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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM13–11–000; Order No. 794]

Frequency Response and Frequency Bias Setting Reliability Standard

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to section 215(d) of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) approves Reliability Standard BAL–003–1 (Frequency Response and Frequency Bias Setting), submitted by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization. Reliability Standard BAL–003–1 defines the amount of frequency response needed from balancing authorities to maintain Interconnection frequency within predefined bounds and includes requirements for the measurement and provision of frequency response. In addition, the Commission directs NERC to submit certain reports to address concerns discussed in the final rule.

DATES: *Effective Date:* This rule will become effective March 24, 2014.

FOR FURTHER INFORMATION CONTACT: Daniel Woldemariam (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8080, *Daniel.Woldermariam@ferc.gov.*

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SUPPLEMENTARY INFORMATION:

Order No. 794

Final Rule

Issued January 16, 2014

1. Pursuant to section 215(d) of the Federal Power Act (FPA),[1] the Commission approves Reliability Standard BAL–003–1 (Frequency Response and Frequency Bias Setting), submitted by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). Reliability Standard BAL–003–1 defines the amount of frequency response needed from balancing authorities to maintain Interconnection frequency within defined bounds and includes requirements for the measurement and provision of frequency response.[2] We find that Reliability Standard BAL–003–1 addresses an existing gap in reliability and the Commission's directives set forth in Order No. 693.[3] Reliability Standard BAL–003–1 establishes a minimum Frequency Response Obligation[4] for each balancing authority; provides a uniform calculation of frequency response; establishes Frequency Bias Settings that set values closer to actual balancing authority frequency response; and encourages coordinated automatic generation control (AGC) operation.[5] These matters are not addressed in any currently-effective Reliability Standard. Therefore, pursuant to section 215(d) of the FPA, we approve Reliability Standard BAL–003–1.[6]

2. The Commission also approves four new or revised definitions to the NERC Glossary and NERC's implementation plan and, with two exceptions, the violation risk factors and violation severity levels, and NERC's request for retirement of currently-effective Reliability Standard BAL–003–0.1b.

3. While the Commission believes that the record supports approving Reliability Standard BAL–003–1, we have concerns about certain aspects of the Reliability Standard that warrant further consideration. Therefore, the Commission directs NERC to submit two reports, and to continue its ongoing annual analysis of certain aspects of BAL–003–1[7] to address concerns regarding specific provisions of the Reliability Standard and to determine the effectiveness of Reliability Standard BAL–003–1 in providing an adequate amount of frequency response. First, no later than 15 months after implementation of the Reliability Standard, NERC shall submit a report that addresses the results and recommendations of a light-load case study of the Eastern Interconnection, using actual turbine governor response data. Second, no later than 27 months after implementation of the Reliability Standard, NERC shall submit a report(s) addressing: (1) An evaluation of the use of the linear regression methodology to calculate frequency response; and (2) the availability of resources for applicable entities to meet the Frequency Response Obligation. Depending on the results and recommendations of these reports, which should provide insight on the effectiveness of the Reliability Standard in assuring that the necessary amount of Frequency Response is available in response to system events, further

[1] 16 U.S.C. 824o(d).

[2] NERC defines ''frequency response'' in the NERC Glossary of Terms Used in Reliability Standards (NERC Glossary) as follows:

Equipment: The ability of a system or elements of the system to react or respond to a change in system frequency. *System:* The sum of the change in demand, plus the change in generation, divided by the change in frequency, expressed in megawatts per 0.1 Hertz (MW/0.1 Hz).

[3] *See Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 375, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[4] NERC defines Frequency Response Obligation as ''[t]he balancing authority's share of the required Frequency Response needed for the reliable operation of an Interconnection. This will be calculated as MW/0.1Hz.''

[5] NERC revises the definition of Frequency Bias Setting as ''[a] number, either fixed or variable, usually expressed in MW/0.1 Hz, included in a balancing authority's Area Control Error equation to account for the balancing authority's inverse Frequency Response contribution to the Interconnection, and discourage response withdrawal through secondary control systems.''

[6] In a related action, the Commission is approving regional Reliability Standard BAL–001–TRE–01 containing provisions for assuring frequency response in the ERCOT Interconnection. *See* Docket No. RD13–12–000, *North American Electric Reliability Corporation,* 146 FERC ¶ 61,025.

[7] On December 30, 2013, NERC submitted an informational filing, titled ''Annual Analysis of Frequency Response.'' NERC states that the informational filing updates the statistical analyses and calculations contained in the 2012 Frequency Response Initiative Report, attached to NERC's Petition as Exhibit F (Frequency Response Initiative Report).

refinements to the standard may be warranted. Moreover, if data indicate that sufficient resources are not available for applicable entities to meet their Frequency Response Obligation, NERC should provide that information, together with appropriate recommendations for mitigation, as this information becomes available.

4. The Commission finds NERC's December 30, 2013 ''Annual Analysis of Frequency Response'' helpful and notes NERC's statement that it intends to continue this work. Specifically, in its 2013 annual analysis, NERC states that the informational filing analyzes the impact of Remedial Action Schemes that trip more than 2,400 MW on the calculation of the Interconnection Frequency Response Obligation (IFRO) for the Western Interconnection, adjustment factors for calculating IFROs and trends in primary frequency response sustainability or withdrawal throughout frequency events. The Commission expects NERC to continue to evaluate these aspects of frequency response and include them in future annual analyses.

I. Background

A. Section 215 of the FPA

5. Section 215(c) of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards that are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by NERC, subject to Commission oversight, or by the Commission independently.[8]

B. Frequency Response and Frequency Bias Setting

6. Sufficient frequency response is necessary to stabilize frequency within an Interconnection immediately following the sudden loss of generation or load. NERC explains that ''[s]ystem frequency reflects the instantaneous balance between generation and load. Reliable operation of a power system depends on maintaining frequency within predetermined boundaries above and below a scheduled value, which is 60 Hertz (Hz) in North America.'' [9] Most frequency response is provided by the automatic and autonomous actions of turbine-governors, with some response being provided by changes in demand due to changes in frequency. Failure to maintain frequency can disrupt the operation of equipment and initiate disconnection of power plant equipment to prevent equipment from being damaged, which could lead to wide-spread blackouts.

7. Frequency response is provided in two stages, referred to as primary frequency response and secondary frequency response.

8. Primary frequency response and control involves the autonomous, automatic, and rapid action of a generator, or other resource, to change its output (within seconds) to rapidly dampen large changes in frequency. The ability of a power system to withstand a sudden loss of generation or load depends on the presence and adequacy of resources capable of providing rapid incremental power changes to counterbalance the disturbance and arrest a frequency deviation.

9. Secondary frequency response, also known as automatic generation control (AGC), is produced from either manual or automated dispatch from a centralized control system.[10] It is intended to balance generation, interchange and demand by managing the response of available resources within minutes as opposed to primary frequency response, which manages response within seconds. Frequency bias is an input used in the calculation of a balancing authority's area control error (ACE) to account for the power changes associated with primary frequency response. However, frequency bias is not the same as frequency response. Frequency Bias Setting is a secondary control setting of the AGC system, not a primary control parameter, and changes in the Frequency Bias Setting of a balancing authority do not change the primary frequency response. The Frequency Bias Setting is used in AGC to prevent premature withdrawal of generator primary frequency response following a disturbance as long as frequency is off its nominal value.[11]

C. NERC Reliability Standard BAL–003–0

10. On March 16, 2007, in Order No. 693, the Commission approved 83 of 107 Reliability Standards pursuant to FPA section 215(d), including currently-effective Reliability Standard BAL–003–0. In addition, pursuant to section 215(d)(5) of the FPA, the Commission directed NERC, among other things, to develop modifications to BAL–003–0 to address certain issues identified by the Commission. Specifically, the Commission directed NERC to:

develop a modification to BAL–003–0 through the Reliability Standards development process that: (1) includes Levels of Non-Compliance; (2) determines the appropriate periodicity of frequency response surveys necessary to ensure that Requirement R2 and other requirements of the Reliability Standard are being met, and to modify Measure M1 based on that determination and (3) defines the necessary amount of Frequency Response needed for Reliable Operation for each balancing authority with methods of obtaining and measuring that the frequency response is achieved.[12]

II. NERC Petition and Reliability Standard BAL–003–1

A. NERC Petition

11. On March 29, 2013, NERC submitted its petition seeking the Commission's approval of Reliability Standard BAL–003–1, four new or modified definitions for inclusion in the NERC Glossary, violation risk factors and violation severity levels, an implementation plan for the proposed standard, and retirement of currently-effective BAL–003–0.1b.[13]

12. The petition states that in 2010 NERC began a frequency response initiative to perform an in-depth analysis of Interconnection-wide frequency response ''to achieve a better understanding of the factors influencing frequency response across North America.'' [14] According to NERC, one of the basic objectives of the frequency response initiative included increasing coordinated communication and outreach on the issue, including webinars, and NERC alerts.[15] NERC states that it developed several reports that provide the conclusions and recommendations resulting from the frequency response initiative, which NERC includes as exhibits to its petition.[16] Further, NERC states that a detailed explanation of the development, testing, and implementation of Reliability Standard BAL–003–1 is provided in the Frequency Response Standard Background Document, included as Exhibit D to the petition.

13. NERC requests approval of the implementation plan for proposed BAL–003–1, under which: (1) Requirement R2, Requirement R3 and Requirement

[8] 16 U.S.C. 824o(e).

[9] NERC Petition at 3.

[10] NERC Petition at 11. Additional background information about the engineering concepts that pertain to frequency response is discussed in the Frequency Response Background Document, NERC Petition, Exh. D.

[11] NERC Petition at 11.

[12] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 375.

[13] Reliability Standard BAL–003–1 is not attached to this Final Rule. The complete text of Reliability Standard BAL–003–1 is available on the Commission's eLibrary document retrieval system in Docket No. RM13–11–000 and is posted on the ERO's Web site, *available at:* http://www.nerc.com.

[14] NERC Petition at 11–12.

[15] *Id.* at 12.

[16] *See* Frequency Response Initiative Report, Exh. G (Status of Recommendations), and Exh. H (Supplemental Report).

R4 would become effective the first day of the first calendar quarter that is twelve months following the effective date of this Final Rule; and (2) Requirement R1 would become effective the first day of the first calendar quarter that is twenty-four months following the effective date of this Final Rule. NERC proposes the retirement of existing Reliability Standard BAL–003–0.1b at midnight of the day immediately prior to the effective date of Requirements R2, Requirement R3 and Requirement R4 of the Reliability Standard. NERC requests approval of three new definitions and the revised definition of Frequency Bias Setting effective the first day of the first calendar quarter that is twelve months following the effective date of a Final Rule in this docket.[17]

B. Reliability Standard BAL–003–1 and NERC Explanation of Provisions

14. NERC states that the purpose of the Reliability Standard is to ensure an adequate amount of Frequency Response and also ensure that ''a Balancing Authority's Frequency Bias Setting is accurately calculated to match its actual Frequency Response.'' The Reliability Standard also is intended ''to provide consistent methods for measuring Frequency Response and determining the Frequency Bias Setting.'' [18] The Reliability Standard consists of four requirements, and is applicable to balancing authorities and Frequency Response Sharing Groups.[19]

15. Requirement R1 requires that each balancing authority or Frequency Response Sharing Group achieve an annual Frequency Response Measure [20] that is ''equal to or more negative than its Frequency Response Obligation'' needed to ensure sufficient Frequency Response. Specifically, Requirement R1 states:

> Each Frequency Response Sharing Group (FRSG) or Balancing Authority that is not a member of a FRSG shall achieve an annual Frequency Response Measure (FRM) (as calculated and reported in accordance with Attachment A) that is equal to or more negative than its Frequency Response Obligation (FRO) to ensure that sufficient Frequency Response is provided by each FRSG or BA that is not a member of a FRSG to maintain Interconnection Frequency Response equal to or more negative than the Interconnection Frequency Response Obligation.

NERC explains that Requirement R1 has the primary objective of ''determin[ing] whether a Balancing Authority has sufficient Frequency Response for reliable operations.'' [21] According to NERC, Requirement R1 achieves this objective ''via FRS [Frequency Response Survey] Form 1 and the process in Attachment A that provides the method for determining the Interconnections' necessary amount of Frequency Response and allocating it to the balancing authorities.'' [22] NERC asserts that Requirement R1 and Attachment A satisfy the Commission's directive in Order No. 693 to ''determine the appropriate periodicity of frequency response surveys necessary to ensure that Requirement R2 and other requirements of the Reliability Standard are met. . . .'' [23]

16. Requirement R2 states that:

> Each Balancing Authority that is a member of a multiple Balancing Authority Interconnection and is not receiving Overlap Regulation Service [24] and uses a fixed Frequency Bias Setting shall implement the Frequency Bias Setting determined in accordance with Attachment A, as validated by the ERO, into its Area Control Error (ACE) calculation during the implementation period specified by the ERO and shall use this Frequency Bias Setting until directed to change by the ERO.

NERC explains that setting the frequency bias to better approximate the balancing authority's natural response characteristic will improve the quality of ACE control and general AGC system control response. NERC states that the ERO, in coordination with the regions of each Interconnection, will annually review Frequency Bias Setting data submitted by the balancing authorities.

17. Requirement R3 states that:

> Each Balancing Authority that is a member of a multiple Balancing Authority Interconnection and is not receiving Overlap Regulation Service and is utilizing a variable Frequency Bias Setting shall maintain a Frequency Bias Setting that is: (1.1) Less than zero at all times, and (1.2) Equal to or more negative than its Frequency Response Obligation when Frequency varies from 60 [Hertz] Hz by more than +/− 0.036 Hz.

NERC explains that, in an Interconnection with multiple balancing authorities, the Frequency Bias Setting should be coordinated among all balancing authorities in the Interconnection. According to NERC, when there is a minimum Frequency Bias Setting requirement, it should apply for all balancing authorities. However, balancing authorities using a variable Frequency Bias Setting may have non-linearity in their actual response for a number of reasons including the deadband settings of their generator governors. The measurement to ensure that these balancing authorities are conforming to the Interconnection minimum is adjusted to remove the deadband range from the calculated average Frequency Bias Setting actually used.[25]

18. Requirement R4 states that:

> Each Balancing Authority that is performing Overlap Regulation Service shall modify its Frequency Bias Setting in its ACE calculation, in order to represent the Frequency Bias Setting for the combined Balancing Authority area, to be equivalent to either:
> • the sum of the Frequency Bias Settings as shown on FRS Form 1 and FRS Form 2 for the participating Balancing Authorities as validated by the ERO, or
> • the Frequency Bias Setting shown on FRS Form 1 and FRS Form 2 for the entirety of the participating Balancing Authorities' areas.

[17] NERC proposes to retire the existing definition of Frequency Bias Setting at midnight of the day immediately prior to the effective date of Requirement R2, Requirement R3, and Requirement R4 of the Reliability Standard.

[18] NERC Petition at 15. *See also* Reliability Standard BAL–003–1, Purpose Statement:

> To require sufficient Frequency Response from the balancing authority (BA) to maintain Interconnection Frequency within predefined bounds by arresting frequency deviations and supporting frequency until the frequency is restored to its scheduled value. To provide consistent methods for measuring Frequency Response and determining the Frequency Bias Setting.

[19] NERC defines Frequency Response Sharing Group as ''[a] group whose members consist of two or more Balancing Authorities that collectively maintain, allocate, and supply operating resources required to jointly meet the sum of the Frequency Response Obligations of its members.'' NERC Petition at 13. The Reliability Standard allows balancing authorities to cooperatively form Frequency Response Sharing Groups as a means to jointly meet the obligations of the standard. *Id.*

[20] NERC defines Frequency Response Measure as ''[t]he median of all the frequency response observations reported annually by Balancing Authorities or Frequency Response Sharing Groups for frequency events specified by the ERO. This will be calculated as MW/0.1Hz.''

[21] NERC Petition at 15.

[22] *Id.* NERC explains that ''Attachment A (appended to the proposed standard) is a supporting document for Reliability Standard BAL–003–1 that discusses the process the ERO will follow to validate the Balancing Authority's FRS Form 1 data and publish the official Frequency Bias Settings. FRS Form 1 provides the guidance as to how to account for and measure Frequency Response. FRS Form 1, and the underlying data retained by the balancing authority, will be used for measuring whether sufficient Frequency Response was provided.'' NERC Petition at 4.

[23] *Id.* at 16 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 375).

[24] NERC explains that overlap regulation service is a method of providing regulation service in which a balancing authority incorporates another balancing authority's actual interchange, frequency responses, and schedule into the providing balancing authority's AGC/ACE equation. NERC Petition at 21.

[25] NERC Petition at 20. NERC further states that ''For [balancing authorities] using variable bias, FRS Form 1 has a data entry location for the previous year's average monthly Bias. The [balancing authority] and the ERO can compare this value to the previous year's Frequency Bias Setting minimum to ensure Requirement R3 has been met.'' Id.

NERC states that Requirement R4 is similar to Requirement R6 in the currently-effective BAL–003–0.1b.

III. Notice of Proposed Rulemaking

19. On July 18, 2013, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to approve Reliability Standard BAL–003–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.[26] The Commission also proposed to approve three new definitions and the revised definition of Frequency Bias Setting, all but one of the associated violation risk factors, most violation severity levels, the implementation plan, effective date, and the retirement of the ''Version 0'' Standard BAL–003–0.1b. The NOPR stated that the Reliability Standard establishes a minimum Frequency Response Obligation and addresses other related matters that are not addressed in any currently-effective Reliability Standard.

20. While the Commission proposed to approve Reliability Standard BAL–003–1, the Commission raised concerns regarding certain provisions of the proposed standard, some of which NERC itself identified in the reports included in its petition. In the NOPR, the Commission sought comments on the following issues: (1) In Requirement R1, the use of the median statistical method in the calculation of Frequency Response Measure, i.e., selecting the middle value in a set of data that is arranged in an ascending or descending order; (2) the potential for early withdrawal of primary frequency response before secondary frequency response is activated; (3) the need to study frequency response during light-load conditions; (4) whether the resource contingency criteria in the Western Interconnection is properly identified; and (5) the need to adequately ensure that each balancing authority has available the resources it needs to meet its frequency response obligation.[27]

21. In response to the NOPR, the Commission received comments from: NERC, Midcontinent Independent System Operator (MISO), Electricity Consumers Resource Council (ELCON), ISO/RTO Council (IRC), Arizona Public Service Company (APS), Bonneville Power Administration (BPA), and Trade Associations.[28] On October 15, 2013, NERC submitted reply comments. We address below the issues raised in the NOPR and comments.

IV. Discussion

22. Pursuant to FPA section 215(d), we approve Reliability Standard BAL–003–1 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Reliability Standard establishes a minimum Frequency Response Obligation for each balancing authority; provides a uniform calculation of frequency response; establishes Frequency Bias Settings that are closer to actual balancing authority frequency response; and encourages coordinated automatic generation control operation. The Reliability Standard addresses an existing gap in reliability, as these matters are either not covered, or not adequately addressed, in any currently-effective Reliability Standard. Further, Reliability Standard BAL–003–1 adequately addresses certain directives from Order No. 693. We also approve the new and modified definitions and, with two exceptions, the proposed violation severity levels and violation risk factors, and retirement of the currently-effective standard and NERC's implementation plan.

23. We discuss below the following issues raised in the NOPR and addressed in the comments: (A) The use of the median statistical method in determining the Frequency Response Measure; (B) the determination of Interconnection Frequency Response Obligation; (C) methods of obtaining frequency response; (D) withdrawal of primary frequency response before secondary frequency response is activated; (E) development of a new light-load case study; (F) assignment of violation risk factors and violation severity levels; and (G) associated and supporting documents.

A. Use of the ''Median'' in Determining the Frequency Response Measure NERC Petition

24. As discussed above, Requirement R1 of Reliability Standard BAL–003–1 provides that each balancing authority or Frequency Response Sharing Group achieve an annual Frequency Response Measure that is equal to or more negative than its Frequency Response Obligation needed to ensure sufficient frequency response. NERC proposed to define the Frequency Response Measure as ''the median of all the Frequency Response observations reported annually by balancing authorities or Frequency Response Sharing Groups for the frequency events specified by the ERO.'' [29] NERC defines the ''median'' as ''the numerical value separating the higher half of a one-dimensional sample, a one-dimensional population, or a one-dimensional probability distribution from the lower half. The median of a finite list of numbers is found by arranging all the observations from lowest value to highest value and picking the middle one.'' [30]

25. NERC stated in its petition that the standard drafting team evaluated different approaches for averaging individual event observations to compute a technically sound estimate of Frequency Response Measure, including median and linear regression analysis.[31] Explaining why the drafting team chose to use the median, NERC stated:

> In general, statisticians use the median as the best measure of a central tendency when a population has outliers. Based on the analyses performed thus far, the standard drafting team believes that the median's superior resiliency to this type of data quality problem makes it the best aggregation technique at the time. However, the standard drafting team sees merit and promise in future research with sample filtering combined with a technique such as linear regression. When compared with the mean, linear regression shows superior performance with respect to the elimination of noise because the measured data is weighted by the size of the frequency changes associated with the event. The standard drafting team acknowledges that linear regression should be re-evaluated for use in the BAL–003 Reliability Standard once more experience is gained with data collected.[32]

NOPR

26. In the NOPR, the Commission stated that NERC provided adequate rationale for using the median to determine the required Frequency Response Measure.[33] The NOPR also

[26] *Frequency Response and Frequency Bias Setting Reliability Standard,* Notice of Proposed Rulemaking, 78 FR 45479 (July 29, 2013), 144 FERC ¶ 61,057 (2013) (NOPR).

[27] On July 18, 2013 the Commission issued a Notice of Request for Comments (Docket No. AD13–8) concerning the market implications of frequency response and frequency bias setting requirements. *See Market Implications of Frequency Response and Frequency Bias Setting Requirements,* 144 FERC ¶ 61,058 (2013).

[28] The Trade Associations group consists of Edison Electric Institute (EEI), National Rural Electric Cooperative Association (NRECA), American Public Power Association (APPA) and Electric Power Supply Association (EPSA).

[29] NERC Petition at 13.

[30] Frequency Response Initiative Report at 72. NERC developed a procedure for selecting frequency response observations. *See* NERC Petition, Exh. C (Procedure for ERO Support of Frequency Response and Frequency Bias Setting Standard). The Procedure is referenced, but not included, in Attachment A of Reliability Standard BAL–003–1.

[31] NERC Petition at 17–18. The Frequency Response Initiative Report defines the linear regression method as the linear average of a multi-dimensional sample, or a multi-dimensional population. *See id.,* Exh. F at 73.

[32] *Id.* at 17–18 (footnote omitted). *See also id.,* Exh. F at 72–78. NERC explained that the ''noise'' refers to factors that can influence data and produce outliers. *Id.* at 18, n.34.

[33] NOPR, 144 FERC ¶ 61,057 at P 26.

noted NERC's explanation that application of the median is supported by the analyses performed to date.[34] Therefore, the Commission proposed to approve BAL–003–1 on that basis.

27. However, in the NOPR, the Commission expressed concern ''whether use of the median adequately represents actual data that could, on occasions, be significantly higher or lower than the median.'' [35] Further, the Commission noted the standard drafting team's support for re-evaluating the use of linear regression when more experience is gained with Reliability Standard BAL–003–1. Accordingly, the Commission proposed to direct NERC to develop a modification to Reliability Standard BAL–003–1 to replace use of the median with a ''more appropriate methodology,'' suggesting that ''based on the record in this docket, it appears that the linear regression method is superior to the median when determining the Frequency Response Measure.'' [36]

Comments

28. NERC, IRC and Trade Associations disagree with the NOPR proposal, and support use of the median statistical measure. NERC states that the Commission's proposed directive to develop a modification to the methodology for determining the Frequency Response Measure is premature. NERC asserts that the standard drafting team evaluated different approaches for averaging individual event observations to compute a technically sound estimate of Frequency Response Measure, including the median and linear regression analysis. NERC also notes that, in the NOPR, the Commission indicated that NERC provided adequate rationale for using the median to determine the required Frequency Response Measure, and that use of the median is supported by the analyses performed to date.[37]

29. Trade Associations and IRC also disagree with the Commission's proposal to direct NERC to develop a modification to the proposed standard and assert that the standard drafting team selected the most appropriate methodology. Trade Associations assert that the standard drafting team's reasoning was ''well thought out and balanced considering the advantages and disadvantages of both approaches (i.e., 'median' and 'linear regression').'' [38] Trade Associations understand that the standard drafting team evaluated both methods and found that the median approach consistently produced a more conservative Frequency Response Measure value, and was significantly less likely to result in calculation errors. Thus, Trade Associations support the median methodology because ''it is far better to err on the side of having slightly more available reserves than not having enough.'' [39] Finally, Trade Associations and IRC comment that that the median methodology is less complicated and will minimize the compliance risks and resource burdens of applicable entities. IRC notes that the frequency response measurement process is easily susceptible to distortion due to a very large noise to signal ratio, and that use of the median discards such ''outliers,'' while results from linear regression may be skewed by such ''noise.''

30. BPA raises a concern that use of the median method for determining the Frequency Response Measure ''gives equal weight to large and small disturbances.'' [40] In particular, BPA expresses concern with NERC's proposal to use 20 to 30 events per year for calculating the Frequency Response Measure because targeting a fixed number of events per year may lead to using relatively small (less than 400 MW) events in frequency response calculations. BPA asserts that extrapolating from these small events to large events could lead to misleading indications of the Interconnection and balancing authority's performance during large events and ''undermine the intent'' of the Reliability Standard.[41] BPA recommends the following specific revisions to the frequency response measurement proposal: (1) Use resource loss events equal to or greater than 1,000 MW or events with frequency deviations below 59.9 Hz for calculating frequency response, rather than a fixed number of events per year; and (2) use the smallest of actual maximum design frequency or the maximum design delta from NERC Table 1 Interconnection Frequency Response Obligation.

31. In reply comments, NERC responds to BPA's proposed revisions, stating that the values in Table 1 are not static and are revised on an annual basis pursuant to a written process for identifying candidate frequency events and an annual review of the calculations. Further, NERC explains that the methodology set forth in Table 1 of Attachment A to Reliability Standard BAL–003–1 is based on frequency and not the size of events, as suggested by BPA.

Commission Determination

32. The Commission does not adopt the NOPR proposal that NERC develop a modification to replace the use of the median with a more appropriate methodology and, instead, approves the use of the median methodology to determine the required Frequency Response Measure as set forth in Reliability Standard BAL–003–1. As indicated by NERC, the standard drafting team considered various approaches for averaging individual event observations to compute a technically sound estimate of Frequency Response Measure and determined that ''the median's superior resiliency to this type of data quality problem [i.e., a data set with outliers] makes it the best aggregation technique at the time.'' [42] We also see merit at this time in IRC's explanation that the frequency response measurement process is susceptible to distortion due to a large noise to signal ratio, and that use of the median discards such ''outliers.'' Accordingly, we are persuaded that, based on this record, there is sufficient justification for NERC's use of the median method for determining the required Frequency Response Measure in the initial implementation of Reliability Standard BAL–003–1.

33. Further, with respect to BPA's concerns regarding NERC's process for determining the appropriate Frequency Response Measure, we agree with NERC's explanation that NERC has developed an acceptable methodology for identifying candidate frequency events and an annual review of the calculations.[43] The methodology developed by NERC is based on frequency and not the size of events. Therefore, if any revisions are necessary, as BPA suggests, they can be implemented via this established review process.[44]

34. In addition, while the use of the median provides an adequate initial means to achieve the objectives of Reliability Standard BAL–003–1, we continue to believe that over the long term the Reliability Standard can be improved by adopting the linear method.[45] However, we are persuaded

[34] *Id.* P 25 (citing NERC Petition at 17–18).

[35] *Id.* P 27.

[36] *Id.*

[37] NERC Comments at 5.

[38] Trade Associations Comments at 5; *see also* IRC Comments at 4.

[39] Trade Associations Comments at 5.

[40] BPA Comments at 2.

[41] *Id.*

[42] NERC Petition at 17–18.

[43] NERC Reply Comments at 3–4.

[44] *Id.*

[45] *See* NOPR, 144 FERC ¶ 61,057 at P 27. One of the recommendations contained in NERC's Frequency Response Initiative Report states that

Continued

by the comments of NERC and others that adopting the linear regression method will insert an additional level of complexity to the process, and a directive to that effect would be premature. Accordingly, as stated above, we do not adopt our NOPR proposal to direct that NERC immediately develop a modification to Reliability Standard BAL–003–1 to calculate the Frequency Response Measure using linear regression. Rather, the Commission acknowledges NERC's commitment to studying the use of linear regression [46] and the analysis contained in the Frequency Response Initiative Report,[47] and directs NERC to continue its evaluation of the use of the linear regression methodology based upon experience and data collected following the implementation of BAL–003–1 and to submit a report to the Commission within three months after two years of operating experience once Requirement R1 of BAL–003–1 becomes effective (i.e., 27 months from the effective date of Requirement R1). The report should assess the accuracy of the linear regression methodology compared to the median methodology for purposes of determining Frequency Response Measure. Based on this report and actual experience, the Commission may revisit this issue.

B. Determination of Interconnection Frequency Response Obligation NERC Petition

35. Reliability Standard BAL–003–1 establishes an Interconnection Frequency Response Obligation designed to require sufficient frequency response for each Interconnection to arrest frequency decline even for severe, but possible, contingencies. The methodology for determining each Interconnection's obligation for obtaining the necessary amount of frequency response is set forth in Attachment A of the Reliability Standard. The Interconnection Frequency Response Obligation is based on the ''resource contingency criteria,'' which is the largest ''Category C'' event for the Interconnection,[48] except for the Eastern Interconnection, which uses the largest event and maximum actual change in frequency in the last ten years.[49] The maximum change in frequency is calculated by adjusting the starting frequency for each Interconnection by the ''prevailing UFLS first step,'' i.e., under-frequency load shedding for the Interconnection as adjusted by specific information on the frequency deviations for the observed events which make up the data-set used to calculate the Frequency Response Measure.[50] For multiple balancing authority Interconnections, the Frequency Response Obligation is allocated to balancing authorities based on the formula set forth in Attachment A. FRS Form 1 and the underlying data retained by the balancing authorities are used for measuring whether frequency response was provided.

NOPR

36. In the NOPR, with respect to the determination of the Interconnection Frequency Response Obligation, the Commission discussed two matters: (1) Eastern Interconnection—prevailing first step of under-frequency load shedding and (2) Western Interconnection—identifying the largest N–2 contingency.

1. Eastern Interconnection—Prevailing UFLS First Step

37. For the Eastern Interconnection, Attachment A to the Reliability Standard identifies 59.5 Hz as the ''first step'' of under-frequency load shedding in the calculation of the default Interconnection Frequency Response Obligation. Attachment A notes that this set point is ''a compromise value set midway between the stable frequency minimum established in Reliability Standard PRC–006–1 (59.3 Hz) and the local protection under frequency load shedding setting of 59.7 Hz used in Florida and Manitoba.'' [51] The NERC Frequency Response Initiative Report notes that the Florida Reliability Coordinating Council (FRCC) concluded that the Interconnection Frequency Response Obligation starting frequency of the prevalent 59.5 Hz for the Eastern Interconnection is acceptable because it imposes no greater risk of triggering under-frequency load shedding operation for contingencies internal to FRCC than for contingencies external to FRCC.[52]

38. Noting that the actual first-step of under-frequency load shedding for the Eastern Interconnection is 59.7 Hz, the NOPR sought comment on the technical source or support for NERC's statement that the first-step value of 59.5 Hz in the calculation of the Interconnection Frequency Response Obligation imposes no greater risk of under-frequency load shedding operation in FRCC for an external resource loss than for an internal FRCC event. Also, the NOPR sought clarification of whether the intent of the proposal is that FRCC will start shedding load automatically before an event meets the value of 59.5 Hz used in the Reliability Standard to determine the Interconnection Frequency Response Obligation.

