flows with the U.S. The Exchange states that the Bloomberg Inverse USD TR Index additionally incorporates the impact of short-term interest rates in the global currencies and that the Bloomberg Inverse USD TR Index is structured to potentially rise as global currencies appreciate relative to the U.S. Dollar.

The Bloomberg Inverse USD TR Index's annual rebalance is done in December every year with a reference date of the third Friday of the month and a rebalance date after the close of the last U.S. trading date of the month. The Bloomberg Inverse USD TR Index (BBDXI) value is generated once a day.

According to the Exchange, the Indexes seek contrasting positions in the same currencies and the same weightings. The Bloomberg USD TR Index seeks to potentially benefit from a rise in the U.S. Dollar against a basket of currencies, while the Bloomberg Inverse USD TR Index seeks to potentially benefit from a fall in the U.S. Dollar against the same basket of currencies. The eligibility criteria for each of the Indexes and the method of weighting the Indexes are the same.

Investment Methodologies of the Funds

DI Bull Fund

Under normal circumstances,[13] the DI Bull Fund will invest at least 80% of its net assets in U.S.-issued and non-U.S.-issued money market securities,[14] other U.S. government and investment grade non-U.S. government securities (*i.e.,* that are longer term than money market securities) and short-term investment grade corporate debt securities,[15] as well as positions in currency forward contracts,[16] listed currency options and listed currency futures,[17] currency swap agreements,[18] and spot currencies. According to the Exchange, these investments are designed to provide a long exposure that is similar to price movements in the Bloomberg USD TR Index with the incorporation of relative interest rates in the United States and instruments in other representative countries.[19] The DI Bull Fund will seek this exposure through investments in money market securities combined with a similar size notional position in currency forwards and currency futures in the individual component currencies of the Bloomberg USD TR Index. The Exchange states that, if a sufficiently liquid futures contract on the Bloomberg USD TR Index or a related index is later developed, the Fund may invest in that futures contract as a substitute for, or as a complement to, futures contracts or forward contracts on the individual currencies in the Bloomberg USD TR Index. Although the Fund may invest in spot currencies, listed currency options, and currency swaps, investments in these instruments are expected to be limited, in each case to not more than 20% of Fund net assets. If, subsequent

[13] The Exchange defines ''under normal circumstances'' to include, without limitation, the absence of extreme volatility or trading halts in the fixed-income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[14] The Exchange defines the term ''money market securities'' to include: Short-term, high quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high quality securities issued or guaranteed by non-U.S. governments, agencies, and instrumentalities; repurchase agreements backed by U.S. government and non-U.S. government securities; money market mutual funds; and deposit and other obligations of U.S. and non-U.S. banks and financial institutions. All money market securities acquired by a Fund will be rated investment grade, except that a Fund may invest in unrated money market securities that are deemed by the Adviser or Sub-Adviser to be of comparable quality to money market securities rated investment grade. The determination by the Adviser or the Sub-Adviser that an unrated security is of comparable quality to another security rated investment grade will be based on, among other factors, a comparison between the unrated security and securities issued by similarly situated companies to determine where in the spectrum of credit quality the unrated security would fall. The Adviser or Sub-Adviser would also perform an analysis of the unrated security and its issuer similar, to the extent possible, to that performed by a nationally recognized statistical rating organization (''NRSRO'') in rating similar securities and issuers. *See Credit Analysis of Portfolio Securities,* Commission No-Action Letter (May 8, 1990).

The Exchange states that the term ''investment grade,'' for purposes of money market securities only, is intended to mean securities rated A1 or A2 by one or more NRSROs. The exchange further states that the term ''U.S.-issued money market securities'' means money market securities issued or guaranteed by the U.S. government, repurchase agreements backed by the U.S. government securities, and U.S.-based money market mutual funds and deposits and other obligations of financial institutions organized or having their principal place of business in the U.S. According to the Exchange, the term ''non-U.S.-issued money market securities'' means money market securities issued or guaranteed by a non-U.S. government, repurchase agreements backed by non-U.S. government securities, non-U.S.-based money market mutual funds, and deposits and other obligations of financial institutions organized or having their principal place of business outside the U.S.

[15] According to the Adviser, ''investment grade'' means securities (other than money market securities) rated in the Baa/BBB categories or above by one or more NRSROs. If a security is rated by multiple NRSROs and receives different ratings, the Fund will treat the security as being rated in the highest rating category received from an NRSRO. Rating categories may include sub-categories or gradations indicating relative standing.

[16] A currency forward contract is an agreement to buy or sell a specific currency on a future date at a price set at the time of the contract. Each of the Funds will invest only in currencies, and instruments that provide exposure to those currencies, that have significant foreign exchange turnover and are included in the BIS Survey. To the extent a Fund invests in currencies, each Fund will invest in currencies, and instruments that provide exposure to those currencies, explicitly listed on Table 3 in the BIS Survey.

[17] The Exchange represents that exchange-listed currency options in which each of the Funds may invest will be listed on exchanges in the U.S. or the United Kingdom. In addition, the exchange-listed futures contracts in which each of the Funds may invest will be listed on exchanges in the U.S., the United Kingdom, Hong Kong, or Singapore. According to the Exchange, each of the United Kingdom's primary financial markets regulator, the Financial Conduct Authority; Hong Kong's primary financial markets regulator, the Securities and Futures Commission; and Singapore's primary financial markets regulator, the Monetary Authority of Singapore, are signatories to the International Organization of Securities Commissions (''IOSCO'') Multilateral Memorandum of Understanding (''MMOU''), which is a multi-party information sharing arrangement among financial regulators. Both the Commission and the Commodity Futures Trading Commission are signatories to the IOSCO MMOU.

The Exchange represents that each of the exchange-listed currency options and exchange-listed futures contracts in which a Fund may invest will be listed on exchanges that are members of the Intermarket Surveillance Group or on an exchange with which the Exchange has entered into a comprehensive surveillance sharing agreement.

[18] A currency swap agreement is a foreign exchange agreement between two counterparties to exchange aspects (*i.e.,* the principal and interest payments) of a loan in one currency for equivalent aspects of an equal in net present value loan in another currency. The Exchange represents that the market for currency swaps in which each of the Funds will invest is highly liquid.

[19] The Exchange states that, to the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house. The Funds may also invest in money market securities that may serve as collateral for the futures contracts, currency options, forward contracts, and currency swap agreements.

The Exchange further states that the Adviser or Sub-Adviser will also attempt to mitigate each Fund's credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of the counterparty. The Adviser or Sub-Adviser will take various steps to limit counterparty credit risk that will be described in the Registration Statement. Each Fund will enter into forward contracts and swap agreements only with financial institutions that meet certain credit quality standards and monitoring policies. Each Fund may also use various techniques to minimize credit risk, including early termination or reset and payment, using different counterparties, and limiting the net amount due from any individual counterparty. The Funds generally will collateralize forward contracts and swap agreements with cash or certain securities. The collateral will generally be held for the benefit of the counterparty in a segregated tri-party account at the custodian to protect the counterparty against non-payment by the Fund. In the event that a counterparty defaults and a Fund is owed money in the forward contract or swap transaction, the applicable Fund will seek withdrawal of the collateral from the segregated account and may incur certain costs exercising its right with respect to the collateral.

to an investment, the 80% requirement is no longer met, the DI Bull Fund's future investments will be made in a manner that will bring the Fund into compliance with this policy. The Fund's investments in forward contracts, listed options and listed futures contracts, and swap agreements will be backed by investments in U.S. issued money market securities, longer-term U.S. government securities, or other liquid assets (*e.g.,* commercial paper) in an amount equal to the exposure of these contracts.

The Exchange notes that positioning for a stronger U.S. Dollar through a mixture of these securities and financial instruments is intended to provide a return reflective of the changes in the U.S. Dollar against the specified currencies, the U.S. cash rate, and the spread of U.S. interest rates against foreign interest rates.

The Fund may invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit, and bankers acceptances denominated in a specified non-U.S. currency, and the Fund may enter into foreign currency exchange transactions. As stated above, the Fund may also conduct its foreign currency exchange transactions on a spot (*i.e.,* cash) basis at the spot rate prevailing in the foreign currency exchange market.

In order to reduce interest rate risk, the Fund will generally maintain a weighted average portfolio maturity with respect to money market securities of 180 days or less on average (not to exceed 18 months) and will not purchase any money market securities with a remaining maturity of more than 397 calendar days. The ''average portfolio maturity'' of the Fund will be the average of all current maturities of the individual securities in the Fund's portfolio. The Fund's actual portfolio duration may be longer or shorter depending on market conditions.

The Exchange represents that the Fund's fixed-income investment portfolio will meet the listing criteria for index-based, fixed-income exchange-traded funds contained in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02.[20]

DI Bear Fund

Under normal circumstances,[21] the DI Bear Fund will invest at least 80% of its net assets in money market securities, other U.S. government and investment grade non-U.S. government securities (*i.e.,* securities that are longer term than money market securities) and short-term investment grade corporate debt securities [22] and positions in currency forward contracts,[23] listed currency options and currency futures,[24] currency swap agreements,[25] and spot currencies. According to the Exchange, these investments are designed to provide a short exposure that is similar to price movements in the Bloomberg Inverse USD TR Index with the incorporation of relative interest rates in the United States and instruments in other representative countries.[26] The DI Bear Fund will seek this exposure through investments in money market securities combined with a similar size notional position in currency forwards and currency futures in the individual component currencies of the Bloomberg Inverse USD TR Index. The Exchange states that, if a sufficiently liquid futures contract on the Bloomberg Inverse USD TR Index or a related index is later developed, the Fund may invest in that futures contract as a substitute for, or complement to, futures contracts or forward contracts on the individual component currencies of the Bloomberg Inverse USD TR Index. Although the Fund may invest in spot currencies, currency options, and currency swaps, investments in these instruments are expected to be limited, in each case to not more than 20% of Fund net assets. If, subsequent to an investment, the 80% requirement is no longer met, the DI Bear Fund's future investments will be made in a manner that will bring the Fund into compliance with this policy. The Fund's investments in forward contracts, listed options contracts, listed futures contracts, and swap agreements will be backed by investments in U.S. issued money market securities, longer-term U.S. government securities, or other liquid assets (*e.g.,* commercial paper) in an amount equal to the exposure of these contracts.

The Exchange states that positioning for a weaker U.S. Dollar through a mixture of these securities and financial instruments is intended to provide a return reflective of the change in the basket of currencies relative to the U.S. Dollar, the rate of U.S.-issued money market securities, and the spread of foreign interest rates over the U.S. Dollar.

The Fund may invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit, and bankers acceptances denominated in a specified non-U.S. currency, and the Fund may enter into foreign currency exchange transactions. As stated above, the Fund may also conduct its foreign currency exchange transactions on a spot (*i.e.,* cash) basis at the spot rate prevailing in the foreign currency exchange market.

In order to reduce interest rate risk, the Fund will generally maintain a weighted average portfolio maturity with respect to money market securities of 180 days or less on average (not to exceed 18 months) and will not purchase any money market securities with a remaining maturity of more than 397 calendar days. The ''average portfolio maturity'' of the Fund will be the average of all current maturities of the individual securities in the Fund's portfolio. The Fund's actual portfolio duration may be longer or shorter depending on market conditions.

The Exchange notes that the Fund's investment portfolio in fixed-income securities will meet the listing criteria for index-based, fixed-income exchange-traded funds contained in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02.[27]

CC Bear Fund

According to the Exchange, the CC Bear Fund will be an actively-managed fund that seeks to provide total returns reflective of changes in the value of the U.S. Dollar relative to the currencies of selected commodity exporters and the difference between the relative short-term interest rates in the United States and comparable interest rates available for the investments in the currencies of those selected commodity exporters. The CC Bear Fund will seek to potentially benefit from appreciation in the U.S. Dollar relative to the selected

[20] *See* NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 governing fixed-income based Investment Company Units. The requirements of Rule 5.2(j)(3), Commentary .02(a) include the following: (i) The index or portfolio must consist of Fixed Income Securities (as defined generally to include the Fund's holdings in money market and other fixed-income securities) (Rule 5.2(j)(3), Commentary .02(a)(1)); (ii) components that in the aggregate account for at least 75% of the weight of the index or portfolio must each have a minimum original principal amount outstanding of $100 million or more (Rule 5.2(j)(3), Commentary .02(a)(2)); (iii) a component may be a convertible security, however, once the convertible security converts to an underlying equity security, the component is removed from the index or portfolio (Rule 5.2(j)(3), Commentary .02(a)(3)); (iv) no component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities will not in the aggregate account for more than 65% of the weight of the index or portfolio (Rule 5.2(j)(3), Commentary .02(a)(4)); and (v) an underlying index or portfolio (excluding exempted securities) must include securities from a minimum of 13 non-affiliated issuers (Rule 5.2(j)(3), Commentary .02(a)(5)).

[21] *See supra* note 13.

[22] *See supra* note 15.

[23] *See supra* note 16.

[24] *See supra* note 17.

[25] *See supra* note 18.

[26] *See supra* note 19.

[27] *See supra* note 20.

commodity currencies. According to the Exchange, the term ''commodity currency'' generally means the currency of a country whose economic success is commonly identified with the production and export of commodities (such as precious metals, oil, agricultural products, or other raw materials) and whose value is closely linked to the value of such commodities. The Exchange states that these countries currently include Australia, Brazil, Canada, Chile, Indonesia, Mexico, New Zealand, Norway, Russia, and South Africa.

According to the Exchange, under normal circumstances,[28] the CC Bear Fund will invest at least 80% of its net assets, plus the amount of any borrowings for investment purposes, in investments that are tied economically to selected commodity producing countries available to U.S. investors that make a significant contribution to the global export of commodities. Such investments may include a combination of positions in money market securities, other U.S. government and investment grade non-U.S. government securities (*i.e.,* securities that are longer term than money market securities) and short-term investment grade corporate debt securities,[29] with investments in currency forwards,[30] listed currency options and listed currency futures,[31] currency swaps,[32] and spot currencies to provide exposure to the change in value of the U.S. dollar relative to selected commodity currencies.[33] The CC Bear Fund will seek this exposure through investments in money market securities combined with a similar size notional position in currency forwards and currency futures in the individual selected currencies. Although the Fund may invest in spot currencies, listed currency options, and currency swaps, investments in these instruments are expected to be limited, in each case to not more than 20% of Fund net assets. If, subsequent to an investment, the 80% requirement is no longer met, the CC Bear Fund's future investments will be made in a manner that will bring the Fund into compliance with this policy.

The Fund's investments in forward contracts, listed options contracts, listed futures contracts, and currency swap agreements will be backed by investments in U.S. issued money market securities, longer-term U.S. government securities, or other liquid assets (*e.g.,* commercial paper) in an amount equal to the exposure of these contracts.

In addition to seeking broad exposure to the movements in the U.S. Dollar relative to the commodity currencies, the Fund intends to seek exposure across currencies correlated to each of their key commodity groups: Industrial metals; precious metals; energy; agriculture; and livestock. The CC Bear Fund generally will invest only in currencies that ''float'' relative to other currencies.[34] The Fund will invest only in currencies that it deems sufficiently liquid and accessible.

The Fund may invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit, and bankers acceptances denominated in a specified non-U.S. currency, and may enter into foreign currency exchange transactions. As stated above, the Fund may also conduct its foreign currency exchange transactions on a spot (*i.e.,* cash) basis at the spot rate prevailing in the foreign currency exchange market.

The Exchange states that positioning for a stronger U.S. Dollar through a mixture of these securities and financial instruments is intended to provide a return reflective of the changes in the U.S. Dollar against the specified currencies, the U.S. cash rate, and the spread of foreign interest rates against U.S. interest rates.

In order to reduce interest rate risk, the Fund will generally maintain a weighted average portfolio maturity with respect to money market securities of 90 days or less. The ''average portfolio maturity'' of the Fund will be the average of all current maturities of the individual securities in the Fund's portfolio. The Fund's actual portfolio duration may be longer or shorter depending on market conditions.

The CC Bear Fund is actively-managed and is not tied to an index. The Exchange notes, however, that the Fund's investment portfolio in fixed-income securities will meet the listing criteria for index-based, fixed-income exchange-traded funds contained in NYSE Arca Equities Rule 5.2(j)(3).[35]

Other Investments

Each Fund reserves the right to invest in fixed-income securities and cash, without limitation, as determined by the Adviser or Sub-Adviser in response to adverse market, economic, political, or other conditions. Each Fund may also ''hedge'' or minimize its respective exposures to one or more foreign currencies in response to such conditions.

While each Fund, under normal circumstances, will invest at least 80% of its net assets in securities and other financial instruments as described above, each Fund may invest its remaining assets in other securities and financial instruments, as generally described below.

Each Fund may invest in the securities of other investment companies and exchange-traded products, including other exchange-traded funds registered under the 1940 Act (collectively, ''ETPs'').[36]

Each Fund may hold up to an aggregate of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser or Sub-Adviser in accordance with Commission guidance.[37] Each

[28] *See supra* note 13.

[29] *See supra* note 15.

[30] *See supra* note 16.

[31] *See supra* note 17.

[32] *See supra* note 18.

[33] *See supra* note 19.

[34] The Exchange states that the value of a floating currency is largely determined by supply and demand and prevailing market rates. In contrast, the value of a ''fixed'' currency is generally set by a government or central bank at an official exchange rate. The Fund therefore, according to the Exchange, generally does not intend to invest in the currency of certain major commodity producers, such as China, Saudi Arabia, and the United Arab Emirates, since their respective currencies are fixed or otherwise closely linked to the U.S. Dollar.

[35] *See supra* note 20.

[36] According to the Exchange, when used herein, ETPs may include, without limitation, Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2.(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust-Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETPs in which the Funds may invest all will be listed and traded on U.S. registered exchanges. The Funds will invest in the securities of ETPs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act or any rule, regulation or order of the Commission or interpretation thereof. The Funds will only make such investments in conformity with the requirements of Section 817 of the Internal Revenue Code of 1986. The ETPs in which the Funds may invest will primarily be indexed-based exchange-traded funds that hold substantially all of their assets in securities representing a specific index. While the Funds may invest in inverse ETPs, the Funds will not invest in leveraged (*e.g.,* 2X, -2X, 3X, or -3X) ETPs.

[37] Each Fund's Sub-Adviser will be responsible for complying with the Fund's restrictions on investing in illiquid securities. In doing that, the Sub-Adviser will make ongoing determinations about the liquidity of Rule 144A securities that the respective Fund may invest in. In reaching liquidity decisions, the Sub-Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers and dealer undertakings to make a market in the security; and the nature of the security and the nature of the

Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid securities. According to the Exchange, illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Each of the Funds intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.[38] In addition, none of the Funds will concentrate 25% or more of the value of its respective total assets (taken at market value at the time of each investment) in any one industry, as that term is used in the 1940 Act (except that this restriction does not apply to obligations issued by the U.S. government or its agencies and instrumentalities). Moreover, none of the Funds will invest in any non-U.S. equity securities. Each Fund's investments will be consistent with the Fund's respective investment objective and will not be used to enhance leverage.

Additional information regarding the individual Funds, investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, dissemination of values, including net asset value (''NAV''), and distributions, among other information, can be found in the Notice and Registration Statement, as applicable.[39]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[40] and the rules and regulations thereunder applicable to a national securities exchange.[41] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[42] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the initial and continued listing criteria in NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[43] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. A Portfolio Indicative Value, based upon the current value for the components of the Disclosed Portfolio, will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session on the Exchange.[44] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (''Disclosed Portfolio'') held by each Fund that will form the basis for each Fund's calculation of NAV at the end of the business day. The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and market value of money market securities and other assets held by the Fund and the characteristics of these assets. The NAV of each Fund will be calculated and determined at the close of regular trading session on the Exchange (ordinarily 4:00 p.m. E.T.) on each day that the Exchange is open. The Exchange states that, in calculating a Fund's NAV per Share, the Fund's investment will generally be valued using market valuations.[45] The Exchange represents that the intra-day executable price quotations on money market securities and other Fund fixed-income securities, currency forwards, currency options, currency futures, currency swaps, and foreign exchange are available from major broker-dealer firms. Price information for listed currency options, listed currency futures, and ETPs is available from the exchange on which they trade. Intra-day price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The Web site for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market

marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[38] 26 U.S.C. 851.

[39] *See* Notice and Registration Statement, *supra* notes 3 and 5, respectively.

[40] 15 U.S.C. 78f.

[41] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[42] 17 U.S.C. 78f(b)(5).

[43] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[44] According to the Exchange, several major market data vendors display and make widely available Portfolio Indicative Values taken from the CTA or other data feeds. The Exchange notes that, during hours when the markets for money market securities in a Fund's portfolio are closed, the Portfolio Indicative Value will be updated at least every 15 seconds during the Core Trading Session to reflect currency exchange fluctuations.

[45] According to the Exchange, market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker or dealer, or (iii) based on amortized cost, for securities with remaining maturities of 60 days or less. The Exchange represents that International Data Corporation is expected to be the primary price source for each Fund's assets. Each Fund may also rely, however, on other recognized third-party pricing sources, including without limitation, Bloomberg, WM Reuters, JP Morgan, Markit, and JJ Kenney, to provide prices for certain asset categories including, among others, currency swaps, currency forward contracts, spot currencies, and corporate securities, in each case as approved or ratified, from time to time, by the applicable Fund's board of trustees. Exchange listed instruments will be valued, based on the end-of-day exchange prices of those instruments. In addition, fixed-income assets may be valued as of the announced closing time for trading in fixed-income instruments on any day that the Securities Industry and Financial Markets Association (or the applicable exchange or market on which the applicable Fund's investments are traded) announces an early closing time.

conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,[46] and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which Shares of the Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Reporting Authority must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Funds' portfolios. In addition, the Exchange states that the Sub-Adviser has implemented a ''fire wall'' with respect to its affiliated broker-dealers regarding access to information concerning the composition of or changes to each Fund's portfolio.[47] The Commission also notes that the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

(1) The Shares will be subject to Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange further represents that FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, ETPs, futures contracts, and options contracts with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, ETPs, futures contracts, and options contracts from these markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETPs, futures contracts, and options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The ETPs, currency options, and currency futures held by the Funds all will be traded on registered exchanges that are ISG members or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

(5) For initial and continued listing, the Funds must be in compliance with Rule 10A–3 under the Act,[48] as provided by NYSE Arca Equities Rule 5.3.