Comments

39. NERC, Trade Associations, and MISO submitted comments in support of using the prevailing under-frequency load shedding first step for the Eastern Interconnection of 59.5 Hz. Trade Associations state that they understand that FRCC has evaluated the impact of the proposed standard and has determined that the probability of a load shedding event caused by a generation loss within the Eastern Interconnection is comparable with an event internal to the FRCC region.[53]

40. NERC comments that FRCC's 59.7 Hz under-frequency load shedding setting is designed to arrest dynamic transients for system events occurring on the Florida peninsula to avoid separation from the rest of the Eastern Interconnection. NERC states that further analysis by NERC showed that the under-frequency load shedding settings on the Florida peninsula are not susceptible to activation even by very large resource losses within the main body of the Eastern Interconnection. NERC explains that ''[u]sing the 'generic' dynamics case available, a follow-on analysis was performed by NERC staff to determine the general order of magnitude of a frequency event that could be sustained by the Eastern Interconnection without violating the 59.7 Hz first step under-frequency load shedding in FRCC. A simulation was run that tripped about 8,500 MW of generation in the southeast United

''[l]inear regression is the method that should be used for calculating Balancing Authority Frequency Response Measure (FRM) for compliance with Standard BAL–003–1–Frequency Response.''

[46] NERC Comments at 6 and NERC Petition at 18, fn. 35.

[47] *See* NERC Petition at 17–18; *see also id.,* Exh. F at 72–78.

[48] *See* Reliability Standard BAL–003–1, Attachment A at 1. Category C events are defined in Reliability Standard TPL–003–0 (System Performance Following Loss of Two or More Bulk Electric System Elements), Table 1.

[49] For the Eastern Interconnection, the largest event in the last ten years is the loss of 4,500 MW of generation, which occurred on August 4, 2007. *See* Reliability Standard BAL–003–1, Attachment A at 1; Frequency Response Initiative Report at 34–37, 54.

[50] *Id.* Under-frequency load shedding is intended to be a safety net to prevent against system collapse from severe contingencies. The resource contingency criterion is selected to avoid violating the under-frequency load shedding settings. *See* NERC Petition, Exh. D at 36 (''in general, the goal is to avoid triggering the first step of under-frequency load shedding (UFLS) in the given Interconnection for reasonable contingencies expected'').

[51] Reliability Standard BAL–003–1, Attachment A at 2.

[52] *See* Frequency Response Initiative Report at 4, n.3.

[53] Trade Association Comments at 6.

States (north of Florida).'' [54] NERC further states that the simulation showed that the lowest frequency resulting from that event would be about 59.76 Hz in southern Florida.

41. NERC further states that the initial nadir of 59.78 Hz in southern Florida from the simulation is lower than the nadir in northern Florida due to the wave properties of the disturbance.[55] Finally, NERC asserts that because the simulation was conducted with nearly twice the 4,500 MW resource loss used to determine the Interconnection Frequency Response Obligation for the Eastern Interconnection, it is prudent to conclude that the smaller resource loss could not generate a transient or momentary system disturbance that would trip the FRCC 59.7 Hz under-frequency load shedding. For these reasons, NERC concludes that the proposed first-step value of 59.5 Hz is adequately supported by technical considerations.[56]

42. MISO also supports the proposed first-step value of 59.5 Hz for the Eastern Interconnection and asserts that NERC has provided sufficient support for using the 59.5 Hz value. According to MISO, the FRCC 59.7 Hz frequency value reflects local concerns specific to Florida, based on the observation that an event in Florida causes a wider frequency swing locally than what propagates out to the rest of the Eastern Interconnection. MISO asserts that there has been no recorded case of frequency in the Eastern Interconnection declining to 59.7 Hz.[57] MISO further submits that, given the localized nature of the concerns supporting the first-step value in Florida, and the extreme nature of the event that would be required to drive Interconnection-wide impact, NERC has sufficient justification for establishing 59.5 Hz as the first-step value for the Eastern Interconnection.

Commission Determination

43. The Commission accepts NERC's and MISO's explanation of the technical support for using 59.5 Hz as the ''first step'' of under-frequency load shedding in the calculation of the default Interconnection Frequency Response Obligation. The Commission also agrees with Trade Associations' assertion that FRCC has evaluated the impact of the proposed standard and has determined that the probability of a load shedding event caused by a generation loss within the Eastern Interconnection is comparable with an event within the FRCC region. Accordingly, the Commission is satisfied with the NOPR responses and takes no further action on this matter.

2. Western Interconnection—Largest N–2 Event NERC Petition

44. The Interconnection Frequency Response Obligation is based on the largest Category C event, or N–2 (loss of two or more bulk electric system elements) for the Interconnection. The default Interconnection Frequency Response Obligation for the Western Interconnection is based on the loss of two Palo Verde generating station units, which results in a resource contingency criterion of 2,740 MW.[58] NERC indicated in its petition that the default Interconnection Frequency Response Obligation calculation scenarios and the calculation of the Frequency Response Measure for the Western Interconnection do not take into account the intentional tripping of generation that will occur during the operation of specific remedial action schemes. According to the Frequency Response Initiative Report, operation of the Pacific Northwest Remedial Action Scheme trips up to 3,200 MW of generation in the Pacific Northwest due to the loss of the Pacific DC Intertie.[59] The Frequency Response Initiative Report recommends that NERC and the Western Interconnection analyze the Frequency Response Obligation allocation implications of the activation of the Pacific Northwest Remedial Action Scheme that trips 3,200 MW of generation for a single contingency.[60]

NOPR

45. In the NOPR, the Commission expressed concern regarding whether the N–2 contingency identified as an input to the Attachment A methodology for calculating the Interconnection Frequency Response Obligation accurately identifies the largest N–2 event in the Western Interconnection. The NOPR referenced the Frequency Response Initiative Report, which indicates that the Pacific Northwest Remedial Action Scheme could result in a larger contingency that, if included as an input to the Attachment A calculation, would produce more accurate results.[61] Accordingly, the Commission proposed in the NOPR to direct NERC to submit a report that analyzes, with supporting documentation, the implications of the Pacific Northwest Remedial Action Scheme or any other Remedial Action Scheme which involves intentional tripping of greater than 2,400 MW of generation, and whether such a contingency would provide a more accurate basis for the determination of the Western Interconnection default Interconnection Frequency Response Obligation.

Comments

46. Trade Associations comment that they recognize the Commission's issue and have no concerns with a directive mandating the ERO to study the implications of the Pacific Northwest Remedial Action Scheme and other similar arrangements that intentionally involve the tripping of greater than 2,400 MW of generation.

47. BPA comments that ''[Remedial Action Scheme] events should not determine the Resource Contingency Criteria in the Western Interconnection'' because, *inter alia,* simulation of Remedial Action Scheme events and two Palo Verde events show similar system frequency performance and ''RAS events off-load the system stress . . . while an unplanned 2 Palo Verde unit outage would increase the system stress.'' [62]

Commission Determination

48. In light of NERC's December 30, 2013 annual analysis informational filing, we will not adopt our NOPR proposal. In its 2013 annual analysis NERC explains that ''[Remedial Action Schemes] in the Western Interconnection that trip generation resources in excess of 2,400 MW for transmission system contingencies should not be used for the resource contingency protection criteria for the Western Interconnection. Because of the location of the resources tripped and the fact that [Remedial Action Schemes] would not be armed to trip those levels of generation under peak conditions, the loss of two Palo Verde units is a larger hazard to the interconnection.'' [63] Accordingly, the Commission will not direct NERC to submit a report concerning the implications of the Pacific Northwest Remedial Action Scheme or any other Remedial Action

[54] NERC Comments at 13.

[55] The ''nadir'' is the lowest point at which frequency excursion is arrested. Frequency Response Initiative Report at 13.

[56] NERC Comments at 14.

[57] MISO Comments at 5.

[58] *See* Frequency Response Initiative Report at 53.

[59] The Pacific Northwest Remedial Action Scheme, among other things, blocks frequency response from a number of generators and Balancing authorities to avoid overloading the Pacific AC ties. *See* Frequency Response Initiative Report at 62.

[60] *See id.* NERC noted that the maximum value of the Pacific Northwest Remedial Action Scheme has been updated to be 2,850 MW. *See* NERC Petition, Exh. G (Status of Recommendations of the Frequency Response Initiative Report).

[61] *See* NOPR, 144 FERC ¶ 61,057 at P 32.

[62] *See* BPA Comments at 7 (providing additional rationale for not considering Remedial Action Scheme events).

[63] NERC's 2013 Annual Analysis at 2.

Scheme which involves intentional tripping of greater than 2,400 MW of generation, and whether such a contingency would provide a more accurate basis for determining the Western Interconnection default Interconnection Frequency Response Obligation. We expect, however, that NERC will continue to study any modified or new Remedial Action Schemes that may have an impact greater than the tripping of 2,400 MW in its annual frequency response analysis, including an assessment of the adequacy of the resource contingency protection criteria for the Western Interconnection.

49. While BPA advocates that Remedial Action Schemes should not be considered in determining the Interconnection Frequency Response Obligation, BPA did not provide support in the record for its claim that activation of Remedial Action Schemes will reduce system stress while the loss of two Palo Verde units will increase it. Contrary to BPA's argument, we believe that it is appropriate to study this matter, as NERC has done, and take possible future action depending on study results because if the obligation is set too low, the Western Interconnection may not have sufficient frequency response to arrest frequency decline.

C. Method of Obtaining Frequency Response

50. In Order No. 693, the Commission directed NERC to develop a modification to BAL–003–0 that includes methods for obtaining frequency response.[64] While the Reliability Standard establishes an Interconnection Frequency Response Obligation and allocates this obligation to the balancing authorities within the Interconnection, the Reliability Standard imposes no obligation on resources that are capable of providing frequency response.

NOPR

51. In the NOPR, the Commission stated that Reliability Standard BAL–003–1 imposes an obligation, subject to compliance and enforcement, on each balancing authority to obtain frequency response. The Commission recognized, however, that balancing authorities must obtain frequency response from other entities with available resources, and Reliability Standard BAL–003–1 imposes no obligation on those entities to provide frequency response.

52. In the NOPR, the Commission proposed to direct NERC to submit a report 15 months after implementation of BAL–003–1 that provides an analysis of the availability of resources for each balancing authority to meet its Frequency Response Obligation during the first year of implementation.[65] The Commission also proposed that the report provide data indicating whether actual frequency response was sufficient to meet each balancing authority's Frequency Response Obligation. Further, the NOPR proposed that, if NERC's findings indicate that the Frequency Response Obligation was not met, NERC should provide appropriate recommendations to ensure that frequency response can be maintained at all times within each balancing authority's footprint.

Comments

53. NERC, Trade Associations, IRC, APS, and ELCON generally support the Commission's proposal that NERC submit a report regarding the availability of resources for frequency response. Trade Associations comment that they ''recognize the potential benefit of such a study,'' but suggest that 20 to 24 months is a more reasonable time frame for a directive. Trade Associations also ask the Commission to exercise care when directing NERC to conduct studies to ensure that scarce resources are not expended unnecessarily.

54. NERC commits to submitting an analysis of resource availability as proposed in the NOPR. However, NERC provides a detailed timeline for implementation and indicates that it will not receive the necessary information from responsible entities until March 24 of the year following the implementation of Requirement R1 of BAL–003–1, beyond the 15 month time frame proposed in the NOPR. Thus, NERC proposes to submit the report ''within six months of the validation by the ERO of the Frequency Bias Setting values and computation of the sum of all Frequency Bias Setting values for each Interconnection and determination of the L 10 values for the CPS 2 criterion for each Balancing Authority or, if applicable, confirmation of the Frequency Bias Setting to be used for the calculation of the Balancing Authority ACE limit.'' [66] NERC also seeks clarification that the study should analyze the availability of resources for both balancing authorities and Frequency Response Sharing Groups, since the latter was not specifically mentioned in the NOPR proposal. NERC states that, upon completion of the analysis, ''should the findings indicate that the Frequency Response Obligation was not met, NERC will provide appropriate recommendations.'' [67]

55. Several commenters, including IRC, APS and BPA, raise concerns regarding the compliance responsibilities of balancing authorities to meet a Frequency Response Obligation. IRC asserts that BAL–003–1 creates an inequitable alignment of compliance responsibility and generator performance capability. IRC states that while the obligation to meet the frequency response requirements lies with the balancing authority, the ability to provide the resources necessary to meet those obligations lies primarily with generators. Therefore, while IRC supports the analysis proposed in the NOPR, IRC also requests that the Commission direct prospective revisions to the Reliability Standard to assign responsibilities based on performance capability. IRC contends that this approach is appropriate because balancing authorities have no control over generators' performance in supporting the Frequency Response Obligation assigned to balancing authorities.

56. BPA agrees with the Commission that Reliability Standard BAL–003–1 does not address the ability of each balancing authority to ensure adequacy of resources to meet its frequency response obligations. According to BPA, there is a proposal in WECC to develop a regional Reliability Standard complementary to NERC BAL–003–1 to address this gap. BPA comments that, until such a standard is developed, each balancing authority must determine how to meet its own frequency response obligation. BPA states that this frequency response, measured by balancing authority interchange, includes not only the response of balancing authority generation but also incremental transmission losses and natural load response to voltage and frequency.[68] Finally, BPA asserts that balancing authorities that have to acquire resources will also need to develop monitoring capabilities to ensure that the contracted resources provide frequency response and that such monitoring will further increase the cost of compliance with Reliability Standard BAL–003–1.

[64] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 375. The Commission directed NERC to develop a modification to BAL–003–0 that ''defines the necessary amount of Frequency Response needed for Reliable Operation for each balancing authority with methods of *obtaining* and measuring that the frequency response is achieved.'' *Id.* (emphasis added).

[65] NOPR, 144 FERC ¶ 61,057 at P 34.

[66] NERC Comments at 16 (footnote omitted).

[67] *Id.* at 17.

[68] BPA Comments at 20.

57. APS believes it is appropriate for NERC to study and report on the availability of resources. However, APS asserts it is neither just nor reasonable for a balancing authority to be held to this requirement when frequency response services are simply not available. APS states that until such time that NERC has completed the studies, the results are reviewed, and appropriate solutions are developed to assure that affected entities have the resources available to comply under all conditions, either the implementation of the requirements should be delayed, or in the alternative, those balancing authorities who cannot obtain the required frequency response should be exempt from the proposed requirements.

58. APS also proposes that the Commission take a phased-in approach to compliance obligations to allow adequate time for necessary activities such as testing generation units for ramp-up capability, tuning generation and retesting, as well as time to allow a frequency response market to develop. APS comments that the types of resources a balancing authority has in its portfolio may significantly impact its ability to comply with BAL–003–1 because some resources, such as hydroelectric generation, are more effective in responding to frequency declines. APS asserts that it does not have sufficient fast-ramping resources to provide the required frequency response should the Western Interconnection experience an event that results in significant frequency response deviation. To address its concern, APS suggests a revision to the definition of a Balancing Authority's ''annual generation'' to exclude non-responsive units and apply a higher weighting factor for responsive units. According to APS, this revision would align the allocation of Frequency Response Obligation with a generator's physical ability to provide it.

59. In its reply comments, NERC responds to APS, stating that the standard drafting team determined technical evidence indicates that sufficient frequency response resources would be available for balancing authorities to comply with the requirements of Reliability Standard BAL–003–1.[69] Therefore, NERC contends that there is no need to adjust the implementation plan for Reliability Standard BAL–003–1 on the basis of availability.[70] Further, NERC disagrees with APS's suggestion to revise the definition of balancing authority ''annual generation,'' contending that such a change would create a ''perverse incentive'' for entities to install generating units that are not capable of providing Frequency Response. Further, NERC explains in response to APS that the Reliability Standard is appropriately technology- neutral, does not require every generator to respond and provide Frequency Response, and allows for flexibility since Frequency Response is measured on a balancing authority and an Interconnection-wide basis and permits the formation of Frequency Response Sharing Groups.

Commission Determination

60. The Commission adopts the NOPR proposal and directs NERC to submit a report that provides an analysis of the availability of resources for each balancing authority and Frequency Response Sharing Group to meet its Frequency Response Obligation during the first year of implementation. However, NERC indicates in its comments that it needs more than the proposed 15 months to prepare the report based on the time frame for NERC to receive relevant data from applicable entities.[71] Accordingly, we direct NERC to submit this report within 27 months of implementation of Requirement R1. The Commission believes that the need for the report is well justified based on the record in the proceeding, including the support of most commenters. While we conclude that BAL–003–1 is reasonable and should be approved, it includes a new methodology for determining the Frequency Response Obligation and the results when applied are not yet known. Further, as discussed above, the ability of balancing authorities and Frequency Response Sharing Groups to meet the obligation is untested. Thus, we believe the required report is an appropriate means to inform us as to whether additional steps are needed on the Frequency Response Obligation and what those might be. The required report should provide data indicating whether actual frequency response was sufficient to meet each balancing authority's Frequency Response Obligation. Further, consistent with NERC's representation in its comments, the Commission directs that, upon completion of the required analysis, should the findings indicate that the Frequency Response Obligation was not met, NERC shall provide appropriate recommendations to ensure that frequency response can be maintained at all times within each balancing authority's footprint.[72]

61. In response to the concerns expressed by the IRC, BPA and APS that balancing authorities may not have control over adequate resources necessary to support the Frequency Response Obligations assigned to the balancing authorities, we will not forego compliance or delay implementation. Certainly, a balancing authority's ability or inability to draw on the necessary resources to meet the compliance obligations of BAL–003–1 might be a potential mitigating factor in a compliance action, depending on the efforts made to obtain resource commitments. Moreover, NERC and its stakeholders had, and still have, the option to propose a Reliability Standard imposing obligations directly on resources, if they find it appropriate. (Similarly, we may consider a directive for such a Standard or other options such as market or tariff mechanisms, if appropriate.) However, we are not persuaded that a blanket waiver or delay in compliance is warranted.

62. While we share concerns regarding the ability of balancing authorities and Frequency Response Sharing Groups to meet the Frequency Response Obligation pursuant to BAL–003–1, we do not believe that such changes are warranted based on the current record in the proceeding. Rather, a recent NERC study indicates that sufficient frequency response resources would be available for balancing authorities to comply with the requirements of Reliability Standard BAL–003–1.[73] Further, as noted by NERC, Reliability Standard BAL–003–1 provides flexibility, for example by allowing entities to form Frequency Response Sharing Groups to meet the Frequency Response Obligation. Likewise, we are not persuaded by APS that a change to the definition of balancing authority annual generation is warranted at this time, and we are concerned that APS's suggestion would change the resource-neutral approach of the standard.

63. We do not discount the concerns of APS and others regarding resource availability. However, we believe that the prudent course is to have NERC complete the directed report. The

[69] NERC Reply Comments at 4 (citing NERC Report: State of Reliability 2013 Report (May 2013), Key Finding 3, Page 12).

[70] NERC Reply Comments at 4.

[71] *See* NERC Comments at 16.

[72] *See* NERC Comments at 17.

[73] *See* NERC Reply Comments at 4 (citing NERC Report: State of Reliability 2013 Report (May 2013), Key Finding 3, Page 12). *See also* APS Comments at 8 (''[a]s NERC Reported in its recent State of Reliability 2013 Report, from 2009 to 2012 interconnection frequency response performance, and expected frequency response . . . has been higher than the recommended interconnection frequency response obligation'').

Commission will review NERC's report, any related recommendations from NERC, and the record developed in Docket No. AD13–8 regarding the market implications of frequency response requirements,[74] to determine whether additional action is warranted. However, if prior to the deadline for the report NERC learns that a lack of resource availability could prevent achieving the purpose of Reliability Standard BAL–003–1, (e.g., balancing authorities are experiencing problems procuring sufficient resources to satisfy their frequency response obligations), NERC should immediately report that to the Commission together with appropriate recommendations for mitigation.[75]

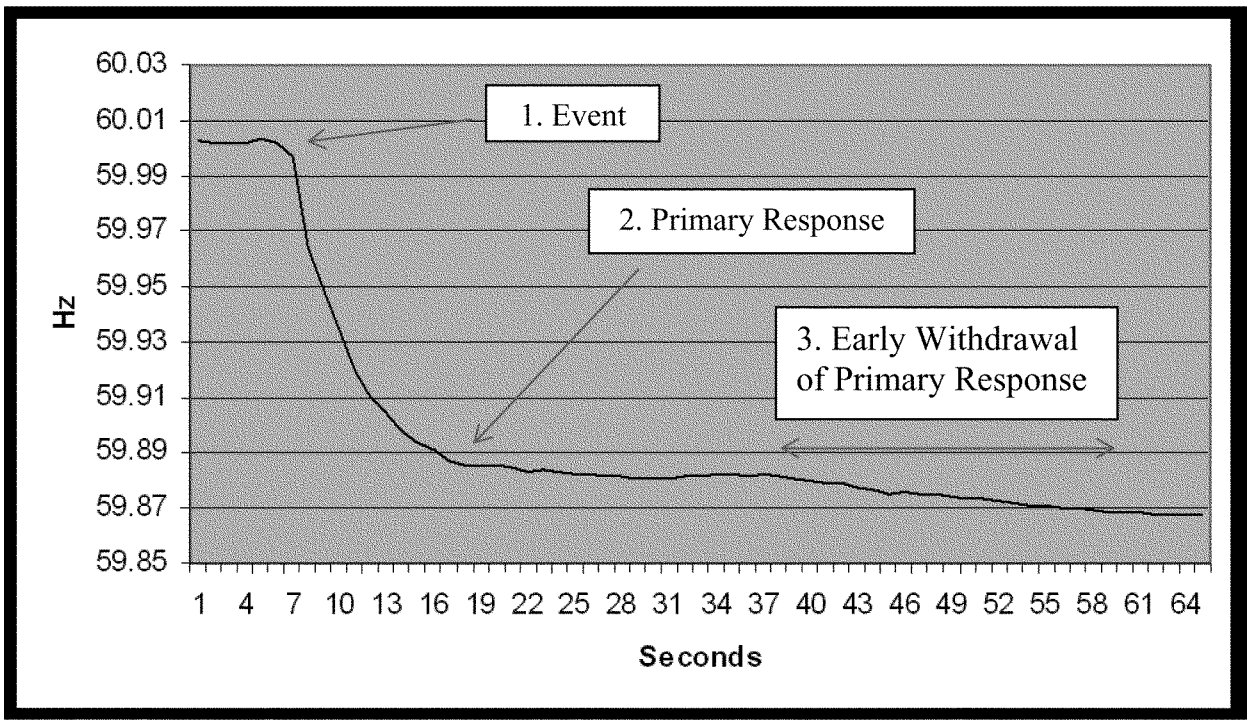
D. Premature Withdrawal of Primary Frequency Response NERC Petition

64. In its petition, NERC indicated that, while the standards drafting team addressed the early withdrawal of primary frequency response, there are no requirements that address this issue and it remains a concern.[76] Specifically, during the initial recovery from the loss of a generator, a gap can occur if a significant amount of primary frequency response is withdrawn before the secondary response is fully activated. As previously noted, the Interconnection Frequency Response Obligation for each Interconnection is a function of the resource contingency criteria and the maximum change in frequency.[77]

65. NERC's Frequency Response Initiative Report states that ''[w]ithdrawal of primary frequency response is an undesirable characteristic associated most often with digital turbine-generator control systems using set point output targets for generator output. These are typically outer-loop control systems that defeat the primary frequency response of the governors after a short time to return the unit to operating at a requested MW output.'' [78] The Frequency Response Initiative Report recommends measuring and tracking frequency response sustainability trends.[79] The Frequency Response Initiative Report also recommends that ''NERC should include guidance on methods to reduce or eliminate the effects of primary frequency response withdrawal by outer-loop unit or plant control systems.'' [80]

NOPR

66. In the NOPR, the Commission explained that ''following the sudden loss of generation, the automatic and immediate increase in power output by resources providing primary frequency control seeks to quickly arrest and stabilize the frequency of the interconnection, usually within 30 seconds or less. After this rapid primary frequency response, AGC provides secondary frequency response to return frequency to the scheduled value in time frames of several minutes after the loss of generation.'' [81] However, the withdrawal of a significant amount of primary frequency response before the secondary frequency response is activated can cause a further drop in frequency response. This drop in frequency is illustrated by the following diagram: [82]



[74] *See Market Implications of Frequency Response and Frequency Bias Setting Requirements,* 144 FERC ¶ 61,058 (2013).

[75] For example, in such circumstances, NERC could look to regional Reliability Standard BAL–001–TRE–01, approved concurrently with this Final Rule, which contains provisions for assuring frequency response in the ERCOT Interconnection.

[76] *See* NERC Petition, Exh. D (Frequency Response Standard Background Document) at 19 (''the intentional withdrawal of response before frequency has been restored to schedule can cause a decline in frequency beyond that which would be otherwise expected. This intentional withdrawal of response is highly detrimental to reliability. Therefore, it can be concluded in general that sustained response has a higher reliability value than un-sustained response.'').

[77] The maximum change in frequency is an amount of frequency deviation based on the loss of the identified resource contingency that will not trigger under-frequency load shedding.

[78] NERC Petition, Exh. F (Frequency Response Initiative Report) at 31.

[79] *Id.* at 35. The Frequency Response Initiative Report also recognizes unit characteristics and operating philosophies as typical causes.

[80] *Id.* at 41–42.

[81] NOPR, 144 FERC ¶ 61,057 at P 35.

[82] *Id.* P 35 (citing Frequency Response Initiative Report at 35, fig. 21).

67. In the NOPR, the Commission expressed concern that Reliability Standard BAL–003–1 does not adequately address the reliability issue created by the withdrawal of primary frequency response prior to activation of secondary frequency response. The withdrawal of primary frequency response before the activation of resources providing secondary frequency response may lead to under-frequency load shedding and possible cascading outages. Accordingly, the Commission proposed to direct NERC to develop a modification to BAL–003–1 to address the concern of premature withdrawal of primary frequency response prior to the activation of secondary frequency response.

Comments

68. NERC disagrees with the need for the proposed directive. First, NERC asserts that Form 1 of the Reliability Standard addresses premature withdrawal of frequency response and suggests that experience with the actual implementation of the Reliability Standard will better indicate whether premature withdrawal is an issue that requires revisions to the Reliability Standard and, if necessary, definitions of the scope and parameters of the potential issue. Second, NERC notes that the premature withdrawal issue could be impacted by the Commission's ongoing effort to determine whether action is necessary to coordinate the requirements of the Reliability Standard with tariffs and market rules.[83] Third, NERC asserts the issue of premature withdrawal can be addressed with other mechanisms rather than a revision to the Reliability Standard. Finally, NERC states that it ''commits to monitoring the issue of premature withdrawal on a going-forward basis and will submit an informational filing two years after Requirement R1 of Reliability Standard BAL–003–1 becomes effective.'' [84]

69. NERC maintains that the standard drafting team accounted for the issue of premature withdrawal of frequency response in the calculation of the B-value averaging period within the Frequency Response Measure. NERC states that ''[t]he team recognized that there would be more AGC response in the 20 to 52 second period, but the team also recognized that the 20 to 52 second period would provide a better measure of squelched response from outer loop control action. The 20 to 52 second period was selected because it would indicate squelched response from outer-loop control and *provide incentive to reduce response withdrawal.''* [85] NERC further explains that if there is withdrawal of primary frequency response during the 20 to 52 second interval, the metric will have a lower value, which will then lower an entity's median score thereby impacting compliance with Requirement R1 of Reliability Standard BAL–003–1.

70. NERC also maintains that, while Reliability Standard BAL–003–1 applies to balancing authorities and Frequency Response Sharing Groups, the premature withdrawal issue applies to generators. Therefore, NERC asserts, the withdrawal issue could be addressed with alternative mechanisms, including other Reliability Standards or guidelines. NERC further asserts that there are emerging technologies that can and will affect withdrawal, including energy storage devices. NERC notes that the premature withdrawal issue could be affected by whatever tariff or market solutions the Commission may adopt in related Docket AD13–8. For these reasons, NERC believes the Commission's proposed directive requiring a specific solution, i.e., a modification to BAL–003–1 Reliability Standard, is premature. NERC states that, consistent with the recommendations in the Frequency Response Initiative Report, it will evaluate whether a modification to Reliability Standard BAL–003–1 is necessary to address premature withdrawal and will submit an informational filing to the Commission two years after Requirement R1 of Reliability Standard BAL–003–1 becomes effective.[86]

71. Trade Associations disagree with the Commission's concern over premature withdrawal of frequency response. Trade Associations state that Reliability Standard BAL–003–1, along with other Reliability Standards awaiting implementation, such as BAL–001–2, sufficiently addresses this concern. Trade Associations assert that the Eastern Interconnection has significant inertia which buffers the initial drop in frequency in major events making premature primary frequency response withdrawal more apparent. Trade Associations state that the exemplary post-contingent recovery of all Interconnections' frequency as demonstrated over time supports their view that premature withdrawal is not a significant factor at this time. Finally, Trade Associations state that the desired outcome of automatic generation control for a balancing authority should result in a dispatch of resources to meet the secondary control requirements of NERC BAL–001. Based upon the overall balance of resources and demand, Trade Associations assert that automatic generation control may at times, guide individual regulating resources within a balancing authority, where a positive ACE exists, to withdraw energy (i.e., to reduce ACE) to meet the secondary control requirements of CPS2 under Reliability Standard BAL–001–1. Trade Associations assert that the response of such a unit would be to withdraw support, thereby resulting in an outcome contrary to the desire to sustain frequency response.[87]

72. IRC states that the Commission's concern about premature withdrawal of frequency response is unwarranted. IRC maintains that the Commission should adopt a more comprehensive perspective, taking into account frequency response and withdrawal patterns over an extended period of time and across Interconnections to understand the potential impact of premature withdrawal. IRC states that data collected and analyzed during the standard drafting team's field trial indicated how quickly and steadily frequency is, on average, brought back to a stable level over a five minute response window in all three Interconnections. IRC explains that the standard drafting team considered data regarding the mean frequency recovery rate (mHz/Sec) for all frequency-related events in each of the major Interconnections from 2010 to 2013. IRC states that early withdrawal of primary frequency response has not been a significant problem because ''most responses are incomplete at the time that frequency has been initially arrested and the additional response has generally been sufficient to make up for more than these unpreventable reductions in response.'' [88]

73. ELCON states that secondary frequency response (Regulation) is primarily delivered through automatic generation control, which is governed by Reliability Standard BAL–005–0.2b. That Reliability Standard contains requirements applicable to balancing authorities which therefore, ELCON states, have ''the responsibility to ensure its operability.'' [89] ELCON further states that Reliability Standard TOP–003–1 calls for generator operators to coordinate planned outages with transmission operators, who are

[83] *See Market Implications of Frequency Response and Frequency Bias Setting Requirements,* 144 FERC ¶ 61,058 (2013).

[84] NERC Comments at 7.

[85] NERC Comments at 9 (citing NERC Petition, Exh. D at 13).

[86] *Id.* at 10.

[87] Trade Associations Comments at 8–9.

[88] IRC Comments at 10.

[89] ELCON Comments at 8.

required to share that information with balancing authorities. Therefore, ELCON asserts that ''[t]his means that the [balancing authority] is aware of all AGC capacity that will be unavailable due to planned maintenance well ahead of time—and can plan mitigating actions accordingly.'' [90] ELCON also asserts that Reliability Standard PRC–024–1 has requirements intended to ensure that generator operators can ride through specifically defined frequency deviations, ''which can best assure their availability when needed for secondary frequency response support.'' [91] ELCON suggests that generator concerns with possible violations of Reliability Standard PRC–024–1, such as dropping off-line during a frequency transient within the standard's ''no-trip zones,'' could provide incentives against premature withdrawal.

74. BPA states that it shares the Commission's concerns on early withdrawal of frequency response and provides a recorded frequency response withdrawal by a combined cycle plant.[92] BPA states that the withdrawal was caused by load controllers implemented at many power plants and suggests that load controllers include a frequency bias term, similar to automatic generation control, to allow plants to sustain their frequency response. BPA asserts that the sustainability of frequency response is essential not only for Interconnection system frequency support, but also for voltage stability when the response withdrawal causes excessive loading on stability-limited transmission paths.[93]

Commission Determination

75. The Commission is persuaded not to adopt the NOPR proposal to require NERC to develop a modification to Reliability Standard BAL–003–1 to address premature withdrawal of frequency response. The Commission believes that the nature and extent of the problems that could result from the premature withdrawal of primary frequency response, and how best to address it if necessary, will be better understood after NERC and balancing authorities have more experience with Reliability Standard BAL–003–1. Accordingly, in light of NERC's December 30, 2013 annual analysis informational filing, the Commission expects NERC to continue to evaluate the impact of the withdrawal of primary frequency response before secondary frequency response is activated in its annual analyses.

76. The Commission recognizes BPA's concerns about the early withdrawal of frequency response, particularly the possibility that load controllers may prematurely over-ride primary frequency response. However, we agree with NERC that the need to take action, including requiring load controllers to include a frequency bias term similar to AGC to sustain frequency response or otherwise modifying Reliability Standard BAL–003–1, should be decided after we have actual experience with the Reliability Standard.

E. Light Load Case Study

NOPR

77. In the NOPR, the Commission highlighted NERC's conclusion in its Frequency Response Initiative Report that ''[s]ustainability of primary frequency response becomes more important during light-load conditions when there are generally fewer frequency-responsive generators online.'' [94] Light load conditions require special consideration because inertia, i.e., the resistance to a change in the motion of an object, plays a crucial role in how fast frequency declines following the sudden loss of generation.[95] In the NOPR, the Commission further explained that ''[W]hen the inertia on the system is low (i.e. fewer generators on line), the loss of generation creates a steeper frequency excursion and thus the need for faster frequency response.'' [96]

78. In the NOPR, the Commission focused on the resource contingency criterion in Reliability Standard BAL–003–1 for calculating the Interconnection Frequency Response Obligation for the Eastern Interconnection, and the potential concerns with the use of an event that took place during heavy system load conditions. The use of a generic governor stability case in the stability simulation testing for the Eastern Interconnection resource contingency criteria used in the determination of the Interconnection Frequency Response Obligation represented conditions far different than light-load conditions. This raises questions regarding whether, and by what amount, light load conditions would lower system inertia and load response. The Frequency Response Initiative Report recommended the development of a new light-load case study, and the re-simulation of the resource contingency criterion for the Eastern Interconnection Frequency Response Obligation.[97] According to NERC, the Eastern Interconnection Reliability Assessment Group is preparing an updated generic governor 2013 summer light-load case (from the 2012 case series), and NERC will be evaluating the Eastern Interconnection Frequency Response Obligation during the expected light-load conditions.[98]

79. The Commission agreed with NERC that the study of light-load scenarios is useful in determining an appropriate Interconnection Frequency Response Obligation, especially for the Eastern Interconnection.[99] Accordingly, the Commission proposed to direct NERC to submit the results of the light-load case, together with NERC's recommendations on whether further actions are warranted.

Comments

80. BPA, Trade Associations, and IRC submitted comments agreeing with the Commission that the study of light-load scenarios is useful in determining an appropriate Interconnection Frequency Response Obligation, especially for the Eastern Interconnection.

81. IRC states that it does not oppose the development of a new light-load case study, but believes that better modeling data needs to be collected before an accurate study can be conducted. IRC states that ''[i]n

[90] *Id.*

[91] *Id.*

[92] BPA Comments at 14–15.

[93] *Id.* at 15.

[94] NOPR, 144 FERC ¶ 61,057 at P 39 (quoting Frequency Response Initiative Report at 32).

[95] *Id.* Inertia is provided from the stored energy in the rotating mass of the turbine-generators and synchronous motors on the Interconnection. *See* NERC Petition, Exh. D at 16–17.

[96] *Id.* (quoting Frequency Response Initiative Report at 40). The reduction in inertia also drives a need for higher speed response to frequency excursions.

[97] NERC Petition, Exh. F, Frequency Response Initiative Report at 99.

[98] NERC Petition, Exh. G. A study conducted by the National Renewable Energy Laboratory explored the relationship between system disturbance and grid frequency perturbation. *See* National Renewable Energy Laboratory, Eastern Frequency Response Study (May 2013). A key finding is that the dynamic model of the Eastern Interconnection can be adjusted to more closely capture the observed behavior. In particular, the assumed amount of generation with governor controls activated was increased to model the contingency used in calculating the Eastern Interconnection Frequency Response Obligation. In addition, a light load power flow case was selected with the expectation that it would represent one of the more challenging conditions for the Eastern Interconnection with respect to frequency response. *See http://www.nrel.gov/docs/fy13osti/58077.pdf.*

[99] According to NERC, ''[m]odeling of frequency response characteristics has been a known problem since at least 2008, when forensic modeling of the Eastern Interconnection required a 'de-tuning' of the existing [Multiregional Modeling Working Group] dynamics governor to 20% of modeled (80% error) to approach the measured frequency response values from the [August 4, 2007] event.'' *See* NERC Petition, Exh. F, Frequency Response Initiative Report at 35.

particular, inaccurate modeling of governor deadbands and adjustments to model governor performance based on observed performance for frequency excursions will lead to inaccurate assumptions of performance for extreme events during light-load.'' [100] IRC encourages the Commission to direct that NERC partner with industry to compile the appropriate information needed to ensure an accurate case study, and to review that study through an industry stakeholder process. Finally, the IRC states that while it agrees that a new light-load case study would be useful, the study should also look at tools to estimate frequency response in real time.

82. BPA states that while frequency response is expected to be lower during off-peak light load conditions, there have not been a sufficient number of events under light load conditions to confirm the severity of the problem. BPA states that currently all WECC regions are exceeding their frequency response obligations.

83. The Trade Associations support the Commission's proposal to direct NERC to submit their light-load case study and recommendations.

Commission Determination

84. The Commission adopts the proposal in the NOPR and directs NERC to submit the results of the Eastern Interconnection Reliability Assessment Group's light-load case, using actual turbine governor response data. Additionally, the Commission directs NERC to submit a recommendation on whether further actions are warranted no later than 15 months after implementation of the Final Rule. Further, the report should discuss any appropriate changes to the Interconnection Frequency Response Obligation warranted by the study.

F. Assignment of Violation Risk Factors and Violation Severity Levels

1. Violation Risk Factor for Requirement R1

NOPR

85. In the NOPR, the Commission proposed to approve each violation risk factor assignment NERC proposed for a requirement of the proposed Reliability Standard, with one exception. The Commission indicated that NERC did not adequately justify assignment of a medium violation risk factor to Requirement R1, which establishes the Frequency Response Measure that a balancing authority must achieve to arrest a decline in system frequency. While NERC asserted that a violation of this requirement will not cause bulk electric system instability, separation or cascading failures because ''a balancing authority's previous year's Frequency Bias setting is included within its ACE equation and would provide support for the contingency,'' the Commission indicated that this explanation does not apply to Requirement R1. The Commission noted that the ACE equation provides input to secondary frequency control, which differs from the primary control needed to arrest a frequency decline, as established by Requirement R1. The Commission proposed to direct NERC to assign a high violation risk factor to Requirement R1 because (1) NERC described frequency response as a critical component to the reliable operation of the Bulk-Power System, indicating that Requirement R1 does not impose merely an administrative burden, and (2) the medium violation risk factor that the Commission approved for each BAL–003–0.1b requirement does not apply to Requirement R1 because it has no equivalent in that standard.[101] The Commission sought comments on this proposal.

Comments

86. Trade Associations state that while Requirement R1 may merit a high violation risk factor, responsible entities must achieve an annual Frequency Response Measure as calculated in accordance with Attachment A to Reliability Standard BAL–003–1. The Trade Associations therefore observe that it would be inappropriate to apply the violation risk factor for Requirement R1 to a single event rather than to an annual Frequency Response Measure.[102]

87. Commenting that the standard drafting team took a rational approach to its violation risk factor assignments, and that each such assignment appears appropriate and well-reasoned to approximate the impact of a violation on reliability, IRC requests that the Commission accept the medium violation risk factor for Requirement R1 as developed by the standard drafting team and agreed to by industry.[103]

88. APS disagrees with the Commission's proposal to assign a high violation risk factor to Requirement R1. APS agrees with NERC that a violation of this requirement will not cause Bulk Electric System instability, separation or cascading failures. APS maintains that frequency response in the Western Interconnection is and has been stable. APS states that there are almost forty balancing authorities in the Western Interconnection, and even if individual balancing authorities should fall short of their obligation, there is no measurable risk to the Interconnection.[104]

89. APS also states that the worst case scenario from a violation of Requirement R1 is some loss of load due to under-frequency load shedding. APS contends that over the last fifteen years in the Western Interconnection, frequency has not declined below 59.7 Hertz for a generation loss of 3,000 megawatts or less. APS states that the first under-frequency load shedding in the Western Interconnection occurs at 59.5 Hertz, and hence, there has not been a significant impact to the bulk electric system for loss of generation. APS submits that a medium violation risk factor is appropriate.[105]

Commission Determination

90. We direct NERC to change the violation risk factor for Requirement R1 to ''high,'' as proposed in the NOPR. No commenter disagreed with the Commission's observation that Requirement R1 addresses primary frequency control that is necessary to arrest frequency decline within seconds after it begins. Without sufficient primary frequency control, a frequency decline may not be arrested in sufficient time to prevent instability, uncontrolled separation or cascading failures. While APS maintains that frequency in the Western Interconnection is and has been stable, that stability depends on compliance with Requirement R1 by balancing authorities that have sufficient resources to meet Requirement R1. The fact that one entity's violation of Requirement R1 may be offset by the efforts of others is not a basis for ignoring or downplaying the substantial risk posed by inadequate frequency response. Accordingly, we conclude that a ''high'' violation risk factor for Requirement R1 is appropriate. We agree with Trade Associations that Requirement R1 mandates achievement of an annual Frequency Response Measure, and that compliance with that requirement cannot be determined by a single event.

2. Violation Severity Levels for Requirement R1

NOPR

91. In the NOPR, the Commission proposed changes to NERC's proposed violation severity level assignments for Requirement R1. NERC proposed two violation severity levels depending

[100] IRC Comments at 11.

[101] NOPR, 144 FERC ¶ 61,057 at P 42.

[102] Trade Associations Comment at 10–11.

[103] IRC Comments at 12.

[104] APS Comments at 9.

[105] APS Comments at 9.

upon whether a balancing authority or a Frequency Response Sharing Group has an annual Frequency Response Measure ''less negative than its Frequency Response Obligation by more than 1 percent but by at most 30 percent or 15 MW/0.1Hz, whichever one is the greater deviation from its [Frequency Response Obligation].'' This violation would have a ''lower'' severity level if ''[t]he summation of the Balancing authorities' [Frequency Response Measure] within an Interconnection was equal to or more negative than the Interconnection's [Interconnection Frequency Response Obligation],'' and a ''high'' severity level if this summation ''did not meet its [Interconnection Frequency Response Obligation].'' Based on these two possibilities for this summation, NERC proposed either a ''medium'' severity level and a ''severe'' severity level for a balancing authority or Frequency Response Sharing Group with an Frequency Response Measure that is ''less negative than its [Frequency Response Obligation] by more than 30% or by more than 15 MW/0.1 Hz, whichever is the greater deviation from its [Frequency Response Obligation].'' [106]

92. The Commission proposed that NERC modify its severity level assignments for Requirement R1 to remove references to performance by other entities or otherwise so as to address a concern that NERC assigned these severity levels partly on performance of Requirement R1 by all other responsible entities in the Interconnection in which a violator is located. The Commission concluded that it would be unfair to base a penalty on a responsible entity in part upon the collective compliance or lack of compliance by independent entities, because: (1) NERC's sanction guidelines focus violation severity levels on a violator's deviation from required performance, not the risk the violation is expected to pose to reliability or performance by other entities; and (2) a balancing authority or Frequency Response Sharing Group subject to Requirement R1 does not control any other responsible entity's compliance with this requirement.[107] The Commission sought comments on its proposal.

Comments

93. APS agrees with the Commission's proposal that NERC change Requirement R1 violation severity level assignments that are in part based on the performance of other entities in the Interconnection. However, APS contends that there is no justification for a ''severe'' violation severity level applicable to this requirement. APS comments that the violation severity level should be ''low'' for a responsible entity missing its annual Frequency Response Obligation by small amounts (less than 20 percent) and ''medium'' for missing by a larger amount (greater than 20 percent).[108]

94. IRC states that the standard drafting team took an appropriate, rational approach to its violation severity level proposal, taking into account that frequency response is an interconnection-wide service, not balancing authority specific. IRC contends that a single balancing authority should not be penalized for a 10 percent decrease in response, where frequency response is otherwise sufficient amongst its surrounding balancing authorities and the reliability of the Interconnection as a whole is not in jeopardy. IRC asserts that, in contrast, a 10 percent decrease in frequency response within the Interconnection as a whole clearly would signal a reliability issue. IRC contends that, by suggesting that the VSLs for Requirement R1 be modified to remove references to performance by other entities, the Commission essentially suggested that a small deficiency within a single balancing authority is equivalent to deficient frequency response within an Interconnection, and should be equivalently penalized as such.[109]

Commission Determination

95. As proposed in the NOPR, we direct NERC to remove from its violation severity level assignments for Requirement R1 any references to performance of that requirement by other entities. No commenter has questioned the Commission's analysis in the NOPR that NERC's Sanction Guidelines define violation severity levels as a violator's deviation from required performance, not as the risk the violation is expected to pose to reliability or performance by other entities, and that a particular responsible entity's compliance with Requirement R1 is not controlled by performance of the requirement by other responsible entities in an Interconnection. Nor has any commenter suggested any rationale sufficient to support a departure from the Sanction Guidelines in this regard. While we agree with IRC that frequency response is an Interconnection-wide service, a failure by each responsible entity in an Interconnection to comply with Requirement R1 will result in a failure to meet the Interconnection-wide annual Frequency Response Measure, to the detriment of reliability across the Interconnection. We believe that violation severity levels for this requirement should be set so as to discourage particular responsible entities from ''leaning on'' other entities to provide sufficient frequency response collectively to meet the relevant Interconnection Frequency Response Obligation.

96. We leave it to NERC to consider how its violation severity level assignments for Requirement R1 should be changed in response to our concerns, including consideration of APS's suggestions. However, we note that APS did not provide in its comments any rationale for its suggested severity level assignments.

G. Supporting/Associated Documents

97. In the NOPR, the Commission explained that Reliability Standard BAL–003–1 has several supporting or associated documents. For example, Attachment A, appended to the Reliability Standard, is explicitly referenced in Requirements R1 and R2.[110] Further, NERC's Procedure for ERO Support of Frequency Response and Frequency Bias Setting Standard (Procedure), is included as an ''associated document'' in the Reliability Standard, and is referenced in Attachment A.[111] Likewise, Requirement 4 of proposed BAL–003–1 references FRS Forms 1 and 2, stating that ''each balancing authority that provides Overlap Regulation Service shall modify its Frequency Bias Setting in its ACE calculation . . . to be equivalent to 'the sum of Frequency Bias Settings as shown on FRS Form 1 and Form 2 . . . as validated by the ERO.' '' [112]

98. In the NOPR, the Commission stated that ''[t]hese associated and supporting documents are explicitly referenced in the Requirements of the Reliability Standard. Thus, failure of a Balancing Authority to comply with such associated and supporting documents could result in non-compliance with the underlying Requirement.'' [113]

[106] NOPR, 144 FERC ¶ 61,057 at P 43.

[107] *Id.* P 44.

[108] APS Comments at 9–10.

[109] IRC Comments at 12–13.

[110] *See* NOPR, 144 FERC ¶ 61,057 at P 45.

[111] *Id.* The Procedure is provided as Exh. C to the NERC petition. NERC stated that it included the Procedure in the petition for informational purposes. NERC Petition at 4.

[112] NOPR, 144 FERC ¶ 61,057 at P 45. Reliability Standard BAL–003–1 identifies FRS Form 1 and FRS Form 2 as ''associated documents.''

[113] *Id.* P 46 (footnote omitted).

Commission Determination

99. No entity submitted comments on this matter. Accordingly, the Commission affirms its NOPR statement that the failure of a balancing authority to comply with the associated and supporting documents that are referenced in the Requirements of BAL–003–1 could result in non-compliance with the underlying Requirement.[114]

100. NERC, in its Reply Comments, states that ''the values in Table 1 of Attachment A are not static. As explained in Attachment A to the proposed Reliability Standard and the *Procedure for ERO Support of Frequency Response and Frequency Bias Setting Standard,* the values in Table 1 are determined and revised on an annual basis.'' [115] While the Procedure sets forth a mechanical and objective formula for calculating the IFRO value in Table 1 of Attachment A, we believe that any changes to the inputs or IFRO value in Table 1 should occur in a transparent manner. Accordingly, should NERC make changes to Table 1 based upon NERC's Procedure document, the Commission directs NERC to submit an informational notice describing the basis for the changes at least 30 days in advance of the effective date of any such changes.[116]

V. Information Collection Statement

101. The following collection of information contained in this Final Rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).[117] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[118] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Commission solicited comments on the need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. The Commission received comments on specific requirements in the Reliability Standard, which we address in this Final Rule. However, the Commission did not receive any comments on our reporting burden estimates.

102. *Public Reporting Burden:* The burden and cost estimates below are based on the collection of certain information to establish the Interconnection Frequency Response Obligation and the Frequency Bias Setting for each balancing authority. Each balancing authority reports its previous year Frequency Response Measure and Frequency Bias Setting to NERC, and revised Frequency Bias Settings are based on data from events the balancing authorities report on the proposed FRS Form 1. The information provided on the FRS Form 1 is based on events which qualify for analyses,[119] and NERC states that it will identify between 20 to 35 events in each Interconnection for calculating the Frequency Response Measure and Frequency Bias Setting.[120] Allotting eight hours for balancing authorities to compile the information on candidate events,[121] multiplied by 28 events per balancing authority per year yields 224 hours per year per balancing authority as the regulatory burden for compliance.[122] Our estimates are based on the NERC Compliance Registry as of May 31, 2013, which indicates that there are about 132 registered balancing authorities.[123] Accordingly, the Commission estimates the annual regulatory burden for compliance with the Reliability Standard to be $13,560 per balancing authority,[124] with an estimated total annual cost for all balancing authorities to be $1,789,920.[125]

BAL–003–1 (frequency response and frequency bias setting)	Number of balancing authority respondents (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)	Estimated total annual cost ($) Total hours × $60
Annual Reporting	132	28	8	29,568	$1,774,080
Data Retention	132	1	2	264	15,840
Total				29,832	1,789,920

[114] Attachment A and the Procedures also require NERC to take certain actions pertaining to the calculation of frequency response measure and allocation among balancing authorities. The ERO is not an applicable entity pursuant to Reliability Standard BAL–003–1. The ERO, however, has an independent obligation to ''ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity'' and the Commission can take ''such action as is necessary or appropriate'' to ensure that the ERO fulfills this responsibility under Attachment A and the Procedures. *See id.* P 46, n.73 (citing 16 U.S.C. 824o(e)(5)).

[115] NERC Reply Comments at 3–4.

[116] *Cf. Version One Regional Reliability Standard for Transmission Operations,* Order No. 752, 135 FERC ¶ 61,062, at P 43 (2011) (requiring WECC to notify the Commission of changes to the WECC Transfer Path Table). *See also* NERC Petition, Exh. C at 1 (changes to the Procedure for ERO Support of Frequency Response must be posted for comment by NERC, approved by the NERC Board of Trustees, and filed with the Commission ''for informational purposes'').

[117] 44 U.S.C. 3507(d).

[118] 5 CFR 1320.11.

[119] NERC stated that it will provide quarterly posting of candidate events to assist the balancing authorities with compliance, and lessen the burden of the annual submission of FRS Form 1 data. NERC Petition, Exh. C at 3–4.

[120] *Id.* at 1. The Frequency Response Initiative Report states that between 20 and 25 events are necessary for statistical analysis. Frequency Response Initiative Report at 72.

[121] The information is automatically generated from computer data bases. However, time is allotted to compile, verify, and review the information.

[122] Assuming an average of between 20 and 35 events per year.

[123] NERC Compliance Registry List, May 31, 2013, *available at: http://www.nerc.com.*

[124] The estimated hourly loaded cost (salary plus benefits) for an engineer is assumed to be $60/hour, based on salaries as reported by the Bureau of Labor Statistics (BLS) *(http://bls.gov/oes/current/naics2_22.htm).* Loaded costs are BLS rates divided by 0.703 and rounded to the nearest dollar. *(http://www.bls.gov/news.release/ecec.nr0.htm.)*

[125] The estimated total annual cost includes an annual data retention burden of $15,840 for all balancing authorities.

Title: FERC–725R, Mandatory Reliability Standards: Reliability Standard BAL–003–1.

Action: Proposed Collection of Information.

OMB Control No: To be determined.

Respondents: Business or other for-profit, and not-for-profit institutions.

Frequency of Responses: Annual.

Necessity of the Information: The revision of NERC Reliability Standard BAL–003–1 is part of the implementation of the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk Power System. Specifically, Reliability Standard BAL–003–1 is intended to ensure sufficient Frequency Response from balancing authorities to maintain Interconnection Frequency within predefined bounds.

Internal Review: The Commission has reviewed the revisions to the Reliability Standard and determined that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

103. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

VI. Environmental Analysis

104. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[126] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[127] The actions directed herein fall within this categorical exclusion in the Commission's regulations.

VII. Regulatory Flexibility Act

105. The Regulatory Flexibility Act of 1980 (RFA)[128] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The NERC registry includes about 132 individual balancing authorities. Comparison of the NERC Compliance Registry with data submitted to the Energy Information Administration on Form EIA–861 indicates that, of these entities, 15 may qualify as small entities.[129]

106. As noted above, the Commission estimates the annual regulatory burden for compliance with the Reliability Standard to be $13,560 per balancing authority. This estimate for all balancing authorities was established using 28 events per year, but smaller entities may have fewer events which qualify for analysis,[130] and the costs for these smaller entities may be reduced. Further, while the Reliability Standard establishes a balancing authority's Frequency Response Obligation, because balancing authorities are currently providing frequency response, we do not anticipate additional compliance costs. Accordingly, we do not consider the cost of compliance with the Reliability Standard to be a significant economic impact for small entities because it should not represent a significant percentage of an affected small entity's operating budget. Accordingly, no regulatory flexibility analysis is required.

VIII. Document Availability

107. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page *(http://www.ferc.gov)* and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

108. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

109. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

110. These regulations are effective March 24, 2014. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–01218 Filed 1–22–14; 8:45 am]

BILLING CODE 6717–01–P

[126] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[127] 18 CFR 380.4(a)(2)(ii).

[128] 5 U.S.C. 601–612.

[129] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act (SBA), which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 632 (2006). According to the Small Business Administration, an electric utility is defined as ''small'' if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.

[130] The Procedures establish a minimum of 20 events for analysis, and a process for identifying when fewer than 20 events are available for analysis.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 225

[Docket No. FDA–2013–N–0002]

Current Good Manufacturing Practice for Medicated Feeds

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule, correcting amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for good manufacturing practice of animal feeds containing a new animal drug to correctly cite the applicable section of the Federal Food, Drug, and Cosmetic Act (FD&C Act). This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective January 23, 2014.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary

Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, *ghaibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA has noticed the regulations for good manufacturing practice of animal feeds containing a new animal drug do not correctly cite the applicable section of the FD&C Act. At this time, FDA is making a correcting amendment in 21 CFR 225.1. This action is being taken to improve the accuracy of the regulations.

List of Subjects in 21 CFR Part 225

Animal drugs, Animal feeds, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 225 is amended as follows:

PART 225—CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

■ 1. The authority citation for 21 CFR part 225 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 374.

§ 225.1 [Amended]

■ 2. In § 225.1, in the last sentence in paragraph (b)(1), remove ''section 402(a)(2)(D) of the act'' and in its place add ''section 402(a)(2)(C)(ii) of the act''.

Dated: January 16, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01299 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2013–N–1662]

Medical Devices; Immunology and Microbiology Devices; Classification of John Cunningham Virus Serological Reagents

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying John Cunningham Virus (JCV) serological reagents into class II (special controls). The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective February 24, 2014. The classification was effective January 20, 2012.

FOR FURTHER INFORMATION CONTACT: Haja Sittana El Mubarak, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5519, Silver Spring, MD 20993–0002, 301–796–6193.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act provided a procedure by which a person may request that FDA classify a device under the criteria set forth in section 513(a)(1). The person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). In response to a request to classify a device under the procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 60 days. This classification will be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing this classification.

In accordance with section 513(f)(1) of the FD&C Act, FDA issued an order on December 22, 2011, classifying the STRATIFY JCV™ antibody enzyme-linked immunosorbent assay (ELISA) into class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On January 5, 2012, Focus Diagnostics, Inc., submitted a request for de novo classification of the STRATIFY JCV™ antibody ELISA under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II.

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request for de novo classification in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act. FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls will provide reasonable assurance of the safety and effectiveness of the device.

The device is assigned the generic name John Cunningham Virus serological reagents, which are devices that consist of antigens and antisera used in serological assays to identify antibodies to JCV in serum and plasma. The identification aids in the risk stratification for the development of progressive multifocal leukoencephalopathy in multiple sclerosis and Crohn's disease patients undergoing natalizumab therapy. These devices are for adjunctive use, in the context of other clinical risk factors for the development of progressive multifocal leukoencephalopathy.

FDA has identified the following risks to health associated with this type of device and the measures required to mitigate these risks:

TABLE 1—IDENTIFIED RISKS TO HEALTH AND MITIGATION MEASURES

Identified risks to health	Mitigation measures
False positive results	Device Description Performance.
False negative results	Device Description Performance.

TABLE 1—IDENTIFIED RISKS TO HEALTH AND MITIGATION MEASURES—Continued

Identified risks to health	Mitigation measures
Failure to perform as indicated or an error in the interpretation of the results.	Labeling.

FDA believes that the measures set forth in the special controls guideline entitled ''Class II Special Controls Guideline: John Cunningham Virus Serological Reagents'' are necessary, in addition to general controls, to mitigate the risks to health described in table 1.

Therefore, on January 20, 2012, FDA issued an order to the petitioner classifying JCV serological reagents into class II. FDA is codifying this device type by adding 21 CFR 866.3336.

II. 510(k) Premarket Notification

Following the effective date of this final classification order, any firm submitting a 510(k) premarket notification for this device type will need to comply with the special controls.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this type of device is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the JCV serological reagents they intend to market.

III. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final administrative order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 801 and 21 CFR 809.10 have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 866 continues to read as follows:

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

■ 2. Section 866.3336 is added to subpart D to read as follows:

§ 866.3336 John Cunningham Virus serological reagents.

(a) *Identification.* John Cunningham Virus serological reagents are devices that consist of antigens and antisera used in serological assays to identify antibodies to John Cunningham Virus in serum and plasma. The identification aids in the risk stratification for the development of progressive multifocal leukoencephalopathy in multiple sclerosis and Crohn's disease patients undergoing natalizumab therapy. These devices are for adjunctive use, in the context of other clinical risk factors for the development of progressive multifocal leukoencephalopathy.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guideline document entitled ''Class II Special Controls Guideline: John Cunningham Virus Serological Reagents.'' For availability of the guideline document, see § 866.1(e).

Dated: January 16, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01216 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

Proposed Rules

Federal Register
Vol. 79, No. 15
Thursday, January 23, 2014

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2005–0096]

Change in Disease Status of the Patagonia South Region of Argentina With Regard to Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have added that portion of the Patagonia region of Argentina located south of latitude 42° south (Patagonia South) to the list of regions considered free of rinderpest and foot-and-mouth disease (FMD). The proposed rule would also have added that region to the list of regions that are subject to certain import restrictions on meat and meat products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. We are taking this action because we have prepared an updated risk analysis relative to Argentina that is being made available in accordance with a newer process for recognizing the animal health status of regions.

DATES: The proposed rule published on January 5, 2007 (72 FR 475) is withdrawn, effective January 23, 2014.

FOR FURTHER INFORMATION CONTACT: Dr. Silvia Kreindel, Senior Staff Veterinarian, Regionalization Evaluation Services, National Import Export Services, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 851–3308.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2007, we published in the **Federal Register** (72 FR 475–480, Docket No. APHIS–2005–0096) a proposal [1] to amend the regulations in § 94.1 by adding that portion of the Patagonia region of Argentina located south of latitude 42° south (referred to below as Patagonia South) to the list of regions that are considered free of both rinderpest and foot-and-mouth disease (FMD). We proposed this because there had been no outbreak of FMD in the Patagonia South region of Argentina since 1976 and there was no evidence that there were any species infected with FMD in Patagonia South at that time. In addition, because rinderpest has never been diagnosed in Argentina and is not endemic to that region of the world, we also proposed to recognize Patagonia South as free of rinderpest. Finally, we proposed to amend the regulations in § 94.11 by adding Patagonia South to the list of regions that are subject to certain import restrictions on meat and other animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions.

We solicited comments concerning our proposal for 60 days ending March 6, 2007. We received 45 comments by that date. Based on the comments we received and other considerations, we concluded that it was necessary to reexamine the risk analysis. We have completed an updated risk analysis covering the Patagonia South region, as well as the Patagonia North B region, in Argentina that we will be making available for review and comment. However, as discussed in more detail below, since the publication of the proposed rule, we have changed the process by which we recognize the animal health status of regions. Therefore, we are withdrawing the January 5, 2007, proposed rule and will make the new risk analysis available in accordance with the current process.

In a final rule [2] published in the **Federal Register** on January 10, 2012 (77 FR 1388–1396, Docket No. APHIS–2009–0035), we removed lists of regions classified with respect to certain animal diseases and pests from our animal and animal product import regulations in 9 CFR parts 92, 93, 94, 96, and 98. The lists are now posted on APHIS' Web site, rather than published in the Code of Federal Regulations. These lists are maintained on the APHIS Web site at http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml. Copies of the lists are also available via postal mail, fax, or email upon request to National Import and Export Services, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

The regulations in 9 CFR 92.2 contain requirements for requesting the recognition of the animal health status of a foreign region or for the approval of the export of a particular type of animal or animal product to the United States from a foreign region. If, after review and evaluation of the information submitted in support of the request, the Animal and Plant Health Inspection Service (APHIS) believes the request can be safely granted, APHIS will make the evaluation available for public comment through a notice published in the **Federal Register**. Following the close of the comment period, APHIS will review all comments received and will make a final determination regarding the request that will be detailed in another notice published in the **Federal Register**.

In accordance with this process, we are announcing the availability of an evaluation of the FMD status of a region of Patagonia, Argentina, in a notice published today in the **Federal Register** (Docket No. APHIS–2013–0105). The concerns and recommendations of all the commenters on the January 5, 2007, proposed rule have been considered in the development of the new evaluation.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 16th day of January 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–01231 Filed 1–21–14; 4:15 pm]

BILLING CODE 3410–34–P

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2005-0096.*

[2] *See http://www. regulations.gov/#!docketDetail;D=APHIS-2009-0035.*

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2013–BT–STD–0051]

RIN 1904–AD09

Energy Efficiency Program for Consumer Products: Energy Conservation Standards for General Service Lamps

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

ACTION: Extension of public comment period.

SUMMARY: This document announces an extension of the public comment period for submitting comments on the framework document regarding energy conservation standards for general service lamps (GSLs). The comment period is extended to February 7, 2014.

DATES: The comment period for the framework document regarding energy conservation standards for GSLs published on December 9, 2013 (78 FR 73737) is extended to February 7, 2014.

ADDRESSES: Any comments submitted must identify the framework for standards for general service lamps and provide docket number EERE–2013–BT–STD–0051 and/or Regulation Identification Number (RIN) 1904–AD09 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: GSL2013STD0051@ee.doe.gov.* Include the docket number EERE–2013–BT–STD–0051 and/or RIN 1904–AD09 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments and CDs sent by mail are often delayed and may be damaged by mail screening processes.]
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone (202) 586–2945. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The rulemaking Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=83.* This Web page contains links to the framework document and other supporting materials and information for this rulemaking on the *regulations.gov* site. The *regulations.gov* Web page contains instructions on how to access all documents in the docket, including public comments.

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *GSL2013STD0051@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

On December 9, 2013, DOE published a notice of public meeting and availability of framework document in the **Federal Register** (78 FR 73737) initiating the rulemaking and data collection process to consider new and amended energy conservation standards for products included in the definition of GSLs. The notice provided for the submission of public comments by January 23, 2014. National Electrical Manufacturers Association (NEMA) has requested a 2-week extension of the comment period, stating that it needs additional time to fully evaluate the framework document, its scope and definitions.

Based on NEMA's request, DOE believes that extending the comment period to allow additional time for interested parties to submit comments is appropriate. Therefore, DOE is extending the comment period until February 7, 2014 to provide interested parties additional time to prepare and submit comments. Accordingly, DOE will consider any comments received by February 7, 2014 to be timely submitted.

Issued in Washington, DC on January 16, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–01294 Filed 1–22–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 25

[Docket No. FDA–2013–N–1282]

National Environmental Policy Act; Environmental Assessments for Tobacco Products; Categorical Exclusions

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality (CEQ) Regulations Implementing NEPA (CEQ Regulations), the Food and Drug Administration (FDA) is proposing to revise its NEPA implementing regulations to provide categorical exclusions for certain actions related to substantial equivalence (SE) reports, SE exemption requests, and tobacco product applications, and the rescission (order withdrawing an order) or suspension of orders regarding the marketing of tobacco products under the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act). FDA is also proposing to amend its NEPA implementing regulations to include tobacco products, where appropriate, in light of its new authority under the Tobacco Control Act.