(6) None of the Funds will invest in non-U.S. equity securities.

(7) Each Fund may hold up to an aggregate of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser or Sub-Adviser in accordance with Commission guidance.[49]

(8) To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house. The Adviser or Sub-Adviser will also attempt to mitigate each Fund's credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of the counterparty.[50]

(9) Each of the exchange-listed currency options and exchange-listed futures contracts in which a Fund may invest will be listed on exchanges that are members of ISG or on an exchange with which the Exchange has entered into a comprehensive surveillance sharing agreement.

(10) Although the Funds may invest in spot currencies, listed currency options, and currency swaps, investments in these instruments are expected to be limited, in each case to not more than 20% of a Fund's net assets. Each Fund's investments in forward contracts, listed options and listed futures contracts, and swap agreements will be backed by investments in U.S. issued money market securities, longer-term U.S. government securities, or other liquid assets (*e.g.,* commercial paper) in an amount equal to the exposure of these contracts.

[46] These reasons may include: (1) The extent to which trading is not occurring in the securities or the financial instruments composing the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[47] *See supra* note 9 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser, the Sub-Adviser, and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless the investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[48] *See* 17 CFR 240.10A–3.

[49] *See supra* note 37.

[50] *See supra* note 19.

(11) Each Fund's fixed-income investment portfolio will meet the listing criteria for index-based, fixed-income exchange-traded funds contained in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02.

(12) Each Fund's investments will be consistent with that Fund's investment objective and will not be used to enhance leverage.

(13) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [51] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[52] that the proposed rule change (SR–NYSEArca–2013–101), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29491 Filed 12–10–13; 8:45 am]

BILLING CODE 8011–01–P

[51] 15 U.S.C. 78f(b)(5).

[52] 15 U.S.C. 78s(b)(2).

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70999; File No. SR–NSCC–2013–02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, To Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed To Increase Liquidity Resources To Meet Its Liquidity Needs

December 5, 2013.

I. Introduction

On March 21, 2013, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] proposed rule change SR–NSCC–2013–02 (''Proposed Rule Change'') to institute supplemental liquidity deposits to NSCC's Clearing Fund designed to increase liquidity resources to meet NSCC's liquidity needs (''SLD Proposal'').[3] On April 10, 2013, the Commission published notice of the Proposed Rule Change for comment in the **Federal Register.**[4] On April 19, 2013, NSCC filed with the Commission Amendment No. 1 to the Proposed Rule Change,[5] which the Commission published for comment in the **Federal Register** on May 29, 2013 and designated a longer period for Commission action on the Proposed Rule Change, as amended.[6] The Commission received 12 comment letters, including the NFS Letter, to the SLD Proposal as initially filed and as modified by Amendment No. 1.[7]

On June 11, 2013, NSCC filed with the Commission Amendment No. 2 to the Proposed Rule Change, as previously modified by Amendment No. 1 (''Amended SLD Proposal''), which the Commission published for comment in the **Federal Register** on July 15, 2013, with an order instituting proceedings to determine whether to approve or disapprove the Proposed Rule Change (''Order Instituting Proceedings'').[8] The Commission received nine comment letters to Amendment No. 2 and the Order Instituting Proceedings.[9] On September 25, 2013, the Commission designated a longer period of review for Commission action on the Order Instituting Proceedings.[10] On October 7, 2013, NSCC filed Amendment No. 3 to the Proposed Rule Change (''Final SLD Proposal''), as previously modified by Amendment Nos. 1 and 2, which the Commission published for comment on October 15, 2013.[11] The Commission received two comment letters to the Final SLD Proposal (i.e., Amendment No. 3).[12]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NSCC also filed the SLD Proposal contained in the Proposed Rule Change as advance notice SR–NSCC–2013–802 (''Advance Notice''), as modified by Amendment No. 1, pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) thereunder. *See* Release No. 34–69451 (Apr. 25, 2013), 78 FR 25496 (May 1, 2013). On May 20, 2013, the Commission extended the period of review of the Advance Notice, as modified by Amendment No. 1. Release No. 34–69605 (May 20, 2013), 78 FR 31616 (May 24, 2013). On June 11, 2013, NSCC filed Amendment No. 2 to the Advance Notice, as previously modified by Amendment No. 1. Release No. 34–69954 (Jul. 9, 2013), 78 FR 42127 (Jul. 15, 2013). On October 4, 2013, NSCC filed Amendment No. 3 to the Advance Notice, as previously modified by Amendment Nos. 1 and 2. Release No. 34–70689 (Oct. 15, 2013) 78 FR 62893 (Oct. 22, 2013). On December 5, 2013, the Commission issued a Notice of No Objection to the Advance Notice, as modified by Amendment Nos. 1, 2, and 3, to Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed to Increase Liquidity Resources to Meet Its Liquidity Needs. Release No. 34–71000.

[4] Release No. 34–69313 (Apr. 4, 2013), 78 FR 21487 (Apr. 10, 2013) (''Notice'').

[5] NSCC filed Amendment No. 1 to the Proposed Rule Change and Advance Notice filings to include as Exhibit 2 a comment letter from National Financial Services (''NFS''), a Fidelity Investments (''Fidelity'') company, to NSCC, dated March 19, 2013, regarding the SLD Proposal prior to NSCC filing the SLD Proposal with the Commission (''NFS Letter''). *See* Release No. 34–69620 (May 22, 2013), 78 FR 32292 (May 29, 2013) (''Notice of Amendment No. 1'') and *see* Exhibit 2 to File No. SR–NSCC–2013–02 (*http://www.sec.gov/rules/sro/nscc/2013/34–69620-ex2.pdf*).

[6] Notice of Amendment No. 1, 78 FR 32292.

[7] *See* NFS Letter. *See* letters to Elizabeth M. Murphy, Secretary, Commission from: John C. Nagel, Esq., Managing Director and General Counsel, Citadel Securities (''Citadel''), dated April 18, 2013 (''Citadel Letter I'') and June 13, 2013 (''Citadel Letter II''); Peter Morgan, Senior Vice President & Deputy General Counsel, Charles Schwab & Co., Inc., (''Charles Schwab'') dated April 22, 2013 (''Charles Schwab Letter I'') and May 1, 2013 (''Charles Schwab Letter II''); Thomas Price, Managing Director, Operations, Technology & BCP, Securities Industry and Financial Markets Association (''SIFMA''), dated April 23, 2013 (''SIFMA Letter I''); Julian Rainero, Bracewell & Giuliani LLP, on behalf of Investment Technology Group, Inc. (''ITG''), dated April 25, 2013 (''ITG Letter I''); Matthew S. Levine, Managing Director, Co-Chief Compliance Officer, Knight Capital Americas LLC (''Knight Capital''), dated April 25, 2013 (''Knight Capital Letter''); Giovanni Favretti, CFA, Managing Director, Deutsche Bank, dated April 25, 2013 (''Deutsche Bank Letter''); Scott C. Goebel, Senior Vice President, General Counsel, Fidelity, dated April 25, 2013 (''Fidelity Letter I''); and Chief Financial Officer & Executive Managing Director, ConvergEx Execution Solutions LLC (''ConvergEx''), dated May 2, 2013 (''ConvergEx Letter I'') and May 22, 2013 (''ConvergEx Letter II'').

[8] Release No. 34–69951 (Jul. 9, 2013), 78 FR 42140 (Jul. 15, 2013) (''Notice of Amendment No. 2'').

[9] *See* letters to Elizabeth M. Murphy, Secretary, Commission from: Thomas Price, Managing Director, Operations, Technology & BCP, SIFMA, dated June 24, 2013 (''SIFMA Letter II'') and August 7, 2013 (''SIFMA Letter III''); Scott C. Goebel, Senior Vice President, General Counsel, Fidelity, dated June 26, 2013 (''Fidelity Letter II''); Peter Morgan, Senior Vice President & Deputy General Counsel, Charles Schwab, dated August 5, 2013 (''Charles Schwab Letter III'') and September 11, 2013 (''Charles Schwab Letter IV''); Paul T. Clark and Anthony C.J. Nuland, Seward & Kissel, LLP (representing Charles Schwab), dated August 5, 2013 (''Charles Schwab Letter V''); John C. Nagel, Esq., Managing Director and General Counsel, Citadel, dated August 5, 2013 (''Citadel Letter III'') and September 5, 2013 (''Citadel Letter IV''); and Mark Solomon, Managing Director and Deputy General Counsel, ITG, dated August 5, 2013 (''ITG Letter II'').

[10] Release No. 34–70501 (Sep. 25, 2013), 78 FR 60347 (Oct. 1, 2013).

[11] Release No. 34–70688 (Oct. 15, 2013), 78 FR 62846 (Oct. 22, 2013) (''Notice of Amendment No. 3'').

[12] *See* letters to Elizabeth M. Murphy, Secretary, Commission from: Managing Director and Deputy General Counsel, ITG, dated November 1, 2013 (''ITG Letter III''); and Scott C. Goebel, Senior Vice President, General Counsel, Fidelity, dated November 5, 2013 (''Fidelity Letter III'').

By this order, the Commission approves the Final Proposed Rule Change.

II. Background

A. Purpose of the SLD Proposal

NSCC filed the SLD Proposal to ensure that it would maintain sufficient liquid financial resources to withstand, at a minimum, a default by its single clearing member or clearing member family (''Clearing Member'') to which it has the largest exposure (''Cover One''), in compliance with Commission Rule 17Ad–22(b)(3) [13] and a long-standing NSCC policy.

B. Development of the SLD Proposal

As originally filed, the SLD Proposal would have created two related funding obligations: (1) for the 30 Clearing Members that presented NSCC with the largest peak liquidity requirements on days that did not coincide with quarterly options expiration periods (''Regular Periods''), a liquidity deposit calculated based on the Clearing Member's pro rata portion of NSCC's aggregate liquidity requirements from the 30 Clearing Members during Regular Periods (''Regular SLD''); and (2) for a subset of the 30 Clearing Members that present NSCC with a peak liquidity requirement above NSCC's total liquidity resources on days that coincide with quarterly options expiration periods (''Special Periods''), a liquidity deposit calculated based on each Clearing Members' individual contribution to NSCC's liquidity requirement above its liquidity resources during Special Periods (''Special SLD'').[14]

Regular SLD would have been satisfied in cash only; however, a Clearing Member would have received a dollar-for-dollar reduction of its Regular SLD funding obligation to the extent that it contributed to NSCC's line-of-credit (''Credit Facility'').[15] Special SLD could only be satisfied with cash.[16]

On June 11, 2013, in response to comments received, NSCC filed the Amended SLD Proposal so that, in summary: (1) Special Periods were expanded to include monthly options expirations periods along with quarterly options expiration periods; (2) Clearing Members could designate a commercial lender to commit to the Credit Facility on the Clearing Member's behalf, enabling the Clearing Member to receive the dollar-for-dollar reduction of its Regular SLD; (3) any commitments to the Credit Facility made in excess of a Clearing Member's Regular SLD would be allocated ratably among all 30 Clearing Members that would be required to make a Regular SLD funding obligation; and (4) ''liquidity exposure reports'' would be provided to all NSCC members, so that members, particularly Clearing Members, could better assess their liquidity exposure to NSCC.[17]

On October 4 and 7, 2013, in response to further comments received, NSCC filed the Final SLD Proposal.[18] Among other things, the Final SLD Proposal eliminated the Regular SLD funding obligation.

III. Description of the Final SLD Proposal

The Final SLD Proposal would add Rule 4A to NSCC's Rules and Procedures [19] to establish a supplemental liquidity funding obligation designed to cover the liquidity exposure attributable to those Clearing Members that regularly incur the largest gross settlement debits over a settlement cycle during times of increased trading and settlement activity that arise around Special Periods. More specifically, the obligation applies to a subset of the 30 Clearing Members that present NSCC with historic peak liquidity needs on days that coincide with Special Periods above NSCC's current total liquidity resources. For this subset, NSCC will require a liquidity deposit based on the proportion of the historic peak liquidity exposure that is presented by each Clearing Member in excess of NSCC's then-available total liquidity resources. NSCC will hold deposits made in satisfaction of a Special SLD funding obligation in its Clearing Fund for a period of seven days after the end of the Special Period.

Additionally, if a Clearing Member believes its current trading activity will present a liquidity need to NSCC above NSCC's total liquidity resources, it may voluntarily deposit funds with NSCC to cover the shortfall (''Prefund Deposit''). NSCC will hold Prefund Deposit funds for a period of seven days after the end of the Special Period. If a Clearing Member presents NSCC with a liquidity need above total liquidity resources that is not funded by a Special SLD funding obligation or a Prefund Deposit the Final SLD Proposal will empower NSCC to call from that Clearing Member the amount of the shortfall, or that Clearing Member's share if caused by more than one Clearing Member, and hold it for 90 days (''Call Deposit'').

IV. Summary of Comments Received and NSCC's Responses

The Commission received 23 comment letters to the SLD Proposal [20] from eight commenters,[21] including the NFS Letter.[22] Commenters include bank affiliated and non-bank affiliated NSCC members, as well as one industry trade group, SIFMA.[23] NSCC also submitted two responses to comment letters received.[24] The Commission has reviewed and taken into full consideration all of the comments received.

All eight commenters express support for NSCC's overall goal of maintaining sufficient financial resources to withstand a default by a Clearing Member (i.e., Cover One).[25] One commenter, who previously supported approval of the Amended SLD Proposal, supports approval of the Final SLD Proposal.[26] The remaining seven commenters oppose the original SLD Proposal and the Amended SLD Proposal, as discussed in more detail below.[27] One of those seven

[13] 17 CFR 240.17Ad–22(b)(3).

[14] *See* Notice, 78 FR at 21487–88.

[15] *Id.* at 21489.

[16] *Id.*

[17] *See* Notice of Amendment No. 2, 78 FR at 42127.

[18] NSCC filed the Final Proposed Rule Change on October 7, 2013, three days after NSCC filed Amendment No. 3 to the Advance Notice.

[19] *See* Exhibit 5 to File No. SR–NSCC–2013–02, *http://www.sec.gov/rules/sro/nscc/2013/34-70688-ex5.pdf.*

[20] Since the SLD Proposal was filed as both the Proposed Rule Change and the Advance Notice, the Commission considered all comments received on the proposal, regardless of whether the comments were submitted to the Proposed Rule Change or the Advance Notice. *See* NFS Letter, Citadel Letter I, Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, Deutsche Bank Letter, Fidelity Letter I, Fidelity Letter II, Fidelity Letter III, ConvergEx Letter I, and ConvergEx Letter II.

[21] *See* Comments to the Proposed Rule Change (File No. SR–NSCC–2013–02), *http://sec.gov/comments/sr-nscc-2013-02/nscc201302.shtml,* and the Advance Notice (File No. SR–NSCC–2013–802) (*http://sec.gov/comments/sr-nscc-2013-802/nscc2013802.shtml* (''Comments Received''). For purposes of discussion, the Commission considers the comment submitted by Seward & Kissel on behalf of Charles Schwab as a Charles Schwab comment, *see* Charles Schwab Letter V, *supra* note 9, and the NFS Letter as a Fidelity comment. *See* NFS Letter.

[22] *See* NFS Letter.

[23] *See* Comments Received, *supra* note 21.

[24] *See* letters to Elizabeth M. Murphy, Secretary, Commission from Larry E. Thompson, Managing Director and DTCC General Counsel, dated June 10, 2013 (''NSCC Letter I'') and August 20, 2013 (''NSCC Letter II'').

[25] *See* NFS Letter, Citadel Letter III, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter V, SIFMA Letter II, SIFMA Letter III, Knight Capital Letter, Deutsche Bank Letter, Fidelity Letter I, Fidelity Letter II, ConvergEx Letter I, ConvergEx Letter II, ITG Letter II.

[26] *See* Fidelity Letter II, Fidelity Letter III.

[27] *See* NFS Letter, Citadel Letter I, Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles

commenters submitted the sole comment letter in opposition to the Final SLD Proposal.[28]

A. Comments Expressing Support for the Provision of Adequate Liquidity at NSCC

As mentioned above, all eight commenters to the SLD Proposal agreed that NSCC must have access to sufficient liquidity and capital to meet the Cover One standard, and some stated NSCC's critical role as a national clearance and settlement system.[29] For example, one commenter states ''that a clearing agency performing central counterparty services is essential to the proper functioning of the capital markets, and that ensuring the clearing agency is well capitalized and financially sound serves to benefit both the clearing agency's members and the capital markets as a whole.'' [30] The commenter goes on to state that it ''appreciates the need for the NSCC, both as a central counterparty and as a financial market utility that has been designated by the Financial Stability Oversight Council as systemically important, to maintain sufficient financial resources to withstand a default by the NSCC member or family of affiliated members to which the NSCC has the largest exposure . . . [and] also understands the NSCC's desire to broaden the base of support for its liquidity needs beyond the small group of firms that has historically supported these needs through participation in the NSCC's revolving credit facility, and believes it is important to enable all of the NSCC's members to help the NSCC maintain sufficient financial resources.'' [31] Another commenter notes that ''NSCC should have the resources it needs to be a source of strength for the national clearing and settlement system . . . .'' [32] Additionally, another commenter states that it ''appreciates the importance of NSCC's critical role as a [c]entral [c]ounterparty . . . and supports NSCC's goal in ensuring that it has access to sufficient capital in the event that is largest participant fails.'' [33]

B. Opposing Comments Received Prior to the Final SLD Proposal

1. Comments Inapplicable to the Final SLD Proposal

The seven commenters opposed to approval of the SLD Proposal objected to the SLD Proposal for various reasons, as discussed below.[34] Additionally, five of the seven commenters that oppose the SLD Proposal, as well as the commenter in support of the Final SLD Proposal, suggested potential alternative mechanisms for NSCC to satisfy its liquidity needs.[35]

Many of the commenters opposed to the original SLD Proposal and Amended SLD Proposal raised concerns with a component of the proposal that NSCC eliminated in the Final SLD Proposal.[36] Those comments included concerns about: (1) The anticipated costs for Clearing Members as a result of implementation of Regular SLD funding obligation, including costs imposed by a quick implementation period; [37] (2) Clearing Members' inability to accurately predict or control their funding obligation and the effects thereof, including broker-dealers' inability to plan for funding and liquidity risks as provided in FINRA Reg. Notice 10–57; [38] (3) distributional effects associated with implementation of the Regular SLD funding obligation, manifested in particular by an anti-competitive and disparate impact on non-bank affiliated Clearing Members compared to bank affiliated Clearing Members with regard to the offsetting commitments to the Credit Facility; [39] and (4) perceived mechanical flaws with the application of the Regular SLD funding obligation.[40]

Since NSCC has eliminated the aspect of the SLD Proposal to which these comments were made, the Commission believes these comments are not relevant for its determination on the Final SLD Proposal.

2. Comments Applicable to the Final SLD Proposal and NSCC's Responses Thereto

Seven of the eight commenters raised concerns with the SLD Proposal that, while not necessarily directly associated with the Special SLD funding obligation, could apply to elements of the Special SLD funding obligation and thus are relevant for the Commission's consideration of the Final SLD Proposal.[41] Four commenters argued that the SLD Proposal is arbitrary and capricious because it applies to no more than 30 Clearing Members.[42] Six commenters argued that the SLD Proposal would have unintended consequences of forcing a number of Clearing Members to terminate their membership and thereby concentrating the broker clearing business in fewer Clearing Members, potentially increasing systemic risk.[43] One

Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, Deutsche Bank Letter, Fidelity Letter I, ConvergEx Letter I, and ConvergEx Letter II.

[28] *See* ITG Letter III.

[29] *See supra* note 25.

[30] *See* SIFMA Letter II.

[31] *Id.*

[32] *See* Charles Schwab Letter III, Charles Schwab Letter V.

[33] *See* ConvergEx Letter II.

[34] *See* Citadel Letter I, Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, Deutsche Bank Letter, ConvergEx Letter I, and ConvergEx Letter II.

[35] Alternatives included, but were not limited to: NSCC should issue long-term debt to increase its liquidity resources; NSCC should increase intra-day margin calls; NSCC should increase Clearing Member fees; NSCC should reduce the settlement cycle; NSCC should reduce the volume of unsettled trades; NSCC should establish a bilateral third-party bank committed facility; and NSCC should change its capital structure. *See* NFS Letter, Citadel Letter II, Citadel Letter III, Charles Schwab Letter II, Charles Schwab Letter III, SIFMA Letter II, SIFMA Letter III, ITG Letter II, Fidelity Letter II, Fidelity Letter III and ConvergEx Letter II. The Commission notes that these comments are beyond the subject of the Final SLD Proposal by NSCC that is before the Commission for approval under Section 19(b) of the Act (which provides that the Commission shall approve a proposed rule change if it finds that such proposed rule change is consistent with the requirements of this title and the applicable rules and regulations issued thereunder).

[36] *See* Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, Knight Capital Letter, Deutsche Bank Letter, ConvergEx Letter I, ConvergEx Letter II.

[37] *See, e.g.,* ITG Letter I, ITG Letter II, Citadel Letter III.

[38] *See* Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter II, SIFMA Letter I, SIFMA Letter II, ITG Letter II, Knight Capital Letter, Deutsche Bank Letter, ConvergEx Letter II.

[39] *See* Citadel Letter II, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, Knight Capital Letter, ConvergEx Letter I, ConvergEx Letter II.

[40] *See* ITG Letter II.

[41] *See* Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, Deutsche Bank Letter, ConvergEx Letter I, ConvergEx Letter II.