DATES: Submit either electronic or written comments on the proposed rule by April 8, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2013–N–1282, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):

Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2013–N–1282 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Gerie A. Voss, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373, *gerie.voss@fda.hhs.gov*.

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I. Background and Legal Authority

NEPA and the CEQ Regulations require each Federal Agency to assess, as an integral part of its decisionmaking process, the environmental impacts of any proposed Federal action to ascertain the environmental consequences of that action on the quality of the human environment and to ensure that the interested and affected public is appropriately informed (42 U.S.C. 4332(2); 40 CFR 1506.6). The CEQ is responsible for the CEQ Regulations and for overseeing Federal efforts to comply with NEPA. Both FDA and CEQ have issued regulations governing Agency obligations and responsibilities under NEPA. The FDA regulations are included at 21 CFR part 25 and the CEQ regulations are at 40 CFR parts 1500 to 1508.

The CEQ regulations, which are binding on all Federal executive Agencies, establish procedures for implementing NEPA. Agencies may adopt procedures to supplement CEQ's regulations. In adopting NEPA-implementing procedures, Federal Agencies are directed by CEQ to reduce paperwork (40 CFR 1500.4 and 1500.2(b)) and to reduce delay (40 CFR 1500.5) by using several means, including the use of categorical exclusions. The CEQ regulations also state that Agencies shall continue to review their policies and procedures and, in consultation with CEQ, revise them as necessary to ensure full compliance with the purpose and provisions of NEPA (40 CFR 1507.3).

The FDA regulations state that for major Federal actions that may ''significantly affect the quality of the human environment,'' FDA must prepare an environmental impact statement (EIS) (21 CFR 25.22; see also 40 CFR 1501.4). The term ''significantly,'' as used in NEPA, requires considerations of both ''context'' (i.e., analyzed in several contexts) and ''intensity'' (i.e., severity of impact) (40 CFR 1508.27(a), (b)). If the action *may* have a significant environmental impact, FDA can either prepare an EIS or prepare an Environmental Assessment (EA). An EA provides sufficient information and analysis for FDA to determine whether to prepare an EIS or issue a finding of no significant impact (FONSI) (21 CFR 25.20; 40 CFR 1501.3). FDA is responsible for the scope and content of an EA and generally requires an applicant to prepare an EA and make necessary corrections to it (21 CFR 25.40(b)).

Categorically excluded actions refer to a category of actions that have been found not to individually or cumulatively have a significant effect on the quality of the human environment and which do not ordinarily require the preparation of an EA or EIS (40 CFR 1508.4). However, as required under 21 CFR 25.21 and 40 CFR 1508.4, FDA will require at least an EA for any specific action that ordinarily would be excluded if extraordinary circumstances indicate that the specific proposed action may significantly affect the quality of the human environment.

If a submitter elects to request a categorical exclusion for a proposed action, a claim of categorical exclusion must be submitted in accordance with 21 CFR 25.15. Section 25.15 requires that the claim of categorical exclusion include: (1) A statement of compliance with the categorical exclusion criteria and (2) a statement that, to the submitter's knowledge, no extraordinary circumstances exist.

In November 2010, CEQ issued a final guidance on categorical exclusions including the process Agencies should use to establish new categorical exclusions. The guidance states that Agencies can establish new categorical exclusions to reduce paperwork and delay where the Agency has developed a record illustrating that the proposed categorical exclusion covers a category of action that, on the basis of past experience, does not normally have the potential to cause significant environmental effects (Ref. 1 at pp. 2 and 16). In addition, ''[w]hen agencies acquire new responsibilities through legislation or administrative restructuring, they should propose new categorical exclusions after they, or other agencies, gain sufficient experience with the new activities to make a reasoned determination that any resulting environmental impacts are not significant'' (Ref. 1 at p. 18).

FDA is proposing new categorical exclusions in accordance with NEPA, FDA, and CEQ regulations, and the CEQ November 2010 categorical exclusion guidance.

II. Overview of the Proposed Rule

Since FDA's NEPA policies and supplemental procedures were published in 1985 and prior to Congress giving FDA authority to regulate tobacco products in 2009, the Agency has prepared EAs for many Agency-initiated actions and has reviewed hundreds of EAs for a variety of industry requests for Agency action on foods, drugs, and medical devices for human consumption and use, and foods and drugs given to animals. In accordance with § 25.40(a) (21 CFR 25.40(a)), these EAs have focused on the potential environmental effects related to the use and disposal from use of the FDA-regulated articles. Based on FDA's experience reviewing EAs for actions involving foods, drugs, and medical devices for human consumption and use, and food and drugs given to animals, and its evaluation and knowledge of other relevant environmental science, FDA has determined that certain classes of

actions related to tobacco products normally do not cause significant environmental effects and, therefore, should be added to the list of actions that are excluded from the requirement to prepare an EA or an EIS. In addition, FDA has gained sufficient experience from its responsibilities under the Tobacco Control Act to determine that certain actions on tobacco-related applications do not result in significant environmental impacts to the quality of the human environment. Accordingly, FDA is proposing several new categorical exclusions for tobacco product-related actions. See the ''Statement of RADM David Ashley, Ph.D. and Hoshing Chang, Ph.D.'' (Ref. 2).

A. Classes of Tobacco Product-Related Actions Subject to Proposed Categorical Exclusions

FDA is proposing that the following classes of tobacco product-related actions qualify for categorical exclusions: (1) Issuance of an order finding a tobacco product substantially equivalent to a tobacco product commercially marketed in the United States as of February 15, 2007, under section 910(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 387j(a)(2)(B)); (2) issuance of an order finding a tobacco product not substantially equivalent under section 910(a) of the FD&C Act, an order under section 910(c) of the FD&C Act that a new tobacco product may not be introduced or delivered for introduction into interstate commerce, or an order under section 911 of the FD&C Act (21 U.S.C. 387k) that a modified risk tobacco product (MRTP) may not be introduced or delivered for introduction into interstate commerce (a modified risk tobacco product is any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products); (3) rescission (order withdrawing an order) or temporary suspension of an order authorizing the marketing of a new tobacco product under section 910 of the FD&C Act; (4) rescission of an order authorizing the marketing of a MRTP under section 911 of the FD&C Act; and (5) rescission of an order granting an exemption request under 21 CFR 1107.1.

For each proposed categorical exclusion, the environmental effect from the use and disposal from use of the tobacco product is negligible, if any, and would not individually or cumulatively have a significant effect on the quality of the human environment. Therefore, FDA believes that absent extraordinary circumstances, such actions should not require the preparation of any further analysis such as an EIS or an EA, which is intended to focus on ''relevant environmental issues relating to the use and disposal from use of FDA-regulated articles'' (§ 25.40(a)).

FDA also is proposing to amend several paragraphs of its existing environmental impact regulations in order to include tobacco products, where appropriate, in light of its new authority under the Tobacco Control Act.

1. SE Order Under Section 910(a)(2)(B) of the FD&C Act

FDA proposes that the Agency's issuance of an order finding a product to be substantially equivalent under section 910(a)(2)(B) of the FD&C Act qualifies for a categorical exclusion. Section 910(a)(2)(B) allows manufacturers of tobacco products that were first introduced or delivered for introduction into interstate commerce after February 15, 2007, and before March 22, 2011, and who submit a report by March 22, 2011, to continue to market the tobacco product unless the Agency issues an order that the tobacco product is not substantially equivalent and therefore must be removed from the market.

The estimated environmental effects that encompass all FDA-regulated tobacco products on the market, including products marketed after February 15, 2007, and before March 22, 2011, and grandfathered products (defined here as those products on the market as of February 15, 2007), are as follows:

a. *Effects due to the manufacture of the tobacco products:*

According to the 2011 Toxics Release Inventory (TRI) National Analysis, FDA estimates that 46,308 pounds of toxic chemicals (ammonia) were released to the land in the United States in 2011 without recycle and treatment; 3,702 pounds of toxic chemicals (including ammonia, nicotine and salts, and nitrate compounds) to the water; 719,451 pounds of toxic chemicals (including ammonia, chlorine, lead compounds, as well as nicotine and salts) to the air; 252,931 pounds of toxic chemicals (including ammonia, lead compounds, as well as nicotine and salts) recycled; and 1,563,193 pounds of toxic chemicals (including ammonia, nitrate compounds, as well as nicotine and salts) treated (Ref. 3). Compared to toxic waste released due to other manufacture activities estimated by the Environmental Protection Agency (EPA) using the same EPA database, the amount of waste released, recycled, and treated due to the manufacture of all tobacco products on the market is a fraction of the total toxic waste released from and managed in industrial facilities in the United States (as reported in 2011 TRI National Analysis Report).

TABLE 1—RELEASE OF TOXIC CHEMICALS

	Chemicals in Pounds Released Due to Manufacture of Tobacco Products in 2011 (Derived from 2011 TRI National Analysis Report, EPA)		Total Toxic Released from and Managed in Industrial Facilities in the United States in 2011 (2011 TRI National Analysis Report, EPA) in Pounds
Land Total Release	Ammonia	46,308	1,255,558,266
Water Total Release	Ammonia	185	212,990,079
	Nicotine and Salts	285	
	Nitrate compounds	3,232	
	Subtotal	3,702	
Air Total Release	Ammonia	467,181	799,250,733
	Chlorine	294	
	Lead Compounds	38	
	Nicotine and Salts	251,938	
	Subtotal	719,451	
Total Recycled	Ammonia	775	8,601,489,350
	Lead Compounds	621	
	Nicotine and Salts	251,535	
	Subtotal	252,931	
Total Treated	Ammonia	30,385	7,397,857,287
	Nicotine and Salts	369,130	
	Nitrate compounds	1,163,678	
	Subtotal	1,563,193	

b. *Effects due to use of the tobacco products:*

As reported in the U.S. Department of Agriculture's 2007 Tobacco Outlook, the United States consumed 2.9 pounds of cigarettes per capita and 0.38 pounds of snuff per capita (adults age 18 and over) (Ref. 4). From 1996 to 2006, tobacco product consumption dropped by about 24 percent, chewing tobacco use decreased 41 percent, snuff use increased 23 percent, and cigarette smoking decreased 29 percent (Ref. 4).

The existing environmental impact resulting from cigarette and roll-your-own use is tobacco smoke, which is one of the causes of poor indoor air quality (Ref. 5). Environmental Tobacco Smoke (secondhand smoke) is classified as a Class A carcinogen by EPA (Ref. 6). Studies on outdoor tobacco smoke have shown that during periods of active smoking, peak and average outdoor tobacco smoke levels near smokers are equivalent to indoor tobacco smoke concentrations levels. However, outdoor tobacco smoke levels approached zero at distances greater than approximately 2 meters from a single cigarette and dropped almost instantly after smoking activity ceased (Ref. 7). The existing environmental impact resulting from use of smokeless tobacco products is not as substantial as that for cigarettes or roll-your-own tobacco. FDA expects that any new tobacco products that receive marketing authorization through the available pathways would have less or no more environmental impact than that of tobacco products currently on the market.

c. *Effects due to the disposal from use of the tobacco products:*

The existing environmental consequence resulting from disposal from use of cigarettes is from the discarded cigarette filters. Cigarette filters are primarily composed of cellulose acetate (Ref. 8) and may persist under normal environmental conditions for 18 months to 10 years (Ref. 9). As much as 766,571 metric tons of cigarette filters are discarded as litter worldwide each year (Ref. 10). Discarded cigarette filters are carried as runoff from streets to drains and rivers and, ultimately, to the ocean and its beaches and are found to be the most collected item in beach clean-ups and litter surveys (Ref. 10). Evidence has shown that cigarette butts are the most prevalent items discarded in urban areas (Ref. 11). Cigarette filters were found to be a point source for metal contamination litter, based on a study performed to assess the gradual release of multiple metals from the cigarette filter over the 34-day study period (Ref. 12). Scientists evaluating the ecotoxicity of discarded cigarette filters also have shown the potential existing environmental consequences that result from disposal of cigarette filters. Scientists found that the solution made as a result of soaking smoked cigarette butts (smoked filter + tobacco) in water was toxic to both marine and fresh water fish used in the study (Ref. 13).

The existing environmental consequence resulting from disposal from use of smokeless tobacco is the impact on landfills. About 126 million pounds of smokeless tobacco were consumed in the United States in 2006, which resulted in an approximately equal amount of spent smokeless tobacco in the country's landfills (Ref. 14).[1]

The Agency estimates that there are currently about 5,000 brands and subbrands of tobacco products on the market that are subject to FDA's tobacco product authorities. The majority of them are on the market under section 910(a)(2)(B) of the FD&C Act. The effects of keeping tobacco products on the market are individually and cumulatively trivial compared to the existing environmental effects due to toxic waste released from and managed

[1] The consumption of smokeless tobacco in 2006 is estimated as follows: 225,662,922 (U.S. population for age 18 years old and over in 2006) × 0.38 (snuff consumption per capita 18 years and over in pounds, 2007) + 109,777,445 (U.S. population for male age 18 years old and over in 2006) × 0.37 (chewing tobacco consumption per capita male 18 years and over in pounds, 2007) = 126,369,565 pounds.

in industrial facilities in the United States and the existing environmental effects due to the use and disposal from use of the tobacco products in the country. Therefore, the action should qualify for a categorical exclusion under proposed § 25.35(a).

2. Orders Under Sections 910(a), 910(c), and 911 of the FD&C Act

FDA proposes that the Agency's issuance of any of the following orders qualifies for a categorical exclusion: (1) An order finding a tobacco product not substantially equivalent under section 910(a) of the FD&C Act; (2) an order finding that a new tobacco product may not be introduced or delivered for introduction into interstate commerce under section 910(c) of the FD&C Act; or (3) an order finding that a modified risk tobacco product may not be introduced or delivered for introduction into interstate commerce under section 911. No use or disposal from use exists as a result of these actions. Generally, the effect of a denial for a new product application is to prevent the entry or continued entry of a product into the market. With regard to products that entered the market after February 15, 2007, and before March 22, 2011, and for which a report was submitted by March 22, 2011, the effect of a finding of not substantially equivalent would be to remove that product from the market. Such a removal would not result in the production or distribution of any substances and, therefore, would not result in the introduction of any substance into the environment. Therefore, FDA believes these actions would not individually or cumulatively have an effect on the quality of the human environment and should qualify for categorical exclusions under proposed § 25.35(b).

3. Rescission or Temporary Suspension of an Order Issued Under Section 910 of the FD&C Act

FDA proposes that the Agency's rescission or temporary suspension of an order authorizing the marketing of a new tobacco product under section 910 of the FD&C Act qualifies for a categorical exclusion. This action stops or suspends the use of a new tobacco product under section 910. The Agency is proposing that these rescissions or temporary suspensions of authorization, whether requested by industry or initiated by the Agency, be categorically excluded because these types of actions would not result in the production or distribution of any substances and, therefore, would not result in the introduction of any substance into the environment. Furthermore, assuming that users of the product continued to use tobacco, they would be expected to continue use by changing their use to products already on the market. These products would have been part of the baseline market that existed prior to passage of the Tobacco Control Act or would have already been subject to a categorical exclusion or an EA. The discontinuation of use and disposal from use of the tobacco product would not individually or cumulatively have a significant impact on the quality of the human environment. Therefore, the action should qualify for a categorical exclusion under proposed § 25.35(c).

4. Rescission of an Order Issued Under Section 911 of the FD&C Act

FDA proposes that the Agency's rescission of an order authorizing the marketing of an MRTP under section 911 of the FD&C Act qualifies for a categorical exclusion. This action would prohibit a tobacco product manufacturer from the use of advertisements, labels, or labeling indicating that the product somehow reduces harm or the risk of tobacco-related diseases associated with other tobacco products. The Agency is proposing that these rescissions of authorization, whether requested by industry or initiated by the Agency, be categorically excluded because these types of actions would not result in the production or distribution of any substances and, therefore, would not result in the introduction of any substance into the environment. Accordingly, FDA believes the action would not individually or cumulatively have a significant effect on the quality of the human environment and should qualify for a categorical exclusion under proposed § 25.35(d).

5. Rescission of an Order Issued Under Section 905(j)(1)(A)(ii) of the FD&C Act and § 1107.1

FDA proposes that the Agency's rescission of an order authorizing the marketing of a new tobacco product under section 905(j)(1)(A)(ii) of the FD&C Act (21 U.S.C. 387e(j)(1)(A)(ii)) and § 1107.1 qualifies for a categorical exclusion. Section 1107.1 allows the Agency to rescind an exemption from the requirements relating to the demonstration of substantial equivalence where the tobacco product is modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if it finds that the exemption is not appropriate for the protection of public health (§ 1107.1(d)). The action stops the use of a new tobacco product under these provisions. The Agency is proposing that these rescissions of authorization, whether requested by industry or initiated by the Agency, be categorically excluded because these types of actions would not result in the production or distribution of any substances and, therefore, would not result in the introduction of any substance into the environment. The discontinuation of use and disposal from use of the tobacco product would not individually or cumulatively have a significant effect on the quality of the human environment. Therefore, the action should qualify for a categorical exclusion under proposed § 25.35(e).

B. Extraordinary Circumstances for Tobacco Product-Related Actions

The current regulations state that FDA will require further analysis, at least an EA, for any specific action that ordinarily would be categorically excluded if extraordinary circumstances indicate that the specific proposed action may significantly affect the quality of the human environment (§ 25.21). The regulations also state that examples of actions where extraordinary circumstances would preclude using a categorical exclusion include ''[a]ctions for which available data establish that, at the expected level of exposure, there is the potential for serious harm to the environment'' and ''[a]ctions that adversely affect a species or the critical habitat of a [protected] species'' (§ 25.21(a) and (b)).

These examples are applicable to tobacco products. If any tobacco product submission indicates that the action could result in the exposure of substances harmful to some biological mechanisms or systems in the environment or that the action may cause harm to a protected or endangered species, this would be considered an extraordinary circumstance that would warrant at least the preparation of an EA. FDA will continue to rely upon considerations of the intensity and context as set out at 40 CFR 1508.27 for determining whether an extraordinary circumstance will result in the potential for a proposed action to significantly affect the environment.

C. Proposed Categorical Exclusions Would Benefit the Public Interest

FDA believes that this proposal would benefit FDA, regulated industry, and the public as a whole. The proposal would substantially reduce the numbers of EAs required to be submitted by industry and reviewed by FDA and, consequently, reduce the number of FONSIs the Agency would be required to prepare for such applications. This would enable FDA to focus its

environmental resources on situations likely to have an effect on the environment—a key goal of NEPA and CEQ (see 40 CFR 1500.4(b), 1500.5(k)). As CEQ noted in 2010, the ''use of categorical exclusions can reduce paperwork and delay, so that EAs and EISs are targeted toward proposed actions that truly have the potential to cause significant environmental effects'' (Ref. 1 at p. 16). The proposal also would allow tobacco product manufacturers to focus on other key portions of their applications, which is particularly necessary given that this industry has not been previously subject to Federal regulations. In addition, the proposal would benefit the tobacco product industry by alleviating otherwise necessary burdens given that ''[g]enerally, FDA requires an applicant to prepare an EA and make necessary corrections to it'' (21 CFR 25.40(b)). Furthermore, this rule would benefit the public health by allowing both FDA and industry to better focus their resources on other matters that could have a direct impact on the public health. Finally, § 25.21 provides a safeguard that allows the Agency to prepare or require industry to prepare an EA if there are extraordinary circumstances such that an action that ordinarily would be categorically excluded may significantly affect the quality of the human environment.

III. Description of the Proposed Rule

FDA proposes to amend Title 21 of the Code of Federal Regulations in order to:

- Clarify that part 25 applies to tobacco products subject to FDA's authority under Chapter IX of the FD&C Act (U.S.C. 387 through U.S.C. 387u); and
- Establish categorical exclusions specific to tobacco products.

Specifically, the proposed regulations would: (1) Amend § 25.15(a), (c), and (d) to indicate the availability of categorical exclusions under § 25.35; (2) amend § 25.20 by adding language to the introductory paragraph and adding paragraphs (p) and (q) to identify the tobacco-related actions that normally would require at least the preparation of an EA, unless the specific classes of actions are categorically excluded by the proposed exclusions in § 25.35; (3) revise the introductory paragraph of § 25.30 to reflect the new proposed categorical exclusions in § 25.35; (4) add § 25.35 to outline the categorical exclusions that apply solely to certain actions on tobacco product applications; (5) amend § 25.40(a) to indicate the availability of categorical exclusions under § 25.35; and (6) amend §§ 25.50(b) and 25.52(a), (b), and (c) to ensure that the public has an opportunity to participate in the development of environmental documents regarding tobacco products and that it receives notification of these documents.

A. General Procedures (§ 25.15)

The proposed rule would revise paragraphs (a), (c), and (d) of § 25.15 to add a reference to new proposed § 25.35, which would provide categorical exclusions for actions associated with various tobacco product submissions. Specifically, the addition to § 25.15(a) would explain that failure to submit an adequate EA with a tobacco application constitutes sufficient grounds for FDA to refuse to file or approve the application or petition, unless the action qualifies for a categorical exclusion under proposed § 25.35. The addition to § 25.15(c) would add the categorical exclusions under proposed § 25.35 to the classes of actions that qualify for categorical exclusions. Finally, the addition to § 25.15(d) would provide that a person submitting a tobacco application or petition identified in proposed § 25.35 would not be required to submit an EA if the person's application states that: (1) The action requested qualifies for a categorical exclusion and (2) no extraordinary circumstances exist that would prevent the use of the categorical exclusion. For the purposes of tobacco products, the term ''application'' includes any application or submission to FDA (including SE reports and exemption requests) related to the marketing of tobacco products.

B. Actions Requiring Preparation of an Environmental Assessment (§ 25.20)

FDA proposes to revise § 25.20 to change the introductory paragraph to indicate the existence of tobacco-specific categorical exclusions under proposed § 25.35. In addition, FDA proposes to add to § 25.20 paragraphs (p) and (q) to state that the following Agency actions on tobacco applications require the preparation of an EA unless it is an action in a specific class that is categorically excluded: (1) Issuance of an order finding a tobacco product to be substantially equivalent under the FD&C Act, unless categorically excluded in § 25.35 and (2) issuance of an order authorizing the marketing of a new tobacco product under section 910 or an MRTP under section 911 of the FD&C Act, unless categorically excluded in § 25.35.

These revisions are necessary to make clear that certain types of actions on tobacco-related submissions could result in the requirement to prepare an EA, but manufacturers may be exempted from this requirement for certain classes of actions if the action qualifies for the use of a categorical exclusion.

C. General (§ 25.30)

The proposed rule would revise the introductory sentence to reflect the fact that we are proposing to add categorical exclusions in § 25.35. Therefore, those actions listed in § 25.30 and in §§ 25.30 through 25.35 would not ordinarily require the preparation of an EA or EIS.

D. Tobacco Product Applications (§ 25.35)

The proposed rule would add new § 25.35, which would provide additional categorical exclusions from the requirement to prepare at least an EA for certain actions on tobacco product submissions.

Specifically, proposed § 25.35(a) would provide for a categorical exclusion from preparing an EA for the issuance of an order finding that a product is substantially equivalent to a predicate product under section 910(a)(2)(B) of the FD&C Act.

Proposed § 25.35(b) would provide for a categorical exclusion regarding FDA's issuance of orders stating that: (1) A tobacco product is not substantially equivalent under section 910(a) of the FD&C Act; (2) a new tobacco product may not be introduced or delivered for introduction into interstate commerce under section 910(c) of the FD&C Act; or (3) a modified risk tobacco product may not be introduced or delivered into interstate commerce under section 911 of the FD&C Act.

Proposed § 25.35(c) would allow for a categorical exclusion where FDA rescinds or temporarily suspends an order authorizing the marketing of a new tobacco product under section 910 of the FD&C Act. Proposed § 25.35(d) would provide a categorical exclusion where FDA rescinds an order authorizing the marketing of a modified risk tobacco product under section 911 of the FD&C Act. Similarly, proposed § 25.35(e) would provide a categorical exclusion where FDA rescinds an order authorizing the marketing of a new tobacco product under section 905(j)(1)(A)(ii) of the FD&C Act and under § 1107.1. The term ''new tobacco product'' is defined in section 910(a)(1)(A) and (a)(1)(B) of the FD&C Act.

E. Environmental Assessments (§ 25.40)

The proposed rule would amend § 25.40(a), which currently indicates that an EA shall be prepared for each action not categorically excluded in § 25.30, 25.31, 25.32, 25.33, or 25.34.

The proposed rule would delete ''or 25.34'' and replace with it with ''25.34, or 25.35'' to indicate the availability of additional categorical exclusions in proposed § 25.35.

F. General Information (§ 25.50)

The proposed rule would amend § 25.50(b), which relates to information protected from disclosure by law. By adding tobacco products to this regulation, FDA seeks to make clear that any environmental impact documentation regarding tobacco product applications (including SE reports and requests for exemptions from the requirements to demonstrate substantial equivalence) would not be released prior to issuance of an FDA order, unless the existence of such application has been made publicly available.

G. Environmental Impact Statements (§ 25.52)

Section 25.52 explains the process and requirements for public participation and notification regarding the preparation of an EIS for FDA-regulated products. Similar to other FDA-regulated products, FDA may determine that forthcoming actions involving tobacco products should require the preparation of an EIS. Therefore, the proposed rule would add ''tobacco products'' to paragraphs (a), (b), and (c) of § 25.52, where the regulation refers to actions on other FDA-regulated products that may require preparation of an EIS.

Specifically, the proposed rule would amend § 25.52(a) to explain that if an EIS is necessary for an action involving tobacco products, it would become available for review by the public only at the time of the issuance of an order authorizing commercial marketing of the product in the United States. In addition, the proposed rule would amend § 25.52(b) to indicate that comments on the EIS may be submitted after the issuance of an order authorizing commercial marketing of the tobacco product in the United States and that these comments can form the basis for beginning the process of rescinding the marketing authorization. The proposed rule also would amend § 25.52(c) to state that where the existence of an application for a tobacco product has been disclosed before the Agency action, FDA will involve the public in preparing an EA or an EIS while continuing to adhere to the Agency's disclosure regulations with regard to confidential commercial information that has not been disclosed.

Further, the proposed rule would amend § 25.52(a) and (b) to add references to ''market authorizations.'' As currently written, § 25.52(a) and (b) do not identify all the types of actions that could be taken with regard to tobacco products, including market authorizations. Not only can FDA engage in review and assessment of investigations with respect to tobacco products, but the Agency also may provide market authorizations in response to applications regarding tobacco products (see, e.g., section 911(g)(1) of the FD&C Act).

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

VI. Environmental Impact

The proposed amendment of the FDA NEPA Regulations (21 CFR part 25) concerns NEPA documentation for certain actions on tobacco product submission. CEQ does not direct Agencies to prepare a NEPA analysis or document before establishing Agency procedures that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: Those that require preparation of an EIS; those that require preparation of an EA; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those Agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures, such as the FDA NEPA regulations assist FDA in the fulfillment of Agency responsibilities under NEPA, but are not FDA's final determination of what level of NEPA analysis is required for a particular proposed action on a tobacco product submission. The requirements for establishing Agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. Furthermore, the Agency has also determined under 21 CFR 25.30(h) that this rulemaking does not individually or cumulatively have a significant effect on the quality of the human environment.

VII. Analysis of Impacts

The analysis of economic impacts is available as Reference 15 in Docket No. FDA–2013–N–1282 and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm*.

VIII. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). As noted previously, if you have comments on specific provisions of the proposed regulation, we request that you identify these provisions in your comments. In addition, if you have concerns that would be addressed by alternative text for the regulation, we request that you provide this alternative text in your comments. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

IX. References

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

1. Council on Environmental Quality, ''Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act,'' 76 FR 3843, January 21, 2011.

2. Statement of RADM David Ashley, Ph.D. and Hoshing Chang, Ph.D., ''Impact of Tobacco Products on the Environment.''

3. 2011 Toxic Release Inventory (TRI) National Analysis. Available at *http://*

www.epa.gov/tri/tridata/tri11/nationalanalysis/overview/2011_TRI_NA_Overview.pdf.

4. U.S. Department of Agriculture. ''Tobacco Outlook Report,'' Economic Research Service, 2007. *http://usda01.library.cornell.edu/usda/ers/TBS//2000s/2007/TBS-10-24-2007.pdf*. Accessed on August 29, 2012.

5. Poor Air Quality, available at *http://www.epa.gov/iaq/pubs/insidestory.html*.

6. U.S. Environmental Protection Agency, ''Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders,'' EPA/600/6–90/006F, December 1992.

7. Klepeis, NE., W.R. Ott, and P. Switzer, ''Real-Time Measurement of Outdoor Tobacco Smoke Particles,'' *Journal of the Air & Waste Management Association,* 57:5, 522–534, 2007.

8. U.S. Department of Health and Human Services, ''Reducing the Health Consequences of Smoking: 25 Years of Progress.'' A Report of the Surgeon General, 1989. Rockville, MD: Public Health Service, Centers for Disease Control, Office on Smoking and Health, 1989. (DHHS Publication No (CDC) 89–8411.)

9. Ach, A. Biodegradable Plastics Based on Cellulose Acetate. *Journal of Macromolecular Science: Pure and Applied Chemistry*. A30:733–740, 1993.

10. Smith, E.A. and T.E. Novotny, ''Whose Butt Is It? Tobacco Industry Research About Smokers and Cigarette Butt Waste.'' *Tobacco Control*, 20:I2–I9, 2011. DOI: 10.1136/tc.2010.040105.

11. Department for the Environment, Food and Rural Affairs of the U.K. ''Preventing Cigarette Litter in England: Guidelines for Local Authorities,'' DEFRA 2007.

12. Moerman, J.W. and G.E. Potts, ''Analysis of Metals Leached From Smoked Cigarette Litter.'' *Tobacco Control*, 20:I30–I35, 2011. DOI: 10.1136/tc.2010.040196.

13. Slaughter, E.; R.M. Gersberg, K. Watanabe, et al., ''Toxicity of Cigarette Butts, and Their Chemical Components, to Marine and Freshwater Fish,'' *Tobacco Control,* 20: I25–I29 2011.

14. United States Census Bureau, Vintage 2006: National Tables, available at *http://www.census.gov/popest/data/historical/2000s/vintage_2006/index.html*; accessed October 20, 2012.

15. Preliminary Regulatory Impact Analysis.

List of Subjects in 21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

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

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262, 263b–264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531–533 as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356–360.

§ 25.15 [Amended]

■ 2. Amend § 25.15 as follows:

■ a. Remove from paragraph (a) ''or 25.34,'' and add in its place ''25.34, or 25.35,'';

■ b. Remove from paragraph (c) ''or 25.34''and add in its place ''25.34, or 25.35''; and

■ c. Remove from paragraph (d) ''or 25.34,'' and add in its place ''25.34, or 25.35,''.

■ 3. Amend § 25.20 by revising the introductory text and by adding paragraphs (p) and (q) to read as follows:

§ 25.20 Actions requiring preparation of an environmental assessment.

Any proposed action of a type specified in this section ordinarily requires at least the preparation of an EA, unless it is an action in a specific class that qualifies for exclusion under §§ 25.30, 25.31, 25.32, 25.33, 25.34, or 25.35:

* * * * *

(p) Issuance of an order finding a tobacco product substantially equivalent under Federal Food, Drug, and Cosmetic Act, unless categorically excluded under § 25.35.

(q) Issuance of an order authorizing marketing of a new tobacco product under section 910 of the Federal Food, Drug, and Cosmetic Act or an order authorizing marketing of a modified risk tobacco product under section 911 of the Federal Food, Drug, and Cosmetic Act, unless categorically excluded under § 25.35.

■ 4. Amend the introductory text of § 25.30 by removing ''25.34'' and adding in its place ''25.35''.

■ 5. Add new § 25.35 to subpart C to read as follows:

§ 25.35 Tobacco product applications.

The classes of actions listed in this section are categorically excluded and, therefore, ordinarily do not require the preparation of an EA or an EIS:

(a) Issuance of an order finding a tobacco product substantially equivalent under section 910(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act;

(b) Issuance of an order finding a tobacco product not substantially equivalent under section 910(a) of the Federal Food, Drug, and Cosmetic Act, issuance of an order under section 910(c) of the Federal Food, Drug, and Cosmetic Act that a new tobacco product may not be introduced or delivered for introduction into interstate commerce, or issuance of an order under section 911 of the Federal Food, Drug, and Cosmetic Act that a modified risk tobacco product may not be introduced or delivered for introduction into interstate commerce;

(c) Rescission or temporary suspension of an order authorizing the marketing of a new tobacco product under section 910 of the Federal Food, Drug, and Cosmetic Act;

(d) Rescission of an order authorizing the marketing of a modified risk tobacco product under section 911 of the Federal Food, Drug, and Cosmetic Act; and

(e) Rescission of an order granting an exemption request under § 1107.1 of this chapter.

■ 6. Amend § 25.40 by removing from paragraph (a) ''or § 25.34'' and adding in its place, ''§ 25.34, or § 25.35.''

■ 7. Amend § 25.50 by revising the first, third, fourth, and fifth sentences of paragraph (b) to read as follows:

§ 25.50 General information.

* * * * *

(b) Many FDA actions involving investigations, review, and approval or market authorization of applications, and premarket notifications for human drugs, animal drugs, biologic products, devices, and tobacco products are protected from disclosure under the Trade Secret Act, 18 U.S.C. 1905, and section 301(j) of the Federal Food, Drug, and Cosmetic Act. * * * Even the existence of applications for human drugs, animal drugs, biologic products, devices, and tobacco products is protected from disclosure under these regulations. Therefore, unless the existence of applications for human drugs, animal drugs, biologic products, tobacco products, or premarket notification for devices has been made publicly available, the release of the environmental document before approval or authorization of human drugs, animal drugs, biologic products, devices and tobacco products is inconsistent with statutory requirements imposed on FDA. Appropriate environmental documents, comments, and responses will be included in the administrative record to the extent allowed by applicable laws.

■ 8. Amend § 25.52 by revising the first sentence of paragraph (a), and paragraphs (b) and (c) to read as follows:

§ 25.52 Environmental impact statements.

(a) If FDA determines that an EIS is necessary for an action involving investigations, approvals, or market authorizations for drugs, animal drugs, biologic products, devices, or tobacco products, an EIS will be prepared but

will become available only at the time of the approval or market authorization of the product. * * *

(b) Comments on the EIS may be submitted after the approval or market authorization of the drug, animal drug, biologic product, device, or tobacco product. Those comments can form the basis for the Agency to consider beginning an action to withdraw the approval or market authorization of applications for a drug, animal drug, biologic product, or tobacco product, or to withdraw premarket notifications or premarket approval applications for devices.

(c) In those cases where the existence of applications and premarket notifications for drugs, animal drugs, biologic products, devices, or tobacco products has already been disclosed before the Agency approves the action, the Agency will ensure appropriate public involvement consistent with 40 CFR 1506.6 and part 1503 in preparing and implementing the NEPA procedures related to preparing EIS's while following its own disclosure requirements including those listed in part 20 and §§ 312.130(b), 314.430(d), 514.11(d), 514.12(b), 601.51(d), 807.95(e), 812.38(b), and 814.9(d) of this chapter.

* * * * *

Dated: January 15, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01224 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 2, 6, and 7

[Docket No. PTO–T–2013–0026]

RIN 0651–AC88

Miscellaneous Changes to Trademark Rules of Practice and the Rules of Practice in Filings Pursuant to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

AGENCY: United States Patent and Trademark Office, Commerce.

ACTIONS: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (''Office'') proposes to amend the Trademark Rules of Practice and the Rules of Practice in Filings Pursuant to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks to benefit the public by providing greater clarity as to certain requirements relating to representation before the Office, applications for registration, examination procedures, amendment of applications, publication and post publication procedures, appeals, petitions, post registration practice, correspondence in trademark cases, classification of goods and services, and procedures under the Madrid Protocol. For the most part, the proposed rule changes are intended to codify existing practice.

DATES: Comments must be received by April 23, 2014 to ensure consideration.

ADDRESSES: The Office prefers that comments be submitted via electronic mail message to *TMFRNotices@uspto.gov.* Written comments also may be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, attention Cynthia C. Lynch; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia C. Lynch; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal. Written comments will be available for public inspection on the Office's Web site at *http://www.uspto.gov,* on the Federal eRulemaking Portal, and at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, by email at *TMPolicy@uspto.gov,* or by telephone at (571) 272–8742.

SUPPLEMENTARY INFORMATION: *Executive Summary: Purpose:* The proposed rules will benefit the public by providing more comprehensive and specific guidance regarding certain requirements relating to representation before the Office, applications for registration, examination procedures, amendment of applications, publication and post publication procedures, appeals, petitions, post registration practice, correspondence in trademark cases, classification of goods and services, and procedures under the Madrid Protocol. For the most part, the proposed rule changes are intended to codify existing practice.

Summary of Major Provisions: As stated above, the Office proposes to revise the rules in parts 2, 6, and 7 of title 37 of the Code of Federal Regulations to codify current Office practice and provide sufficient detail regarding miscellaneous requirements relating to representation before the Office, applications for registration, examination procedures, amendment of applications, publication and post publication procedures, appeals, petitions, post registration practice, correspondence in trademark cases, classification of goods and services, and procedures under the Madrid Protocol.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

References below to ''the Act,'' ''the Trademark Act,'' or ''the statute'' refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.,* as amended. References to ''TMEP'' or ''*Trademark Manual of Examining Procedure''* refer to the October 2013 edition.

Discussion of Proposed Rules Changes

Representation by Attorneys or Other Authorized Persons

The Office proposes to revise § 2.17(d)(1) to remove the reference to the number of powers of attorney that can be filed via the Trademark Electronic Application System (''TEAS'') for existing applications or registrations that have the identical owner and attorney. The TEAS Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative form currently indicates that up to 300 applications or registrations may be amended per request. The proposed revision is intended to remove outdated information, and will allow more flexibility for future enhancements to TEAS.

The Office proposes to revise § 2.19(b) to require compliance with § 11.116, rather than § 10.40, as part 10 of this chapter has been removed and reserved (78 FR 20180 (April 3, 2013)) and § 11.116 now sets out the requirements for terminating representation.

Applications for Registration

The Office proposes to revise § 2.22(a)(19) to indicate that if a TEAS Plus applicant owns one or more registrations for the same mark shown in the application, and the last listed owner of the prior registration(s) differs from the owner of the application, the application must include a claim of ownership for the prior registration(s) in order to be entitled to the reduced filing fee under § 2.6(a)(1)(iii). This limits the

circumstances under which a TEAS Plus applicant is required to claim ownership of a prior registration and is consistent with the proposed revision to the claim of ownership requirements in § 2.36.

The Office proposes to revise § 2.36 to indicate that an applicant is only required to claim ownership of prior registrations for the same or similar marks if the owner listed in the application differs from the owner last listed in the Office's database for such prior registrations. This is consistent with existing practice.

The Office proposes to revise § 2.38(b) to remove the requirement that an application indicate that, if the applied-for mark is not being used by the applicant but is being used by one or more related companies whose use inures to the benefit of the applicant under section 5 of the Act, such fact must be indicated in the application.

The Office further proposes to redesignate § 2.38(c) as § 2.38(b), as the requirement in current § 2.38(b) is being removed.

Examination of Application and Action by Applicants

The Office proposes to add new § 2.62(c) to specify that responses to Office actions must be filed through TEAS, transmitted by facsimile, mailed, or delivered by hand, and that responses sent by email will not be accorded a date of receipt. This is consistent with existing practice.

The Office proposes to amend the title of § 2.63 from ''Reexamination'' to ''Action after response,'' as revised § 2.63 incorporates a discussion of reexamination, the filing of petitions and appeals, and abandonments.

The Office proposes to revise § 2.63(a) to clarify that after submission of a response by the applicant, the examining attorney will review all statutory refusal(s) and/or requirement(s) in light of the response. This is consistent with TMEP section 713.

The Office proposes to add § 2.63(a)(1) to clarify that the applicant may respond to a non-final action that maintains any requirement(s) or substantive refusal(s) by filing a timely response to the examiner's action. This is consistent with TMEP section 713.

The Office proposes to add § 2.63(a)(2) to clarify that the applicant may respond to a non-final action that maintains any requirement(s) by filing a petition to the Director under § 2.146 if the subject matter of the requirement(s) is appropriate for petition, that if the petition is denied, the applicant will have six months from the date of the Office action which repeated the requirement(s), or thirty days from the date of the decision on the petition, whichever is later, to comply with the repeated requirement(s), and that a requirement which is the subject of a petition to the Director subsequently may not be the subject of an appeal to the Trademark Trial and Appeal Board (''TTAB''). This is consistent with TMEP sections 713 and 1702.

The Office proposes to revise § 2.63(b) to clarify that the examining attorney may make final a refusal or a requirement upon review of a response or request for reconsideration. This is consistent with current § 2.64(a) and TMEP sections 713 and 714.03.

The Office proposes to add § 2.63(b)(1) to clarify that the applicant may respond to a final action that maintains any substantive refusal(s) under sections 2, 3, 4, 5, 6, or 23 of the Act by filing an appeal to the TTAB under §§ 2.141 and 2.142. This is consistent with TMEP section 1501.01.

The Office proposes to add § 2.63(b)(2) to clarify that the applicant may respond to a final action that withdraws all substantive refusals but maintains any requirement(s) either by filing an appeal to the TTAB under §§ 2.141 and 2.142, or by filing a petition to the Director under § 2.146, if the subject matter of the requirement(s) is procedural, and therefore appropriate for petition. This is consistent with current § 2.63(b) and TMEP sections 1501.01 and 1704.

The Office proposes to add § 2.63(b)(3) to clarify that the applicant may file a request for reconsideration of the final action prior to the expiration of the time for filing an appeal to the TTAB or a petition to the Director, that the request must be signed by a party authorized under § 2.193(e)(2), and that the request does not stay or extend the time for filing an appeal or petition. This is consistent with current § 2.64(b) and TMEP section 715.03.

The Office proposes to add § 2.63(b)(4) to clarify that the filing of a request for reconsideration that does not result in the withdrawal of all refusals and requirements, without the filing of a timely appeal or petition, will result in abandonment of the application for incomplete response. This is consistent with section 12(b) of the Act and current § 2.65(a).

The Office proposes to add § 2.63(c) to clarify both that if a petition to the Director under § 2.146 is denied, the applicant will have until six months from the date of issuance of the Office action that repeated the requirement(s), or made it final, or thirty days from the date of the decision on the petition, whichever date is later, to comply with the requirement(s), and that a requirement that is the subject of a petition decided by the Director subsequently may not be the subject of an appeal to the TTAB. This is consistent with current § 2.63(b) and TMEP section 1702.

The Office proposes to add § 2.63(d) to clarify that if an amendment to allege use is filed during the six-month response period after issuance of a final action, the examining attorney will examine the amendment, but the filing of the amendment does not stay or extend the time for filing an appeal to the TTAB or a petition to the Director. This is consistent with current § 2.64(c)(1) and TMEP sections 711 and 1104.

The Office proposes to remove and reserve § 2.64 and incorporate updated final action procedures into proposed revised § 2.63.

The Office proposes to revise § 2.65(a) both to clarify that an application will be deemed abandoned if an applicant fails to respond, or respond completely, to an Office action within six months of the issuance date, but a timely petition to the Director or notice of appeal to the TTAB, if appropriate, is considered to be a response that avoids abandonment, and to revise the reference to § 2.63(b) so as to reference § 2.63(a) and (b). The clarification is consistent with TMEP section 718.03 and the revision to the reference accounts for the proposed amendment to § 2.63 which sets out the conditions for a petition under § 2.146 in § 2.63(a) and (b) instead of only § 2.63(b).

The Office proposes to add § 2.65(a)(1) to clarify that if an applicant fails to timely respond to an Office action, but all refusals or requirements are expressly limited to certain goods or services, the application will be abandoned only as to those goods or services. This is consistent with current § 2.65(a) and TMEP section 718.02(a).

The Office proposes to add § 2.65(a)(2) to clarify that an applicant may, in certain situations, be granted thirty days, or to the end of the response period set forth in the action, whichever is longer, to provide information omitted from a response before the examining attorney considers the issue of abandonment. This is consistent with current § 2.65(b) and TMEP section 718.03(b).

The Office proposes to revise § 2.65(b) to clarify that an application will be abandoned if an applicant expressly abandons the application pursuant to § 2.68. This is consistent with TMEP section 718.01.

The Office proposes to revise § 2.65(c) to clarify that an application under section 1(b) of the Act will be abandoned if the applicant fails to file a timely statement of use under § 2.88 or a request for an extension of time for filing a statement of use under § 2.89. This is consistent with section 1(d)(4) of the Act and TMEP sections 1108.01 and 1109.04.

The Office proposes to revise § 2.68(a) to indicate that a request for abandonment or withdrawal may not subsequently be withdrawn. This is consistent with TMEP section 718.01, and is intended to provide applicants, registration owners, and the public assurance of the accuracy of the status of applications or registrations after filings are received by the Office.

The Office proposes to revise § 2.68(b) for clarity by moving the ''in any proceeding before the Office'' clause to the end of the sentence.

Amendment of Application

The Office proposes to revise § 2.77(b) to indicate that amendments not listed in § 2.77(a) may be entered in the application in the time period between issuance of the notice of allowance and submission of a statement of use only with the express permission of the Director, after consideration on petition under § 2.146. This is consistent with TMEP sections 1107 and 1505.01(d), which currently require a waiver of § 2.77 on petition.

Publication and Post Publication

The Office proposes to revise § 2.81(b) to remove the list of items that will be included on the notice of allowance. The proposed change allows greater flexibility in the format of notices of allowance, to allow for changes that may occur in conjunction with the Office's ''Trademarks Next Generation'' information technology initiative. As a matter of practice, at this time, the Office plans to continue to maintain the current format of the notice of allowance.

The Office proposes to revise § 2.84(b) to clarify that an application that is not the subject of an inter partes proceeding before the TTAB may be amended after the mark has been published for opposition, but before the certificate of registration has been issued under section 1(a), 44, or 66(a) of the Act, or before the notice of allowance has been issued in an application under section 1(b) of the Act, if the amendment meets the requirements of §§ 2.71, 2.72, and 2.74. This is consistent with existing practice.

Appeals

The Office proposes to revise § 2.142(f)(3) and (f)(6) to remove the references to § 2.64, as the Office is proposing to remove and reserve § 2.64, with the sections of § 2.64 relevant to § 2.142(f)(3) and (f)(6) incorporated into proposed revised § 2.63.

The Office proposes to revise § 2.145(a) to add registrants who have filed an affidavit or declaration under section 71 of the Act and are dissatisfied with a decision of the Director to the list of parties eligible to appeal to the U.S. Court of Appeals for the Federal Circuit. This is consistent with TMEP section 1613.18(d).

The Office proposes to revise § 2.146(a)(1) and (g) to replace references to § 2.63(b) with references to § 2.63(a) and (b), as the Office is proposing to list conditions for a petition under § 2.146 in § 2.63(a) and (b) instead of only § 2.63(b).

Post Registration

The Office proposes to revise § 2.172 to clarify that a surrender for cancellation may not subsequently be withdrawn. This is consistent with existing practice.

The Office proposes to revise § 2.185(a) to indicate that deficiencies in renewal applications may be corrected after notification from the Office. This is consistent with existing practice.

General Information and Correspondence in Trademark Cases

The Office proposes to amend § 2.198(a)(1) by adding § 2.198(a)(1)(viii) to include affidavits under section 71 of the Act in the list of documents excluded from the Office's Express Mail procedure. This is consistent with the handling of corresponding affidavits under section 8 of the Act. In connection with this addition, the Office proposes to revise § 2.198(a)(1)(vi) and § 2.198(a)(1)(vii) for clarity.

Classification of Goods and Services

The Office proposes to revise § 6.1(5) to add the wording ''or veterinary'' to the entry ''dietetic food and substances adapted for medical use'' in the listing of goods for International Class 5. This is consistent with the current heading for the international class as established by the Committee of Experts of the Nice Union and set forth in the *International Classification of Goods and Services for the Purposes of the Registration of Marks* published annually by the World Intellectual Property Organization (''WIPO'') on its Web site.

Madrid Protocol

The Office proposes to revise § 7.11(a)(3)(ii) to clarify that if the mark in the basic application or registration is depicted in black-and-white and includes a color claim, an international application filed on paper must include both black-and-white and color reproductions of the mark, and an international application filed electronically must include a color reproduction of the mark. This is consistent with existing practice as the WIPO paper application form requires the applicant to submit both black-and-white and color reproductions of the mark, while the Office's electronic application form requires only that the applicant submit a color reproduction of the mark.

The Office proposes to revise § 7.23(a)(5) to require that a request to record an assignment of an international registration submitted through the Office include a statement that, after making a good faith effort, the assignee could not obtain the assignor's signature for the request to record the assignment and be signed and verified or supported by declaration under § 2.20. This revision is intended to ensure that assignees make a good-faith effort to obtain the assignor's signature before invoking this rule and requesting the Office to forward the assignment document to the International Bureau (''IB'') of WIPO.

The Office proposes to revise § 7.23(a)(6) to indicate that a request to record an assignment of an international registration submitted through the Office must include an indication that the assignment applies to the designation to the United States or an international registration that was originally based on a United States application or registration. This revision is intended to ensure that an assignee of an international registration based on a U.S. registration or application is treated the same as an assignee of a designation to the U.S. Current practice is that the owner of the international registration based on a U.S. registration or application must file a petition to waive this subsection of the rule.

The Office proposes to revise § 7.24(b)(5)(ii) to require that a request, submitted through the Office, to record a restriction, or the release of a restriction, that is the result of an agreement between the holder of the international registration and the party restricting the holder's right of disposal must include a statement indicating that, after making a good faith effort, the signature of the holder of the international registration could not be

obtained for the request to record the restriction, or release of the restriction, and be signed and verified or supported by declaration under § 2.20. This revision is intended to ensure that assignees make a good faith effort to obtain the assignor's signature before invoking this rule and requesting the Office to forward the document to the IB.

The Office proposes to revise § 7.24(b)(7) to indicate that a request to record a restriction, or the release of a restriction, must include an indication that the restriction, or the release of the restriction, of the holder's right of disposal of the international registration applies to the designation to the United States or an international registration that was originally based on a United States application or registration. This revision is intended to ensure that an assignee of an international registration based on a U.S. registration or application is treated the same as an assignee of a designation to the U.S. Current practice is that the owner of the international registration based on a U.S. registration or application must file a petition to waive this subsection of the rule.

The Office proposes to revise § 7.25(a) to add §§ 2.21, 2.76, 2.88, and 2.89 to the list of sections in part 2 not applicable to an extension of protection. This is consistent with existing practice as the section relates to procedures only applicable to applications under sections 1 or 44 of the Act.

The Office proposes to amend § 7.31 by revising the introductory text and § 7.31(a)(3) to require that a request to transform an extension of protection to the United States into a U.S. application specify the goods and/or services to be transformed. This revision is intended to ensure that the Office transforms an accurate listing of goods and/or services.

The Office further proposes to redesignate current § 7.31(a)(3) as § 7.31(a)(4) and current § 7.31(a)(4) as new § 7.31(a)(5) because current § 7.31(a)(3) is being revised to require that a request to transform an extension of protection to the United States into a U.S. application specify the goods and/or services to be transformed.

Rulemaking Considerations

Administrative Procedure Act: The changes proposed in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims).

Accordingly, prior notice and opportunity for public comment for the proposed rule changes are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice,'' quoting 5 U.S.C. 553(b)(A)). However, the Office has chosen to seek public comment before implementing the rule.

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis, nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), is required. *See* 5 U.S.C. 603.

In addition, for the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that rule changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). This notice proposes changes to rules of agency practice and procedure. The primary impact of the proposed rule changes is to provide greater clarity as to certain requirements relating to representation before the Office, applications for registration, examination procedures, amendment of applications, publication and post publication procedures, appeals, petitions, post registration practice, correspondence in trademark cases, classification of goods and services, and procedures under the Madrid Protocol. For the most part, the proposed rule changes are intended to codify existing practice. The burdens, if any, to all entities, including small entities, imposed by these proposed rule changes would be minor. Additionally, in a number of instances, the proposed rule changes would lessen the burdens on applicants. Therefore, the proposed rule changes will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866: The proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the proposed rule changes; (2) tailored the proposed rules to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rulemaking, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

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

Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this proposed rulemaking are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

Unfunded Mandate Reform Act of 1995: The Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare an assessment of anticipated costs and benefits before

issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This proposed rulemaking would have no such effect on State, local, and tribal governments or the private sector.

Paperwork Reduction Act: This proposed rulemaking involves information collection requirements which are subject to review by the U.S. Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Office has determined that there would be no new information collection requirements or impacts to existing information collection requirements associated with this proposed rulemaking. The collections of information involved in this proposed rulemaking have been reviewed and previously approved by OMB under control numbers 0651–0009, 0651–0050, 0651–0051, 0651–0054, 0651–0055, 0651–0056, and 0651–0061.

The Office is soliciting comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 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.

Interested persons are requested to send comments regarding this information collection by April 23, 2014, to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20503, Attention: Nicholas A. Fraser, the Desk Officer for the United States Patent and Trademark Office; and (2) by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, attention Cynthia C. Lynch; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building—East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia C. Lynch; or by electronic mail message via the Federal eRulemaking Portal. All comments submitted directly to the Office or provided on the Federal eRulemaking Portal should include the docket number (PTO–T–2013–0026).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 6

Administrative practice and procedure, Classification, Trademarks.

37 CFR Part 7

Administrative practice and procedure, International registration, Trademarks.

For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office proposes to amend parts 2, 6, and 7 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 2. Revise § 2.17(d)(1) to read as follows:

§ 2.17 Recognition for representation.

* * * * *

(d) * * *

(1) The owner of an application or registration may appoint a practitioner(s) qualified to practice under § 11.14 of this chapter to represent the owner for all existing applications or registrations that have the identical owner name and attorney through TEAS.

* * * * *

■ 3. Revise § 2.19(b) introductory text to read as follows:

§ 2.19 Revocation or withdrawal of attorney.

* * * * *

(b) *Withdrawal of attorney.* If the requirements of § 11.116 of this chapter are met, a practitioner authorized to represent an applicant, registrant, or party to a proceeding in a trademark case may withdraw upon application to and approval by the Director or, when applicable, upon motion granted by the Trademark Trial and Appeal Board. The practitioner should file the request to withdraw soon after the practitioner notifies the client of his/her intent to withdraw. The request must include the following:

* * * * *

■ 4. Revise § 2.22(a)(19) to read as follows:

§ 2.22 Filing requirements for a TEAS Plus application.

(a) * * *

(19) If the applicant owns one or more registrations for the same mark, and the owner(s) last listed in Office records of the prior registration(s) for the same mark differs from the owner(s) listed in the application, a claim of ownership of the registration(s) identified by the registration number(s), pursuant to § 2.36; and

* * * * *

■ 5. Revise § 2.36 to read as follows:

§ 2.36 Identification of prior registrations.

Prior registrations of the same or similar marks owned by the applicant should be identified in the application if the owner(s) last listed in Office records of the prior registrations differs from the owner(s) listed in the application.

■ 6. Amend § 2.38 by revising paragraph (b) to read as follows, and removing paragraph (c):

§ 2.38 Use by predecessor or by related companies.

* * * * *

(b) The Office may require such details concerning the nature of the relationship and such proofs as may be necessary and appropriate for the purpose of showing that the use by related companies inures to the benefit of the applicant and does not affect the validity of the mark.

■ 7. Amend § 2.62 by adding new paragraph (c), to read as follows:

§ 2.62 Procedure for filing response.

* * * * *

(c) *Form.* Responses must be filed through TEAS, transmitted by facsimile, mailed or delivered by hand, as set out in § 2.190(a). Responses sent via email will not be accorded a date of receipt.

■ 8. Revise § 2.63 to read as follows:

§ 2.63 Action after response.

(a) *Repeated non-final refusal or requirement.* After response by the applicant, the examining attorney will review all statutory refusals and/or requirement(s) in light of the response.

(1) If, after review of the applicant's response, the examining attorney issues

a non-final action that maintains any previously issued substantive refusal(s) to register or repeats any requirement(s), the applicant may submit a timely response to the action.

(2) If, after review of the applicant's response, the examining attorney issues a non-final action that contains no substantive refusals to register, but maintains any requirement(s), the applicant may respond to such repeated requirement(s) by filing a timely petition to the Director for relief from the repeated requirement(s) if the subject matter of the repeated requirement(s) is appropriate for petition to the Director (see § 2.146(b)). If the petition is denied, the applicant shall have until six months from the date of the Office action which repeated the requirement(s) or thirty days from the date of the decision on the petition, whichever date is later, to comply with the repeated requirement(s). A requirement which is the subject of a petition decided by the Director subsequently may not be the subject of an appeal to the Trademark Trial and Appeal Board.

(b) *Final refusal or requirement.* Upon review of a response or request for reconsideration, the examining attorney may state that the refusal(s) to register, or the requirement(s), is final.

(1) If the examining attorney issues a final action that maintains any substantive refusal(s) to register, the applicant may respond by filing a timely appeal to the Trademark Trial and Appeal Board under §§ 2.141 and 2.142.

(2) If the examining attorney issues a final action that contains no substantive refusals to register, but maintains any requirement(s), the applicant may respond by filing: (i) A timely appeal of the requirement(s) to the Trademark Trial and Appeal Board under §§ 2.141 and 2.142; or (ii) a timely petition to the Director under § 2.146 to review the requirement(s), if the subject matter of the requirement(s) is procedural, and therefore appropriate for petition.

(3) Prior to the expiration of the time for filing an appeal or a petition, the applicant may file a request for reconsideration of the final action. The request must be signed by the applicant, someone with legal authority to bind the applicant, or a practitioner qualified to practice under § 11.14, in accordance with the requirements of § 2.193(e)(2). Filing a request for reconsideration does not stay or extend the time for filing an appeal or petition.

(4) Filing a request for reconsideration that does not result in the withdrawal of all refusals and requirements, without the filing of a timely appeal or petition, will result in abandonment of the application for incomplete response, pursuant to § 2.65(a).

(c) If a petition to the Director under § 2.146 is denied, the applicant will have until six months from the date of issuance of the Office action that repeated the requirement(s), or made it final, or thirty days from the date of the decision on the petition, whichever date is later, to comply with the requirement(s). A requirement that is the subject of a petition decided by the Director subsequently may not be the subject of an appeal to the Trademark Trial and Appeal Board.

(d) If an applicant in an application under section 1(b) of the Act files an amendment to allege use under § 2.76 during the six-month response period after issuance of a final action, the examining attorney will examine the amendment. The filing of such an amendment does not stay or extend the time for filing an appeal or petition.

§ 2.64 [Removed and Reserved]

■ 9. Remove and reserve § 2.64.

■ 10. Revise § 2.65 to read as follows:

§ 2.65 Abandonment.

(a) An application will be abandoned if an applicant fails to respond to an Office action, or to respond completely, within six months from the date of issuance. A timely petition to the Director pursuant to §§ 2.63(a) and (b) and 2.146 or notice of appeal to the Trademark Trial and Appeal Board pursuant to § 2.142, if appropriate, is a response that avoids abandonment.

(1) If all refusals and/or requirements are expressly limited to certain goods and/or services, the application will be abandoned only as to those goods and/or services.

(2) When a timely response by the applicant is a bona fide attempt to advance the examination of the application and is a substantially complete response to the examining attorney's action, but consideration of some matter or compliance with a requirement has been omitted, the applicant may be granted thirty days, or to the end of the response period set forth in the action to which the substantially complete response was submitted, whichever is longer, to explain and supply the omission before considering the question of abandonment.

(b) An application will be abandoned if an applicant expressly abandons the application pursuant to § 2.68.

(c) An application will be abandoned if an applicant in an application under section 1(b) of the Act fails to timely file either a statement of use under § 2.88 or a request for an extension of time for filing a statement of use under § 2.89.

■ 11. Revise § 2.68 to read as follows:

§ 2.68 Express abandonment (withdrawal) of application.

(a) *Written document required.* An applicant may expressly abandon an application by filing a written request for abandonment or withdrawal of the application, signed by the applicant, someone with legal authority to bind the applicant (*e.g.,* a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter, in accordance with the requirements of § 2.193(e)(2). A request for abandonment or withdrawal may not subsequently be withdrawn.

(b) *Rights in the mark not affected.* Except as provided in § 2.135, the fact that an application has been expressly abandoned shall not affect any rights that the applicant may have in the mark set forth in the abandoned application in any proceeding before the Office.

■ 12. Revise § 2.77(b) to read as follows:

§ 2.77 Amendments between notice of allowance and statement of use.

* * * * *

(b) Other amendments may be entered during this period only with the express permission of the Director, after consideration on petition under § 2.146. If the Director determines that the amendment requires review by the examining attorney, the petition will be denied and the amendment may be resubmitted with the statement of use in order for the applicant to preserve its right for review.

■ 13. Revise § 2.81(b) to read as follows:

§ 2.81 Post publication.

* * * * *

(b) In an application under section 1(b) of the Act for which no amendment to allege use under § 2.76 has been submitted and accepted, if no opposition is filed within the time permitted or all oppositions filed are dismissed, and if no interference is declared, a notice of allowance will issue. Thereafter, the applicant must submit a statement of use as provided in § 2.88.

■ 14. Revise § 2.84(b) to read as follows:

§ 2.84 Jurisdiction over published applications.

* * * * *

(b) After publication, but before the certificate of registration is issued in an application under section 1(a), 44, or 66(a) of the Act, or before the notice of allowance is issued in an application under section 1(b) of the Act, an application that is not the subject of an inter partes proceeding before the

Trademark Trial and Appeal Board may be amended if the amendment meets the requirements of §§ 2.71, 2.72 and 2.74. Otherwise, an amendment to such an application may be submitted only upon petition to the Director to restore jurisdiction over the application to the examining attorney for consideration of the amendment and further examination. The amendment of an application that is the subject of an inter partes proceeding before the Trademark Trial and Appeal Board is governed by § 2.133.

■ 15. Revise § 2.142(f)(3) and (6) to read as follows:

§ 2.142 Time and manner of ex parte appeals.

* * * * *

(f) * * *

(3) If the further examination does result in an additional ground for refusal of registration, the examiner and appellant shall proceed as provided by §§ 2.61, 2.62, and 2.63. If the ground for refusal is made final, the examiner shall return the application to the Board, which shall thereupon issue an order allowing the appellant sixty days from the date of the order to file a supplemental brief limited to the additional ground for the refusal of registration. If the supplemental brief is not filed by the appellant within the time allowed, the appeal may be dismissed.

* * * * *

(6) If, during an appeal from a refusal of registration, it appears to the examiner that an issue not involved in the appeal may render the mark of the appellant unregistrable, the examiner may, by written request, ask the Board to suspend the appeal and to remand the application to the examiner for further examination. If the request is granted, the examiner and appellant shall proceed as provided by §§ 2.61, 2.62, and 2.63. After the additional ground for refusal of registration has been withdrawn or made final, the examiner shall return the application to the Board, which shall resume proceedings in the appeal and take further appropriate action with respect thereto.

* * * * *

■ 16. Revise § 2.145(a) to read as follows:

§ 2.145 Appeal to court and civil action.

(a) *Appeal to U.S. Court of Appeals for the Federal Circuit.* An applicant for registration, or any party to an interference, opposition, or cancellation proceeding, or any party to an application to register as a concurrent user, hereinafter referred to as inter partes proceedings, who is dissatisfied with the decision of the Trademark Trial and Appeal Board, and any registrant who has filed an affidavit or declaration under section 8 or section 71 of the Act or who has filed an application for renewal and is dissatisfied with the decision of the Director (§§ 2.165, 2.184), may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal:

* * * * *

■ 17. Revise § 2.146(a)(1) and (g) to read as follows:

§ 2.146 Petitions to the Director.

(a) * * *

(1) From any repeated or final formal requirement of the examiner in the ex parte prosecution of an application if permitted by § 2.63(a) and (b);

* * * * *

(g) The mere filing of a petition to the Director will not act as a stay in any appeal or inter partes proceeding that is pending before the Trademark Trial and Appeal Board nor stay the period for replying to an Office action in an application except when a stay is specifically requested and is granted or when §§ 2.63(a) and (b) and 2.65 are applicable to an ex parte application.

* * * * *

■ 18. Revise § 2.172 to read as follows:

§ 2.172 Surrender for cancellation.