[42] *See* Citadel Letter II, ITG Letter I, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter III, ITG Letter II, ITG Letter III. All four commenters argue that the imposition of a funding obligation to no more than 30 Clearing Members was arbitrary and capricious referred to the Regular SLD funding obligation, in which a Regular SLD funding obligation is satisfied pro rata by 30 Clearing Members irrespective of whether each Clearing Member presented a peak liquidity need above NSCC total available liquidity resources. One of the four commenters claims that the same argument persists for the Special SLD Funding Obligation; as such, the Commission will consider the comment here. *See* Charles Schwab Letter V.

[43] *See* Citadel Letter II, Charles Schwab Letter II, Charles Schwab Letter III, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, Knight Capital Letter, ConvergEx Letter II.

commenter stated that historic peak liquidity needs, which would be used by NSCC to determine the liquidity need presented by each Clearing Member, is not necessarily predictive of future liquidity needs.[44] Three commenters argued that NSCC incorrectly calculates its liquidity needs in the SLD Proposal, either because the liquidity need is calculated using Clearing Member gross settlement debits instead of net settlement debits or because the settlement debits were aggregated over a four-day cycle.[45] Seven commenters stated that treatment of funds delivered to NSCC to satisfy a funding obligation under the SLD Proposal for Commission Rule 15c3–1 purposes was unclear.[46]

In response to comments that imposition of a funding obligation is arbitrary and capricious, NSCC revised the SLD Proposal to eliminate the Regular SLD funding obligation component,[47] which would have: (i) Assigned a funding obligation to the 30 Clearing Members that presented NSCC with the largest peak liquidity needs irrespective of whether the peak liquidity need itself would have surpassed NSCC available liquidity resources, and (ii) allocated a funding obligation to each of those 30 Clearing Members driven substantially by the peak liquidity need presented to NSCC by the largest Clearing Member.[48] In response to comments regarding unintended consequences of the SLD Proposal, such as Clearing Members terminating their membership, NSCC stated that the Clearing Member is in the best position to monitor and manage the liquidity risks presented by its own activity.[49] Similarly, NSCC states that the maintenance of adequate liquidity resources at NSCC is a key element in the reduction of systemic risk at a systemically-important financial market utility and also a key component of NSCC's ability to prevent the failure of a Clearing Member from having a cascading effect on other Clearing Members.[50]

NSCC agreed that historic peak liquidity needs are not necessarily predictive of future liquidity needs, and as a result NSCC has proposed a mechanism whereby Clearing Members may voluntarily prefund liquidity needs that the Clearing Member anticipates will surpass total liquidity resources available at NSCC through the Prefund Deposit.[51] Furthermore, in the event a Clearing Member does not elect to prefund potential liquidity needs but does present a liquidity need to NSCC above total liquidity resources that is not accounted for by a Special SLD funding obligation, NSCC has proposed a mechanism to require the Clearing Member to fund the liquidity need through the Call Deposit.[52] With respect to comments that NSCC incorrectly calculates its liquidity need by using gross settlement debits instead of net settlement debits, NSCC responded that, as a central counterparty for its members, its risk-exposure is reflected by the gross settlement debits presented to it, not net settlement debits, in the event of a Clearing Member default.[53] Furthermore, NSCC stated that calculating liquidity obligations over a four-day settlement cycle is consistent with NSCC's practical liquidity obligation in the event of a Clearing Member default.[54] Finally, in response to comments that the treatment of funds posted in satisfaction of an SLD funding obligation for Rule 15c3–1 purposes is unclear, NSCC stated that it structured the SLD Proposal so that deposits made pursuant to an SLD funding obligation would constitute Clearing Fund deposits, which have clear regulatory capital treatment under Rule 15c3–1.[55]

Six commenters stated that the SLD Proposal did not provide a sufficient evaluation of its burden on competition and lacked necessary detail so as to elicit meaningful comment.[56] Many of these commenters argued that, while they supported NSCC's need for liquidity resources generally, NSCC did not demonstrate a specific need for additional liquidity in connection with the SLD Proposal.[57] Five commenters argued the SLD Proposal lacked sufficient Clearing Member input prior to submitting the proposal.[58] Three commenters also argued that the SLD Proposal did not adequately protect investors.[59] One commenter argued that the fact that NSCC submitted the SLD Proposal without Clearing Member input is indicative of a lack of fair representation for Clearing Members in the governance of NSCC.[60] One commenter stated that NSCC did not take into account the potential impact of other central counterparties instituting similar liquidity provisions.[61] Five commenters argued in opposition of cash being the only source by which a Clearing Member could satisfy a supplemental liquidity deposit.[62]

In response to comments received regarding insufficient detail of the SLD Proposal, NSCC provided detail regarding: the specific need for liquidity resources,[63] implementation timeframes for the SLD Proposal,[64] and a suite of tools, such as monthly and daily reports, to enable Clearing Members to more accurately predict a potential Regular SLD funding obligation.[65] NSCC stated that it would work with Clearing Members to help them understand and develop tools to forecast liquidity exposure and mitigate their peak liquidity exposure.[66] NSCC also stated that it would provide monthly and daily reports to Clearing Members that would show liquidity exposure during relevant periods.[67] NSCC also stated that fluctuating peak activity recently has exceeded NSCC available total liquidity resources.[68] NSCC believes these liquidity needs are largely driven by industry consolidation, developments in

[44] *See* ITG Letter II.

[45] *See* Citadel Letter III, ITG Letter II, ConvergEx Letter I, ConvergEx Letter II.

[46] *See* 17 CFR 240.15c3–1. *See, e.g.,* Citadel Letter II, Citadel Letter III, Charles Schwab Letter II, Charles Schwab Letter III, SIFMA Letter II, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, ConvergEx Letter II.

[47] *See* Notice of Amendment No. 3, 78 FR at 62847.

[48] *Id.* at 62846–47.

[49] NSCC Letter I.

[50] *See* NSCC Letter I, NSCC Letter II.

[51] *See* Notice of Amendment No. 3, 78 FR at 62847.

[52] *See* Notice, 78 FR at 21489.

[53] *See* NSCC Letter I.

[54] *Id.*

[55] *Id.*

[56] *See* Citadel Letter II, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter V, SIFMA Letter II, ITG Letter I, ITG Letter II, Knight Capital Letter, ConvergEx Letter I, ConvergEx Letter II.

[57] *See* Citadel Letter II, Citadel Letter III, SIFMA Letter II, SIFMA Letter III, ITG Letter II, ITG Letter III, ConvergEx Letter II.

[58] *See* Citadel Letter III, Charles Schwab Letter I, ITG Letter I, ITG Letter II, Knight Capital Letter, Deutsche Bank Letter.

[59] *See* Deutsche Bank Letter, Charles Schwab Letter II, Charles Schwab IV, Charles Schwab Letter V, SIFMA Letter II.

[60] *See* Citadel Letter III.

[61] *See* Charles Schwab Letter II, Charles Schwab Letter III. Additionally, one commenter argued that NSCC attempted to improperly amend the SLD Proposal through a response to comments. *See* Charles Schwab Letter V. The Commission notes that NSCC filed the Final SLD Proposal subsequent to the Commission's receipt of this comment in accordance with the rule filing process. *See* Notice of Amendment No. 3, 78 FR 62846.

[62] *See* NFS Letter, Charles Schwab Letter II, Charles Schwab Letter III, Citadel Letter II, Citadel Letter III, SIFMA Letter I, Fidelity Letter II, ITG Letter II.

[63] *See* NSCC Letter II (stating that ''NSCC has seen continued increases in potential liquidity needs, driven by consolidation in the industry, developments in trading techniques (including a rise in high frequency trading), and a reduction in volatility from the post-[2008] crisis highs which result in reduced Clearing Fund requirements'').

[64] *See* Notice of Amendment No. 3, 78 FR 62846 (stating that the Final SLD Proposal would be implemented on February 1, 2014).

[65] *See* NSCC Letter I, NSCC Letter II, Notice of Amendment No. 2, 78 FR 42140, Notice of Amendment No. 3, 78 FR 62846.

[66] *See* NSCC Letter I.

[67] *See* NSCC Letter I, NSCC Letter II.

[68] *See* NSCC Letter II.

trading techniques, including an increased use of high frequency trading, and a reduction in volatility from post-2008 financial crisis levels, generally resulting in a reduction in Clearing Fund requirements.[69] In response to comments received regarding insufficient analysis of the burden on competition that might ensue from implementation of the SLD Proposal, NSCC substantially revised the SLD Proposal twice to expand its analysis of the burden on competition to include, for example, individual subsections specifically addressing competition concerns raised by commenters,[70] and to reduce any disparate impact on Clearing Members stemming from implementation of the SLD Proposal, first to provide a mechanism by which non-bank affiliated Clearing Members could contribute to Credit Facility, and second to eliminate the Regular SLD from the Final SLD Proposal.[71]

In response to comments regarding the lack of Clearing Member input in the SLD Proposal and that the development of the SLD Proposal without Clearing Member input was indicative of a lack of fair representation of all Clearing Members at NSCC, NSCC stated that it engaged in discussions with Clearing Members likely to be impacted by the SLD Proposal, including more than 100 meetings with Clearing Members to enhance Clearing Members' understanding of liquidity risks presented to NSCC and the SLD Proposal generally.[72] The Proposed Rule Change and subsequent amendments were published for comment four times, so Clearing Members had an opportunity to comment, and NSCC also substantially revised the SLD Proposal twice as a direct response to comments received on the SLD Proposal.[73] Finally, on September 18, 2013, NSCC announced to its membership that it was forming the Clearing Agency Liquidity Council (''CALC''), an advisory group to continue the dialogue between NSCC and its Clearing Members regarding liquidity issues in a formal setting.[74] According to NSCC, the CALC intends to explore additional liquidity resources in advance of the 2014 renewal of NSCC's Credit Facility, in order to address, for example, NSCC's liquidity needs outside of Special Periods and the refinancing risk associated with the annual renewal of the Credit Facility.[75] According to NSCC, twenty-four Clearing Members joined the CALC, including all eight commenters to the SLD Proposal, which has met on multiple occasions since its inception.

NSCC responded to comments that the SLD Proposal did not contain sufficient information by amending the SLD Proposal twice to further identify the potential impact of the SLD Proposal on Clearing Members and to make substantive revisions to the SLD Proposal to address those concerns.[76] NSCC responded to comments that the SLD Proposal did not protect investors by stating that the maintenance of adequate liquidity resources at NSCC, a designated systemically-important financial market utility[77] that plays a fundamental role in the United States cash equities market, will protect against the transmission of systemic risk among Clearing Members in the event of a failure of one Clearing Member, thereby promoting the prompt and accurate settlement of securities transactions and the protection of investors.[78] NSCC responded to the comment that it did not take into account other central counterparties imposing similar liquidity requirements by stating that such a concern was unlikely given the difference in liquidity risk between cash market central counterparties (i.e., NSCC), where potential liquidity needs typically are orders of magnitude greater than the market risk that their margin collections are designed to cover, and derivatives central counterparties, where liquidity needs generally are more closely aligned to market risk of members' portfolios and the members' margin requirements.[79] In response to comments opposed to cash being the sole funding source by which a Clearing Member could satisfy a supplemental liquidity deposit, NSCC eliminated Regular SLD, thereby eliminating concern relating to disparate treatment that might ensue by requiring Clearing Members that do not make a commitment to lend to NSCC through the Credit Facility to make their Regular SLD funding obligation in cash, and NSCC states that the CALC will evaluate potential alternative collateral approaches that could be used to fund a portion of a Clearing Member's funding obligation.[80]

C. Comments to the Final SLD Proposal

The Commission received two comments on the Final SLD Proposal. Both commenters supported NSCC's decision to eliminate the Regular SLD funding obligation from the SLD Proposal.[81] One commenter argued for approval of the Final SLD Proposal, since the Final SLD Proposal ''is a helpful development in the process of determining how best to increase NSCC's liquidity resources to meet its liquidity needs.''[82] Moreover, the commenter believes that ''NSCC has addressed the area of greatest [m]ember concern in removing provisions of the [SLD] Proposal that collectively deal with the imposition of the Regular [SLD].''[83] One commenter argued for disapproval of the Final SLD Proposal, stating that flawed concepts remain and approval would unnecessarily inhibit the development of ideas from NSCC's CALC.[84] NSCC did not submit a response to comments received after submission of the Final SLD Proposal.

V. Discussion and Commission Findings

After careful review, the Commission finds that the Final SLD Proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency.[85] In particular, the

[69] *Id.*

[70] *See* Notice of Amendment No. 2, 78 FR 42140. *See also* NSCC Letter I. NSCC argued that the SLD Proposal would apply fairly across Clearing Members and, while recognizing potential competitive impacts on such members, believed the SLD Proposal addressed important financial resource requirements. NSCC also stated that it was revising the SLD Proposal to address competition concerns.

[71] *See* Notice of Amendment No. 3, 78 FR 62846. *See also* NSCC Letter II.

[72] *See* NSCC Letter I.

[73] *See* Notice of Amendment No. 2, 78 FR 42140, Notice of Amendment No. 3, 78 FR 62846. *See also* NSCC Letter II.

[74] DTCC Important Notice a7706, *Creation of DTCC Clearing Agency Liquidity Council and Nomination Process* (Sep. 18, 2013), *http://dtcc.com/downloads/legal/imp_notices/2013/nscc/a7706.pdf.*

[75] *See* NSCC Letter II. *See also* Notice of Amendment No. 2, 78 FR 42140, Notice of Amendment No. 3, 78 FR 62846.

[76] *See* Notice of Amendment No. 2, 78 FR 42140, Notice of Amendment No. 3, 78 FR 62846. *See also* NSCC Letter II.

[77] Financial Stability Oversight Council (''FSOC'') 2012 Annual Report, Appendix A, *http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf* (''FSOC Designation'').

[78] *See* NSCC Letter I, NSCC Letter II. Designation as systemically-important by FSOC means that a failure of or disruption to its functioning could create, or increase, the risk of significant credit or liquidity problems spreading among financial institutions or markets, thereby threatening financial stability. *See* 12 U.S.C. 5462(9). *See also* FSOC Designation, *supra* note 77.

[79] *See* NSCC Letter II.

[80] *Id. See also* discussion below noting that any cash deposit is driven by the Clearing Member's own trading activity.

[81] *See* ITG Letter III, Fidelity Letter III.

[82] *See* Fidelity Letter III.

[83] *Id.*

[84] *See* ITG Letter III.

[85] In approving the Proposed Rule Change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). Comments about

Continued

Commission finds that the Final SLD Proposal is consistent with the following provisions of the Act: (i) Section 17A(b)(3)(A),[86] which requires that a clearing agency ''is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions . . . to safeguard securities and funds in its custody and control and for which it is responsible . . . and to enforce . . . compliance by its participants with the rules of the clearing agency;'' (ii) Section 17A(b)(3)(F),[87] which requires that: the rules of a clearing agency not be designed to permit unfair discrimination among participants in the use of the clearing agency; and the rules of a clearing agency promote the prompt and accurate clearance and settlement of securities transactions and protect investors and the public interest; (iii) Section 17A(b)(3)(D),[88] which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other changes among its participants; and (iv) Section 17A(b)(3)(I),[89] which requires the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission's Order Instituting Proceedings solicited comment on a number of issues. After carefully considering the Final SLD Proposal and the comments received on the SLD Proposal and NSCC responses thereto, the Commission finds that the Final SLD Proposal is consistent with the Exchange Act and therefore must be approved.

The Commission recognizes that some commenters did not support certain aspects of the SLD Proposal. The Commission, however, must approve a proposed rule change if it finds that the proposed rule change is consistent with the requirements of the Exchange Act and the applicable rules and regulations thereunder. No comments convinced the Commission that the Final SLD Proposal was not consistent with the Exchange Act and the applicable rules and regulations thereunder. The Commission believes that, overall, the Final SLD Proposal: (i) Will improve financial safety at NSCC by increasing its ability to meet its liquidity needs; (ii) provides for the equitable allocation of reasonable expenses; and (iii) does not permit unfair discrimination among Clearing Members in the use of NSCC or impose an unnecessary burden on competition. The Commission's analysis of the comments applicable to the Final SLD Proposal and the Final SLD Proposal's consistency with the Exchange Act are discussed below.

As stated above, several commenters argued that the original SLD Proposal suffered from certain defects, such as a failure of NSCC to consult with Clearing Members prior to submitting the SLD Proposal,[90] that the SLD Proposal contained an insufficient evaluation of the burden on competition, and an insufficient description of the SLD Proposal,[91] and that NSCC did not demonstrate a specific need for additional liquidity in connection with the SLD Proposal.[92]

The Commission believes that the Final SLD Proposal is consistent with the Exchange Act and the applicable rules and regulations thereunder. NSCC made substantial revisions to the SLD Proposal directly responsive to comments raised during the comment period, created the CALC to continue the dialogue between NSCC and Clearing Members regarding liquidity generally, and provided a more robust description of the SLD Proposal and its potential effects on the competition between Clearing Members,[93] in particular describing how the Final SLD Proposal addresses those potential effects.[94]

As stated above, all commenters expressed support for the notion that NSCC must have access to sufficient liquidity.[95] One commenter stated that ''NSCC's critical role as a national clearance and settlement system'' made it so that adequate liquidity resources at NSCC was of paramount importance.[96] The Commission believes that NSCC's maintenance of adequate Cover One liquidity resources helps ensure that orderly settlement can be completed notwithstanding the failure of its largest Clearing Member. The Commission further believes approval of the Final SLD Proposal is necessary to improve the overall financial safety of NSCC and its ability to complete settlement.

The Commission also notes that NSCC has stated that fluctuating peak liquidity needs presented to NSCC have exceeded total liquidity resources available to NSCC, emphasizing the need for NSCC to develop a mechanism to help ensure that it maintains adequate liquidity as soon as possible.[97] These liquidity needs are driven by Clearing Members' trading activity, and the Final SLD Proposal is designed as a mechanism to allocate a funding obligation to those Clearing Members with peak liquidity needs that surpass NSCC available liquidity resources.

The Commission also believes that the Final SLD Proposal provides a mechanism to help ensure that NSCC maintains sufficient liquidity prospectively. The Commission agrees with commenters that have suggested that historic peak liquidity is not necessarily predictive of future liquidity needs. To this point, the Final SLD Proposal permits Clearing Members to use a Prefund Deposit in cases where a Clearing Member anticipates that its current trading activity will surpass total liquidity resources at NSCC. Furthermore, in the event that a Clearing Member does not elect to make a Prefund Deposit but does present a liquidity need to NSCC above total liquidity resources that is not accounted for by a Special SLD funding obligation, NSCC may require the Clearing Members to fund the liquidity need by making a Call Deposit. The Commission believes that these tools provide NSCC with the means to access sufficient liquidity prospectively. For the above reasons, the Commission believes the SLD Proposal is consistent with the requirements of Exchange Act Sections 17A(b)(3)(A) and (F) regarding the prompt and accurate settlement of securities transactions.

The Commission takes specific note of comments arguing that the costs of the Final SLD Proposal would have the unintended consequence of causing many Clearing Members to terminate their membership with NSCC and thereby concentrating the brokerage clearing business in fewer Clearing Members, potentially leading to an increase of systemic risk. The Commission recognizes that there are costs of the Final SLD Proposal for Clearing Members for which the Special SLD funding obligation applies. Clearing Members would be required to meet the Special SLD funding obligation in cash, which would be maintained by NSCC for a period of seven business days following the end of the Special Period.[98] Furthermore, funds delivered to NSCC pursuant to a Call Deposit will

the potential competitive impact of the Proposed Rule Change are addressed above and below.

[86] 15 U.S.C. 78q–1(b)(3)(A).

[87] 15 U.S.C. 78q–1(b)(3)(F).

[88] 15 U.S.C. 78q–1(b)(3)(D).

[89] 15 U.S.C. 78q–1(b)(3)(I).

[90] *See supra* note 58.

[91] *See supra* note 56.

[92] *See supra* note 57.

[93] *See* Notice of Amendment No. 2, 78 FR 42140, Notice of Amendment No. 3, 78 FR 62846, NSCC Letter I, NSCC Letter II.

[94] *See* Notice of Amendment No. 3, 78 FR 62846, NSCC Letter II.

[95] *See supra* note 25.

[96] *See* ConvergEx Letter II.

[97] *See* NSCC Letter II.

[98] *See* Notice, 78 FR at 21490.

be maintained by NSCC for a period of 90 days.[99]

Under the Final SLD Proposal, Clearing Members would only be required to provide funding to the extent that the Clearing Member's trading activity during a two-year look-back period of correlated Special Period dates would have resulted in NSCC having insufficient liquidity resources to cover the default of that Clearing Member after taking into account all of NSCC's available liquidity resources at the time of default.[100] The Special SLD funding obligation provides for an allocation formula that ratably applies to a subset of the 30 Clearing Members that present largest peak liquidity needs to NSCC above NSCC's total liquidity resources during Special Periods.[101] By allocating the funding obligation to those Clearing Members that directly create the liquidity need, the Final SLD Proposal helps to ensure that those Clearing Members who impose equivalent liquidity burdens on NSCC bear equivalent financial costs and allows each Clearing Member to exercise a degree of control over the funding obligation it bears. Accordingly, and notwithstanding the views expressed by commenters, the Commission believes that applying a liquidity obligation only to those Clearing Members that present a liquidity need to NSCC based on a historical look-back period above the total liquidity resources available to NSCC is an equitable allocation of expenses as required by Exchange Act Section 17A(b)(3)(D).

NSCC's application of the Special SLD funding obligation to no more than the 30 Clearing Members that present the highest peak liquidity exposures over a two-year look-back period during Special Periods [102] prima facie has the effect of limiting that obligation to a subset of Clearing Members. However, a Special SLD funding obligation will not be imposed on a Clearing Member, irrespective of the rank of that Clearing Member's peak liquidity need vis-à-vis other Clearing Members, unless that Clearing Member's peak liquidity need surpassed NSCC's total liquidity resources.[103]

Since whether an individual Clearing Member will have a Special SLD funding obligation is dependent solely upon the liquidity needs presented by that Clearing Member during the look-back period in excess of NSCC's then-available total liquidity resources, the Commission believes that expanding the Special SLD funding obligation to all Clearing Members is not necessary given the practical application of the rule to a subset of the 30 Clearing Members. Accordingly, despite the views expressed by some commenters, the Commission believes that limiting application of the Special SLD requirement to no more than 30 Clearing Members is consistent with the requirement of Exchange Act Section 17A(b)(3)(D) that expenses be equitably allocated among Clearing Members.