Upon application by the owner, the Director may permit any registration to be surrendered for cancellation. The application for surrender must be signed by the owner of the registration, someone with legal authority to bind the owner (*e.g.,* a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter. When a registration has more than one class, one or more entire class(es) but fewer than the total number of classes may be surrendered. Deletion of fewer than all the goods or services in a single class constitutes amendment of the registration as to that class (*see* § 2.173), rather than surrender. A surrender for cancellation may not subsequently be withdrawn.

■ 19. Revise § 2.185(a) to read as follows:

§ 2.185 Correcting deficiencies in renewal application.

(a) If the renewal application is filed within the time periods set forth in section 9(a) of the Act, deficiencies may be corrected after notification from the Office, as follows:

* * * * *

■ 20. Amend § 2.198(a)(1) by revising paragraphs (a)(1)(vi) and (a)(1)(vii), and adding new paragraph (a)(1)(viii), to read as follows:

§ 2.198 Filing of correspondence by "Express Mail."

(a)(1) * * *

(vi) Renewal requests under section 9 of the Act;

(vii) Requests to change or correct addresses; and

(viii) Affidavits of use under section 71 of the Act.

* * * * *

PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

■ 21. The authority citation for 37 CFR Part 6 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 22. Revise § 6.1, paragraph 5., to read as follows:

§ 6.1 International schedule of classes of goods and services.

* * * * *

5. Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

* * * * *

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

■ 23. The authority citation for 37 CFR Part 7 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 24. Revise § 7.11(a)(3)(ii) to read as follows:

§ 7.11 Requirements for international application originating from the United States.

(a) * * *

(3) * * *

(ii) If the mark in the basic application or registration is depicted in black-and-white and includes a color claim, an international application filed on paper must include both a black-and-white reproduction of the mark and a color reproduction of the mark, and an international application filed

electronically must include a color reproduction of the mark.

* * * * *

■ 25. Revise § 7.23(a)(5) and (6) to read as follows:

§ 7.23 Requests for recording assignments at the International Bureau.

* * * * *

(a) * * *

(5) A statement that, after a good faith effort, the assignee could not obtain the assignor's signature for the request to record the assignment, signed and verified (sworn to) or supported by a declaration under § 2.20 of this chapter;

(6) An indication that the assignment applies to the designation to the United States or an international registration that is based on a U.S. application or registration;

* * * * *

■ 26. Revise § 7.24(b)(5)(ii) and (b)(7) to read as follows:

§ 7.24 Requests to record security interest or other restriction of holder's rights of disposal or release of such restriction submitted through the Office.

* * * * *

(b) * * *

(5) * * *

(ii) Where the restriction is the result of an agreement between the holder of the international registration and the party restricting the holder's right of disposal, a statement that after a good faith effort, the signature of the holder of the international registration could not be obtained for the request to record the restriction, or release of the restriction, signed and verified (sworn to) or supported by a declaration under § 2.20 of this chapter;

* * * * *

(7) An indication that the restriction, or the release of the restriction, of the holder's right of disposal of the international registration applies to the designation to the United States or an international registration that is based on a U.S. application or registration; and

* * * * *

■ 27. Revise § 7.25(a) to read as follows:

§ 7.25 Sections of part 2 applicable to extension of protection.

(a) Except for §§ 2.21–2.23, 2.76, 2.88, 2.89, 2.130–2.131, 2.160–2.166, 2.168, 2.173, 2.175, 2.181–2.186 and 2.197, all sections in part 2 and all sections in part 11 of this chapter shall apply to an extension of protection of an international registration to the United States, including sections related to proceedings before the Trademark Trial and Appeal Board, unless otherwise stated.

* * * * *

■ 28. Amend § 7.31 by revising the introductory text and paragraphs (a)(3) and (a)(4), and adding new paragraph (a)(5) to read as follows:

§ 7.31 Requirements for transformation of an extension of protection to the United States into a U.S. application.

If the International Bureau cancels an international registration in whole or in part, under Article 6(4) of the Madrid Protocol, the holder of that international registration may file a request to transform the goods and/or services to which the cancellation applies in the corresponding pending or registered extension of protection to the United States into an application under section 1 or 44 of the Act.

(a) * * *

(3) Identify the goods and/or services to be transformed, if other than all the goods and/or services that have been cancelled;

(4) The application filing fee for at least one class of goods or services required by § 2.6(a)(1) of this chapter; and

(5) An email address for receipt of correspondence from the Office.

* * * * *

Dated: January 15, 2014.

Michelle K. Lee,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director, United States Patent and Trademark Office.

[FR Doc. 2014–01126 Filed 1–22–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2012–0893; FRL–9905–11–Region 4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Georgia; Redesignation of the Rome, Georgia 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 21, 2012, the Georgia Department of Natural Resources, through Georgia Environmental Protection Division (GA EPD), submitted a request to redesignate the Rome, Georgia, fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as the ''Rome Area'' or ''Area'') to attainment for the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS) and to approve a state implementation plan (SIP) revision containing a maintenance plan for the Rome Area. The Rome Area is comprised of Floyd County in Georgia. EPA is proposing to approve the redesignation request and the related SIP revision for the Rome Area, including GA EPD's plan for maintaining attainment of the $PM_{2.5}$ standard in the Area. EPA is also proposing to approve into the Georgia SIP, the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_x) and $PM_{2.5}$ for the year 2023 for the Rome Area that are included as part of Georgia's maintenance plan for the 1997 Annual $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before February 24, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0893, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email: R4–RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2012–0893, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0893. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder or Joel Huey of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Joydeb Majumder may be reached by phone at (404) 562–9121, or via electronic mail at *majumder.joydeb@epa.gov*. Joel Huey may be reached by phone at (404) 562–9104.

SUPPLEMENTARY INFORMATION:

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I. What are the actions EPA is proposing to take?

In this action, EPA is proposing to make a determination that Rome Area is continuing to attain the 1997 annual $PM_{2.5}$ NAAQS [1] and to take additional actions related to Georgia's request to redesignate the Rome Area, which are summarized as follows and described in greater detail throughout this notice of proposed rulemaking: (1) to redesignate the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS; and (2) to approve, under section 175A of the Clean Air Act (CAA or Act), Georgia's 1997 annual $PM_{2.5}$ NAAQS maintenance plan, including the associated MVEBs, for the Rome Area into the Georgia SIP.

First, EPA proposes to determine that the Rome Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. In this action, EPA is proposing to approve a request to change the legal designation of Floyd County from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

Second, EPA is proposing to approve Georgia's 1997 annual $PM_{2.5}$ NAAQS maintenance plan for the Rome Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Rome Area in attainment of the 1997 annual $PM_{2.5}$ NAAQS through 2023. As explained in Section V, EPA is also proposing to approve that attainment can be maintained through 2024. The maintenance plan that EPA is proposing to approve today includes on-road MVEBs for the mobile source contribution of direct $PM_{2.5}$ and NO_X to the air quality problem in the Rome Area for transportation conformity purposes. EPA is proposing to approve (into the Georgia SIP) the 2023 MVEBs that are included as part of Georgia's maintenance plan for the 1997 annual $PM_{2.5}$ NAAQS.

Further, EPA proposes to make the determination that the Rome Area is continuing to attain the 1997 annual $PM_{2.5}$ NAAQS and that all other redesignation criteria have been met for the Rome Area. The bases for EPA's determination for the Area are discussed in greater detail below.

EPA is also notifying the public of an update of the status of EPA's adequacy process for the 2023 direct MVEBs for $PM_{2.5}$ and NO_X for the Rome Area. Please see section VIII of this proposed rulemaking for further explanation of this process and for more details.

Today's notice of proposed rulemaking is in response to Georgia's June 21, 2012, SIP submittal, which requests redesignation of the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS and addresses the specific issues summarized above and the necessary elements for redesignation described in section 107(d)(3)(E) of the CAA.

II. What is the background for EPA's proposed actions?

Fine particle pollution can be emitted directly or formed secondarily in the atmosphere. The main precursors of secondary $PM_{2.5}$ are sulfur dioxide (SO_2), NO_X, ammonia, and volatile organic compounds (VOC). *See, e.g.,* 72 FR 20586 at 20589. Sulfates are a type of secondary particle formed from SO_2 emissions of power plants and industrial facilities. Nitrates, another common type of secondary particle, are formed from NO_X emissions of power plants, automobiles, and other combustion sources.

On July 18, 1997, EPA promulgated the first air quality standards for $PM_{2.5}$. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of annual mean $PM_{2.5}$ concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 $\mu g/m^3$, based on a 3-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, at 71 FR 61144, EPA retained the annual average NAAQS at 15 $\mu g/m^3$ but revised the 24-hour NAAQS to 35 $\mu g/m^3$, based again on the 3-year average of the 98th percentile of

[1] In notices published on April 5, 2011, at 76 FR 18650, and on September 8, 2011, at 76 FR 55776, EPA determined that the Rome Area had attained the 1997 Annual $PM_{2.5}$ NAAQS and that the Area had done so by its applicable attainment date of April 5, 2010.

24-hour concentrations.[2] Under EPA regulations at 40 CFR part 50, the primary and secondary 1997 annual $PM_{2.5}$ NAAQS are attained when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 μg/m³ at all relevant monitoring sites in the subject area over a 3-year period.

On January 5, 2005, at 70 FR 944, and supplemented on April 14, 2005, at 70 FR 19844, EPA designated the Rome Area as nonattainment for the 1997 $PM_{2.5}$ NAAQS. In that action, EPA defined the 1997 $PM_{2.5}$ Rome Area to include Floyd County in Georgia. On November 13, 2009, at 74 FR 58688, EPA promulgated designations for the 24-hour standard established in 2006, designating the Rome Area as attainment for that NAAQS. That action clarified that the Rome Area was classified unclassifiable/attainment for the 1997 24-hour $PM_{2.5}$ NAAQS. EPA did not promulgate designations for the 2006 annual $PM_{2.5}$ NAAQS because that NAAQS was essentially identical to the 1997 annual $PM_{2.5}$ NAAQS, and today's action only addresses this designation.

All 1997 $PM_{2.5}$ NAAQS areas were designated under subpart 1 of title I, part D, of the CAA. Subpart 1 contains the general requirements for nonattainment areas for any pollutant governed by a NAAQS and is less prescriptive than the other subparts of title I, part D. On April 25, 2007, at 72 FR 20586, EPA promulgated its Clean Air Fine Particle Implementation Rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 $PM_{2.5}$ annual NAAQS. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory results of attaining the NAAQS, as discussed below. The DC Circuit remanded the Clean Air Fine Particle Implementation Rule and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule'') to EPA on January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013). The court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of Part D of Title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I. The effect of the court's ruling on this proposed redesignation action is discussed in detail in Section VI of this notice.

The 3-year ambient air quality data for 2007–2009 indicated no violations of the 1997 $PM_{2.5}$ annual NAAQS for the Rome Area. As a result, on June 21, 2012, Georgia requested redesignation of the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS. The redesignation request includes three years of complete, quality-assured ambient air quality data for the 1997 annual $PM_{2.5}$ NAAQS for 2007–2009, indicating that the 1997 $PM_{2.5}$ NAAQS had been achieved for the entire Rome Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). The Rome Area design value based on data from 2007 through 2009 is 13.3 μg/m³, which demonstrates attainment of the standard. While annual $PM_{2.5}$ concentrations are dependent on a variety of conditions, the overall improvement in annual $PM_{2.5}$ concentrations in the Rome Area can be attributed to the reduction of pollutant emissions, as discussed in more detail in section V of this proposed rulemaking.

III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided the following criteria are met: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of title I of the CAA.

EPA has provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (April 16, 1992, 57 FR 13498, and supplemented on April 28, 1992, 57 FR 18070) and has provided further guidance on processing redesignation requests in the following documents:

1. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''Calcagni Memorandum'');
2. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
3. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
4. ''Next Steps for Pending Redesignation Requests and State Implementation Plan Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule,'' Memorandum from Gina McCarthy, Assistant Administrator, November 19, 2012.

IV. Why is EPA proposing these actions?

On June 21, 2012, GA EPD requested the redesignation of the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS. The Rome Area has attained the 1997 annual $PM_{2.5}$ NAAQS, and EPA's preliminary evaluation indicates that the Area has met the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. EPA is also announcing the status of its adequacy determination for the direct $PM_{2.5}$ and NO_X MVEBs for the Rome Area.

V. What is EPA's analysis of the request?

As stated above, in accordance with the CAA, EPA proposes in today's action to: (1) Redesignate the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS; and (2) approve into the Georgia SIP the 1997 annual $PM_{2.5}$ NAAQS maintenance plan, including the associated MVEBs, for the Rome Area. Further, EPA proposes to make the determination that the Rome Area

[2] In response to legal challenges of the annual standard promulgated in 2006, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir.) remanded that NAAQS to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual NAAQS are essentially identical, attainment of the 1997 annual NAAQS would also indicate attainment of he remanded 2006 annual NAAQS.

continues to attain the 1997 annual $PM_{2.5}$ NAAQS and that all other redesignation criteria have been met for the Rome Area. The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs of this section.

Criteria (1)—The Rome Area Has Attained the 1997 Annual $PM_{2.5}$ NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). EPA is proposing to determine that the Rome Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS since the September 8, 2011, attainment determination. For $PM_{2.5}$, an area may be considered to be attaining the 1997 annual $PM_{2.5}$ if it meets the 1997 annual $PM_{2.5}$ NAAQS, as determined in accordance with 40 CFR 50.13 and Appendix N of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain these NAAQS, the 3-year average of the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, must be less than or equal to 15.0 μg/m³ at all relevant monitoring sites in the subject area over a 3-year period. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS) database. The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

On April 5, 2011, at 76 FR 18650, EPA determined that the Rome Area was attaining the 1997 annual $PM_{2.5}$ NAAQS. For that action EPA reviewed $PM_{2.5}$ monitoring data from monitoring station in the Rome Area for the 1997 annual $PM_{2.5}$ NAAQS for 2007–2009. These data have been quality-assured and are recorded in AQS. On September 8, 2011, at 76 FR 55774, EPA also finalized a determination that the Rome Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. EPA has reviewed more recent data, which indicates that the Rome Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS beyond the submitted 3-year attainment period of 2007–2009. The most recent year available with complete, quality-assured and certified ambient air monitoring is 2012, during which the Area recorded an annual average $PM_{2.5}$ concentration of 10.6 μg/m³. EPA has also reviewed the available data in AQS for 2013 which, although not yet complete or certified, indicates the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. As summarized in Table 1 below, the 3-year average of annual arithmetic mean concentrations (i.e., design values) for the years 2009, 2010, 2011, and 2012 for the Rome Area are below the 1997 annual $PM_{2.5}$ NAAQS.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE ROME AREA FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS (μg/m³)

Location	County	Site ID	3-Year design values			
			2007–2009	2008–2010	2009–2011	2010–2012
Rome-Coosa Elementary School	Floyd	13–115–0003	13.3	12.5	12.4	12.1

As discussed above, the design value for an area is the highest 3-year average annual mean concentration recorded at any monitor in the area for a 3-year period. Therefore, the 3-year design value for the period on which Georgia based its redesignation request (2007–2009) for the Rome Area is 13.3 μg/m³, which meets the NAAQS as described above. Additional details can be found in EPA's final clean data determination for the Rome Area (76 FR 18650, April 5, 2011). EPA has reviewed more recent data which indicate that the Rome Area continues to attain the 1997 $PM_{2.5}$ NAAQS beyond the submitted 3-year attainment period of 2007–2009. If the Area does not continue to attain before EPA finalizes the redesignation, EPA will not go forward with the redesignation. As discussed in more detail below, GA EPD has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

Criteria (5)—Georgia Has Met All Applicable Requirements Under Section 110 and Part D of the CAA; and Criteria (2)—Georgia Has a Fully Approved SIP Under Section 110(k) for the Rome Area

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Georgia has met all applicable SIP requirements for the Rome Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that the Georgia SIP satisfies the criterion that it meet applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to 1997 annual $PM_{2.5}$ nonattainment areas) in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. The Rome Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (Nonattainment New Source Review (NNSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation

in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation. However, as discussed later in this notice, addressing pollutant transport from other states is an important part of an area's maintenance demonstration.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

On June 15, 2012 (77 FR 35909) and February 20, 2013 (78 FR 11805), EPA proposed approval on a submittal from Georgia, addressing ''infrastructure SIP'' elements required under the CAA section 110(a)(2) for the 1997 annual $PM_{2.5}$ NAAQS.[3] However, these are statewide requirements that are not a consequence of the nonattainment status of the Rome Area. As stated above, EPA believes that section 110 elements not linked to an area's nonattainment status are not applicable for purposes of redesignation. Therefore, notwithstanding the fact that EPA has not yet completed rulemaking on Georgia's submittal for the $PM_{2.5}$ infrastructure SIP elements of section 110(a)(2), EPA believes that it has approved all SIP elements that must be approved as a prerequisite for redesignating the Rome Area to attainment.

Title I, Part D, subpart 1 applicable SIP requirements. EPA proposes to determine that the Georgia SIP meets the applicable SIP requirements for the Rome Area for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets for the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS were designated under subpart 1 of the CAA. For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and in section 176. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498, April 16, 1992). Section VI of this proposed rulemaking notice discusses the relationship between this proposed redesignation action and subpart 4 of Part D.

Subpart 1 Section 172 Requirements. Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. However, pursuant to 40 CFR 51.1004(c), EPA's final determination that the Rome Area is attaining the annual $PM_{2.5}$ standard suspended Georgia's obligation to submit most of the attainment planning requirements that would otherwise apply. Specifically, the determination of attainment suspended Georgia's obligation to submit an attainment demonstration and planning SIPs to provide for reasonable further progress (RFP), RACM, and contingency measures under section 172(c)(9).

The General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992) also discusses the evaluation of the section 172 requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard.

Because attainment has been reached in the Rome Area, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the Area continues to attain the standard until redesignation. *See* also 40 CFR 51.1004(c).

Pursuant to section 172(c)(2), nonattainment plans must contain provisions that require reasonable further progress toward attainment. This requirement is not relevant for purposes of redesignation because EPA has determined that the Rome Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. *See* General Preamble, 57 FR 13564. *See also* 40 CFR 51.1004(c). In addition, because the Rome Area has attained the 1997 annual $PM_{2.5}$ NAAQS and is no longer subject to a RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. On January 12, 2012, EPA approved Georgia's 2002 base-year emissions inventory for the Rome Area as part of the SIP revision submitted by GA EPD to provide for attainment of the 1997 $PM_{2.5}$ NAAQS in the Area. *See* 77 FR 1873. No comments, adverse or otherwise, were received on EPA's

[3] The June 15, 2012 proposed approval (77 FR 35909) addressed all infrastructure SIP elements required under section 110(a)(2) for the 1997 annual $PM_{2.5}$ NAAQS with the exception of the visibility element under section 110(a)(2)(D)(i)(II) (also known as ''prong 4''). EPA finalized the June 15, 2012 proposed action on October 25, 2012 (77 FR 65125). EPA proposed approval of prong 4 for the 1997 annual $PM_{2.5}$ NAAQS on February 20, 2013 (78 FR 11805) but has not yet taken final action on this element.

proposed approval of the emissions inventory for the Rome Area.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Georgia has demonstrated that the Rome Area will be able to maintain the NAAQS without part D NSR in effect, and therefore, Georgia need not have fully approved part D NSR programs prior to approval of the redesignation request. Georgia's PSD program will become effective in the Rome Area upon redesignation to attainment.

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes the Georgia SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally-supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally-supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA believes that it is reasonable to interpret the conformity SIP requirements [4] as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA,* 265 F.3d 426 (upholding this interpretation) (6th Cir. 2001); see also 60 FR 62748 (December 7, 1995, Tampa, Florida). Thus, the Rome Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. The Rome Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Georgia SIP for the Rome Area for the 1997 annual $PM_{2.5}$ nonattainment area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein). Following passage of the CAA of 1970, Georgia has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various SIP elements applicable for the 1997 annual $PM_{2.5}$ NAAQS in the Rome Area (e.g., 77 FR 35909, June 15, 2012).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. In addition, EPA believes that since the part D subpart 1 requirements did not become due prior to submission of the redesignation request, they are also not applicable requirements for purposes of redesignation. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis-East St. Louis Area to attainment of the 1-hour ozone NAAQS). EPA has previously approved all part D subpart 1 requirements applicable for purposes of this redesignation. See Section VI of this notice for a discussion of the relationship between part D subpart 4 and this action.

Criteria (3)—The Air Quality Improvement in the Rome Area 1997 Annual $PM_{2.5}$ NAAQS Nonattainment Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanentF and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal air pollution control regulations and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA believes that Georgia has demonstrated that the observed air quality improvement in the Rome Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state adopted measures.

Fine particulate matter, or $PM_{2.5}$, refers to airborne particles less than or equal to 2.5 micrometers in diameter. Although treated as a single pollutant, fine particles come from many different sources and are composed of many different compounds. In the Rome Area, one of the largest components of $PM_{2.5}$ is sulfate, which is formed through various chemical reactions from the precursor SO_2. The other major component of $PM_{2.5}$ is organic carbon, which originates predominantly from biogenic emission sources. Nitrate, which is formed from the precursor NO_X, is also a component of $PM_{2.5}$. Crustal materials from windblown dust and elemental carbon from combustion sources are less significant contributors to total $PM_{2.5}$.

State and federal measures enacted in recent years have resulted in permanent emission reductions in particulate matter and its precursors. Most of these emission reductions are enforceable through regulations. A few non-regulatory measures also result in emission reductions. The federal measures that have been implemented include:

Tier 2 vehicle standards and low-sulfur gasoline. In addition to requiring NO_X controls, the Tier 2 rule reduced the allowable sulfur content of gasoline

[4] CAA Section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the MVEBs that are established in control strategy SIPs and maintenance plans.

to 30 parts per million (ppm) starting in January of 2006. Most gasoline sold prior to this had a sulfur content of approximately 300 ppm.

Heavy-duty gasoline and diesel highway vehicle standards & Ultra Low-Sulfur Diesel Rule. On October 6, 2000, the U.S. EPA promulgated a rule to reduce NO_X and VOC emissions from heavy-duty gasoline and diesel highway vehicles that began to take effect in 2004. 65 FR 59896. A second phase of standards and testing procedures began in 2007 to reduce particulate matter from heavy-duty highway engines, and reduce highway diesel fuel sulfur content to 15 ppm since the sulfur in fuel damages high efficiency catalytic exhaust emission control devices. The total program should achieve a 90 percent reduction PM emissions and a 95 percent reduction in NO_X emission for new engines using low-sulfur diesel, compared to existing engines using higher-content sulfur diesel.

Nonroad Large spark-ignition engines and recreational engines standards. The nonroad spark-ignition and recreational engine standards, effective in July 2003, regulate NO_X, hydrocarbons, and carbon monoxide from groups of previously unregulated nonroad engines. These engine standards apply to large spark-ignition engines (e.g., forklifts and airport ground service equipment), recreational vehicles (e.g., off-highway motorcycles and all-terrain-vehicles), and recreational marine diesel engines sold in the United States and imported after the effective date of these standards.

When all of the nonroad spark-ignition and recreational engine standards are fully implemented, an overall 72 percent reduction in hydrocarbons, 80 percent reduction in NO_X, and 56 percent reduction in carbon monoxide emissions are expected by 2020. These controls will help reduce ambient concentrations of ozone, carbon monoxide, and fine particulate matter.

Large nonroad diesel engine standards. Promulgated in 2004, this rule is being phased in between 2008 and 2014. This rule will reduce sulfur content in nonroad diesel fuel and, when fully implemented, will reduce NO_X and direct $PM_{2.5}$ emissions by over 90 percent from these engines.

Reciprocating Internal Combustion Engine Standard. Promulgated in 2010, this rule regulates emissions of air toxics from existing diesel powered stationary reciprocating internal combustion engines that meet specific site rating, age, and size criteria. When all of the reciprocating internal combustion engine standards are fully implemented in 2013, EPA estimates that $PM_{2.5}$ emissions from these engines will be reduced by approximately 2,800 tons per year (tpy).

Category 3 Marine Diesel Engine Standards. Promulgated in 2010, this rule establishes more stringent exhaust emission standards for new large marine diesel engines with per cylinder displacement at or above 30 liters (commonly referred to as Category 3 compression-ignition marine engines) as part of a coordinated strategy to address emissions from all ships that effect U.S. air quality. Near-term standards for newly built engines will apply beginning in 2011, and long-term standards requiring an 80 percent reduction in NO_X emissions will begin in 2016.

NO_X SIP Call. On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the NO_X SIP Call are permanent and enforceable.

CAIR and CSAPR. EPA recently promulgated CSAPR (76 FR 48208, August 8, 2011) to replace the Clean Air Interstate (CAIR), which has been in place since 2005. *See* 76 FR 59517. CAIR requires significant reductions in emissions of SO_2 and NO_X from electric generating units (EGUs) to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. *See* 76 FR 70093. The DC Circuit initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008).

On December 30, 2011, the DC Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the DC Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR ''pending . . . development of a valid replacement.'' *EME Homer City,* 696 F.3d at 38. The DC Circuit denied all petitions for rehearing on January 24, 2013. EPA and other parties filed petitions for certiorari to the U.S. Supreme Court on March 29, 2013, to review the DC Circuit's decision in *EME Homer City,* and on June 24, 2013, the U.S. Supreme Court granted the United States' petition asking the Court to review the DC Circuit's decision on CSAPR. Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion.

In light of these unique circumstances and for the reasons explained below, EPA proposes to approve the redesignation request and the related SIP revision for Floyd County in Georgia, including Georgia's plan for maintaining attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Rome Area. To the extent that attainment is due to emission reductions associated with CAIR, EPA is here determining that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and 175A. The air quality modeling analysis conducted for CSAPR demonstrates that the Rome Area would be able to maintain the 1997 annual $PM_{2.5}$ NAAQS even in the absence of either CAIR or CSAPR. *See* ''Air Quality Modeling Final Rule Technical Support Document,'' App. B, B–39. This modeling is available in the docket for this proposed redesignation action. Nothing in the DC Circuit's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based.

In addition, as directed by the DC Circuit, CAIR remains in place and enforceable until substituted by a valid replacement rule. EPA approved a modification to Georgia's SIP on October 9, 2007, that addressed the requirements of CAIR for the purpose of reducing SO_2 and NO_X emissions (*see* 72 FR 57202), and Georgia's SIP redesignation request lists CAIR as a control measure. CAIR was thus in place and getting emission reductions when the Rome area began monitoring attainment of the 1997 Annual $PM_{2.5}$ NAAQS. The quality-assured, certified monitoring data used to demonstrate the area's attainment of the 1997 Annual $PM_{2.5}$ NAAQS by the April 5, 2010 attainment deadline was also impacted by CAIR.

To the extent that Georgia is relying on CAIR in its maintenance plan, the recent directive from the DC Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been

ordered by the Court to develop a new rule to address interstate transport to replace CSAPR and the opinion makes clear that after promulgating that new rule, EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until EPA has promulgated a final rule through a notice-and-comment rulemaking process, States have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a FIP if appropriate. The Court's clear instruction to EPA that it must continue to administer CAIR until a valid replacement exists provides an additional backstop: By definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the DC Circuit emphasized that the consequences of vacating CAIR ''might be more severe now in light of the reliance interests accumulated over the intervening four years.'' *EME Homer City,* 696 F.3d at 38. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed.

Criteria (4)—The Rome Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS, GA EPD submitted a SIP revision to provide for the maintenance of the 1997 annual $PM_{2.5}$ NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA believes this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, GA EPD must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, as EPA deems necessary, to assure prompt correction of any future 1997 annual $PM_{2.5}$ NAAQS violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed below, EPA finds that GA EPD's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Georgia SIP.

b. Attainment Emissions Inventory

The Rome Area attained the 1997 annual $PM_{2.5}$ NAAQS based on monitoring data for the 3-year period from 2007–2009. GA EPD has selected 2007 as the attainment emission inventory year. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 1997 annual $PM_{2.5}$ NAAQS. GA EPD began development of the attainment inventory by first generating a baseline emissions inventory for the Rome Area. As noted above, the year 2007 was chosen as the base year for developing a comprehensive emissions inventory for direct $PM_{2.5}$ and the $PM_{2.5}$ precursors SO_2 and NO_X. Emissions projections to support maintenance through 2023 have been prepared for the years 2017 and 2023. In addition, emissions have been calculated by interpolation for the years 2014 and 2020. The projected inventory included with the maintenance plan estimates emissions forward to 2023, which is at the 10-year interval required in section 175(A) of the CAA.

The emissions inventories are composed of four major types of sources: point, area, on-road mobile and non-road mobile. The 2007 inventory, with the exception of on-road emissions, was prepared for Georgia by the contractor for the Southeastern Modeling, Analysis, and Planning (SEMAP) project. Under the SEMAP project, emissions estimates are reported by county and source classification code (SCC). The SEMAP emissions inventories were developed using data from a number of sources, including state and local agencies and EPA's National Emissions Inventory (NEI). GA EPD utilized the State's own resources to develop the 2007 inventory of on-road mobile emissions.

The 2007 SO_2, NOx and $PM_{2.5}$ emissions for the Rome Area, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Tables 2, 3, 4, 5, and 6 of the following subsection discussing the maintenance demonstration.

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the Area ''for at least 10 years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of ten years following redesignation.'' Calcagni Memorandum, p. 9. Where the emissions inventory method of showing maintenance is used, the purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. Calcagni Memorandum, pp. 9–10.

As discussed in detail in the subsection below, Georgia's maintenance plan submission expressly documents that the Area's emissions inventories will remain below the attainment year inventories through 2023. Projected emissions inventory levels in 2023 are well below the attainment year inventory levels, and it is highly improbable that they will suddenly increase and exceed attainment year inventory levels in 2024. In addition, for the reasons set forth below, EPA believes that the Georgia's submission, in conjunction with additional supporting information, further demonstrates that the Area will continue to maintain the 1997 Annual $PM_{2.5}$ NAAQS at least through 2024.

Thus, if EPA finalizes its proposed approval of the redesignation request and maintenance plans in 2014, the approval will be based upon this showing, in accordance with section 175A, and EPA's analysis described herein, that the Georgia's maintenance plan provides for maintenance for at least ten years after redesignation.

c. Maintenance Demonstration

The June 21, 2012, final submittal includes a maintenance plan for the Rome Area. This demonstration:

(i) Shows compliance with and maintenance of the annual $PM_{2.5}$ standard by providing information to support the demonstration that current and future emissions of SO_2, NO_X and $PM_{2.5}$ remain at or below 2007 emissions levels.

(ii) Uses 2007 as the attainment year and includes future emission inventory projections for 2017 and 2023.

(iii) Identifies an ''out year'' at least 10 years after EPA review and potential approval of the maintenance plan. Per 40 CFR part 93, NO_X and $PM_{2.5}$ MVEBs were established for the last year (2023) of the maintenance plan.

(iv) Provides, as shown in Tables 2, 3, 4, 5, and 6 below, the actual and projected missions inventories, in tpy, for the Rome Area.

TABLE 2—ACTUAL (2007), ESTIMATED (2014 AND 2020) AND PROJECTED (2017 AND 2023) POINT SOURCE EMISSIONS FOR THE ROME AREA

[tons]

Pollutant	2007	2014	2017	2020	2023
SO_2	24,275	19,666	6,119	6,242	6,366
NO_X	10,165	8,267	7,453	7,660	7,866
$PM_{2.5}$	953	774	697	722	747

TABLE 3—ACTUAL (2007), ESTIMATED (2014 AND 2020) AND PROJECTED (2017 AND 2023) NONPOINT SOURCES EMISSIONS FOR THE ROME AREA

[tons]

Pollutant	2007	2014	2017	2020	2023
SO_2	758	784	794	807	819
NO_X	936	1,026	1,066	1,104	1,144
$PM_{2.5}$	1,855	2,072	2,164	2,249	2,333

TABLE 4—ACTUAL (2007), ESTIMATED (2014 AND 2020) AND PROJECTED (2017 AND 2023) ONROAD MOBILE SOURCES EMISSIONS FOR THE ROME AREA

[tons]

Pollutant	2007	2014	2017	2020	2023
SO_2	14.1	11.6	10.5	9.4	8.3
NO_X	3,378.3	2,270.9	1,796.2	1,321.6	847.0
$PM_{2.5}$	117.3	79.9	63.9	47.8	31.8

TABLE 5—ACTUAL (2007), ESTIMATED (2014 AND 2020) AND PROJECTED (2017 AND 2023) NONROAD MOBILE SOURCE EMISSIONS FOR THE ROME AREA

[tons]

Pollutant	2007	2014	2017	2020	2023
SO_2	29	9	1	1	1
NO_X	996	728	613	546	479
$PM_{2.5}$	66	48	40	36	31

TABLE 6—ACTUAL (2007), ESTIMATED (2014 AND 2020) AND PROJECTED (2017 AND 2023) EMISSIONS FOR ALL SECTORS FOR THE ROME AREA

[tons]

Pollutant	2007	2014	2017	2020	2023	Change 2007–2023
SO_2	25,276.1	20,470.6	6,924.5	7,059.4	7,194.3	72% decrease.
NO_X	15,475.3	12,291.9	10,928.2	10,631.6	10,336.0	33% decrease.
$PM_{2.5}$	2,991.3	2,973.9	2,964.9	3,054.8	3,142.8	5% increase.

The State's submittal credits Georgia Rule 391–3–1–.02(2)(sss) as requiring flue gas desulfurization (FGD) and selective catalytic reduction (SCR) controls on the majority of coal-fired EGUs in the State. The submittal also credits Georgia Rule 391–3–1–.02(2)(uuu) as requiring a 95 percent reduction in SO_2 emissions from the majority of Georgia's coal-fired EGUs, with the requirement being phased in from 2010 through 2016. Within the Rome Area, this rule requires a 95 percent reduction of SO_2 emissions from all four EGUs at plant Hammond, which is being phased in on individual units between 2011 and 2015. The rule also requires SO_2 emission reductions from other coal-fired EGUs in north Georgia.

EPA has not approved Georgia Rules 391–3–1–.02(2)(sss) and 391–3–1–.02(2)(uuu) into Georgia's SIP, and therefore, these rules are not federally enforceable. However, CAIR was one measure that led to air quality improvement in the Rome Area. As discussed above, EPA is interpreting CAA section 107(d)(3)(E)(iii)'s requirement that emission reductions be due to permanent and federally enforceable measures to include CAIR, because of the D.C. Circuit's directive to leave CAIR in place until it is replaced by a new rule. Although modeling completed as part of the CSAPR rulemaking showed that the Area would continue to maintain the standard even in the absence of CAIR or CSAPR, to the extent that the Area's maintenance of the standard relies on CAIR, EPA is proposing to find CAIR may be relied upon under CAA section 175A as well. Unlike the state-only rules discussed above, CAIR was approved into Georgia's SIP. Although the state-only rules have more specific unit control requirements than the provisions of CAIR, the State implemented them in response to CAIR and they require emissions reductions in NO_X and SO_2 consistent with CAIR's original schedule starting in 2009. Since the controls are already in the process of being installed to comply with both CAIR and the state rules, EPA regards the emission estimates based on the installation and operation of these controls to be both an accurate projection of how CAIR will continue to be implemented in the Rome Area and an appropriate basis upon which to project the emission inventory.

As reflected in Table 6, future emissions for the relevant pollutants and precursors are expected to be below the ''attainment level'' emissions in 2007, thus illustrating that the Macon Area is expected to continue to attain the 1997 annual $PM_{2.5}$ NAAQS through 2023. In situations such as this where local emissions are the primary contributor to nonattainment, if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the 1997 annual $PM_{2.5}$ NAAQS should not be violated in the future.

A maintenance plan requires the state to show that projected future year emissions will not exceed the level of emissions which led the Area to attain the NAAQS. Georgia has projected emissions as described previously and determined that emissions in the Macon Area will remain below those in the attainment year inventory for the duration of the maintenance plan.

As noted above, EPA believes that several pertinent factors demonstrate that the Rome Area will continue to maintain the 1997 Annual $PM_{2.5}$ NAAQS at least through the year 2023. These include the circumstances that (1) all of the state and federal regulatory requirements that enabled the Area to attain the NAAQS will continue to be in effect and enforceable after the 10-year maintenance period; (2) the most recent complete, quality-assured and certified annual $PM_{2.5}$ design value (for the period 2009 to 2011) for the Area of 13.3 $\mu g/m^3$ is well below the standard of 15.0 $\mu g/m^3$; (3) as discussed in detail below, EPA is proposing in this action to approve Georgia's determination that the direct $PM_{2.5}$ and NO_X contribution from motor vehicle emissions for the Area and thus does not expect such emissions to contribute significantly to future ambient $PM_{2.5}$ levels; and (4) as noted above, several of the largest sources in the Area have been required by permanent and enforceable consent decrees to install controls that achieve reductions in SO_2 and NO_X emissions as well as reductions in direct $PM_{2.5}$ emissions. Therefore, EPA expects the projected downward trend in pollutant emissions in the Rome Area from the 2007 attainment year through the 2023 maintenance year, as shown in Table 6 above, to continue for at least the one additional year past 2024.

d. Monitoring Network

There is currently one monitor measuring $PM_{2.5}$ in the Rome Area (Rome-Coosa Elementary School in Floyd County). GA EPD has committed to continue operation of the monitor in the Rome Area in compliance with 40 CFR part 58 and have thus addressed the requirement for monitoring. EPA approved Georgia's 2012 monitoring plan on October 16, 2012.

e. Verification of Continued Attainment

GA EPD has the legal authority to enforce and implement the requirements of the Rome Area 1997 annual $PM_{2.5}$ maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future $PM_{2.5}$ attainment problems.

GA EPD will track the progress of the maintenance plan by performing future reviews of triennial emission inventories for the Rome Area as required in the Air Emissions Reporting Rule (AERR) and Consolidated Emissions Reporting Rule (CERR). For these periodic inventories, GA EPD will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, then GA EPD will re-project emissions for the Rome Area.

f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by GA EPD. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

The contingency plan included in the submittal includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. GA EPD will use actual ambient monitoring data as the triggering event to determine when contingency measures should be implemented.

Georgia has identified a Tier I trigger as occurring when any of the following conditions occurs, as described in the State's submittal for the Rome Area.

- The previous calendar year's annual mean $PM_{2.5}$ concentration exceeds the standard by 1.5 $\mu g/m^3$ or more;
- The annual mean $PM_{2.5}$ concentration in each of the previous

two consecutive calendar years exceeds the standard by 0.5 ug/m^3 or more;

• The total maintenance area SO_2 emissions in the most recent NEI exceeds the corresponding attainment-year inventory by more than 10.0 percent;

• The total maintenance area $PM_{2.5}$ emissions in the most recent NEI exceeds the corresponding attainment-year inventory by more than 30.0 percent.

GA EPD will evaluate a Tier I condition, if it occurs, as expeditiously as practicable to determine the causes of the ambient $PM_{2.5}$ or emissions inventory increase and to determine if a Tier II condition is likely to occur. A Tier II trigger will be activated when any violation of the annual $PM_{2.5}$ NAAQS at any federal reference method monitor in the Rome maintenance area is recorded, based on quality-assured monitoring data. In this event, GA EPD will conduct a comprehensive study to determine the cause of the ambient $PM_{2.5}$ increase and to determine if the increase is likely to continue and will implement any required measures as expeditiously as practicable, taking into consideration the ease of implementation and the technical and economic feasibility of selected measures.

The comprehensive study will be completed and submitted to EPA as expeditiously as practical but no later than nine months after the Tier I or Tier II trigger is activated, and the appropriate corrective measures will be adopted and implemented within 18 to 24 months after the trigger occurs. If the study determines that additional measures are required, the State will adopt rules no later than 18 months following the date that the trigger is activated.[5] The comprehensive measures will be selected from the following types of measures or from any other measure deemed appropriate and effective at the time the selection is made by GA EPD:

• RACM for sources of SO_2 and $PM_{2.5}$;

• Reasonably Available Control Technologies (RACT) for point sources of SO_2 and $PM_{2.5}$;

• Expansion of RACM/RACT to areas of transport within the State;

• Mobile source measures; and

• Additional SO_2 and/or $PM_{2.5}$ reduction measures yet to be identified.

In addition to the triggers indicated above, Georgia will monitor regional emissions through the CERR and AERR, and compare them to the projected inventories and the attainment year inventory. In the June 21, 2012, submittal, the State acknowledges that the contingency plan requires the implementation of all measures contained in the SIP for the Area prior to redesignation. The State also notes that these measures are currently in effect and may be evaluated by the State to determine if they are adequate or up-to-date.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment emission inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Therefore, the maintenance plan SIP revision submitted by GA EPD for the Rome Area meets the requirements of section 175A of the CAA and is approvable.

VI. What is the effect of the January 4, 2013, D.C. Circuit decision regarding $PM_{2.5}$ implementation under Subpart 4?

a. Background

As discussed in Section I of this action, the D.C. Circuit remanded the 1997 $PM_{2.5}$ Implementation Rule to EPA on January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428. The court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of Part D of Title I of the CAA, rather than the particulate matter-specific provisions of subpart 4 of Part D of Title I.

b. Proposal on This Issue

In this portion of the proposed redesignation, EPA addresses the effect of the Court's January 4, 2013, ruling on the proposed redesignation. As explained below, EPA is proposing to determine that the Court's January 4, 2013, decision does not prevent EPA from redesignating the Rome Area to attainment. Even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to the Rome Area redesignation request and disregards the provisions of its 1997 $PM_{2.5}$ Implementation Rule recently remanded by the Court, the State's request for redesignation of this area still qualifies for approval. EPA's discussion takes into account the effect of the Court's ruling on the area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

c. Applicable Requirements for the Purpose of Evaluating the Redesignation Request

With respect to the 1997 $PM_{2.5}$ Implementation Rule, the Court's January 4, 2013, ruling rejected EPA's reasons for implementing the $PM_{2.5}$ NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 $PM_{2.5}$ NAAQS under subpart 4 of Part D of the CAA, in addition to subpart 1. For the purposes of evaluating the Georgia's redesignation request for the area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not ''applicable'' for the purposes of CAA section 107(d)(3)(E), and thus EPA is not required to consider subpart 4 requirements with respect to the Rome Area of redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are ''applicable'' and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. *See* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum). *See also* ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for the plan and Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465–66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424–27, May 12, 2003); *Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this

[5] In a September 23, 2013, letter to EPA, the State reaffirmed its commitment to address and correct any violation of the 1997 annual $PM_{2.5}$ NAAQS as expeditiously as practicable, and no later than 24 months from the trigger activation.

interpretation and expressly rejecting Sierra Club's view that the meaning of ''applicable'' under the statute is ''whatever should have been in the plan at the time of attainment rather than whatever actually was in already implemented or due at the time of attainment'').[6] In this case, at the time that Georgia submitted its redesignation request, requirements under subpart 4 were not due, and indeed, were not yet known to apply.

EPA's view that, for purposes of evaluating the Rome Area redesignation, the subpart 4 requirements were not due at the time the State submitted the redesignation request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone areas redesignated subsequent to the DC Circuit's decision in *South Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). In *South Coast,* the Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that ''applicable requirements,'' for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. *See, e.g.,* Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA therefore did not consider subpart 2 requirements to be ''applicable'' for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from the provisions of CAA Section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet ''all requirements 'applicable' to the area under section 110 and part D.'' Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the ''applicable'' SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of ''applicable'' as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arose after the state submitted its redesignation request, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18-month deadline Congress set for EPA action in section 107(d)(3)(D). If ''applicable requirements'' were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting a redesignation request, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the redesignation request beyond the 18-month timeframe provided by the Act for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area for which a redesignation request has been submitted would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the Court's January 4, 2013, decision in *NRDC* v. *EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. The State submitted its redesignation request on June 21, 2012, but the Court did not issue its decision remanding EPA's 1997 $PM_{2.5}$ implementation rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require the State's fully-completed and pending redesignation request to comply now with requirements of subpart 4 that the Court announced only in January 2013 would be to give retroactive effect to such requirements when the State had no notice that it was required to meet them. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club* v. *Whitman,* 285 F.3d 63 (D.C. Cir. 2002),[7] where it upheld the District Court's ruling refusing to make retroactive EPA's determination that the St. Louis area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it ''would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time.'' *Id.* at 68. Similarly, it would be unreasonable to penalize the State of Georgia by rejecting its redesignation request for an area that is already attaining the 1997 $PM_{2.5}$ standard and that met all applicable requirements known to be in effect at the time of the request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements of which it had no notice would inflict the same unfairness condemned by the Court in *Sierra Club* v. *Whitman.*

d. Subpart 4 Requirements and the Rome Area Redesignation Request

Even if EPA were to take the view that the Court's January 4, 2013, decision requires that, in the context of pending redesignations, subpart 4 requirements were due and in effect at the time the State submitted its redesignation request, EPA proposes to determine that the Rome Area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Rome Area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of

[6] Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

[7] *Sierra Club* v. *Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n* v. *EPA.* 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied 643 F.3d 958 (D.C. Cir. 2011), cert denied 132 S. Ct. 571 (2011).

subpart 4 for purposes of redesignating the Rome Area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. *See* Section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM_{10} [8] nonattainment areas, and under the Court's January 4, 2013, decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See,* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) (the ''General Preamble''). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific PM–10 requirements.'' 57 FR 13538 (April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, reasonably available control measures (RACM), reasonable further progress (RFP), emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, we are considering the Rome Area to be a ''moderate'' $PM_{2.5}$ nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as ''moderate'' nonattainment areas and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM_{10}, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.[9] In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a PSD program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,[10] when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the $PM_{2.5}$ standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble for the Implementation of title I, EPA stated that:

> The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990''; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

Id.

EPA similarly stated in its 1992 Calcagni memorandum that, ''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''

It is evident that even if we were to consider the Court's January 4, 2013, decision in *NRDC* v. *EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively [11] and thus are now past due, those requirements do not apply to an area that is attaining the 1997 $PM_{2.5}$ standard for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret ''applicable requirements'' in the redesignation context. *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA's prior ''Clean Data Policy'' rulemakings for the PM_{10} NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* ''Determination of Attainment for Coso Junction Nonattainment Area,'' (75 FR 27944, May 19, 2010). *See also* Coso Junction proposed PM_{10} redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet

[8] PM_{10} refers to particles nominally 10 micrometers in diameter or smaller.

[9] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

[10] I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

[11] As explained above, EPA does not believe that the Court's January 4, 2013, decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club* v. *Whitman, supra.*

superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this notice, EPA proposes to determine that the area has attained the 1997 $PM_{2.5}$ standard. Under its longstanding interpretation, EPA is proposing to determine here that the area meets the attainment-related plan requirements of subparts 1 and 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)d section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating the redesignation request.

e. Subpart 4 and Control of $PM_{2.5}$ Precursors

The D.C. Circuit in *NRDC* v. *EPA* remanded to EPA the two rules at issue in the case with instructions to EPA to re-promulgate them consistent with the requirements of subpart 4. EPA in this section addresses the Court's opinion with respect to $PM_{2.5}$ precursors. While past implementation of subpart 4 for PM_{10} has allowed for control of PM_{10} precursors such as NO_X from major stationary, mobile, and area sources in order to attain the standard as expeditiously as practicable, CAA section 189(e) specifically provides that control requirements for major stationary sources of direct PM_{10} shall also apply to PM_{10} precursors from those sources, except where EPA determines that major stationary sources of such precursors ''do not contribute significantly to PM_{10} levels which exceed the standard in the area.''

EPA's 1997 $PM_{2.5}$ implementation rule, remanded by the DC Circuit, contained rebuttable presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was ''not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures.'' EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court in its January 4, 2013, decision made reference to both section 189(e) and 40 CFR 51.1002, and stated that, ''In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.'' *NRDC* v. *EPA,* at 27, n.10.

Elsewhere in the Court's opinion, however, the Court observed:

> Ammonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}. For a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)].

Id. at 21, n.7.

For a number of reasons, EPA believes that its proposed redesignation of the Rome Area is consistent with the Court's decision on this aspect of subpart 4. First, while the Court, citing section 189(e), stated that ''for a PM_{10} area governed by subpart 4, a precursor is 'presumptively regulated,' '' the Court expressly declined to decide the specific challenge to EPA's 1997 $PM_{2.5}$ implementation rule provisions regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding ammonia and VOC as $PM_{2.5}$ precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of the Rome Area EPA, believes that doing so is consistent with proposing redesignation of the area for the 1997 $PM_{2.5}$ standard. The Rome Area has attained the standard without any specific additional controls of VOC and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM_{10} precursors.[12] Under subpart 1 and EPA's prior implementation rule, all major stationary sources of $PM_{2.5}$ precursors were subject to regulation, with the exception of ammonia and VOC. Thus we must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the area for the 1997 $PM_{2.5}$ standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOCs under other Act requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). 57 FR 13542. EPA in this proposal proposes to determine that the SIP has met the provisions of section 189(e) with respect to ammonia and VOCs as precursors. This proposed determination is based on our findings that: (1) The Rome Area contains no major stationary sources of ammonia, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[13] In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the area, which is attaining the 1997 annual $PM_{2.5}$ standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 $PM_{2.5}$ standard in the Rome Area. *See* 57 FR 13539–42.

EPA notes that its 1997 $PM_{2.5}$ implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of $PM_{2.5}$ precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 $PM_{2.5}$ NAAQS. By contrast, redesignation to attainment primarily requires the area to have

[12] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

[13] The Rome area has reduced VOC emissions through the implementation of various control programs including VOC Reasonably Available Control Technology regulations and various on-road and non-road motor vehicle control programs.

already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013, decision as calling for ''presumptive regulation'' of ammonia and VOC for $PM_{2.5}$ under the attainment planning provisions of subpart 4, those provisions in and of themselves do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring the State to address precursors differently than they have already would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM_{10} contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need be regulated for attainment and control purposes.[14] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}.[15] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Rome Area has already attained the 1997 $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of Georgia's request for redesignation of the Rome Area. In the context of a redesignation, the area has shown that it has attained the standard. Moreover, the state has shown and EPA has proposed to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows logically that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013, decision of the court as precluding redesignation of the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS at this time.

In sum, even if Georgia were required to address precursors for the Rome Area under subpart 4 rather than under subpart 1, EPA would still conclude that the area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3(E)(ii) and (v).

f. Maintenance Plan and Evaluation of Precursors

With regard to the redesignation of the Rome Area, in evaluating the effect of the court's remand of EPA's implementation rule, which included presumptions against consideration of VOC and ammonia as $PM_{2.5}$ precursors, EPA in this proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the Area has attained the 1997 annual $PM_{2.5}$ standard and that the State has shown that attainment of that standard is due to permanent and enforceable emission reductions.

EPA proposes to determine that the State's maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors whose control brought about attainment of the 1997 $PM_{2.5}$ standard in the Rome Area. EPA therefore believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013, decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this area. As explained below, based upon documentation provided by Georgia and supporting information, EPA believes that the maintenance plan for the Rome Area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the standard.

First, as noted above in EPA's discussion of section 189(e), VOC emission levels in this Area have historically been well-controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Rome area are very low, estimated to be less than 1,000 tons per year. *See* Table 7, below. This amount of ammonia emissions appears especially small in comparison to the total amounts of SO_2, NO_X, and even direct $PM_{2.5}$ emissions from sources in the Area. Third, as described below, available information shows that no precursor, including VOC and ammonia, is expected to increase over the maintenance period so as to interfere with or undermine the State's maintenance demonstration.

Georgia's maintenance plan shows that emissions of SO_2 and NO_X are projected to decrease over the maintenance period in the Rome Area by 18,082 tpy and 5,139 tpy, respectively, while direct $PM_{2.5}$ emissions are projected to increase by 152 tpy. *See* Table 6, above. In addition, emissions inventories used in the regulatory impact analysis (RIA) for the 2012 $PM_{2.5}$ NAAQS show that VOC emissions are projected to decrease by 1,603 tpy and that ammonia emissions are projected to increase by 85 tpy between 2007 and 2020. Although ammonia emissions are projected to increase slightly between 2007 and 2020, the large decrease in emissions of other precursors in comparison will keep the Area well below the standard. *See* Table 7, below. While the RIA emissions inventories are only projected out to 2020, there is no reason to believe that this overall downward trend would not continue through 2023. Given that the Rome Area is already attaining the 1997 annual $PM_{2.5}$ NAAQS even with the current level of emissions from sources in the area, the overall trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that the State is addressing for purposes of the 1997 annual $PM_{2.5}$ NAAQS indicate that the area should continue to attain the NAAQS following the precursor control strategy that the State has already elected to pursue. Even if VOC and ammonia emissions were to increase unexpectedly between 2020 and 2023, the overall emission reductions projected in SO_2 and NO_X would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential $PM_{2.5}$ precursors will not increase to the extent that they will cause monitored $PM_{2.5}$ levels to violate the 1997 annual $PM_{2.5}$ standard during the maintenance period.

In addition, available air quality data and modeling analyses show continued maintenance of the standard during the maintenance period. As noted in section V, above, the Rome Area recorded an annual average $PM_{2.5}$ concentration of 10.6 $\mu g/m^3$ during 2012, the most recent year available with complete, quality-assured and certified ambient air monitoring data. This is well below the 1997 annual $PM_{2.5}$ NAAQS of 15 $\mu g/m^3$. Moreover, the modeling analysis

[14] *See, e.g.,* ''Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM-10 Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM-10 Standards,'' 69 FR 30006 (May 26, 2004) (approving a PM_{10} attainment plan that impose controls on direct PM_{10} and NO_X emissions and did not impose controls on SO_2, VOC, or ammonia emissions).

[15] *See, e.g., Assoc. of Irritated Residents* v. *EPA et al.,* 423 F.3d 989 (9th Cir. 2005).

conducted for the RIA for the 2012 $PM_{2.5}$ NAAQS indicates that the design value for this area is expected to continue to decline through 2020. In the RIA analysis, the 2020 modeled design value for the Rome Area is 9.5 μg/m³. Given the significant decrease in overall precursor emissions projected through 2023, it is reasonable to conclude that monitored $PM_{2.5}$ levels in this area will also continue to decrease through 2023.

TABLE 7—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE AREA [16]

Sector	VOC			Ammonia		
	2007	2020	Net change	2007	2020	Net change
Nonpoint	1,607.57	1,643.06	35.49	734.23	837.46	103.23
Nonroad	772.31	430.25	−342.06	0.72	0.84	0.12
Onroad	1,971.44	672.57	−1,298.87	56.90	32.17	−24.73
Point	2,208.40	2,210.38	1.98	30.27	36.46	6.19
Total	6,559.72	4,956.26	−1,603.46	822.12	906.93	84.81

Thus, EPA believes that there is ample justification to conclude that the Rome Area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to $PM_{2.5}$. After consideration of the DC Circuit's January 4, 2013, decision, and for the reasons set forth in this notice, EPA continues to propose approval of the State's maintenance plan and its request to redesignate the Rome Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

VII. What is EPA's analysis of Georgia's proposed NO_X and $PM_{2.5}$ MVEBs for the Rome area?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstration) and maintenance plans create MVEB for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, MVEBs must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEBs is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEBs serves as a ceiling on emissions from an area's planned transportation system. The MVEBs concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs.

After interagency consultation with the transportation partners for the Rome Area, Georgia has elected to develop MVEBs for NOx and $PM_{2.5}$ for the entire nonattainment area. Georgia has developed these MVEBs, as required, for the last year of its maintenance plan, 2023. The MVEBs reflect the total on-road emissions for 2023, plus an allocation from the available NOx and $PM_{2.5}$ safety margin. Under 40 CFR 93.101, the term ''safety margin'' is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. The NOx and $PM_{2.5}$ MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model vehicle miles traveled, and new emission factor models. The NOx and $PM_{2.5}$ MVEBs for the Rome Area are identified in Table 8, below.

TABLE 8—ROME AREA $PM_{2.5}$ NO_X MVEBS (TPY)

	$PM_{2.5}$	NO_X
2023 Mobile Emissions	31.8	847
2023 Safety Margin Allocated	6.2	147.4
2023 Total Mobile Budget	38.0	994.4

In an effort to accommodate future variations in Travel Demand Models (TDM) and the vehicle miles traveled forecast when no change to the network is planned, GA EPD consulted with the interagency consultation group, including U.S. EPA Region 4, to determine a reasonable approach to address this variation. The projected 2023 on-road motor vehicle emissions for direct $PM_{2.5}$ and NO_X are 31.8 and 847 tons, respectively. On-road emissions of SO_2 are considered de-minimis (70 FR 24280, 24283, May 6, 2005), therefore, no budget for SO_2 is required.

A safety margin is necessary to accommodate the variabilities, or worst-case scenarios that can occur due to future planning assumptions. The worst-case daily motor vehicle emissions projection for $PM_{2.5}$ is 19.5 percent above the projected 2023 on-road emissions. In a worst-case scenario, the needed annual safety margin for the MVEB would be 6.2 tons resulting in an overall MVEB of 38 tons per year. The worst-case daily motor vehicle emissions projection for NO_X is 17.4

[16] These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 $PM_{2.5}$ NAAQS.

percent above the projected 2023 on-road emissions. In a worst-case scenario, the needed annual safety margin for the MVEB would be 147.4 tons resulting in an overall MVEB of 994.4 tpy.

Through this rulemaking, EPA is proposing to approve the MVEBs for NO_X and $PM_{2.5}$ for 2023 for the Rome Area into the Georgia SIP because EPA has determined that the Area maintains the 1997 annual $PM_{2.5}$ NAAQS with the emissions at the levels of the budgets. Once the MVEBs for the Rome Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations. In addition, as discussed in Section V above, EPA is proposing that if this approval is finalized in 2014, the Area will continue to maintain the 1997 Annual $PM_{2.5}$ NAAQS through at least 2024. After thorough review, EPA is proposing to approve the budgets because they are consistent with maintenance of the 1997 annual $PM_{2.5}$ NAAQS through 2023.

VIII. What is the status of EPA's adequacy determination for the proposed NO_X and $PM_{2.5}$ MVEBs for 2023 for the Rome area?

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEB, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation conformity purposes, the MVEBs must be used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEBs are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Georgia's maintenance plan submission includes NO_X and $PM_{2.5}$ MVEBs for the Rome Area for 2023, the last year of the maintenance plan. EPA reviewed the NO_X and $PM_{2.5}$ MVEBs through the adequacy process, and the adequacy of the MVEBs was open for public comment on EPA's adequacy Web site on July 26, 2012, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy for the 2023 MVEBs for the Rome Area closed on August 27, 2012. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal.

EPA intends to make its determination on the adequacy of the 2023 MVEBs for the Rome Area for transportation conformity purposes in the near future by completing the adequacy process that was started on July 26, 2012. After EPA finds the 2023 MVEBs adequate or takes final action to approve them into the Georgia's SIP, the new MVEBs for NOx and $PM_{2.5}$ must be used for future transportation conformity determinations. For required regional emissions analysis years that involve 2023 or beyond, the applicable budgets will be the new 2023 MVEBs established in the maintenance plan.

IX. Proposed Actions on the Redesignation Request and Maintenance Plan SIP Revisions Including Approval of the NO_X and $PM_{2.5}$ MVEBs for 2023 for the Rome Area

On April 5, 2011, EPA determined that the Rome Area was attaining the 1997 $PM_{2.5}$ NAAQS. *See* 76 FR 18650. EPA is now taking two separate but related actions regarding the Area's redesignation and maintenance of the 1997 annual $PM_{2.5}$ NAAQS.

First, EPA is proposing to determine, based on complete, quality-assured and certified monitoring data for the 2007–2009 monitoring period, and after review of all available data in AQS, that the Rome Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. EPA is also proposing to determine that the Rome Area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. On this basis, EPA is proposing to approve Georgia's redesignation request for the Rome Area.

Second, EPA is proposing to approve the maintenance plan for the Rome Area, including the $PM_{2.5}$ and NO_X MVEBs for 2023 submitted by Georgia into the State's SIP (under section 175A). The maintenance plan demonstrates that the Area will continue to maintain the 1997 annual $PM_{2.5}$ NAAQS, and the budgets meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5). Further, as part of today's action, EPA is describing the status of its adequacy determination for transportation conformity purposes for the $PM_{2.5}$ and NO_X MVEBs for 2023 under 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy determination for the MVEBs or the effective date for the final rule approving the MVEBs into the Georgia's SIP, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO_X and $PM_{2.5}$ MVEBs pursuant to 40 CFR 93.104(e).

If finalized, approval of the redesignation request would change the official designation of Rome Area for the 1997 annual $PM_{2.5}$ NAAQS, found at 40 CFR part 81, from nonattainment to attainment.

X. What is the effect of EPA's proposed actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Georgia's redesignation request would change the legal designation of the Rome Area for the 1997 annual $PM_{2.5}$ NAAQS, found at 40 CFR part 81, from nonattainment to attainment. Approval of GA EPD's request would also incorporate a plan for maintaining the 1997 annual $PM_{2.5}$ NAAQS in the Rome Area through 2023 into the Georgia SIP. This maintenance plan includes contingency measures to remedy any future violations of the 1997 annual $PM_{2.5}$ NAAQS and procedures for evaluation of potential violations. The maintenance plan also includes NO_X and $PM_{2.5}$ MVEBs for the Rome Area. Additionally, EPA is notifying the public of the status of its adequacy determination for the NO_X and $PM_{2.5}$ pursuant to 40 CFR 93.118(f)(1).

XI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not

impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

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

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: December 19, 2013.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2014–01369 Filed 1–22–14; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 79, No. 15

Thursday, January 23, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 17, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by February 24, 2014 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Federal and Non-Federal Financial Assistance Instruments.

OMB Control Number: 0596–0217.

Summary of Collection: In order to carry out specific Forest Service (FS) activities, Congress created several authorities to assist the Agency in carrying out its mission. Authorized by the Federal Grants and Cooperative Agreements Act (FGCAA), the FS issues Federal Financial Assistance awards, (i.e., grants and cooperative agreements). Agency specific authorities and appropriations also support use of Federal Financial Assistance awards. In addition to FFA, Congress created specific authorizations for acts outside the scope of the FGCAA. Appropriations language was developed to convey authority for the Forest Service to enter into relationships that are outside the scope of the FGCAA. Information in this request is collected from individuals; non-profit and for-profit institutions; institutions of higher education and state, local, and Native American tribal governments etc. Multiple options are available for respondents to respond including forms, non-forms, electronically, face-to-face, by telephone and over the Internet.

Need and Use of the Information: From the pre-award to the close-out stage, FS will collect information from respondents on forms, via emails, meetings, and telephone calls. Using various forms respondents will describe the type of project, project scope, financial plan and other factors. To reach management decision on several Office of the Inspector General (OIG) Recommendations from the American Recovery and Reinvestment Act—Forest Service Hazardous Fuels Reduction and Ecosystem Restoration Projects on Non-Federal Lands Audit (Report No. 08703–0005–SF, Issued March 2013), several new forms were created. In addition, mandatory post-award meetings must be held for each new Federal financial assistance award. Without this information the FS would not be able to develop, implement, monitor and administer these agreements and comply with the OIG audit recommendations.

Description of Respondents: Business or other for-profit; Not-for-profit Institutions; State, Local or Tribal Government; Individuals.

Number of Respondents: 4,874.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; On occasion.

Total Burden Hours: 52,783.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–01287 Filed 1–22–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0105]

Notice of Availability of Evaluations of the Foot-and-Mouth Disease and Rinderpest Status of a Region of Patagonia, Argentina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that we have determined that a region of Argentina, consisting of the areas of Patagonia South and Patagonia North B, is free of foot-and-mouth disease. We are making that determination, as well as an evaluation we have prepared in connection with this action, available for review and comment. In addition, we have prepared an evaluation assessing the rinderpest status of South America, which includes Argentina, and have determined, based on our evaluation, that rinderpest is not present in the entirety of Argentina. We are also making that determination, as well as our evaluation, available for review and comment.

DATES: We will consider all comments that we receive on or before March 24, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0105-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No.

APHIS–2013–0105, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0105* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Silvia Kreindel, Senior Staff Veterinarian, Regionalization Evaluation Services, National Import Export Services, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 851–3308.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States to prevent the introduction of various animal diseases, including rinderpest and foot-and-mouth disease (FMD). The regulations prohibit or restrict the importation of live ruminants and swine, and products from these animals, from regions where rinderpest or FMD is considered to exist.

Within part 94, § 94.1 contains requirements governing the importation of ruminants and swine from regions where rinderpest or FMD exists and the importation of the meat of any ruminants or swine from regions where rinderpest or FMD exists to prevent the introduction of either disease into the United States. We consider rinderpest and FMD to exist in all regions except those listed in accordance with paragraph (a)(2) of that section as free of rinderpest and FMD.

Section 94.11 of the regulations contains requirements governing the importation of meat of any ruminants or swine from regions that have been determined to be free of rinderpest and FMD, but that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. Such regions are listed in accordance with paragraph (a)(2) of that section.