As stated above, the Commission recognizes that costs will be imposed through the Final SLD Proposal on Clearing Members for which the Special SLD funding obligation applies. The Commission also recognizes that some Clearing Members may make an economic decision to terminate their NSCC membership to avoid these costs. The Commission believes, however, that the Final SLD Proposal is a reasonable measure of the associated liquidity expenses experienced by NSCC and that the associated costs are necessary and appropriate for NSCC to ensure that it has the liquidity resources required to continue to operate in a safe and sound manner.

Under the Final SLD Proposal, a funding obligation is generated when a Clearing Member's trading activity during a historic Special Period would have resulted in NSCC having insufficient liquidity resources to cover the default of that Clearing Member after taking into account all of NSCC's available liquidity resources at that time. As a result, a Special SLD funding obligation is the amount of the difference between a demonstrated peak total liquidity need created and current total liquidity resources available, which difference NSCC would be unable to account for through other liquidity resources.

As for the unintended consequences associated with the Final SLD Proposal, the Commission agrees with NSCC that the maintenance of adequate liquidity at NSCC is a fundamental element in addressing the goal of reducing the potential systemic risk posed by a systemically-important financial market utility [104] and also a key component of NSCC's ability to prevent the failure of a Clearing Member from having a cascading effect on other Clearing Members. The Commission also believes that since Clearing Members exercise a degree of control over whether they will face an SLD funding obligation, they could explore alternatives to termination of membership to avoid incurring a Special SLD funding obligation, including changes to trading behavior so that their trading activity does not present a liquidity need to NSCC above NSCC's total available liquidity resources, as informed by the daily and monthly ''liquidity transaction'' reports to be provided by NSCC as part of the Final SLD Proposal.[105] Accordingly, the Commission believes the expenses charged by NSCC through imposition of the Special SLD funding obligation are reasonable as required by Exchange Act Section 17A(b)(3)(D).

For these reasons stated above, the Commission believes that the Final Proposed Rule Change containing the Final SLD Proposal meets the Section 17A(b)(3)(D) Exchange Act standard of equitable allocation of reasonable dues, fees, and other charges among its participants. The Commission finds it equitable that Clearing Members address the liquidity exposure that they actually present to NSCC during Special Periods and that such liquidity exposure is not borne by Clearing Members whose trading activity does not generate the liquidity need. Similarly, the Commission finds the Final SLD Proposal equitable in that two Clearing Members that produce the same liquidity need in excess of NSCC's total liquidity resources will be assessed the same Special SLD funding obligation. Furthermore, the Final SLD Proposal is equitable because it allows Clearing Members to anticipate and manage their own liquidity exposure to the clearing agency by changing their trading behavior. Finally, the Commission believes that the limitation in NSCC's rules to apply the Special SLD funding obligation to not more than 30 Clearing Members is not arbitrary or capricious because a Clearing Member's Special SLD funding obligation will depend solely upon its trading activity in relation to NSCC's total liquidity resources.

Several commenters raised concerns regarding the perceived burdens on competition and asserted that there are

[99] *See* Exhibit 5 to File No. SR–NSCC–2013–02, *http://www.sec.gov/rules/sro/nscc/2013/34-70688-ex5.pdf.*

[100] *Id. See also* Notice, 78 FR at 21489.

[101] *See* Notice of Amendment No. 3, 78 FR at 62847.

[102] *Id. See also* Exhibit 5 to File No. SR–NSCC–2013–02, *http://www.sec.gov/rules/sro/nscc/2013/34-70688-ex5.pdf.*

[103] *See* Notice of Amendment No. 3, 78 FR at 62847.

[104] *See* NSCC Letter I.

[105] *See* Notice of Amendment No. 2, 78 FR 42140, Notice of Amendment No. 3, 78 FR 62846, NSCC Letter II. With respect to the comments described above about NSCC requiring cash be deposited as collateral, the Commission believes that NSCC has addressed these comments and has stated that the CALC will evaluate potential alternative collateral approaches.

unfair and discriminatory impacts of the SLD Proposal, in particular with respect to an aspect of the eliminated Regular SLD funding obligation.[106] However, no commenters argued that the Final SLD Proposal discriminated among Clearing Members in the use of the clearing agency or imposed an unnecessary or inappropriate burden on competition. Because a Special SLD funding obligation will be imposed only to the extent that an individual Clearing Member's trading activity over a two-year historical look-back period on corresponding days surpasses the total liquidity resources available to NSCC, only a small number of Clearing Members likely will incur a Special SLD funding obligation. While the Special SLD funding obligation will very likely only be met by a small number of Clearing Members, NSCC (i) will provide all members with a daily report regarding the liquidity exposure presented by such member, (ii) will provide similar monthly reports specifically to Clearing Members to help Clearing Members determine whether they should make Prefund Deposits or otherwise manage their liquidity exposure,[107] and (iii) has created the CALC to ensure that the Special SLD funding obligation will continue to only reasonably and fairly impose a requirement on those Clearing Members that can foresee the liquidity exposure that they may present to NSCC during Special Periods.[108]

As a result, the Commission believes that the Final SLD Proposal meets the requirements of Sections 17A(b)(3)(F) and (I) of the Exchange Act. To the extent the imposition of the Special SLD funding obligation results in a burden on competition because it levies a funding obligation on some Clearing Members but not others, such burden is necessary or appropriate for NSCC to ensure that it has the liquidity resources required to continue to operate in a safe and sound manner. Furthermore, the Special SLD funding obligation does not amount to unfair discrimination among Clearing Members in the use of the clearing agency because the funding requirement is correlated directly with trading activity that creates the actual liquidity need.

[106] *See* Citadel Letter II, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, ITG Letter I, ITG Letter II, Knight Capital Letter, ConvergEx Letter I, ConvergEx Letter II.

[107] *See* Notice of Amendment No. 2, 78 FR 42140, Notice of Amendment No. 3, 78 FR 62846, NSCC Letter II.

[108] *See* NSCC Letter I, NSCC Letter II.

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[109] that the proposed rule change SR–NSCC–2013–02, as modified by Amendment Nos. 1, 2, and 3, be and hereby is *approved,* as of the date of this order or the date of the ''Notice of No Objection to Advance Notice Filing, as Modified by Amendment Nos. 1, 2, and 3, to Institute Supplemental Liquidity Deposits to [NSCC's] Clearing Fund Designed to Increase Liquidity Resources to Meet Its Liquidity Needs,'' SR–NSCC–2012–802, whichever is later.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

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[109] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70991; File No. SR–BOX–2013–57]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Interpretive Material To Rule 5050 To Eliminate the Cap on the Number of Additional Series That May be Listed Per Expiration Month for Each Quarterly Options Series in Exchange-Traded Fund Options

December 5, 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 December 3, 2013, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

[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 interpretive material to Rule 5050 (Series of Options Contracts Open for Trading) to eliminate the cap on the number of additional series that may be listed per expiration month for each Quarterly Option Series (''QOS'') in exchange-traded fund (''ETF'') options. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Interpretive Material (''IM'') 5050–4 to Rule 5050 (Series of Options Contracts Open for Trading) to eliminate the cap on the number of additional series that may be listed per expiration month for each QOS in ETF options.[3] This is a competitive filing that is based on proposals recently submitted by NYSE Arca, Inc. (''NYSE Acra'') and NYSE MKT LLC (''NYSE MKT'') that were recently noticed by the Commission.[4] As set out in IM–5050–4, the Exchange

[3] A Quarterly Option Series is a series of an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day, and that expires at the close of business on the last business day of a calendar quarter. The Exchange lists series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the next calendar year. *See* Rule 100(a)(54) and IM–5050–4(a).

[4] *See* Securities Exchange Act Release Nos. 70855 (November 13, 2013) 78 FR 69493 (November 19, 2013) (Notice of Filing and Immediate Effectiveness of SR–NYSEArca–2013–120) and 070854 (November 13, 2013) 78 FR 69465 (November 19, 2013) (Notice of Filing and Immediate Effectiveness of SR–NYSEMKT–2013–90).

may list QOS for up to five currently listed options classes that are either index options or options on ETFs. The Exchange may also list QOS on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. Currently, for each QOS in ETF options that has been initially listed on the Exchange, the Exchange may list up to 60 additional series per expiration month.

The Exchange is proposing to amend IM–5050–4(d) to make the treatment of QOS in ETF options consistent with the treatment of QOS in index options. IM–6090–1 governs the QOS Program in index options. Index options include options on industry/narrow-based indices and options on market/broad-based indices.[5] Options on ETFs are similar to index options because ETFs hold securities based on an index or portfolio of securities.[6] The requirements and conditions of the QOS Program in index options, moreover, parallel those of the QOS Program in ETF options. For example, like the QOS Program in ETF options, the QOS Program in index options permits QOS in up to five currently-listed options classes; requires the listing of series that expire at the end of the next (as of the listing date) consecutive four quarters, as well as the fourth quarter of the next calendar year; requires the strike price of each QOS to be fixed at a price per share; and establishes parameters for the number of strike prices above and below the underlying index. The QOS Program in index options, however, does not place a cap on the number of additional series that the Exchange may list per expiration month for each QOS in index options. Elimination of the cap set out in IM–5050–4(d), therefore, would result in similar regulatory treatment of similar options products.[7]

The Exchange believes that the proposed revision to the QOS Program would provide market participants with the ability to better tailor their trading to meet their investment objectives, including hedging securities positions, by permitting the Exchange to list additional QOS in ETF options that meet such objectives. The Exchange has observed that situations arise in which additional strike prices in smaller intervals would be valuable to investors. However, due to the cap on additional QOS series the Exchange cannot always provide these important at-the-money strikes. Elimination of the cap would remedy this issue.

Currently, the Exchange lists quarterly expiration options on six ETFs, but the cap restricts the number of strikes on these options, which often results in a lack of strike continuity. For example, the Exchange lists quarterly expiration options on SPDR Gold Trust (''GLD''). On January 2, 2013, the Exchange initially listed December 31, 2013 quarterly expiration options (''December 2013 Quarterlies'') on GLD, which closed the previous trading day at $162.02, with initial strikes from $115 to $210, and additional strikes in $1 intervals from $131 to $189. But during 2013, GLD has closed at a range of $115.94 to $163.67 and is currently trading around $125. As a result of the cap, the Exchange cannot offer December 2013 Quarterlies on GLD in $1 intervals within $10 of the closing price of GLD because the number of strikes would exceed the cap of 60 additional strikes. Consequently, the Exchange is not able to list important at-the-money strikes due to the cap on additional strikes. While the Exchange has the ability to delist strikes with no open interest so that it may list strikes that are closer to the money, delisting is not always possible. If all of the existing strikes have open interest, the Exchange cannot delist strikes so that it may list strikes closer to the money.

But the Exchange is not subject to a similar cap on the number of additional weekly or monthly expiration options it can list on ETFs.[8] So, for example, the Exchange can list additional weekly expiration options on GLD in $1 and $0.50 intervals within $5 of the closing price of GLD, and additional monthly expiration options in $1 intervals from $85 to $178. Therefore, due to the cap, the Exchange cannot list, and an investor cannot structure, an investment on a quarterly basis with the same granularity that can be achieved on a weekly or monthly basis.

Similarly, the Exchange lists quarterly options on SPDR S&P 500 ETF (''SPY''), which during 2013 closed at a range of $145.55 to $173.05. Again, due to the cap, the Exchange cannot offer quarterly expiration options on SPY in $1 intervals above $170 because the number of additional strikes would exceed the cap of 60. Instead, the Exchange is forced to list quarterly expiration options on SPY at $5 intervals above $170, despite the fact that SPY has recently traded between $165 and $170. As such, if SPY would again increase to $170, then the Exchange would only be able to offer options with a strike price $5 away from the price of the underlying ETF due to the cap on additional strikes.

On the other hand, in contrast to the limitations imposed on the Exchange for quarterly expiration options on ETFs, the absence of a similar cap on quarterly expiration options on indexes means that the Exchange can list, and investors can achieve, more granularity in index-based options. For example, S&P 500 Mini—SPX options (''SPX'') are options on the S&P 500 index, as opposed to options on SPY, the ETF based on that same S&P 500 index. SPX options are used to hedge SPY positions and are traded at the equivalent of one point and one-half point intervals. The SPX trades at 10 times the value of SPY, so that if SPY trades at $168.70, SPX trades at $1687. Therefore, the strike price for a quarterly expiration option on SPX, that is a hedge for a quarterly expiration option on SPY at $170, would be $1700. The Exchange can offer quarterly expiration options on SPX with strike prices of $1670, $1680, $1690, and $1700 because there is no cap on quarterly expiration index-based options. However, the Exchange cannot similarly offer quarterly expiration options on SPY with similar strike price

[5] An ''industry index'' or ''narrow-based index'' is ''an index designed to be representative of a particular industry or group of related industries.'' *See* Rule 6010(i). A ''market index'' or ''broad-based index'' is ''an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.'' *See* Rule 6010(j).

[6] *See* Rule 5020(h).

[7] The Exchange notes that Rule IM–6090–1(d), which governs the addition of new series of Quarterly Options Series on index options, states,

The Exchange may open additional strike prices of a Quarterly Options Series that are above the value of the underlying index provided that the total number of strike prices above the value of the underlying is no greater than five. The Exchange may open additional strike prices of a Quarterly Options Series that are below the value of the underlying index provided that the total number of strike prices below the value of the underlying index is no greater than five. The opening of any new Quarterly Options Series shall not affect the series of options of the same class previously opened.

In practice, this means that the Exchange may add Quarterly Options Series at strikes above and below the current index value, so long as there are not more than five strikes above, and five strikes below, the current index value after such additions are made. The total number of Quarterly Options Series that can be listed at any one time is, therefore, theoretically unlimited, so long as there are no more than five strikes above (or below) a given index value when new strikes are added.

[8] For Short Term Options Series (''weekly options''), IM–5050–6(b) sets a maximum number of strikes, but the Exchange can exceed this maximum number of strikes under certain circumstances. Specifically, ''in the event that the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security and all existing series have open interest, BOX may list additional series, in excess of the 30 allowed under IM–5050–6(b), that are between 10% and 30% above or below the price of the underlying security.''

continuity because of the cap on quarterly expiration ETF-based options.

Elimination of the cap would also help market participants meet their investment objectives by providing expanded opportunities to roll ETF options into later quarters. For example, a market participant that holds one or more contracts in a QOS in an ETF put option that has a strike price of $120 and an expiration date of the last day of the third quarter may wish to roll that position into the fourth quarter. That is, the market participant may wish to close out the contracts set to expire at the end of the third quarter and instead establish a position in the same number of contracts in a QOS in a put option on the same ETF with the same strike price of $120, but with an expiration date of the last day of the fourth quarter. Because of the cap on additional QOS in ETF options, however, the Exchange may not be able to list additional QOS in the ETF. Elimination of the cap, though, would allow the Exchange to meet the investment needs of market participants in such situations.

The Exchange has sufficient capacity to handle increased quote and trade reporting traffic that might be expected to result from listing additional QOS in ETF options. The Exchange notes that it has purchased capacity from the Options Price Reporting Authority (''OPRA'') to handle its options quote and trade reporting traffic.[9] The Exchange believes that it has acquired sufficient capacity to handle increased quote and trade reporting traffic that might be expected to result from listing additional QOS in ETF options.[10] In the Exchange's view, it would be inconsistent to prohibit the listing of additional QOS beyond a specified cap when each exchange independently purchases capacity to meet its quote and trade reporting traffic needs.

Moreover, the Exchange has in place a quote mitigation plan that helps it maintain sufficient capacity to handle quote traffic. The plan, which has been approved by the Commission, reduces the number of quotations that the Exchange disseminates by limiting disseminated quotes to active options series only.[11]

To help ensure that only active options series are listed, the Exchange also has in place procedures to delist inactive series. IM–5050–4(f) requires the Exchange to review QOS that are outside of a range of five strikes above and five strikes below the current price of the underlying ETF. Based on that review, the Exchange must delist series with no open interest in both the call and the put series having (i) a strike price higher than the highest price with open interest in the put and/or call series for a given expiration month, and (ii) a strike price lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

The Exchange's experience with listing additional QOS in ETF options at the end of 2008 also indicates that it has sufficient capacity to handle increased order and quote traffic that might be expected to result from listing additional QOS in ETF options. The Exchange established a temporary rule that permitted the Exchange to list up to 100 additional series per expiration month for each QOS in ETF option in the fourth quarter of 2008, and for the new expiration month being added after the December 2008 QOS expiration.[12] The Exchange did not experience capacity constraints during this temporary increase.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[13] in general, and Section 6(b)(5) of the Act,[14] 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 is designed to remove impediments to and perfect the mechanism of a free and open market because it will expand the investment options available to investors and will allow for more efficient risk management. The Exchange believes that removing the cap on the number of QOS in ETF options permitted to be listed on the Exchange will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions to their needs, and therefore, the proposal is designed to protect investors and the public interest. Additionally, by removing the cap, the proposed rule change will make the treatment of QOS in ETF options consistent with the treatment of QOS in index options, thus resulting in similar regulatory treatment for similar options products.

While the expansion of the number of QOS in ETF options is expected to generate additional quote traffic, the Exchange believes that this increased traffic will be manageable and will not present capacity problems. As previously stated, the Exchange has in place a quote mitigation plan that helps it maintain sufficient capacity to handle quote traffic. To help ensure that only active options series are listed, Exchange procedures are designed to delist inactive series, ensuring that any additional quote traffic is a result of interest in active series.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to filings submitted by NYSE Arca and NYSE MKT that were recently noticed by the Commission.[15]

The Exchange believes that investors would benefit from the introduction of additional QOS in ETF options by providing investors with more flexibility to closely tailor their investment and hedging decisions to their needs. Additionally, Exchange procedures for delisting inactive series will ensure that only active series with sufficient investor interest will be made available and maintained on the Exchange.

[9] *See* Exchange Act Release No. 48822 (Nov. 21, 2003), 68 FR 66892 (Nov. 28, 2003) (SR–OPRA–2003–01) (requiring exchanges to acquire options market data transmission capacity independently, rather than jointly).

[10] The SEC has relied upon an exchange's representation that it has sufficient capacity to support new options series in approving a rule amendment permitting the listing of additional option series. *See* Exchange Act Release No. 57410 (Jan. 17, 2008), 73 FR 12483, 12484 (Mar. 7, 2008) (SR–CBOE–2007–96) (amendments to CBOE Rule 5.5(e)(3)) (''In approving the proposed rule change, the Commission has relied upon the Exchange's representation that it has the necessary systems capacity to support new options series that will result from this proposal'').

[11] *See* Rule 7250 (Quote Mitigation).

[12] *See* Exchange Act Release No. 58996 (November 21, 2008), 73 FR 72878 (December 1, 2008) (SR–BSE–2008–55). The Exchange amended the cap on additional series per expiration month for each QOS in ETF options during the financial crisis in 2008. The amendment was in response to requests for lower priced strikes on certain ETFs. Other options exchanges amended their rules quarterly options series rules to permit the listing of additional series in ETF options. *See, e.g.,* Exchange Act Release No. 59012 (November 24, 2008), 73 FR 73371 (December 2, 2008) (amendments to Commentary .08 to NYSE Arca Rule 6.4)

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See supra,* note 4.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 [16] and Rule 19b–4(f)(6) thereunder.[17]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will promote fair competition among the exchanges by allowing the Exchange to treat QOS in ETF options in the same manner as QOS in index options at the same time as NYSE Arca and NYSE MKT. The Exchange also stated that the proposal would allow the Exchange to meet investor demand for an expanded number of QOS in ETF options, allowing investors to meet investment objectives, including hedging securities positions, currently unavailable because of the limited number of QOS in ETF options available. For these reasons, the Commission believes that the proposed rule change presents no novel issues, and waiver will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposed rule change to be operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2013–57 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–BOX–2013–57. 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–BOX–2013–57 and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70994; File No. SR–NYSEArca–2013–132]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of Merk Hard Currency ETF Under NYSE Arca Equities Rule 8.600

December 5, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 22, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): Merk Hard Currency ETF. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of Merk Hard Currency ETF (the ''Fund'') under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares [4] on the Exchange.[5] The Shares will be offered by Forum ETF Trust (the ''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6] Forum Investment Advisors, LLC (''Investment Manager'') is the investment manager of the Fund. Merk Investments, LLC (''Investment Adviser'') is the investment adviser of the Fund.[7] Foreside Fund Services LLC (''Distributor'') is the Fund's principal underwriter and distributer of the Fund's Shares. Atlantic Fund Administration, LLC (''Administrator''), an affiliate of the Investment Manager, serves as the administrator for the Fund. The Bank of New York Mellon Corporation serves as custodian and transfer agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[8] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Investment Manager nor the Investment Adviser is a broker-dealer or is affiliated with a broker-dealer. In the event (a) the Investment Manager or the Investment Adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new investment adviser is or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Description of the Fund

According to the Registration Statement, the Fund's investment objective is to seek to profit from a rise in hard currencies relative to the U.S. dollar. The Fund will not be an index fund. The Fund will be actively managed and does not seek to replicate the performance of a specified index.

According to the Registration Statement, under normal market conditions,[9] the Fund will invest at least 80% of the value of its net assets (plus borrowings for investment purposes) in a basket of hard currency denominated investments composed of high quality, short-term [10] debt instruments, including sovereign debt, physical gold and gold-related securities.[11]

According to the Registration Statement, the term ''hard currencies'' is used to describe currencies of countries pursuing what the Investment Adviser believes to be ''sound'' monetary policy and gold.[12] Sound monetary policy is

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Securities and Exchange Commission (the ''Commission'') has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 58564 (September 17, 2008), 73 FR 55194 (September 24, 2008) (SR–NYSEArca–2008–86) (order approving Exchange listing and trading of WisdomTree Dreyfus Emerging Markets Fund).

[6] The Trust is registered under the 1940 Act. On April 12, 2013, the Trust filed with the Commission an amended Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act''), and under the 1940 Act relating to the Fund (File Nos. 333–180250 and 811–22679) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based in part on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30549 (June 4, 2013) (File No. 812–13915–01) (''Exemptive Order'').

[7] The Investment Adviser will be responsible for the day-to-day portfolio management of the Fund and, as such, will make all investment decisions for the Fund and is responsible for implementing the Fund's investment strategy. The Investment Manager will develop the overall investment program for the Fund (which includes working with the Investment Adviser to define principal investment strategies) and will be responsible for overseeing and reporting to the Board of the Trust regarding the Investment Adviser.

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Investment Manager and Investment Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[9] The term ''under normal market conditions'' includes, but is not limited to, the absence of adverse market, economic, political or other conditions including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[10] According to the Fund, it will define ''short-term'' based upon an instrument's remaining maturity period, not the initial maturity period. For example, a twenty year bond with three months remaining until maturity will be considered to be a short-term debt instrument.

[11] According to the Registration Statement, ''gold-related securities'' are exchange-traded products (''ETPs'') that invest directly in gold bullion. ETPs that hold gold, physically or indirectly, are not regulated under the 1940 Act and are not afforded the protections afforded thereunder.

[12] Provided that the Investment Adviser deems the following currencies to be backed by sound monetary policy, ''hard currencies'' include, without limitation: Argentine Peso (ARS), Australian Dollar (AUD), Brazilian Real (BRL), British Pound (GBP), Canadian Dollar (CAD), Chilean Peso (CLP), Chinese Renminbi (CNY), Colombian Peso (COP), Czech Koruna (CZK), Danish Krone (DKK), Euro (EUR), Hong Kong Dollar (HKD), Hungarian Forint (HUF), Iceland Krona

defined by the Investment Adviser as a monetary policy providing an environment fostering long-term price stability. The Investment Adviser considers gold to be the only currency with intrinsic value and, as such, qualifies as a hard currency.

According to the Registration Statement, the term ''high quality'' refers to debt instruments rated in the top three ratings by a U.S. nationally recognized ratings service, or that the Investment Adviser considers comparable in quality to debt instruments rated in the top three ratings.[13]

According to the Registration Statement, the Investment Adviser will determine currency allocations based on an analysis of monetary policies pursued by central banks and economic environments. The Investment Adviser will search for currencies that, in the Investment Adviser's opinion, are backed by sound monetary policy or gold. Once this determination has been made, money market or other debt instruments will be selected to create a liquid portfolio of short duration and high credit quality.

According to the Registration Statement, the Fund will specifically seek the currency risk of select countries pursuing what the Investment Adviser believes are sound monetary policies. As long-term price stability is unlikely to be achieved by most currencies, if any, the Investment Adviser will focus on a country's monetary policy that fosters such stability. The Investment Adviser will invest in a basket of hard currency denominated investments that may include physical gold and gold-related securities to reduce the Fund's exposure to the risks of any one currency. The Investment Adviser may adapt the currency allocations as its analysis of monetary policies and economic environments evolves.

According to the Registration Statement, the Investment Adviser may sacrifice yield in return for high credit quality of debt securities. The Investment Adviser may limit or exclude currencies if, in the Investment Adviser's opinion, the potential for appreciation is not backed by sound monetary policy.

According to the Registration Statement, if the Investment Adviser deems a currency crisis likely, it is possible that the Fund will restrict its investments to a few currencies that meet the Investment Adviser's investment criteria for sound monetary policies and practices.

Investments

As noted above, according to the Registration Statement, under normal market conditions,[14] the Fund will invest at least 80% of the value of its net assets (plus borrowings for investment purposes) in ''hard currency'' denominated investments. The Fund normally will invest in a basket of hard currency denominated investments composed of high quality, short-term debt instruments,[15] including sovereign debt, physical gold and gold-related securities.

According to the Registration Statement, to try to reduce interest rate and credit risk to its portfolio, the Fund will seek to maintain a weighted average portfolio maturity of less than eighteen months, although the Fund may maintain a weighted average portfolio maturity of greater than eighteen months at any given time. In addition, the Fund will only buy money market or other short-term debt instruments that are rated in the top three ratings by U.S. nationally recognized ratings services or that the Investment Adviser considers comparable in quality to instruments rated in the top three ratings.[16]

According to the Registration Statement, the high quality, short term debt instruments in which the Fund will primarily invest include: U.S. dollar and non-U.S. dollar denominated money market instruments and similar securities; debt obligations issued by the U.S. and foreign national, provincial, state or municipal governments or their political subdivisions or agencies, central banks, sovereign entities, supranational organizations or special purpose entities organized or backed by any of the foregoing entities (''Special Purpose Entities''); debt instruments issued by U.S. and foreign corporations[17]; and debt obligations issued by entities that the Investment Adviser considers to be comparable to entities in the categories enumerated above.

According to the Registration Statement, money market instruments in which the Fund may invest include short-term government securities, floating and variable rate notes, CDs, time deposits, bankers' acceptances, commercial paper and other short-term liquid instruments.

According to the Registration Statement, securities issued by the U.S. Government in which the Fund may invest include short-term U.S. Treasury obligations and short-term debt obligations. The Fund may also purchase certificates not issued by the U.S. Department of the Treasury, which evidence ownership of future interest, principal or interest and principal payments on obligations issued by the U.S. Department of the Treasury. The Fund may invest in obligations issued or guaranteed by U.S. Government agencies.[18] The Fund may also invest in separated or divided U.S. Government Securities.[19] Foreign government securities may include direct obligations, as well as obligations guaranteed by the foreign government and obligations issued by Special Purpose Entities.

According to the Registration Statement, the Fund may invest in U.S. and foreign corporate debt obligations. Corporate debt obligations include

(ISK), Indian Rupee (INR), Indonesian Rupiah (IDR), Israeli Shekel (ILS), Japanese Yen (JPY), Malaysian Ringgit (MYR), Mexican Peso (MXN), New Zealand Dollar (NZD), Norwegian Krone (NOK), Pakistani Rupee (PKR), Peruvian New Sol (PEN), Philippine Peso (PHP), Polish Zloty (PLN), Russian Ruble (RUB), Singapore Dollar (SGD), South African Rand (ZAR), South Korean Won (KRW), Swedish Krona (SEK), Swiss Franc (CHF), Taiwanese Dollar (TWD), Thai Baht (THB), Thai Baht Onshore (THO), Turkish Lira (TRY), U.S. Dollar (USD), and successor currencies of the aforementioned currencies, if any.

[13] In determining which instruments are comparable in quality to instruments rated in the top three ratings, the Investment Adviser will evaluate the relative creditworthiness of issuers and the relative credit quality of debt issues. Consideration may be given to an issuer's financial strength, capacity for timely payment and ability to withstand adverse financial developments as well as any ratings assigned to other instruments issued by that issuer.

[14] *See* note 9, *supra.*

[15] *See* note 10, *supra.*

[16] *See* note 13, *supra.*

[17] The Fund will typically invest only in debt instruments that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally a debt instruments must have $100 million (or an equivalent value if denominated in a currency other than U.S. dollars) or more par amount outstanding and significant par value traded to be considered sufficiently liquid at the time of investment. The Fund may invest up to 25% of its total assets in debt instruments having a lower par amount outstanding to the extent the Investment Advisor determines such an investment to be appropriate. In any such determination, the Investment Advisor will evaluate the relative creditworthiness of issuers and the relative credit quality of debt issues. Consideration may be given to an issuer's financial strength, capacity for timely payment and ability to withstand adverse financial developments.

[18] Obligations issued or guaranteed by U.S. Government agencies include: (1) Obligations issued or guaranteed by U.S. Government agencies and instrumentalities that are backed by the full faith and credit of the U.S. Government and (2) securities that are guaranteed by agencies or instrumentalities of the U.S. Government but are not backed by the full faith and credit of the U.S.

[19] These instruments represent a single interest, or principal, payment on a U.S. Government Security that has been separated from all the other interest payments as well as the security itself. While the components of such instruments are drawn from U.S. Government Securities, separated or divided securities may be formed by non-governmental institutions.

corporate bonds, debentures, notes, commercial paper and other similar corporate debt instruments. In addition, the Fund also may invest in corporate debt securities registered and sold in the U.S. by foreign issuers (sometimes called Yankee bonds) and those sold outside the U.S. by foreign or U.S. issuers (sometimes called Eurobonds).

According to the Registration Statement, the Fund may invest in investment grade debt securities and non-investment grade debt securities. Investment grade means rated in the top four long-term rating categories, or unrated and determined by the Investment Adviser to be of comparable quality. The Fund may invest up to 5% of its total assets in non-investment grade debt securities, including defaulted securities, however the Fund does not expect to invest up to 5% in defaulted securities.

According to the Registration Statement, the Fund may invest in physical gold and gold-related securities. To the extent that the Fund invests in gold, it may do so by investing directly in physical gold or indirectly by investing through U.S.-listed ETPs [20] that invest in gold bullion.

Other Investments

According to the Registration Statement, in addition to the principal investments in hard currency denominated investments described above, the Fund may make certain other investments.

According to the Registration Statement, in addition to the U.S. listed ETPs that the Fund may use as an indirect investment in gold, the Fund may invest in other ETPs, including Exchange Traded Funds (''ETFs'') [21] and Exchange Traded Notes (''ETNs'').[22]

According to the Registration Statement, the Fund may enter into repurchase agreements. If the Fund enters into a repurchase agreement, it will maintain possession of the purchased securities and any underlying collateral. The Fund may also enter into reverse repurchase agreements. A counterparty to a reverse repurchase agreement must be a primary dealer that reports to the Federal Reserve Bank of New York or one of the largest 100 commercial banks in the United States.

According to the Registration Statement, the Fund may invest in exchange-listed common and preferred stock, and warrants; however, according to the Fund, it will not generally invest in such investments. The Fund will not invest in any non-U.S. equity securities.

According to the Registration Statement, the Fund may invest in sponsored American Depositary Receipts (''ADRs''), European Depositary Receipts (''EDRs''), Global Depositary Receipts (''GDRs''), New York Registered Shares (''NYRs'') or American Depositary Shares (''ADSs'').[23] The Fund may invest in sponsored, exchange traded depositary receipts in order to obtain exposure to foreign securities markets.[24]

According to the Registration Statement, the Fund may invest in convertible securities. Convertible securities include debt securities, preferred stock or other securities that may be converted into or exchanged for a given amount of common stock of the same or a different issuer during a specified period and at a specified price in the future.

According to the Registration Statement, the Fund may invest in variable amount master demand notes. All variable amount master demand notes acquired by the Fund will be payable within a prescribed notice period not to exceed seven days.

According to the Registration Statement, the Fund may hold cash in bank deposits in foreign currencies. The Fund may conduct foreign currency exchange transactions either on a spot (cash) basis at the spot rate prevailing in the foreign exchange market or by entering into a forward foreign currency contract. The Fund may enter into forward contracts in order to ''lock in'' the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract.

According to the Registration Statement, for the purpose of hedging, efficient portfolio management, generating income and/or enhancement of returns, the Fund may, from time to time, enter into forward currency contracts,[25] including currency forwards and cross currency forwards. The Fund may enter into forward currency contracts to hedge against risks arising from securities the Fund owns or anticipates purchasing, or the U.S. dollar value of interest and dividends paid on those securities.[26] The Fund may invest in a combination of forward currency contracts and U.S. dollar-denominated instruments in an attempt to obtain an investment result that is substantially the same as a direct investment in a foreign currency-denominated instrument. For hedging purposes, the Fund may invest in forward currency contracts to hedge either specific transactions (transaction hedging) or portfolio positions (position hedging).[27]

According to the Registration Statement, in order to respond to adverse market, economic, political or other conditions, the Fund may assume a temporary defensive position that is inconsistent with its principal investment strategies and invest, without limitation, in cash or cash equivalents (including commercial paper, certificates of deposit, banker's acceptances and time deposits) which may be U.S. dollar denominated.

[20] Such ETPs may include the following securities: Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200) and Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201). The Fund may invest in ETPs which are not registered under the 1940 Act. The Fund may invest in ETPs sponsored by the Investment Adviser or its affiliates.

[21] For purposes of this proposed rule change, ETFs are securities that are registered pursuant to the 1940 Act such as those listed and traded on the Exchange pursuant to NYSE Arca Equities Rules 5.2(j)(3), 8.100 and 8.600.

[22] For purposes of this proposed rule change, ETNs are securities that are registered pursuant to the 1933 Act such as those listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(6).

[23] ADRs typically are issued by a U.S. bank or trust company, evidence ownership of underlying securities issued by a foreign company, and are designed for use in U.S. securities markets. EDRs are issued by European financial institutions and typically trade in Europe and GDRs are issued by European financial institutions and typically trade in both Europe and the United States. NYRs, also known as Guilder Shares since most of the issuing companies are Dutch, are U.S. dollar-denominated certificates issued by foreign companies specifically for the U.S. market. ADSs are shares issued under a deposit agreement that represents an underlying security in the issuer's home country. (An ADS is the actual share trading, while an ADR represents a bundle of ADSs.)

[24] The depositary receipts and NYRs in which the Fund may invest will be limited to securities listed on markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Fund will not invest in any depositary receipts or NYRs that the Investment Adviser deems to be illiquid or for which pricing information is not readily available.

[25] A forward currency contract is an obligation to purchase or sell a specific currency at a future date, which may be any fixed number of days from the date of the contract agreed upon by the parties, at a price set at the time of the contract.

[26] To the extent the Fund retains various U.S. fixed-income instruments to settle derivative contracts, the Investment Adviser expects such instruments to generate income for the Fund. The value of such investments (to the extent used to cover the Fund's net exposure under the forward foreign currency contracts and similar instruments) and forward contracts and other instruments that provide investment exposure to currencies will be counted for purposes of the Fund's 80% policy.

[27] The Investment Adviser seeks to mitigate counterparty risk associated with forward currency contracts by employing multiple brokers to execute trades and by monitoring the creditworthiness of counterparties through analysis of credit ratings available through U.S. nationally recognized ratings services.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Investment Adviser consistent with Commission guidance,[28] and master demand notes.[29] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

According to the Registration Statement, the Fund may not purchase a security if, as a result, more than 25% of its total assets would be invested in securities of issuers conducting their principal business activities in the same industry.[30] For purposes of this limitation, there is no limit on investments in U.S. Government Securities and repurchase agreements covering U.S. Government Securities. With respect to foreign government securities, the Fund treats each foreign government or sovereign as its own industry.

Although the Fund intends to invest in a variety of securities and instruments, the fund will be considered ''non-diversified' for the purposes of the 1940 Act, which means that it may invest more of its assets in the securities of a smaller number of issuers than if it were a diversified fund.[31]

According to the Registration Statement, the Fund will use leveraged investment techniques only when the Investment Adviser believes that the leveraging and the returns available to the Fund from investing the cash will provide investors with a potentially higher return. Such leveraged investment techniques include borrowing, repurchase agreements, reverse repurchase agreements and securities lending. The Fund will not invest in leveraged or inverse leveraged ETPs. Such investments will not be used to enhance the leverage of the Fund as a whole and will otherwise be consistent with the Fund's investment objective.

The Fund will not directly invest in options contracts, futures contracts or swap agreements.

According to the Registration Statement, the Fund intends, for each taxable year, to qualify for treatment as a ''regulated investment company'' under Subchapter M of the Internal Revenue Code of 1986, as amended.[32]

The Fund will not invest in any non-U.S. equity securities, except for exposure to those that may underlie a depositary receipt or NYR.[33]

Net Asset Value

The Fund will calculate its net asset value (''NAV'') as of the close of trading on the Exchange (normally 4:00 p.m., Eastern Time) on each weekday except on days when the Exchange is closed. The NAV will be determined by taking the market value of the total assets of the Fund, subtracting the liabilities of the Fund, and then dividing the result (net assets) by the number of outstanding shares of the Fund. Because the Fund will invest in instruments that trade on foreign markets on days when the Exchange is closed, the value of the Fund's investments may change on days on which shareholders will not be able to purchase Fund shares.

The Fund will value securities for which market quotations are readily available at current market value, except for money-market instruments with a maturity of sixty days or less, which may be valued at amortized cost. Securities for which market quotations are readily available will be valued using the last reported sales price provided by independent pricing services as of the close of trading on the Exchange. In the absence of sales, such securities will be valued at the mean of the last bid and asked price. Non-exchange traded securities for which quotations are readily available will be valued at the mean between the current bid and asked price. Debt securities may be valued at prices supplied by the Fund's pricing agents based on broker or dealer supplied valuations or matrix pricing, a method of valuing securities by reference to the value of other securities with similar characteristics such as rating, interest rate and maturity. Forward currency contracts will be valued at the mean of bid and ask prices for the time period interpolated from rates reported by an independent pricing service for proximate time periods. Investments in open-end registered investment companies will be valued at their NAV. Investments in other ETPs will be valued using market price.

Market quotations may not be readily available or may be unreliable if, among other things, (1) the exchange on which the security is principally traded closes early, (2) trading in a security was halted during the day and did not resume prior to the time the Fund calculates its NAV or (3) events occur after the close of the securities markets on which the securities primarily trade but before the time the Fund calculates its NAV.

If market prices are not readily available or the Fund reasonably believes that they are unreliable, such as in the case of a security value that has been materially affected by events occurring after the relevant market closes, the Fund will be required to value the securities at fair value as determined in good faith using procedures approved by the Board of Trustees of the Trust (''Board'') and in accordance with the 1940 Act The Board has delegated day-to-day responsibility for fair value determinations to a Valuation Committee, members of which are appointed by the Board. Fair valuation may be based on subjective factors and, as a result, the fair value price of a security may differ from that security's market price and may not be the price at which the security may be sold. Fair

[28] In reaching liquidity decisions, the Investment Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[29] *See* Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A) (stating that Guide 4 ''permit[s] a fund to invest up to 15% of its assets in illiquid securities''). The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 8901 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the ETF. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[30] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[31] The diversification standard is set forth in Section 5(b)(2) of the 1940 Act, (15 U.S.C. 80a-5(b)(2)).

[32] 26 U.S.C. 851.

[33] *See* note 26, *supra* [sic].

valuation could result in a different NAV than a NAV determined by using market quotes.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will offer and issue shares in aggregations of Shares (''Creation Units'') on a continuous basis, at the net asset value per share (''NAV'') [34] next determined after receipt of an order in proper form on any business day. A Creation Unit is currently an aggregation of 50,000 Shares. Creation Units may only be purchased or redeemed by certain large institutional investors who have entered into agreements with the Fund's Distributor (''Authorized Participants'').

The consideration for a Creation Unit of the Fund is the ''Fund Deposit.'' The Fund Deposit will consist of a specified all-cash payment (''All-Cash Payment'') or a basket of securities to be deposited to purchase a Creation Unit (the ''In-Kind Creation Basket'') and a specified cash payment (the ''Cash Component'') as determined by the Investment Adviser to be in the best interest of the Fund. Any positions in the Fund's portfolio that cannot be transferred in kind will be represented by cash in the Cash Component and not in the In-Kind Creation Basket. The Fund expects that Fund Deposits will typically consist of All-Cash Payments. The Cash Component will typically include a ''Balancing Amount'' reflecting the difference, if any, between the NAV of a Creation Unit and the market value of the securities in the In-Kind Creation Basket.

Fund Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form on a business day. The redemption proceeds for a Creation Unit will consist of a basket of securities to be received upon redemption of a Creation Unit (the ''In-Kind Redemption Basket'') and a specified cash payment (the ''Cash Redemption Amount'') or an All-Cash Payment, in all instances equal to the value of a Creation Unit. The Fund expects that Fund redemptions will typically consist of In-Kind Redemption Baskets and a Cash Redemption Amount. The Cash Redemption Amount will typically include a Balancing Amount reflecting the difference, if any, between the NAV of a Creation Unit and the market value of the securities in the In-Kind Redemption Basket.

The Investment Manager or the Investment Adviser, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day,[35] immediately prior to the opening of business on the Exchange (currently 9:30 a.m., E.T.), (a) the All-Cash Payment for the Fund for that day (based on information about the Fund's portfolio at the end of the previous business day) (subject to amendment or correction); (b) in the event the Fund requires an In-Kind Creation Basket and Cash Component, a list of names and the required quantity of each security in the In-Kind Creation Basket to be included in the current Fund Deposit for the Fund (based on information about the Fund's portfolio at the end of the previous business day) (subject to amendment or correction) and the estimated Cash Component, effective through and including the previous business day, per Creation Unit; and (c) if different from the In-Kind Creation Basket and All-Cash Payment, the composition of the In-Kind Redemption Basket and/or an amount of cash that will be applicable to redemption requests (subject to possible amendment or correction). According to the Investment Adviser, this information may be subject to amendment or correction as the values of the instruments in the Fund's portfolio change, or the instruments in the Fund's portfolio change. Creations and redemptions will be at the next determined NAV.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Availability of Information

The Fund's Web site (*www.merkfunds.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[36] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session [37] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'') [38] held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[39] The Web site and information will be publicly available at no charge.

On a daily basis, the Fund will disclose for each portfolio security and other financial instrument of the Fund the following information: Ticker symbol (if applicable), name or description of security and financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of securities and financial instruments in the portfolio. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in NYSE Arca Equities Rule 8.600 as the ''Portfolio Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio.

[34] The Fund will calculate its NAV as of the close of trading on the Exchange (normally 4:00 p.m., Eastern time (''E.T.'')) on each weekday except days when the Exchange is closed. The NAV will be determined by taking the market value of the total assets of the Fund, subtracting the liabilities of the Fund, and then dividing the result (net assets) by the number of outstanding Shares of the Fund. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see the Registration Statement.

[35] Orders from Authorized Participants to create or redeem Creation Units will only be accepted on a business day.

[36] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and/or its service providers.

[37] The Core Trading Session is 9:30 a.m. to 4:00 p.m. E.T.

[38] The Exchange notes that NYSE Arca Equities Rule 8.600(d)(2)(B)(ii) provides that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

[39] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[40] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and underlying U.S. exchange-traded equities, including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts, and NYRs, will be available via the Consolidated Tape Association (''CTA'') high-speed line. Quotation information from brokers and dealers or pricing services will be available for fixed income securities, other money market instruments, and repurchase and reverse repurchase agreements held by the Fund. Price information for the Fund's portfolio securities and other instruments is generally readily available through major market data vendors, automated quotation systems, published or other public sources and/or, for listed securities, the securities exchange on which they are listed and traded. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. ICAP plc provides an electronic trading platform called EBS for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. There are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the daily London noon Fix is publicly available at no charge at *www.thebulliondesk.com.*

Initial and Continued Listing

The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 [41] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share for the Fund will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Shares of the Fund will be halted if the ''circuit breaker'' parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[42] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts, NYRs and any other exchange-traded products) with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying equity securities (including, without

[40] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds.

[41] *See* 17 CFR 240.10A–3.

[42] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts, NYRs and any other exchange-traded products) from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts, NYRs and any other exchange-traded products) from markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[43] The ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts and NYRs in which the Fund may invest all will be listed and traded on an exchange which is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[44] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts, NYRs and any other exchange-traded products) with other markets and other entities that are members of ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts, NYRs and any other exchange-traded products) from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts, NYRs and any other exchange-traded products) from markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE. The ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts and NYRs in which the Fund may invest all will be listed and traded on an exchange which is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. According to the Registration Statement, the Fund normally will invest in a basket of hard currency denominated investments composed of high quality, short-term debt instruments, including sovereign debt, and in gold and gold-related securities. The Fund will typically maintain a weighted average portfolio maturity of less than eighteen months and only buy money market or other short-term debt instruments that are rated in the top three ratings by U.S. nationally recognized ratings services or that the Investment Adviser considers comparable in quality to instruments rated in the top three ratings. The Fund will typically invest only in debt instruments that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally a debt instrument must have $100 million (or an equivalent value if denominated in a currency other than U.S. dollars) or more par amount outstanding and significant par value traded to be sufficiently liquid at the time of investment. The Fund may invest up to 25% of its total assets in debt instruments having a lower par amount outstanding to the extent the Investment Advisor determines such an investment to be appropriate. Leveraged investment techniques will not be used to enhance the leverage of the Fund as a whole and will otherwise be consistent with the Fund's investment objective. The Fund will not invest in leveraged or inverse leveraged ETPs. The Fund will not hold in the aggregate illiquid assets, including Rule 144A Securities deemed illiquid by the Investment Adviser consistent with Commission guidance, and master demand notes, in excess of 15% of its net assets.[45] The Fund will not invest in any non-U.S. equity securities. The Fund will not directly invest in options contracts, futures contracts or swap agreements.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that neither the

[43] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all of the components of the Disclosed Portfolio for the Fund may trade on exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[44] 15 U.S.C. 78f(b)(5).

[45] *See* note 28, *supra.*

Investment Adviser nor the Investment Manager is or is affiliated with a broker-dealer. In the event (a) the Investment Manager or Investment Adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new investment adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Price information for the debt instruments, gold-related securities, and other instruments, including securities of other investment companies, common and preferred stock, warrants, depositary receipts and NYRs held by the Fund will be available through major market data vendors and/or the securities exchange on which they are listed and traded. Moreover, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares. The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers. In addition, the London AM Fix and London PM Fix are publicly available at no charge at *www.thebulliondesk.com.* The Trust's daily (or as determined by the Investment Manager in accordance with the amended and restated trust agreement) NAV is posted on the Trust's Web site as soon as practicable.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days after publication (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–132 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–2013–132. 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–2013–132 and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29492 Filed 12–10–13; 8:45 am]

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[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70997; File No. SR–NYSE–2013–78]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Specify the Exclusion of Odd Lot Transactions From Consolidated Average Daily Volume Calculations for a Limited Period of Time for Purposes of Certain Transaction Pricing on the Exchange Through January 31, 2014

December 5, 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 November 22, 2013, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 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 Price List to specify the exclusion of odd lot transactions from consolidated average daily volume (''CADV'') calculations for a limited period of time for purposes of certain transaction pricing on the Exchange. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to specify the exclusion of odd lot transactions from CADV calculations for a limited period of time for purposes of certain transaction pricing on the Exchange. The Exchange proposes to implement the Price List change on December 9, 2013.

The Exchange provides a member or member organization with the opportunity to qualify for one or more pricing tiers based on its level of activity during a particular month. Each tier has a corresponding fee or credit that applies to the member's or member organization's transactions during the month. Generally, a qualifying member or member organization would be subject to a lower transaction fee or a higher transaction credit, depending on the particular tier. Many of these tiers use a specific percentage of CADV in NYSE-listed securities (*i.e.,* Tape A securities) during the billing month (''NYSE CADV'') as a threshold that a member's or member organization's activity must meet or exceed in order to qualify for the particular tier. For example, in order to qualify for a reduced fee of $0.00055 per share for executions of market at-the-close (''MOC'') and limit at-the-close (''LOC'') orders, a member or member organization must execute an average daily volume (''ADV'') of MOC/LOC activity on the Exchange during the month that is at least 0.375% of NYSE CADV. As an additional example, transaction pricing for a member or member organization that is a Designated Market Maker (''DMM'') can depend on whether the security is considered ''More Active'' or ''Less Active.'' Such a determination is based on the CADV for the security in the previous month.[3]

CADV is a measure of transactions in Tape A, Tape B and Tape C securities reported to the consolidated tape. NYSE CADV is a measure of transactions only in Tape A securities reported to the consolidated tape. Transactions in Tape A securities that are not reported to the consolidated tape are not included in NYSE CADV for purposes of the Price List. An odd lot transaction, which is generally an execution of less than 100 shares, is not currently reported to the consolidated tape and is therefore not currently included in NYSE CADV.[4] Beginning December 9, 2013, odd lot transactions will be reported to the consolidated tape.[5] The Exchange proposes to amend the Price List to specify that odd lot transactions

[3] A ''More Active'' security is one with CADV in the previous month equal to or greater than one million shares. A ''Less Active security is one with CADV in the previous month of less than one million shares.

[4] *See* NYSE Rule 55. A round lot is generally an execution of 100 shares or a multiple thereof.

[5] *See* Securities Exchange Act Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR–CTA–2013–05) (Order Approving the Eighteenth Substantive Amendment to the Second Restatement of the CTA Plan). *See also* Securities Exchange Act Release No. 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (File No. S7–24–89) (Order Approving Amendment No. 30 to 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). *See also* Securities Exchange Act Release No. 70898 (November 19, 2013), 78 FR 70386 (November 25, 2013) (SR–NYSE–2013–75). *See also* announcements regarding December 9, 2013 implementation date, available at *https://cta.nyxdata.com/cta/popup/news/2385* and *http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2013-11.* If the inclusion of odd lot transactions in the consolidated tape is delayed to a date after December 9, 2013, the manner of inclusion or exclusion of odd lot transactions described in this proposal for purposes of billing on the Exchange would similarly take effect on such later date.

reported to the consolidated tape will be excluded from NYSE CADV through January 31, 2014 for purposes of billing on the Exchange. This proposed change is intended to maintain consistency in the Exchange's current method of determining tier qualifications for a limited period of time in order to provide members and member organizations with an opportunity to adjust to the potential impact of the inclusion of odd lot transactions in NYSE CADV.

As described above, CADV is also used in the Price List to differentiate between ''More Active'' and ''Less Active'' securities for purposes of DMM pricing. Odd lot transactions are currently excluded when determining whether a security is More Active or Less Active because odd lot transactions are not currently reported to the consolidated tape. In contrast to the proposed change described above, the Exchange will not make any adjustment beginning on December 9, 2013 to consolidated tape figures for purposes of determining whether a security is More Active or Less Active.[6] Therefore, beginning December 9, 2013, odd lot transactions reported to the consolidated tape would be included in More Active/Less Active determinations. These determinations are based on CADV from the previous month and DMMs would therefore be able to adjust their activity immediately on December 9, 2013 based on November 2013 CADV.

The proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that members or member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because it will maintain consistency in the current manner of measuring member or member organization activity with respect to transaction pricing on the Exchange for a limited period of time. Absent this change, the denominator of a tier threshold calculation (*i.e.,* NYSE CADV) would increase immediately when odd lot transactions begin to be reported to the consolidated tape and a member or member organization would therefore need to immediately increase its own activity (*i.e.,* the numerator) to qualify for the tier compared to when odd lot transactions were not included in the consolidated tape. However, such an increase in member or member organization activity would not result in any corresponding benefit to the member or member organization, because the Exchange is not proposing a change to the tier rates. The Exchange anticipates that the eventual impact on determining tier qualifications will be minimal when odd lot transactions begin to be included in NYSE CADV. Notwithstanding the anticipated minimal impact, however, the Exchange believes that it is reasonable to provide members and member organizations with a limited transition period to adapt to such impact.

The Exchange believes that it is reasonable to include odd lot transactions in More Active/Less Active security determinations immediately on December 9, 2013 because such determinations are based on CADV from the previous month. DMMs would therefore be able to adjust their activity immediately on December 9, 2013 based on November 2013 CADV. This is different than with excluding odd lot transactions from the NYSE CADV calculation for a limited period of time because NYSE CADV is determined based on the actual billing month, not a prior month. Furthermore, the Exchange does not anticipate that including odd lot transactions in these determinations beginning on December 9, 2013 would have a significant impact on the number of securities that would otherwise be considered Less Active absent the inclusion of odd lot transactions.[9]

The proposed change is equitable and not unfairly discriminatory because it would apply to all members and member organizations equally. More specifically, odd lot transactions would be excluded from NYSE CADV for billing purposes for all members and member organizations for a limited period of time. The proposed change is also equitable and not unfairly discriminatory because the inclusion of odd lots in the NYSE CADV calculation beginning on February 1, 2014 would occur at the same time for all members and member organizations, after the same nearly two month transition period. The proposed change is also equitable and not unfairly discriminatory because odd lot transactions would be immediately included in More Active/Less Active determinations for all members and member organizations that operate as DMMs. Immediately including odd lot transactions reported to the consolidated tape in More Active/Less Active determinations is equitable and not unfairly discriminatory because DMMs would be able to adjust their activity immediately on December 9, 2013 based on November 2013 CADV. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange 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. Instead, the proposed change would maintain consistency in the Exchange's current method of determining tier qualifications for a limited period of time in order to give members and member organizations an opportunity to adjust to the inclusion of odd lot transactions in NYSE CADV. This proposed change is also designed to maintain competition on the Exchange by eliminating the potential for members and member organizations to immediately fail to qualify for a tier due to the inclusion of odd lot transactions in the consolidated tape beginning on December 9, 2013. The Exchange believes that competition would not be burdened by including odd lot transactions in More Active/Less Active determinations because the Exchange anticipates that this would not have a significant impact on the number of securities that would otherwise be considered Less Active absent the inclusion of odd lot transactions—*i.e.,* fewer than 1% of securities to which a

[6] The Exchange considers a change to the text of the Price List unnecessary to reflect this result because it will occur automatically by operation of odd lot transactions being reported to the consolidated tape.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] Based on October 2013 data, fewer than 1% of securities to which a DMM is assigned would become More Active securities by including odd lot transactions.

[10] 15 U.S.C. 78f(b)(8).

DMM is assigned based on October 2013 data.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee or credit levels at a particular venue to be unattractive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. The billing method described herein is based on objective standards that are applicable to all members and member organizations and reflects the need for the Exchange to offer significant financial incentives to attract order flow. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and is therefore consistent with the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2013–78 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–NYSE–2013–78. 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–NYSE–2013–78 and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29495 Filed 12–10–13; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70995; File No. SR–NYSEArca–2013–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend NYSE Arca Equities Rules 7.31, 7.32, 7.37, and 7.38 in Order To Comprehensively Update Rules Related to the Exchange's Order Types and Modifiers

December 5, 2013.

On September 30, 2013, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities Rules 7.31, 7.32, 7.37, and 7.38 in order to comprehensively update rules related to the Exchange's order types and modifiers. The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.[3] The Commission received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is December 6, 2013. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposal. The proposal would comprehensively update the Exchange's order type and modifier rules in order to provide additional specificity and transparency regarding the operation of many of the Exchange's order types and modifiers, better align the Exchange's rules with currently available functionality, and organize and define the Exchange's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70637 (October 9, 2013), 78 FR 62745 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

order types and modifiers in a more intuitive manner.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates January 20, 2014, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29493 Filed 12–10–13; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70996; File No. SR–CBOE–2013–114]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend CBOE Rule 18.2 (Procedures in Trading Permit Holder Controversies)

December 5, 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 November 22, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 18.2 to provide that arbitrators in controversies between parties who are Trading Permit Holders (''TPHs'') or associated persons of TPHs (such controversies herein referred to as ''TPH controversies'') may be selected from CBOE's Arbitration Committee (''Committee'') or, if necessary, from rosters provided by the Financial Industry Regulatory Authority Inc. (''FINRA'') of qualified non-public arbitrators and non-public chairperson-qualified arbitrators, as defined by FINRA.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx,* 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 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 V below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend Rule 18.2 (Procedures in Trading Permit Holder Controversies) to provide more flexibility with regards to the selection of the arbitration panel for TPH controversies. By way of background, the Exchange offers an arbitration facility for TPHs and associated persons of TPHs to arbitrate disputes, claims or controversies arising out of Exchange business.[3]

Under Exchange rules, any arbitration between parties who are TPHs or persons associated with a TPH shall be resolved by an arbitration panel that consists of three members of the Committee, which is maintained primarily as a means for managing a pool of qualified industry arbitrators that generally is composed of a cross-section of Exchange TPHs and/or former TPHs or associated persons of TPHs or other individuals who are knowledgeable about the securities industry.

For TPH controversies, CBOE Rule 18.2(a) currently provides that the arbitration panel appointed to hear such controversies be comprised of no fewer than three arbitrators from the Committee.[4] In this proposal, the Exchange seeks to amend Rule 18.2 to provide greater flexibility with regard to the selection of the arbitration panel for TPH controversies. Specifically, CBOE proposes to amend the rule to provide that arbitrators may be selected from the Committee or, if necessary, from rosters provided by FINRA of qualified non-public arbitrators and non-public chairperson-qualified arbitrators (as defined by FINRA's rules governing arbitration of industry disputes) that have indicated that they would be willing to serve as an arbitrator for another self-regulatory organization.[5]

Over the years, fewer TPHs have made themselves available to serve on the Committee. Consequently, it has become increasingly burdensome for the Exchange to select a sufficient number of arbitrators solely from the Committee to sit on any given arbitration panel. In addition, it has become increasingly difficult not only to find three arbitrators to sit on an arbitration panel, but also to ensure that at least one of the arbitrators is qualified to serve as a chairperson on the panel. Moreover, there are instances in which many Committee members have interests, relationships, or circumstances that might preclude them from being able to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For the purposes of CBOE's arbitration rules, the term ''Exchange business'' does not include a dispute, claim or controversy alleging employment discrimination, including sexual harassment. The Exchange may, however, make its arbitration facilities available for the resolution of employment discrimination claims if the parties mutually agree to arbitrate the claim after it has arisen. *See* CBOE Rule 18.1 Interpretation and Policy .03.

[4] In practice, however, arbitration panels for TPH controversies typically consist of three Committee members.

[5] FINRA Rule 13100(p) defines the term ''non-public arbitrator'' as a person who is otherwise qualified to serve as an arbitrator and: (1) Is or, within the past five years, was: (A) Associated with, including registered through, a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer); (B) registered under the Commodity Exchange Act; (C) a member of a commodities exchange or a registered futures association; or (D) associated with a person or firm registered under the Commodity Exchange Act; (2) is retired from, or spent a substantial part of a career engaging in, any of the business activities listed in paragraph (p)(1); (3) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in paragraph (p)(1); or (4) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities. For purposes of FINRA Rule 13100(p), the term ''professional work'' does not include mediation services performed by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation. The Exchange's guidelines classifying whether an arbitrator is deemed to be from the securities industry is substantially similar to FINRA's definition of ''non-public arbitrator.'' *See* CBOE Rule 18.10.

render an objective and impartial determination in a particular arbitration matter. The Exchange believes that eliminating the requirement that all arbitrators for TPH controversies be selected from the Committee would provide the Exchange with additional flexibility and help ensure that the Exchange would have a sufficient number of qualified non-public arbitrators readily available at all times.

The proposed rule change would provide the Exchange with the ability to appoint arbitrators identified in the FINRA-provided rosters in instances in which the Exchange is unable to select a sufficient number of arbitrators from its Committee. For example, the Exchange may be unable to select a sufficient number of arbitrators from the Committee if all the arbitrators from the Committee who are eligible to serve as a panel chairperson are unavailable to serve as the panel chairperson in a particular arbitration matter, due to either scheduling conflicts or the fact that they have interests, relationships, or circumstances which preclude them from being able to render an objective and impartial determination in that matter. In such instances, it would be necessary for the Exchange to select one arbitrator from a FINRA-provided roster of non-public, chairperson-qualified arbitrators, as defined by FINRA [6] to serve as the panel chairperson. Under the proposal, the Exchange would only appoint as many arbitrators from outside the Committee as necessary. For example, in the scenario described above, if the Exchange is able to appoint to the panel the other two ''non-chairperson'' arbitrators from the Committee, it would do so.

The Exchange believes that FINRA maintains a comprehensive roster of arbitrators that are in good standing and qualified to sit on an arbitration panel. The Exchange also believes that the qualification requirements to become a FINRA arbitrator are similar to the qualification requirements to become and stay a member of the Committee. For example, similar to the Exchange's requirements, in order for an individual to become a FINRA arbitrator, the individual must have a minimum of five years of business and/or professional experience and must have attended an introductory arbitrator training course. Accordingly, the Exchange believes that the arbitrators named on any FINRA non-public arbitrator roster would be sufficiently qualified to serve on any CBOE arbitration panel.

The applicable rules of Chapter XVIII of CBOE's Rules would continue to apply to all arbitrators, regardless of whether they were selected from the Committee or from a FINRA-provided roster. In addition, all arbitrators, whether or not selected from the Committee, would be screened for conflicts, potential conflicts, and the appearance of conflicts prior, and subsequent, to appointment and would be required to disclose any information that presents a conflict, existing or potential, or creates the appearance of a conflict with any party, fact, or circumstance related to the case in question.

FINRA is aware of the Exchange's proposal and has indicated that it has no objection. If this filing is approved, the Exchange expects to enter into a written agreement with FINRA under which FINRA would agree to provide to the Exchange lists of qualified non-public arbitrators and non-public chairperson-qualified arbitrators upon the Exchange's request when the Exchange determines that it does not have sufficient arbitrators to handle a case. The Exchange further expects FINRA to agree to provide these lists to CBOE to the extent that FINRA has sufficient non-public arbitrators in a specified location at the time of the request.

The proposed rule change will become effective upon approval by the Commission. CBOE has requested the Commission to find good cause pursuant to Section 19(b)(2) [7] of the Act for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act [9] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in 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.

In particular, the Exchange notes that the purpose of the Exchange providing an arbitration forum is, among other things, to provide TPHs and associated persons of TPHs with a simple and inexpensive procedure for resolution of their controversies with other TPHs or associated persons of TPHs. The Exchange believes that the proposed rule change is consistent with the provisions of the Act because it would help ensure that the Exchange has a sufficient number of qualified arbitrators readily available to resolve TPH controversies. In addition, the Exchange believes that providing it with greater flexibility in its selection of qualified arbitration panels would prevent unnecessary delays in, and improve the administration of, its arbitration forum for resolving disputes and enhancing the forum for its users. As such, the Exchange believes the proposed rule change meets the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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. Specifically, the Exchange believes the proposed rule change will not impose any burden on competition because the Exchange is merely providing greater flexibility in its selection of arbitrators for arbitration panels to facilitate and improve the administration of its arbitration forum and ensure that the Exchange has a sufficient number of qualified non-public arbitrators readily available.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Commission's Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with, and would further the purposes of,

[6] *See* FINRA Rule 13400.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Section 6(b)(5) of the Act [11] by providing the Exchange with a mechanism to ensure that it has a sufficient number of qualified non-public arbitrators readily available to resolve TPH controversies. Section 6(b)(5) of the Act specifically provides, among other things, that the rules of a national securities exchange should foster cooperation and coordination with persons engaged in regulating securities.[12] The Commission believes that the proposed rule change would foster cooperation between CBOE and FINRA to help facilitate and improve the administration of CBOE's arbitration forum. In addition, the proposed rule change would provide the Exchange with greater flexibility in its selection of qualified non-public arbitration panels, which would prevent unnecessary delays in, and improve the administration of, its arbitration forum for resolving disputes.

The Commission 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 because the proposed rule change merely helps ensure that CBOE has a sufficient number of qualified non-public arbitrators readily available for TPH controversies. Moreover, the proposed rule change would be neutrally applied to all TPH controversies.

IV. Accelerated Approval

In its filing, CBOE requested that the Commission approve the proposed rule change on an accelerated basis so that the proposal may become operative as soon as practicable. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[13] for approving the proposed rule change prior to the 30th day after the date of publication in the **Federal Register**. In particular, CBOE represented to the Commission staff that there are pending TPH controversies that cannot be heard in arbitration because there are not enough eligible arbitrators on the Committee because many Committee members have interests, relationships, or circumstances that preclude them from being able to render an objective and impartial determination in these matters.[14] The Exchange has also represented that the delay in resolving these TPH controversies has created an undue hardship on the parties involved.[15] The Commission believes that granting CBOE's request for accelerated approval would allow the Exchange to more readily select the arbitration panels for these pending TPH controversies, thus preventing further delay in hearing the parties' claims. Accordingly, the Commission finds that good cause exists to approve the proposed rule change on an accelerated basis.

V. 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–CBOE–2013–114 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–CBOE–2013–114. 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–CBOE–2013–114 and should be submitted on or before January 2, 2014.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–CBOE–2013–114) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

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[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78s(b)(2).

[14] *See* email from Corinne Klott, Attorney, CBOE, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated December 3, 2013.

[15] *Id.*

[16] *Id.*

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71004; File No. SR–Phlx–2013–101]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Regarding the Short Term Options Program

December 6, 2013.

I. Introduction

On October 3, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Expand the number of classes on which short term options series (''STOs'') may be opened in accordance with its Short Term Option Series Program (''STO Program'') from 30 to 50; (2) modify the initial and additional series listing provisions to allow the Exchange to open up to thirty STOs for each expiration date in a STO class; (3) expand the strike price range limitations for STOs; and (4) allow the Exchange to list STOs at a strike price interval of $2.50 or greater where the strike price is above $150. The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.[3] The Commission received one comment letter on the proposal.[4] This

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 70682 (October 15, 2013), 78 FR 62809 (''Notice'').

[4] *See* letter from Megan R. Malone, Attorney, Legal Division, Chicago Board Options Exchange, Incorporated (''CBOE''), to Elizabeth M. Murphy,

Continued

order approves the proposed rule change.

II. Description of the Proposal

Currently, Commentary .11(a) to Rule 1012 permits the Exchange to open for trading on any Thursday or Friday that is a business day series of options on no more than thirty option classes that expire at the close of business on each of the next five consecutive Fridays that are business days.[5] The Exchange may also list STOs on option classes selected by other exchanges under their respective STO Program rules.[6] The Exchange has proposed to increase from thirty to fifty the number of option classes that may be opened by the Exchange pursuant to the STO Program.

The Exchange also proposed to modify its initial and additional STO listing requirements to permit the Exchange to open up to thirty STOs for each expiration date in a class. Phlx's current rules provide that the Exchange may open up to twenty STOs for each expiration date in a class.[7] Phlx's rules also provide that if the Exchange opens less than twenty STOs for an expiration date, it may open additional series ''when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened.'' [8] The proposed rule change would permit Phlx to open up to thirty STOs for each expiration date in a class. Under the proposed rule change, if Phlx opens less than thirty STOs for an expiration date, it may open additional series under the same conditions noted above.

Phlx also proposed to change the strike price range limitations for the STO Program. Currently, the strike price of each STO has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the STOs are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day.[9] Further, any additional strike prices listed by the Exchange must also be within thirty percent (30%) above or below the current price of the underlying security.[10]

Phlx's proposed rule would provide that any initial or additional series listed by the Exchange shall be reasonably close to the price of the underlying equity security and within the following parameters: (i) If the price of the underlying security is less than or equal to $20, strike prices shall be not more than one hundred percent (100%) above or below the price of the underlying security; and (ii) if the price of the underlying security is greater than $20, strike prices shall be not more than fifty percent (50%) above or below the price of the underlying security. Under the proposed rule change, the Exchange may also open STOs with strike prices that are more than 50% above or below the current price of the underlying security (if the price is greater than $20); provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers (not including Market-Makers trading for their own account).[11]

The Exchange also proposed to modify the STO Program delisting provisions to conform to the proposed STO strike price range limitations. Currently, the STO delisting rules in Commentary .11(d) to Rule 1012 allow the Exchange to delist certain series so as to list series between 10% and 30% above or below the current price of the underlying.[12] The current rules also permit the Exchange to list additional series in excess of the thirty permitted in the STO Program rules if the underlying has moved such that there are no series that are within the 10% to 30% range and all existing series have open interest.[13] Phlx proposed to remove the range methodology to provide that the Exchange will delist any series with no open interest in both the call and the put series having a: (i) Strike higher than the highest price with open interest in the put and/or call series for a given expiration week; and (ii) strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration week.

Finally, the Exchange proposed to amend Commentary .11(e) to Rule 1012 to indicate that the interval between strike prices on STOs may be $2.50 or greater where the strike price is above $150. The current STO Program rules include specific strike price intervals for certain classes that participate in the STO Program, *e.g,* the strike price may be $0.50 or greater where the strike price is less than $75, and $1 or greater where the strike price is between $75 and $150.[14] According to the Exchange, the proposed $2.50 strike price interval addresses the issue that above a $150 strike price STO strike price intervals may be $5.00 or greater.[15]

In the proposed rule change, the Exchange stated that the principal reason for the proposed expansion is market demand for weekly options and continuing strong customer demand to use STOs to execute hedging and trading strategies, particularly in the current fast and volatile trading and investing environment.[16] The Exchange also stated that it has received requests from traders and other market participants to expand the STO Program.[17] Phlx also stated that it believes that the delisting proposal will add clarity and certainty to the STO Program.[18]

The Exchange stated that it has analyzed its capacity, and represented that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with Phlx's proposed amendment to the STO Program. In addition, Phlx stated that it believes that its members will not have a capacity issue as a result of the proposed rule change.[19]

III. Discussion and Commission Findings

After careful review of the proposed rule change and the CBOE Letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] Specifically, the Commission finds that the proposal is consistent with Section

Secretary, Commission, dated November 12, 2013 (''CBOE Letter''). CBOE expressed support for the proposed expansion of the STO Program to 50 classes.

[5] *See* Commentary .11(a) to Rule 1012.

[6] *Id.*

[7] *Id.*

[8] *See* Commentary .11(d) to Rule 1012.

[9] *See* Commentary .11(c) to Rule 1012.

[10] *See* Commentary .11(d) to Rule 1012. Commentary .11(d) to Rule 1012 also permits the Exchange to open additional STOs with strike prices more than 30% above or below the current prices of the underlying security ''provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers.''

[11] Commentary .10(a) to Rule 1012 currently states that if the price of the underlying security is greater than $20, the Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. The Exchange also proposed to add language clarifying that this restriction does not apply to new proposed Commentary .11(d) to Rule 1012.

[12] *See* Commentary .11(d) to Rule 1012.

[13] *See id.*

[14] *See* Commentary .11(e) to Rule 1012.

[15] *See, e.g.,* Commentary .05 to Rule 1012.

[16] *See* Notice, *supra* note 3 at 62812.

[17] *Id.*

[18] *See id.*at 62811.

[19] *See id.*at 62813.

[20] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

6(b)(5) of the Act,[21] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series.

In approving this proposal, the Commission notes that Exchange has represented that it and OPRA have the necessary systems capacity to handle the potential additional traffic associated with the proposed amendment to the STO Program.[22] The Commission expects the Exchange to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Phlx–2013–101) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

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[21] 15 U.S.C. 78f(b)(5).

[22] *See* Notice, *supra* note 3 at 62813.

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70992; File No. SR–MIAX–2013–55]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rule 402

December 5, 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 November 26, 2013, Miami International Securities Exchange LLC (''MIAX'' 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 is filing a proposal to amend Exchange Rule 402 to enable the listing and trading on the Exchange of options on the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust.

The text of the proposed rule change is 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 Exchange proposes to amend Rule 402 (Criteria for Underlying Securities) to enable the listing and trading on the Exchange of options on the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust.

Under current Rule 402, only Exchange-Traded Fund Shares (''ETFs'') that (1) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments (''Funds''), including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the ''Financial Instruments''), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments), or (2) represent interests in a trust or similar entity that holds a specified non-U.S. currency or currencies deposited with the trust which when aggregated in some specified minimum number may be surrendered to the trust or similar entity by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust (''Currency Trust Shares''), or (3) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool ETFs''), or (4) are issued by the SPDR® Gold Trust or the iShares COMEX Gold Trust or the iShares Silver Trust, or (5) represent an interest in a registered investment company (''Investment Company'') organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (''Managed Fund Share'') are eligible as underlying

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

securities for options traded on the Exchange.[3] This rule change proposes to expand the types of ETFs that may be approved for options trading on the Exchange to include ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust.

Apart from allowing ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust to be an underlying for options traded on the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange Rules. ETFs on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy the other listing standards set forth in Rule 402(i).

Specifically, in addition to satisfying the aforementioned listing requirements, ETFs must meet [sic] either (1) meet the criteria and guidelines set forth in paragraphs 402(a) and (b) or (2) they must be available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer is obligated to issue ETF Shares in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of the ETF Shares, all as described in the ETF Shares' prospectus.

The Exchange states that the current continued listing standards for options on ETFs will apply to options on ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust. Specifically, under 403(g), options on ETFs may be subject to suspension of opening transactions as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the ETF Fund [sic] Shares, there are fewer than 50 record and/or beneficial holders of the ETF Fund [sic] Shares for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or Financial Instruments and Money Market Instruments on which ETF Fund [sic] Shares are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

In addition, ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, or the Sprott Physical Gold Trust shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, or the Sprott Physical Gold Trust, if the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, or the Sprott Physical Gold Trust cease to be an ''NMS stock'' as provided for in Rules [sic] 403(b)(4) or the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, or the Sprott Physical Gold Trust is halted or suspended from trading on its primary market.

The addition of the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust to Rule 402(i) will not have any effect on the rules pertaining to position and exercise limits[4] or margin.[5] The Exchange represents that its surveillance procedures applicable to trading in options on the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust will be similar to those applicable to all other options on other ETFs currently traded on the Exchange. Also, the Exchange may obtain information from the New York Mercantile Exchange, Inc. (''NYMEX'') (a member of the Intermarket Surveillance Group) related to any financial instrument that is based, in whole or in part, upon an interest in or performance of silver, gold, palladium, and platinum.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b)[6] of the Act in general, and furthers the objectives of Section 6(b)(5)[7] of the Act 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. In particular, the Exchange believes that amending its rules to accommodate the listing and trading of options on the ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust will benefit investors by providing them with valuable risk management tools.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes this proposed rule change will benefit investors by providing additional methods to trade options on ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust Shares, and by providing them with valuable risk management tools. Specifically, the Exchange believes that market participants on MIAX would benefit from the introduction and availability of options on ETFS Silver Trust, the ETFS Gold Trust, the ETFS Palladium Trust, the ETFS Platinum Trust, and the Sprott Physical Gold Trust in a manner that is similar to other exchanges and will provide investors with yet another venue on which to trade these products. The Exchange notes that the rule change is being proposed as a competitive response to other competing options exchanges[8] and believes this proposed rule change is necessary to permit fair competition among the options exchanges. For all the reasons stated above, 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, and believes

[3] *See* Exchange Rule 402(i).

[4] *See* Exchange Rules 307, Position Limits, and 309, Exercise Limits.

[5] *See* Exchange Rule Chapter XV.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release Nos. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010) (SR–CBOE–2010–007, SR–ISE–2009–106, SR–NYSEAmex–2009–86, and SR–NYSEArca–2009–110); 61892 (April 13, 2010), 75 FR 20649 (April 20, 2013 [sic]) (SR–CBOE–2010–015); 62463 (July 7, 2010), 75 FR 40005 (July 13, 2010) (SR–CBOE–2010–043); 62464 (July 7, 2010), 75 FR 40007 (July 13, 2010) (SR–BX–2010–045); 65099 (August 11, 2011), 76 FR 51114 (August 17, 2011) (SR–NASDAQ–2011–109); 65098 (August 11, 2011), 76 FR 51116 (August 17, 2011) (SR–PHLX–2011–102).

the proposed change will enhance competition.

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 [9] and Rule 19b–4(f)(6) thereunder.[10]

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. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[11] The Commission notes that the proposal is substantively identical to proposals that were approved by the Commission, and does not raise any new regulatory issues.[12] 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–2013–55 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–2013–55. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–2013–55 and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29490 Filed 12–10–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 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.

[11] 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).

[12] *See supra* note 8.

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending Novermber 30, 2013. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–1996–1530.

Date Filed: November 26, 2013.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 17, 2013.

Description: Application of Federal Express Corporation (''FedEx Express'') requesting renewal of its certificate of public convenience and necessity for Route 638, authorizing FedEx Express to provide scheduled foreign air transportation of property and mail between a point or points in the United States, via any intermediate points, to a point or points in China open to scheduled international operations, and beyond to any points outside of China, with full traffic rights.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2013–29530 Filed 12–10–13; 8:45 am]

BILLING CODE 4910–9x–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0050]

Designation of the Primary Freight Network

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of extension of deadline and comment period.

SUMMARY: The FHWA is extending the deadline and comment period for the Designation of the highway Primary Freight Network (PFN) notice, which was published on November 19, 2013, at 78 FR 69520. The original comment period is set to close on December 19, 2013. The extension is based on input received from DOT stakeholders that the December 19 closing date does not provide sufficient time for submission of comments to the docket. The FHWA agrees that the deadline and the comment period should be extended. Therefore, the closing date for submission of comments is extended to January 17, 2014, which will provide others interested in commenting additional time to submit comments to the docket.

DATES: Comments must be received on or before January 17, 2014.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.
- *Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For questions about this program, contact Ed Strocko, FHWA Office of Freight Management and Operations, (202) 366–2997, or by email at *Ed.Strocko@dot.gov*. For legal questions, please contact Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or by email at *Michael.Harkins@dot.gov*. Business hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 2013, at 78 FR 69520, the FHWA published in the **Federal Register** a notice on the designation of the highway PFN.

The purpose of the notice was to publish the draft initial designation of the highway PFN as required by 23 U.S.C. 167(d), provide information regarding State designation of Critical Rural Freight Corridors (CRFCs) and the establishment of the complete National Freight Network (NFN), and to solicit comments on aspects of the NFN. The five areas for comment are: (1) Specific route deletions, additions, or modifications to the draft initial designation of the highway PFN contained in this notice; (2) the methodology for achieving a 27,000-mile final designation; (3) how the NFN and its components could be used by freight stakeholders in the future; (4) how the NFN may fit into a multimodal National Freight System; and (5) suggestions for an urban-area route designation process.

The original comment period for the notice closes on December 19, 2013. However, DOT stakeholders have expressed concern that this closing date does not provide sufficient time for submission of comments to the docket. To allow time for interested parties to submit comments, the closing date is changed from December 19, 2013, to January 17, 2014.

Authority: 23 U.S.C. 167; Section 1115 of Pub. L. 112–141.

Issued on: December 5, 2013.

Victor M. Mendez,

FHWA Administrator.

[FR Doc. 2013–29520 Filed 12–10–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Emergency Order No. 29, Notice No. 1]

Emergency Order Under 49 U.S.C. 20104 Establishing Requirements for Controlling Passenger Train Speeds and Staffing Locomotive Cabs at Certain Locations on the Metro-North Commuter Railroad Company

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

SUMMARY: FRA is issuing this emergency order (EO or Order) to require that the New York State Metropolitan Transportation Authority's Metro-North Commuter Railroad Company (Metro-North) take certain actions to control passenger train speed at any location on main track where there is a reduction of more than 20 miles per hour (mph) in the maximum authorized passenger train speed. Under the EO, Metro-North must create and comply with an FRA-approved action plan that institutes modifications to its existing Automatic Train Control System or other signal systems. Until Metro-North completes the necessary modifications, the EO requires that two qualified railroad employees be present in the control compartment of Metro-North's passenger trains when those trains operate over locations on main track where there is a required reduction of more than 20-mph in the maximum authorized passenger train speed.

FOR FURTHER INFORMATION CONTACT: Thomas Herrmann, Acting Director, Office of Safety Assurance and Compliance, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6036; Joseph St. Peter, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6047, *joseph.st.peter@dot.gov;* or Stephen Gordon, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493–6001, *stephen.n.gordon@dot.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

FRA has determined that public safety compels issuance of this EO. This determination is made in light of the Metro-North train derailment that occurred in New York on December 1, 2013, which killed four people and injured over 60 others. The preliminary investigation into this derailment indicates that the subject train was traveling approximately 82 mph as it entered a sharp curve where the maximum authorized passenger train speed was 30 mph. This is a serious overspeed event, and when considered in the context of three other accidents that occurred on Metro-North earlier this year, FRA has significant concerns with regard to the railroad's compliance with Federal railroad safety regulations and the railroad's own operating rules. These factors lead FRA to the conclusion that additional action is necessary in the form of this EO to eliminate an emergency situation

involving a hazard of death, personal injury, or significant harm to the environment.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Administrator of FRA. 49 CFR 1.89. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws. 49 U.S.C. 20101, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice ''causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment.'' 49 U.S.C. 20104. These orders may immediately impose ''restrictions and prohibitions . . . that may be necessary to abate the situation.'' *Id.*

Metro-North Spuyten Duyvil Derailment

On Sunday, December 1, 2013, Metro-North passenger train 8808 (Train 8808) was traveling south from Poughkeepsie, New York, to Grand Central Terminal in New York City. The train's crew included a locomotive engineer, a conductor, and two assistant conductors. The exact number of passengers aboard the train is not presently known. At approximately 7:20 a.m., the train derailed as it approached the Spuyten Duyvil Station in Spuyten Duyvil, Bronx, New York.[1] The train consisted of seven passenger coach cars, including a control cab locomotive in the lead position, and a conventional locomotive at the rear of the train, operating in a push-pull configuration (a control cab locomotive is both a passenger car, in that it has seats for passengers, and a locomotive, in that it has a control cab from which the engineer can operate the train). All seven cars and the trailing locomotive derailed. As of December 6, the derailment has resulted in four fatalities and over 60 reported injuries.

As is customary, the National Transportation Safety Board (NTSB) has taken the lead role in conducting the investigation of this accident pursuant to its legal authority. 49 U.S.C. 1101 et seq.; 49 CFR 800.3(a), 831.2(b). FRA is also investigating the accident. As Train 8808 approached the Spuyten Duyvil Station from the north, it traveled over a straightaway with a maximum authorized passenger train speed of 70 mph before reaching a sharp curve in the track where, by the railroad's own rules, the maximum authorized speed was reduced to 30 mph. A preliminary review of the information on the locomotive event recorders by NTSB indicates that the train was traveling approximately 82 mph as it entered the curve's 30-mph speed restriction, exceeding the maximum authorized speed on the straightaway by 12 mph, while also traveling nearly three times the railroad's maximum authorized speed for the curve.[2] Additionally, NTSB indicates that information obtained from the train's event recorders reveals that approximately six seconds before the locomotive came to a stop, the locomotive throttle was placed in idle and an application of the train's brake system was made. Prior to the derailment, Train 8808 received a pre-trip brake inspection and made nine stops. The NTSB reviewed the brake inspection records for December 1 and, to date, has found no anomalies with the train's brake system. Further, to date, no evidence has been discovered that any track-related or signal-related deficiencies contributed to the derailment.

Safety Concerns Arising Out of 2013 Metro-North Incidents

In addition to the December 1, 2013, accident discussed above, three other notable accidents occurred on Metro-North earlier this year. Two of the accidents occurred in May, and NTSB and FRA continue to investigate these accidents, and NTSB recently held a public hearing on both accidents in November 2013.[3] A third accident that occurred in July 2013 is also under investigation by NTSB and FRA.

May 17—Bridgeport, Connecticut Derailment

The first accident occurred on May 17, 2013, in Bridgeport, Connecticut, on Metro-North's New Haven line.[4] An eastbound Metro-North passenger train was traveling 74 mph on track number 4 when it derailed near milepost 53.3 and came to rest in the foul of an adjacent track. According to information obtained from locomotive event recorders, about 20 seconds later a westbound Metro-North passenger train on that adjacent track then struck the derailed train. As a result of the accident, over 50 people were transported to hospitals, and several million dollars in property damage occurred.

At the accident scene, broken compromise joint bars were found. The location where the accident had occurred was last inspected on May 15, 2013, two days prior to the accident. Metro-North's record of that inspection noted that near milepost 53.3 on track number 4 an insulated rail joint had inadequate supporting ballast and displayed indications of vertical movement of the track system under load. In April 2013, the joint bars at this location were found to have been broken and were replaced by Metro-North.[5] This accident was one of two that was the subject of FRA's Safety Advisory 2013–05, regarding joint failures on continuous welded rail track. 78 FR 47486 (Aug. 5, 2013). Safety Advisory 2013–05 made several recommendations to railroads regarding the special attention and maintenance that rail joints in continuous welded rail require, including reminding railroads of applicable Federal Track Safety Standards for such joints at 49 CFR 213.119, and the importance of proper maintenance practices to ensure that joints are adequately supported to support train loads.

May 28—West Haven, Connecticut Employee Fatality

A second accident occurred on May 28, 2013, when a Metro-North passenger train in West Haven, Connecticut was traveling 70 mph when it struck and killed a Metro-North maintenance-of-way employee who was part of a roadway work group conducting a railroad maintenance and construction project. According to NTSB's preliminary investigation, the roadway work group had established exclusive track occupancy working limits, in accordance with 49 CFR 214.321, on a controlled main track in order to conduct their work.[6] A Metro-North rail traffic controller (RTC) trainee who was training under the mentorship of a qualified RTC placed blocking devices on the computer console for the signal system to prevent trains from entering the roadway work group's exclusive track occupancy working limits. Later, the Metro-North RTC trainee apparently

[1] The train was not scheduled to stop at the Spuyten Duyvil Station.

[2] FRA regulations provide, in part, that it is unlawful to ''[o]perate a train or locomotive at a speed which exceeds the maximum authorized limit by at least 10 miles per hour.'' 49 CFR 240.305(a)(2).

[3] *See* NTSB Dockets DCA–13–MR–003 and DCA–13–MR–003; available online at *http://www.ntsb.gov/investigations/dms.html.*

[4] *See* NTSB Preliminary Report, Accident Number DCA–13–MR–003 (June 4, 2013); available online at: *http://www.ntsb.gov/investigations/2013/bridgeport_ct/Bridgeport_CT_10_day_Preliminary_Report06042013.pdf.*

[5] *See* NTSB Accident Reconstruction Animation, Derailment and Collision of Metro-North Railroad Passenger Trains 1548 and 1581; available online at: *http://www.ntsb.gov/news/events/2013/bridgeport_ct_hearing/animation.html.*

[6] *See* NTSB Recommendation R–13–17 (June 17, 2013); available online at *http://www.ntsb.gov/doclib/recletters/2013/R-13-17.pdf.*

removed the blocking devices without notifying the roadway work group.[7] After the blocking devices were removed, a train then entered the exclusive track occupancy working limits at 70 mph and struck and killed the maintenance-of-way employee. Under FRA's applicable regulations, train movements through exclusive track occupancy working limits may only be made under the direction of the roadway worker in charge of the working limits, and such movements are required to be made at restricted speed, unless a higher speed has been specifically authorized by the roadway worker in charge. 49 CFR 214.321(d). Further, FRA's regulations prohibit the release of working limits until all affected roadway workers have been notified of such release, and until all affected roadway workers have either left the track or have been afforded on-track safety through train approach warning.[8] 49 CFR 214.329(c).

The NTSB has also stated that in an unrelated incident, approximately three weeks prior to the May 28 accident in West Haven, blocking devices that were protecting an occupied track were similarly removed in error by a Metro-North RTC.[9] In response, Metro-North adopted additional procedures to prevent blocking devices from being removed in error. Despite the adoption of these additional procedures, the accident occurred in West Haven on May 28.

July 18—CSX Transportation, Inc., Freight Train Derailment

A third accident occurred on July 18, 2013, when a CSX Transportation, Inc. freight train derailed while traveling over Metro-North's system. Ten of the train's cars derailed near the Spuyten Duyvil station, and blocked tracks on Metro-North's Hudson line. No persons were injured as a result of this accident, and the NTSB is investigating to determine the accident's probable cause.

The May 17 and May 28 accidents are still under investigation, and the NTSB has not established their probable causes, and the July 18 CSX accident also remains under investigation by FRA. However, together with the December 1, 2013, accident discussed above, these accidents lead FRA to believe that a potential lack of compliance with Federal railroad safety regulations and applicable Metro-North operating rules and procedures in recent months may have caused or contributed to these serious accidents, which have resulted in five deaths and well over 100 injuries to Metro-North's passengers and employees since May. While the specific causes of these recent accidents may vary, these events are extremely concerning, and require immediate corrective actions.

Overspeed Protections

Metro-North passenger trains are normally operated with only one crewmember, a locomotive engineer, located in the cab of the passenger train's locomotive. In the case of push-pull operations, this crewmember occupies the control compartment of the passenger car (cab car) at the leading end of a train. Metro-North's conventional controlling locomotives are typically equipped with an alerter in order to help ensure the attentiveness of the locomotive engineer operating the train, while the control cab of passenger cars are typically equipped with either an alerter or a ''dead man pedal'' for the same purpose. Metro-North's locomotive controls and its signal systems also incorporate an Automatic Train Control System (ATC system), which is a train speed control system where trains may be automatically slowed or stopped if a locomotive engineer fails to comply with a signal indication.

However, at locations where there are large reductions in the maximum authorized speed that a passenger train may travel (e.g., at locations such as the sharp curve in the track where the December 1 derailment occurred) and the signal system is not implicated, Metro-North's ATC system is not currently coded to slow trains to comply with applicable speed limits. If a locomotive engineer fails to take action in accordance with applicable railroad rules to slow a train when approaching such a speed limit, Metro-North's ATC system will not slow the train to comply with the speed reduction. As a result, extreme overspeed events like the December 1 derailment can occur if the lone crewmember controlling the train fails to comply with railroad rules, and, as demonstrated, these overspeed events can have catastrophic results.

In light of the December 1 derailment that is the subject of this Order, and the other serious accidents that have occurred on Metro-North in 2013, and in an effort to immediately prevent similar incidents from occurring that could result in an emergency situation involving a hazard of death, personal injury, or significant harm to the environment, in this Order FRA is requiring that at main track locations where reductions in maximum authorized passenger train speed of greater than 20 mph occur, that Metro-North must immediately have an additional qualified employee in each train's control compartment when a train traverses each such location. A qualified employee is an individual who is qualified on the physical characteristics of the territory over which the train is operating, who is qualified on the signal systems on the territory, and who has been trained to apply the emergency brake if necessary to stop a train (e.g., a conductor, an additional locomotive engineer, or a Metro-North transportation supervisor). A qualified crewmember assigned to the train may serve as the additional qualified employee in a train's control compartment when a train traverses such locations. On trains where the control cab locomotive configuration does not permit a second qualified person to occupy the control compartment, the additional qualified person shall occupy the space immediately adjacent to the control compartment and maintain constant communication with the train's locomotive engineer. The additional qualified employee must be in (or adjacent to, where necessary) the control compartment well in advance of reaching the location where the speed reduction occurs in order to provide sufficient time to take action to control train speeds if necessary.

FRA is requiring this action as the December 1 accident demonstrates that Metro-North's existing ATC system and other existing overspeed protections are not sufficient to prevent dangerous overspeed events. The additional qualified employee located in the control compartment of Metro-North's passenger trains can take immediate actions to slow or stop passenger trains where necessary when the train's locomotive engineer or the existing ATC system fails to do so.

Metro-North must comply with this provision of the EO until it has developed and complied with an action plan to make appropriate modifications to its existing ATC system or other signal systems to enable warning and enforcement of relevant passenger train speed restrictions. FRA notes that other railroads have coded their ATC systems to prevent overspeed events from occurring at locations where civil or other speed restrictions occur. FRA is ordering Metro-North to take similar steps to prevent accidents similar to the

[7] *Id.*

[8] The applicable FRA regulation governing train approach warning requires that warning must be given to enable an affected roadway worker to occupy a place of safety not less than 15 seconds before a train moving at maximum authorized speed can pass the roadway worker's location. 49 CFR 214.329(a).

[9] NTSB Recommendation R–13–17 (June 17, 2013); available online at *http://www.ntsb.gov/doclib/recletters/2013/R-13-17.pdf.*

December 1 accident from occurring in the future if a locomotive engineer fails to take actions to appropriately slow or stop a passenger train.

Finding and Order

FRA recognizes that passenger rail transportation is generally extremely safe. However, FRA finds that the recent December 1, 2013, accident on Metro-North and the lack of overspeed protections in place on Metro-North's system create an emergency situation involving a hazard of death, personal injury, or significant harm to the environment. Accordingly, pursuant to the authority of 49 U.S.C. 20104, delegated to the FRA Administrator by the Secretary of Transportation, 49 CFR 1.89, it is hereby ordered:

1. Metro-North shall survey its entire system and identify each main track location where there is a reduction of more than 20 mph from the maximum authorized operating speed for passenger trains (identified locations), and provide a list of each location to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer (Associate Administrator) by December 10, 2013.

2. Metro-North shall develop an action plan that accomplishes each of the following:

a. Identifies appropriate modifications to Metro-North's existing ATC system or other signal systems to enable warning and enforcement of passenger train speeds at the identified locations.

b. Contains milestones and target dates for implementing each identified modification to Metro-North's existing ATC system or other signal systems to enable warning and enforcement of passenger train speeds at the identified locations.

3. The action plan must be submitted to the Associate Administrator not later than December 31, 2013. FRA will review and approve, approve with conditions, or disapprove Metro-North's action plan within 30 days of the plan's submission to FRA.

4. Once FRA approves its action plan, Metro-North must make all identified modifications to the existing ATC system or other signal systems in the timeframes and manner that comply with all conditions that FRA places on its approval of Metro-North's action plan.

5. As soon as possible, but not later than December 10, 2013, all passenger train movements at the identified locations shall be made with at least two qualified persons in the cab of the train's controlling locomotive [10] until all modifications to Metro-North's existing ATC system or other signal systems have been completed to enable warning and enforcement of passenger train speed. On trains where the control cab locomotive configuration does not permit a second qualified person to occupy the control compartment, the additional qualified person shall occupy the space immediately adjacent to the control compartment and maintain constant communication with the train's locomotive engineer. The additional qualified employee must be present well in advance of reaching each identified location in order to take action to control train speed if necessary. For purposes of this requirement, ''qualified'' means that that an employee is qualified on the physical characteristics of the territory, is qualified on the signal systems of the territory, and has been trained to apply the train's emergency brake to stop or slow the train as necessary to comply with relevant railroad operating rules or applicable Federal railroad safety regulations.

Nothing in this Order precludes FRA from using any of the other enforcement tools available to the agency under its regulatory authority to address non-compliance with the Federal railroad safety laws and regulations by Metro-North. FRA is planning to conduct an extensive investigation of Metro-North's safety compliance. If necessary, FRA may issue additional emergency orders or compliance orders, impose civil penalties against Metro-North (individuals may be liable for civil penalties for willful violations of the Federal railroad safety laws and regulations), or disqualify individuals from performing safety-sensitive functions. In addition, FRA reemphasizes the discussion in the agency's December 3, 2013, letter to the New York Metropolitan Transportation Authority, directing Metro-North to update FRA on the progress of the pending safety stand-down that will be conducted by the railroad, and also to immediately implement a confidential close call reporting system.

Relief

Metro-North may petition for special approval to take actions not in accordance with this EO. Such petitions shall be submitted to the Associate Administrator, who shall be authorized to dispose of those requests without the necessity of amending this EO. In reviewing any petition for special review, the Associate Administrator shall grant petitions only in which Metro-North has clearly articulated an alternative action that will provide, in the Associate Administrator's judgment, at least a level of safety equivalent to that provided by compliance with this EO.

Penalties

Any violation of this EO shall subject the person committing the violation to a civil penalty of up to $105,000. 49 U.S.C. 21301. Any individual who willfully violates a prohibition stated in this order is subject to civil penalties under 49 U.S.C. 21301. In addition, such an individual whose violation of this order demonstrates the individual's unfitness for safety-sensitive service may be removed from safety-sensitive service on the railroad under 49 U.S.C. 20111. If appropriate, FRA may pursue criminal penalties under 49 U.S.C. 522(a) and 49 U.S.C. 21311(a), as well as 18 U.S.C. 1001, for the knowing and willful falsification of a report required by this order. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Effective Date and Notice to Affected Persons

This EO is effective upon receipt of an electronic copy of it by Metro-North, and Metro-North shall immediately initiate steps to implement this Order in order to comply with the Order's deadlines. Metro-North must complete and submit its action plan to FRA no later than December 31, 2013. Notice of this EO will be given by providing Metro-North with a copy of the Order, and by publishing it in the **Federal Register**.

Review

Opportunity for formal review of this EO will be provided in accordance with 49 U.S.C. 20104(b) and 5 U.S.C. 554. Administrative procedures governing such review are found at 49 CFR part 211. *See* 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, DC, on December 6, 2013.

Joseph C. Szabo,

Administrator.

[FR Doc. 2013–29574 Filed 12–10–13; 8:45 am]

BILLING CODE 4910–06–P

[10] Whether the cab of a conventional locomotive or control compartment of a control cab locomotive when the train is being operated in a push-pull configuration.

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket Number: FTA–2013–0019]

Notice of Availability of Draft Guidance on the Application of United States Code to Corridor Preservation and Request for Comment

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability; request for comment.

SUMMARY: The Federal Transit Administration (FTA) announces the availability of draft guidance on the application of a new provision of the Moving Ahead for Progress in the 21st Century Act (MAP–21) regarding corridor preservation for future transit projects. MAP–21 amended Federal transit law by amending a previously existing provision such that FTA can now, under certain conditions, assist in the acquisition of right-of-way (ROW) for corridor preservation before the environmental review process for any transit project that eventually will use that ROW and permit corridor preservation with local funds, under certain conditions, for a transit project that could later receive FTA financial assistance. The draft guidance defines the form of ROW to which this MAP–21 provision applies and explains the conditions and requirements pertaining to its application. FTA requests comments on this draft guidance, which is available in the docket and on the FTA Web site.

DATES: Comments must be received by January 10, 2014.

ADDRESSES: You may submit comments to Docket No. FTA–2013–0019 by any of the following methods:

Federal eRulemaking Portal: Go to *www.regulations.gov* and follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. eastern time, Monday through Friday, except Federal holidays.

Fax: (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and the Docket Number of this notice (FTA–2013–0019) at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to *www.regulations.gov* including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

Docket: For access to the docket to read the draft guidance document and comments received, go to *www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The draft guidance itself is also available on the FTA Web site at *www.fta.dot.gov* under ''MAP–21.''

FOR FURTHER INFORMATION CONTACT: Mr. Christopher S. Van Wyk, Office of Planning and Environment, (202) 366–1733, or email to *christopher.vanwyk@dot.gov;* or Ms. Dana Nifosi, Office of Chief Counsel, (202) 366–4011, or email to *dana.nifosi@dot.gov*. Both are located at the Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 20016 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) amended Federal transit law by revising a pre-existing provision and moving it to 49 U.S.C. 5323(q) such that FTA can now, under certain conditions, assist in the acquisition of right-of-way (ROW) before the environmental review process for any transit project that will eventually use that ROW and permit corridor preservation with local funds, under certain conditions, for a transit project that would later receive FTA financial assistance. The ''environmental review process'' is defined in 23 U.S.C. 139(a)(3). The new provision of MAP–21, which became effective on October 1, 2012, states:

(q) CORRIDOR PRESERVATION.—

(1) IN GENERAL.—The Secretary may assist a recipient in acquiring right-of-way before the completion of the environmental reviews for any project that may use the right-of-way if the acquisition is otherwise permitted under Federal law. The Secretary may establish restrictions on such an acquisition as the Secretary determines to be necessary and appropriate.

(2) ENVIRONMENTAL REVIEWS.—Right-of-way acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

Prior to October 1, 2012, FTA allowed this form of corridor preservation only for pre-existing railroad ROW to be used in a future transit project, pursuant to the former provision of Federal transit law that was modified and moved by MAP–21. MAP–21 removed the word ''railroad'' from the provision formerly in 49 U.S.C. 5324(c) and moved it to 49 U.S.C. 5323(q).

In accordance with the clause in the statute that allows the Secretary to establish restrictions as necessary and appropriate, FTA has developed draft guidance to facilitate the use of this ROW provision. The draft guidance states that FTA considers the acquisition of ROW under this provision to be a separate action from the future transit project that will ultimately be built on that ROW. As a separate action, the ROW acquisition itself, if financially assisted by FTA, is subject to FTA's requirements for planning, environmental review, relocation of residents and businesses, and acquisition of the real property or real property rights. The later transit project built on that ROW, if financially assisted by FTA, would also be subject to these FTA requirements as a separate project. Under the draft guidance, FTA would not permit the acquisition of any property interests once the NEPA process has been initiated for a project that will use that real property for an alternative under review unless justified by hardship or protective proposes as defined in the FTA environmental regulation at 23 CFR 771.118(d).

FTA requests comments on the draft guidance, which is available in the docket and in the MAP–21 section of FTA's Web site at *www.fta.dot.gov*. FTA will respond to comments received on this notice in a second **Federal Register** notice to be published after the close of the comment period. The second notice will announce the availability of final guidance that reflects any changes implemented as a result of comments received.

Dated: December 4, 2013.

Peter Rogoff,

Administrator, Federal Transit Administration.

[FR Doc. 2013–29527 Filed 12–10–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Offices Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Offices Performances Review Board.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental Offices Performance Review Board (PRB). The purpose of this Board is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions in the Departmental Offices, excluding the Legal Division. The Board will perform PRB functions for other bureau positions if requested.

Composition of Departmental Offices PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the Board members are as follows:

- Bae, James J., Director, Strategic Planning & Performance Improvement
- Baukol, Andy P., Deputy Assistant Secretary for Mid-East and Africa
- Banks, Carol, Director, Office of Accounting and Internal Controls
- Berry, Elizabeth, Director, African Nations
- Blair, Anita K., Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer
- Cavella, Charles J., Deputy Assistant Secretary for Security
- Cole, Lorraine, Director, Office of Minority and Women Inclusion
- Coley, Anthony, Deputy Assistant Secretary for Public Affairs
- Dohner, Robert S., Deputy Assistant Secretary for South and East Asia
- Drysdale, David, Director, Office of Trade Finance
- East, Robyn C., Deputy Assistant Secretary and Chief Information Officer
- Farrell, Paula F., Director, Office of Policy and Legislative Review
- Gerardi, Geraldine, Director for Business and International Taxation
- Hammerle, Barbara C., Deputy Director, Office of Foreign Assets Control
- Harvey, Mariam G., Associate Chief Human Capital Officer for Civil Rights and Diversity
- Jaskowiak, Mark M., Deputy Assistant Secretary for Investment Security
- Kershbaum, Sharon, Deputy Assistant Secretary for Management & Budget
- Koide, Melissa, Deputy Assistant Secretary for the Office of Consumer Policy
- Madon, Michael P., Deputy Assistant Secretary for Intelligence Community Integration
- McDonald, William L., Deputy Assistant Secretary for Technical Assistance Policy
- Monroe, David J., Director, Office of Fiscal Projections
- Morrow, Sheryl R., Deputy Assistant Secretary for Fiscal Operations and Policy
- Ostrowski, Nancy, Director, Office of DC Pensions
- Pabotoy, Barbara, Associate Chief Human Capital Officer for Executive & Human Capital Services
- Phillips, Dawn, Associate Chief Human Capital Officer for Policy, Performance & Learning
- Reger, Mark Anthony, Deputy Assistant Secretary for Accounting Policy
- Roth, Dorrice, Deputy Chief Financial Officer
- Sobel, Mark D., Deputy Assistant Secretary for International Monetary and Financial Policy
- Steele, Charles M., Associate Director, Office of Enforcement, Office of Foreign Assets Control
- Tran, Luyen, Director, Mid-East and North Africa

DATES: *Effective Date:* Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Mario R. Minor, Senior Human Resources Specialist, 1500 Pennsylvania Avenue NW., ATTN: Room 6W529, 6th Floor, Washington, DC 20220, Telephone: 202–622–0774.

This notice does not meet the Department's criteria for significant regulations.

Barbara B. Pabotoy,

Associate Chief Human Capital Officer, Executive and Human Capital Services.

[FR Doc. 2013–29415 Filed 12–10–13; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

Composition of Departmental PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

- Nani A. Coloretti, Assistant Secretary for Management
- Daniel L. Glaser, Assistant Secretary for Terrorist Financing
- Mark Mazur, Assistant Secretary for Tax Policy
- Richard L. Gregg, Fiscal Assistant Secretary
- Rosa G. Rios, Treasurer of the United States
- Anita K. Blair, Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer
- John J. Manfreda, Administrator, Alcohol and Tobacco Tax and Trade Bureau
- Mary G. Ryan, Deputy Administrator, Alcohol and Tobacco Tax and Trade Bureau
- Jennifer Shasky-Calvery, Director, Financial Crimes Enforcement Network
- Frederick Reynolds, Deputy Director, Financial Crimes Enforcement Network
- David A. Lebryk, Commissioner, Bureau of Fiscal Service
- Wanda J. Rogers, Deputy Commissioner, Financial Services and Operations, Bureau of Fiscal Service
- Cynthia Z. Springer, Deputy Commissioner, Accounting and Shared Services, Bureau of Fiscal Service
- Larry R. Felix, Director, Bureau of Engraving and Printing
- Leonard Olijar, Deputy Director, Bureau of Engraving and Printing
- Richard A. Peterson, Deputy Director, U.S. Mint

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Julia J. Markham, Human Resources Specialist (Treasury Department Executive Resources), 1500 Pennsylvania Avenue NW., ATTN: Met Square 6W531, Washington, DC 20220, Telephone: (202) 927–4370.

This notice does not meet the Department's criteria for significant regulations.

Barbara Pabotoy,

Associate Chief Human Capital Officer, Executive and Human Capital Services.

[FR Doc. 2013–29411 Filed 12–10–13; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Assessments

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled, ''Assessment of Fees—12 CFR 8.'' The OCC is also giving notice that it has sent the collection to OMB for review.

DATES: You should submit written comments by January 10, 2014

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0223, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0223, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: You can request additional information of the collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is seeking to renew, without change, the following collection:

Title: Assessment of Fees—12 CFR 8.

OMB Control No.: 1557–0223.

Affected Public: Business or other for-profit.

Type of Review: Regular review.

Abstract: The OCC is requesting comment on its proposed extension, without change, of the information collection titled, ''Assessment of Fees—12 CFR 8.'' The OCC is authorized to collect assessments, fees, and other charges as necessary or appropriate to carry out the responsibilities of the OCC by the National Bank Act (for national banks) and the Home Owners Loan Act (for Federal savings associations). The OCC requires independent credit card banks and independent credit card Federal savings associations to pay an additional assessment based on receivables attributable to accounts owned by the bank or Federal savings association. Independent credit card banks and independent credit card Federal savings associations are national banks or Federal savings associations that primarily engage in credit card operations and are not affiliated with a full service national bank or Federal savings association. The OCC will require independent credit card banks and independent credit card Federal savings associations to provide the OCC with ''receivables attributable'' data. ''Receivables attributable'' refers to the total amount of outstanding balances due on credit card accounts owned by an independent credit card bank (the receivables attributable to those accounts) on the last day of an assessment period, minus receivables retained on the bank or Federal savings association's balance sheet as of that day. The OCC will use the information to verify the accuracy of each bank and Federal savings association's assessment computation and to adjust the assessment rate for independent credit card banks and independent credit card Federal savings associations over time.

Burden Estimates:

Estimated Number of Respondents: 9.

Estimated Number of Responses per Respondent: 2.

Estimated Time per Response: 1 hour.

Estimated Annual Burden: 18 hours.

Frequency of Response: Semiannually.

Comments: The OCC issued a notice for 60 days of comment concerning the collection. 78 FR 59096 (September 25, 2013). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 5, 2013.

Stuart E. Feldstein,

Director, Legislative and Regulatory Activities Division.

[FR Doc. 2013–29596 Filed 12–10–13; 8:45 am]

BILLING CODE 4810–33–P

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