The regulations in 9 CFR part 92, § 92.2, contain requirements for requesting the recognition of the animal health status of a region (as well as for the approval of the export of a particular type of animal or animal product to the United States from a foreign region). If, after review and evaluation of the information submitted in support of the request, the Animal and Plant Health Inspection Service (APHIS) believes the request can be safely granted, APHIS will make its evaluation available for public comment through a notice published in the **Federal Register.** Following the close of the comment period, APHIS will review all comments received and will make a final determination regarding the request that will be detailed in another notice published in the **Federal Register.**

In 2003, the Government of Argentina submitted a request to recognize the region located south of latitude 42° south, known as Patagonia South, as free of FMD. In 2008, Argentina expanded its request to include the region immediately north of latitude 42° south, known as Patagonia North B. These two areas are referred to below as the Patagonia Region of Argentina.

In response to this request, APHIS has conducted a qualitative risk assessment to evaluate the FMD status of the Patagonia Region of Argentina. Based on this evaluation, APHIS has found that FMD is not present in the Patagonia Region and that the surveillance, prevention, and control measures implemented by Argentina in the area under consideration as a region free of FMD are sufficient to minimize the likelihood of introducing FMD into the United States via imports of FMD-susceptible species or products. However, because of its proximity to or trading relationships with FMD-affected regions, APHIS has determined that it is necessary to impose certain restrictions on the importation of meat of any ruminants or swine from the Patagonia Region of Argentina.

Rinderpest has never been established in South America. No South American country has ever reported the disease except Brazil, which had an outbreak in 1921 that was limited in scope and quickly eradicated. Furthermore, the global distribution of rinderpest has diminished significantly in recent years as a result of the Food and Agriculture Organization Global Rinderpest Eradication Program. The last known cases of rinderpest worldwide occurred in the southern part of the ''Somali pastoral ecosystem'' consisting of southern Somalia, eastern Kenya, and southern Ethiopia. In May 2011, the World Organization for Animal Health (OIE) announced its recognition of global rinderpest freedom.

Based on the foregoing conclusions, APHIS has found that the Patagonia Region of Argentina is free of rinderpest and FMD.

Therefore, in accordance with § 92.2(e), we are announcing the availability of our evaluation of the FMD status of the region under consideration, as well as an evaluation assessing the rinderpest status of South America, for public review and comment. We are also announcing the availability of an environmental assessment (EA) entitled ''Recognition of Patagonia Region in Argentina as Free of Foot-and-Mouth Disease,'' which has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provision of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). The evaluation and the EA may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this notice.) The evaluations, as well as relevant information used in the review process, are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. Information submitted in support of Argentina's original request for recognition may also be viewed on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/reg_request.shtml* by following the link for ''Previous regionalization requests and supporting documentation.'' Information submitted in support of the expanded request may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

After reviewing any comments we receive, we will announce our decision regarding the disease status of the region of Argentina under consideration with respect to FMD and rinderpest and the import status of susceptible animals and products of such animals in a subsequent notice.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 16th day of January 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–01229 Filed 1–21–14; 4:15 pm]

BILLING CODE 3410–34–P

BROADCASTING BOARD OF GOVERNORS

Proposed Information Collection Reinstatement; Comment Request

AGENCY: The Broadcasting Board of Governors.

ACTION: Proposed information collection reinstatement; comment request.

SUMMARY: The Broadcasting Board of Governors (BBG), as part of its continuing effort to reduce paperwork and respondent burden, invites public comment on an information collection titled, ''Surveys and Other Audience Research for Radio and TV Marti.'' This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 [Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)].

The information collection activity involved with this program is conducted pursuant to the mandate given to the BBG to provide for the broadcasting of accurate information to the people of Cuba, and other purposes, under Public Law 98–111, the Radio Broadcasting to Cuba Act, dated October 4, 1983, and Public Law 101–246, dated February 16, 1990.

DATES: Comments must be submitted by March 24, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Luer, Chief, Office of Administration, BBG, Room 1274, 330 Independence Avenue SW., Washington, DC 20237, telephone (202) 203–4608, email address *cluer@bbg.gov.*

Copies: Copies of the Request for Clearance, supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the Chief of the Office of Administration for BBG.

SUPPLEMENTARY INFORMATION: Annual estimated collection burden for this proposed collection of information is estimated to average 3 hours per response for 96 Focus Group Studies respondents, 3 hours per response for 30 Audience Panels respondents, and 15 minutes (0.25 of an hour) per response for 300 Structured Surveys respondents, including average estimated time for travel to and from the facility where research activities are conducted. Respondents will be required to respond only one time for Focus Group Studies and Structured Surveys, but 3 times for Audience Panels. Comments are requested on the proposed information collection concerning:

(a) Whether the proposed collection of information is necessary for the proper performance of the agency's functions, including whether the information collection has practical utility;

(b) the accuracy of the Agency's burden estimates;

(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 the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate, or any other aspect of this collection of information, to Mr. Chris Luer, the BBG Clearance Officer, IBB/A, Room 1274, 330 Independence Avenue SW., Washington, DC 20237, telephone (202) 203–4595, email address *cluer@bbg.gov.*

Current Actions: BBG is requesting reinstatement of this collection for a three-year period and approval for a revision to the burden hours.

Title: Surveys and Other Audience Research for Radio and TV Marti

Abstract: Data from this information collection are used by BBG's Office of Cuba Broadcasting (OCB) in fulfillment of its mandate to evaluate effectiveness of Radio and TV Marti operations by estimating the audience size and composition for broadcasts; and assess signal reception, credibility and relevance of programming through this research.

Proposed Frequency of Responses

Total Annual Responses—96 Focus Group Studies + 90 Audience Panel + 300 Structured Surveys = 486.

Average Hours per Response—3 Focus Group Studies + 3 Audience Panel + .25 Structured Surveys = (288) + (270) + (75).

Total annual burden—633 hours.

Dated: January 21, 2014.

Chris Luer,

Chief, Office of Administration.

[FR Doc. 2014–01199 Filed 1–22–14; 8:45 am]

BILLING CODE 8610–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting Cancellation and Revision of Agenda

TIME AND DATE: January 30, 2014, 6:30 p.m.–9:00 p.m. PST.

PLACE: Brodniak Auditorium, Anacortes High School; 1600 20th St., Anacortes, WA 98221.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) previously announced a public meeting to be held on January 30, 2014 (78 FR 78810), starting at 6:30 p.m. PST at the Brodniak Auditorium, Anacortes High School, 1600 20th St., Anacortes, WA 98221.

The CSB public meeting to consider and vote upon a draft final investigation report is cancelled. In lieu of a Board meeting, the CSB will conduct a community listening session at the time and place stated above, in order to obtain additional stakeholder and community input on a draft final investigation report into the April 2, 2010, explosion and fire that fatally injured seven employees. The CSB's draft investigation found that at the time of the incident a bank of heat exchangers was being brought online in the refinery's naphtha hydrotreater unit when another heat exchanger in a parallel bank catastrophically failed, spewing highly flammable hydrogen and naphtha which ignited. Seven Tesoro workers who were nearby, assisting with the heat exchanger startup, were fatally burned. The accident at Tesoro was the mostly deadly U.S. refinery incident since the 2005 explosion at BP Texas City that killed 15 workers and injured 180 others.

No formal CSB action or recorded votes will be taken at the community listening session. The community listening session will include a presentation to the community of the draft report by the CSB investigative team. The report will then be available on the CSB Web site (*www.csb.gov*) for a period of 45 days, during which time public comments will be accepted.

At the community listening session, the CSB will receive additional input and comment from affected stakeholders and the community, and will consider this input in finalizing a report. All presentations made at this listening session are intended to allow the Board to consider any additional issues and factors that may bear upon this case.

Additional Information

The public listening session is free and open to the public. If you require a translator or interpreter, please notify the individual listed below as the ''Contact Person for Further Information,'' at least five business days prior to the meeting.

The CSB is an independent federal agency charged with investigating

accidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Comment

Members of the public are invited to make brief statements to the CSB at the public listening session. The time provided for public comments will depend upon the number of people who wish to speak. Speakers should assume that their presentations will be limited to five minutes or less, and may submit written statements for the record.

Contact Person for Further Information

Hillary J. Cohen, Communications Manager, *hillary.cohen@csb.gov* or (202) 446–8094. General information about the CSB can be found on the agency Web site at: *www.csb.gov*.

Dated: January 21, 2014.

Rafael Moure-Eraso,

Chairperson.

[FR Doc. 2014–01410 Filed 1–21–14; 11:15 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–5–2014]

Foreign-Trade Zone 221—Mesa, Arizona, Application for Subzone, Apple, Inc., Mesa, Arizona

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of Mesa, grantee of FTZ 221, requesting subzone status for the facility of Apple, Inc. (Apple), located in Mesa, Arizona. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on January 14, 2014.

The proposed subzone (83.17 acres) is located at 3740 S. Signal Butte Rd, Mesa, Arizona. A notification of proposed production activity has been submitted and will be published separately for public comment. The proposed subzone would be subject to the existing activation limit of FTZ 221.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is March 4, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 19, 2014.

A copy of the 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 FTZ 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: January 14, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–01296 Filed 1–22–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Technical Data: Letter of Explanation

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 24, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *Lawrence.Hall@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

These technical data letters of explanation will assure the Bureau of Industry and Security that U.S.-origin technical data will be exported only for authorized end-uses, users and destinations. The information contained in the letters describes the transaction and fixes the scope of technology to be exported, the parties to the transaction, their roles, the purpose for the export, and the methods authorized to be used in exporting the technology. The letters also place the foreign consignee on notice that the technical data is subject to U.S. export controls and may only be re-exported in accordance with U.S. law.

II. Method of Collection

Submitted on paper or electronically.

III. Data

OMB Control Number: 0694–0047.

Form Number(s): N/A.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,497.

Estimated Time per Response: 30 minutes to 2 hours.

Estimated Total Annual Burden Hours: 5,332.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 16, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–01258 Filed 1–22–14; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Light-Walled Rectangular Pipe and Tube From Mexico: Rescission of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: January 23, 2014.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Angelica Mendoza, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–8029 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2013, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on light-walled rectangular pipe and tube (LWR pipe and tube) from Mexico for the period of review (POR) of August 1, 2012, through July 31, 2013.[1] The Department received timely requests from two foreign producers, Maquilacero S.A. de C.V. (Maquilacero) and Regiomontana de Perfiles y Tubos S.A. de C.V. (Regiopytsa), filed in accordance with 19 CFR 351.213(b), for an administrative review of their shipments during the POR.[2] On September 13, 2013, Maquilacero withdrew its request for the administrative review.[3] On October 2, 2013, the Department published a notice of initiation of an administrative review of the antidumping duty order on light-walled from Mexico with respect to Regiopytsa.[4]

The Department stated in its initiation of this review that it intended to rely on U.S. Customs and Border Protection (CBP) data to select respondents.[5] We released the results of our CBP data query to interested parties and invited them to comment on the CBP data.[6] We received no comments on the CBP data.

Rescission of Review

19 CFR 351.213(d)(1) stipulates that the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. As the only party that requested a review (Regiopytsa) withdrew its request within 90 days of the date of publication of the notice of initiation of the requested review, we are rescinding this review of the antidumping duty order on light-walled from Mexico pursuant to 19 CFR 351.213(d)(1).[7] In accordance with 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP 41 days after the date of publication of this notice of rescission of administrative review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 15, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–01167 Filed 1–22–14; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 78 FR 46573 (August 1, 2013).

[2] *See* Letters to the Secretary of Commerce, from Maquilacero and Regiopytsa, titled ''Request for Administrative Review,'' both dated August 30, 2013.

[3] *See* Letter to the Secretary of Commerce, from Maquilacero, titled ''Withdrawal of Request for Review,'' dated September 13, 2013.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 60834 (October 2, 2013); *see also, Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 67104 (November 8, 2013) (clarifying that the administrative review was initiated on Regiopytsa only as Maquilacero's withdrawal of review request preceded the October 2, 2013, initation.).

[5] *Id.*

[6] *See* Memorandum to the File, from Edythe Artman, Case Analyst, regarding ''Entry Data Obtained from U.S. Customs and Border Protection,'' dated October 17, 2013.

[7] *See* Letter to the Secretary of Commerce, from Regiopytsa, titled ''Request to Withdraw Administrative Review,'' dated December 11, 2013.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Hand Trucks and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 23, 2014.

SUMMARY: The Department of Commerce (the Department) is currently conducting an administrative review of the antidumping duty order on hand trucks and certain parts thereof (hand trucks) from the People's Republic of China (PRC) covering the period of review (POR) of December 1, 2011, through November 30, 2012. We preliminarily determine that sales made by New-Tec Integration (Xiamen) Co., Ltd. (New-Tec) were not below normal value (NV). In addition, we preliminarily determine that Yangjiang Shunhe Industrial Co., Ltd. (Shunhe) had no shipments during the POR (*see* ''Preliminary Determination of No Shipments,'' *infra*). We invite interested parties to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Scott Hoefke, or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4947 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[1] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day. Accordingly, the revised deadline for

[1] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, Deadlines Affected by the Shutdown of the Federal Government,'' dated October 18, 2013.

the preliminary results of this review is now January 16, 2014.

Scope of the Order

The merchandise subject to the *Order*[2] consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof.[3] They are typically imported under heading 8716.80.50.10 of the Harmonized Tariff Schedule of the United States (HTSUS), although they may also be imported under heading 8716.80.50.90 and 8716.90.50.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description remains dispositive.

Preliminary Determination of No Shipments

On February 26, 2013, we received a certification of no shipments from Shunhe. On May 1, 2013, we placed on the record data from Customs and Border Protection (CBP) and received comments from Shunhe on May 8, 2013. On June 21, 2013, we placed on the record CBP Entry documents and received comments from Shunhe on June 28, 2013. On September 4, 2013, Shunhe requested rescission of the review with respect to Shunhe.

Based on certification from Shunhe, our analysis of CBP information, and information contained in Shunhe's request to rescind the review, we preliminarily find that Shunhe has no reviewable entries during the POR. Moreover, the Department finds that consistent with its announced refinement to its assessment practice in non-market economy (NME) cases, as further discussed below, it is appropriate not to rescind the review, in part, in these circumstances but, rather, to complete the review with respect to this company and issue appropriate instructions to CBP based on the final results of the review.[4]

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c) of the Act. Specifically, the respondent's factors of production have been valued using Thailand prices (when available) because the Department has preliminarily determined that Thailand is at the PRC's level of economic development and a significant producer of comparable merchandise. For a full discussion of the Department's surrogate country selection, please see the memorandum from Scott Hoefke to the file entitled, ''Antidumping Duty Administrative Review of Hand Trucks and Certain Parts Thereof From the People's Republic of China: Selection of a Surrogate Country'' (Country Selection Memorandum), dated concurrently with the Preliminary Decision Memorandum. In addition, for a full discussion of the surrogate values selected, please see memorandum entitled ''Hand Trucks and Certain Parts Thereof from the People's Republic of China: Surrogate-Value Memorandum,'' dated concurrently with the Preliminary Decision Memorandum. Additionally, for a full discussion of the methodology underlying our conclusions in these preliminary results, please see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://www.trade.gov/enforcement/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period December 1, 2011, through November 30, 2012:

Manufacturer/exporter	Weighted-average margin (percent)
New-Tec Integration (Xiamen) Co., Ltd.	0.00

Disclosure and Public Comment

The Department intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days after the date of publication of these preliminary results.[5] Interested parties may submit written comments no later than 30 days after the publication of the preliminary results. Rebuttals to written comments may be filed no later than five days after the written comments are filed.[6]

Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[7]

Any interested party may request a hearing within 30 days of publication of this notice. Hearing requests should contain the following information: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[8]

The Department intends to issue the final results of this administrative review, including the results of our analysis of the issues raised in any briefs, within 120 days after the publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3)(ii), the deadline for submission of publicly available information to value FOPs under 19 CFR 351.408(c) is 20 days after the date of publication of these preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline),

[2] *See Notice of Antidumping Duty Order: Hand Trucks and Certain Parts Thereof From the People's Republic of China,* 69 FR 70122 (December 2, 2004) (*Order*).

[3] For a complete description of the Scope of the Order, see the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, titled ''Preliminary Decision Memorandum for the Administrative Review of Hand Trucks and Certain Parts Thereof from the People's Republic of China; 2011–2012,'' dated concurrently with and adopted by this notice (''Preliminary Decision Memorandum'').

[4] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011); *see also* ''Assessment Rates'' section below.

[5] *See* 19 CFR 351.224(b).

[6] *See* 19 CFR 351.309(c) and (d).

[7] *See* 19 CFR 351.309(c)(2) and (d)(2).

[8] *See* 19 CFR 351.310(c).

the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department generally will not accept in the rebuttal submission additional or alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed.[9] Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.[10]

Assessment Rates

In accordance with 19 CFR 351.212(b), upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis,* we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[11]

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. On October 24, 2011, the Department announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[12]

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will apply to all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for New-Tec, which has a separate rate, will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for any previously reviewed or investigated PRC and non-PRC exporter not listed above that received a separate rate in a previous segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity (*i.e.,* 383.60 percent); and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied the non-PRC exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: January 14, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
3. Preliminary Determination of No Shipments
4. Non-Market-Economy Country Status
5. Separate Rates Determination
6. Absence of *De Jure* Control
7. Absence of *De Facto* Control
8. Surrogate Country
9. Fair Value Comparisons
10. U.S. Price
11. Normal Value
12. Factors Valuation
13. Currency Conversion

[FR Doc. 2014–01304 Filed 1–22–14; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, In Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[10] *See* 19 CFR 351.301(c)(3).

[11] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[12] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an Open Meeting.

SUMMARY: The Renewable Energy and Energy Efficiency Advisory Committee (RE&EEAC) will hold a meeting on February 12, 2014. The meeting is open to the public and the room is disabled-accessible. Public seating is limited and available on a first-come, first-served basis.

DATES: February 12, 2014, from 1:00 p.m. to 5:00 p.m. Eastern Standard Time (EST). Members of the public wishing to attend the meeting must notify Ryan Mulholland at the contact information below by 5:00 p.m. EST on Wednesday, February 5, in order to pre-register for clearance into the building. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce,

Room 3407, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ryan Mulholland, Office of Energy and Environmental Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–4693; email: *ryan.mulholland@trade.gov*. This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to OEEI at (202) 482–4693.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the RE&EEAC pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) on July 14, 2010. The RE&EEAC was re-chartered on June 18, 2012. The RE&EEAC provides the Secretary of Commerce with consensus advice from the private sector on the development and administration of programs and policies to enhance the international competitiveness of the U.S. renewable energy and energy efficiency industries.

During the February 12th meeting of the RE&EEAC, committee members will present their initial recommendations on improving the export competitiveness of the RE&EE sector. Recommendations have been developed over the course of 2013 through four subcommittees: finance, U.S. competitiveness, trade policy, and trade promotion.

A limited amount of time, from 3:30 p.m.–3:45 p.m., will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to five minutes per person. Individuals wishing to reserve speaking time during the meeting must contact Mr. Mulholland and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed participant by 5:00 p.m. EST on Wednesday, February 5, 2014. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to bring at least 20 copies of their oral comments for distribution to the participants and public at the meeting.

Any member of the public may submit pertinent written comments concerning the RE&EEAC's affairs at any time before or after the meeting. Comments may be submitted to the Renewable Energy and Energy Efficiency Advisory Committee, c/o: Ryan Mulholland, Office of Energy and Environmental Industries, U.S. Department of Commerce, Mail Stop: 4053, 1401 Constitution Avenue NW., Washington, DC 20230. To be considered during the meeting, written comments must be received no later than 5:00 p.m. EST on Wednesday, February 5, 2014, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of RE&EEAC meeting minutes will be available within 30 days of the meeting.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2014–01244 Filed 1–22–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 23, 2014.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230, telephone: (202) 482–3692.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish quarterly updates to the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the periods April 1, 2013, through June 30, 2013.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies, as defined in section 702(h) of the Act, being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: January 16, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

APPENDIX

Subsidy Programs On Cheese Subject To An In-Quota Rate Of Duty

Country	Program(s)	Gross[1] Subsidy ($/lb)	Net[2] Subsidy ($/lb)
27 European Union Member States[3]	European Union Restitution Payments	$0.00	$0.00
Canada	Export Assistance on Certain Types of Cheese	0.36	0.36
Norway	Indirect (Milk) Subsidy	0.00	0.00

[1] Defined in 19 U.S.C. 1677(5).

[2] Defined in 19 U.S.C. 1677(6).

[3] The 27 member states of the European Union are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

Country	Program(s)	Gross[1] Subsidy ($/lb)	Net[2] Subsidy ($/lb)
	Consumer Subsidy	0.00	0.00
Total		0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

[FR Doc. 2014–01302 Filed 1–22–14; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC958

Domestic Fisheries; Management Strategy Evaluation for Sacramento River Winter Chinook Salmon

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

ACTION: Notice of availability of a Management Strategy Evaluation; request for comments.

SUMMARY: The Pacific Fishery Management Council (Council) has requested that the National Marine Fisheries Service (NMFS) take into consideration alternative harvest control rules for Sacramento River winter Chinook salmon (winter-run), a species listed as endangered under the Endangered Species Act (ESA) and impacted by ocean salmon fisheries that the Council and NMFS manage. The Council is concerned that the existing control rule may be unnecessarily restrictive in years of low winter-run abundance, particularly when the 3-year average escapement drops below 500 fish. The current control rule specifies zero fishery impacts at this level of abundance rather than the *de minimis* impacts that are allowed under fishery control rules that limit impacts on other ESA listed species. The Council has expressed interest in exploring alternatives that would provide some limited harvest opportunity on other Chinook salmon stocks when winter-run abundance is low, without significantly increasing the risk to winter-run. To help facilitate consideration of such alternatives, NMFS is requesting public comment on alternative harvest control rules analyzed in a Management Strategy Evaluation (MSE) for winter-run. These alternative harvest control rules include the current control rule implemented by NMFS on May 1, 2012, as part of the ESA consultation standard on the ocean salmon fishery and additional control rules that reduce the impact rate at low abundance.

DATES: Information and comments on the alternative control rules described in this notice must be received at the appropriate address (see **ADDRESSES**), no later than 5:00 p.m., on April 23, 2014. We encourage the public's involvement in selecting and providing rationale for a preferred control rule that may be taken into consideration during the annual salmon management process.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0154, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2013–0154,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Heidi Taylor, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier ''NOAA–NMFS–2013–0154'' in the comments.

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

FOR FURTHER INFORMATION CONTACT: Heidi Taylor, NMFS WCR, 562–980–4039.

SUPPLEMENTARY INFORMATION:

Background

Sacramento River winter Chinook salmon were first listed as threatened under the Endangered Species Act in 1989 (54 FR 32085) and their status was changed to endangered in 1994 (59 FR 440). Under section 7 of the Endangered Species Act, NMFS consulted with itself on the effects of the federally-managed ocean salmon fishery on the winter-run stock and, in April 2010, completed the Biological Opinion on the Authorization of Ocean Salmon Fisheries Pursuant to the Pacific Coast Salmon Fishery Management Plan (Salmon FMP) and Additional Protective Measures as it affects the Sacramento River Winter Chinook Salmon (winter-run) Evolutionary Significant Unit (ESU) (NMFS 2010) (2010 Opinion). In the 2010 Opinion, NMFS found that, given the current management structure of the fishery and the measures in place to protect winter-run, it was expected that adult spawning returns of winter-run cohorts would be reduced 10 to 25 percent as a result of impacts associated with incidental harvest in the ocean salmon fishery. These impacts occur primarily as a result of removal of age-3 winter-run, almost exclusively south of Point Arena, CA, when fishing activity is permitted in those areas, and in conjunction with the seasonal and size restrictions previously adopted to minimize impacts to winter-run consistent with the proposed action for ocean salmon fisheries management under the salmon FMP (NMFS 2010). The results from the O'Farrell *et al.* (2012a) cohort reconstruction indicate that the majority of these impacts were associated with the recreational salmon fishery in this area. The analysis also indicates that the ocean fishery spawner reduction rate [1] has averaged 20 percent in years when ocean salmon fisheries south of point Arena occur (O'Farrell *et al.,* 2012a), regardless of the spawning abundance of winter-run.

Over the last decade, this winter-run population (and consequently the entire ESU) has had years of positive growth (cohort replacement rates greater than 1.0) while sustaining ocean fishery impacts. The population increased to as many as 17,000 spawners in 2006. Therefore, NMFS concluded that the anticipated impacts of the fishery, based on past performance of both the fishery

[1] The spawner reduction rate is defined as the reduction in a cohort's ''potential adult spawning escapement owing to ocean fisheries, relative to its escapement potential in the absence of ocean fishing'' (O'Farrell *et al.* 2012).

and the winter-run population, were not expected to reduce the likelihood of survival and recovery of the species during periods when the winter-run population is stable or increasing. To a large degree, the consultation standards and management measures described in the 2010 Opinion, which were designed to protect winter-run specifically as well as address other stocks of Chinook salmon, have served to reduce fishery impacts on the winter-run Chinook salmon population to a level that is consistent with an expectation of survival and recovery for the species.

However, NMFS identified that the proposed action analyzed in the 2010 Opinion did not include measures that would avoid or constrain the fishery's impacts on winter-run during periods of decline or increased extinction risk. Without any explicit means to further constrain impacts after consideration of winter-run abundance in the fishery management process, the potential exists for total spawner reduction rates associated with the ocean salmon fishery to approach, or exceed, 25 percent during periods of time when risks of extinction are significantly increased. Therefore, NMFS concluded that the proposed operation of the fishery without consideration of additional protective measures that would be implemented when winter-run are at low abundance was not sufficient to ensure that the fishery was not likely to appreciably reduce the likelihood of survival and recovery of winter-run.

Reasonable and Prudent Alternative (RPA)

The ESA requires that, where NMFS concludes through consultation that a proposed action is likely to jeopardize the continued existence of a listed species, NMFS identify one or more RPAs to such action. By regulation, an RPA is defined as ''alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director [NMFS] believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat'' (50 CFR 402.02).

NMFS' approach when developing the RPA in the 2010 Opinion was to address the foundation of the jeopardy conclusion, which is the lack of explicit controls in the ocean salmon fishery management process to constrain and reduce impacts when the abundance of winter-run is depressed and the extinction risk is increased. Specifically, the purpose of the RPA was to establish a long-term management framework that accounts each year for the abundance of winter-run and specifies a level of fishery impact that is responsive to that abundance and consistent with the requirement to avoid jeopardy. However, at the time of the 2010 Opinion, the information and analyses required to establish specific management objectives or acceptable impact targets given various conditions, and the tools needed to incorporate those criteria into the fishery management process were not available. Additional analytical effort was required before this framework could be developed and implemented. Therefore, the RPA required NMFS to develop a winter-run management framework that (1) meets the objective of the RPA, (2) is practical given the ocean salmon fishery management process as described in the Salmon FMP, and (3) that the framework be available for consideration in time for implementation as the consultation standard for the ocean salmon fishery for winter-run for the 2012 fishing season.

For the interim between issuance of the 2010 Opinion and implementation of the new framework, NMFS determined that the winter-run population had been in significant decline since 2006, and concluded that conservative management measures should be taken and fishery impacts reduced pending completion of the new management framework. The 2010 Opinion provided options to the Council and NMFS to either increase size limits or reduce fishing effort (seasonal closures) in the recreational fishery in 2010 and 2011 to produce a qualitative constraint and reduction in winter-run impacts (see NMFS 2010 for explanation of interim RPA rationale).

Management Strategy Evaluation (MSE)

In order to develop the management framework required by the 2010 RPA, the NMFS Southwest Fisheries Science Center Salmon Assessment Team (Team) engaged in an effort to develop the analytical tools required to evaluate various fishery exploitation control rule alternatives in a formal Management Strategy Evaluation (MSE) process. The term ''Management Strategy Evaluation'' is being used to represent all aspects of the analytical work developed to support the decision-making process. The purpose of the MSE was to simulate winter-run population dynamics as well as monitoring, assessment, and implementation of the fishery management system under a variety of prospective fishery management control rules. The control rules specify the allowable level of incidental take of winter-run (age-3 impact rate south of Point Arena, CA) for ocean fisheries in a given year. For example, a control rule which allows a fixed annual fishing impact rate could be simulated and compared to other control rules that specify reduced allowable impact rates when population abundance is low. The goal of this simulation work was to evaluate the relative performance of various control rules in terms of conservation and fishery criteria.

In order to perform the simulations, the Team developed a model for winter-run such that the prescribed fishing impact rate under a control rule could be directly input as a source of mortality (with its attendant uncertainty). This mortality affected spawning abundance, leading directly to the generation of the next cohort, and on throughout the population simulation (Winship *et al.* 2012). The MSE evaluated three control rules with constant age-3 fishery impact rate target scenarios representing: no impact (0 percent), estimated historical fishery impact rate (25 percent), and current era fishery impact rate (20 percent). The MSE also considered other variations of control rules with decreasing age-3 fishery impact rates at decreasing population abundance levels (Winship *et al.,* 2012). These are described in the paragraph titled ''Public Comment and Availability of the winter-run Management Strategy Evaluation'' below. The performance of alternative control rules was compared in terms of established population performance criteria and the implications for ocean fisheries. A paper consistent with the Winship *et al.* (2012) report describing the winter-run MSE was subsequently published (Winship *et al.,* 2013).

Public Comment and Availability of the Winter-Run Management Strategy Evaluation

NMFS seeks input from the public on the control rules analyzed in the MSE as described in Winship et al. 2012 (''the MSE report''), particularly on whether commenters prefer one of those control rules over the others, and the reasons for such preference. The comment period will conclude at 5:00 p.m. on April 23, 2014, NMFS will consider all comments received by the end of the comment period as we move forward to consider potential changes to the management approach. The MSE report (Winship *et al.,* 2012) is available at the following

Web site *http://www.pcouncil.org/wp-content/uploads/SRWC_MSE_2012_02_28.pdf* and by mail upon request. NMFS is specifically interested in comments and information regarding a preferred control rule analyzed in the MSE for ocean salmon fisheries south of Point Arena that is responsive to the abundance of the species. The control rules are described in the MSE report as ''management strategies'' and are as follows: management strategy 1 allowed for a zero age-3 impact rate, management strategy 2 used a historical impact rate of 25 percent, management strategy 3 used the current era impact rate of 20 percent, and management strategies 4 through 6 required a reduction in impact rates at certain abundance thresholds. The control rule included in the current RPA (referred to as ''management strategy SWR'' in the Winship *et al.* 2012 addendum, beginning on page 57 of the document at *http://www.pcouncil.org/wp-content/uploads/SRWC_MSE_2012_02_28.pdf* was also analyzed with results presented in Winship *et al.* 2012 (addendum); we welcome comments on this control rule as well.

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Dated: January 16, 2014.

Sean F. Corson,

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

[FR Doc. 2014–01239 Filed 1–22–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Board of Advisors (BOA) to the Presidents of the Naval Postgraduate School (NPS) and the Naval War College (NWC) and its two subcommittees will be held. This meeting will be open to the public.

DATES: The meeting will be held on Wednesday, February 19, 2014, from 8:00 a.m. to 4:00 p.m. and on Thursday, February 20, from 8:00 a.m. to 4:00 p.m. Eastern Time Zone.

ADDRESSES: The meeting will be held at 900 N. Glebe Road, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Jaye Panza, Naval Postgraduate School, Monterey, CA, 93943–5001, telephone number 831–656–2514.

SUPPLEMENTARY INFORMATION: The Committee examines the effectiveness with which the NPS and the NWC are accomplishing its missions. The agenda is as follows:

(1) February 19, 2014: General deliberations and inquiry by the NWC BOA Subcommittee and its parent committee NPS/NWC BOA into its programs and mission priorities; re-accreditation preparedness; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operations of the NWC as the board considers pertinent.

(2) February 20, 2014: The purpose of the meeting is to elicit the advice of the NPS BOA subcommittee on the Naval Service's Postgraduate Education Program and the collaborative exchange and partnership between the NPS and the Air Force Institute of Technology. With its parent committee NPS/NWC BOA, the board will inquire into programs and curricula; instruction; administration; state of morale of the student body, faculty, and staff; fiscal affairs; as well as reviewing the updates on recommendations cited in the 2012 Navy Inspector General's report. The committee will review any other matters relating to the operations of the NPS as the board considers pertinent.

Individuals without a DoD Government Common Access Card require an escort at the meeting location. For access, information, or to send written statements for consideration at the committee meeting must contact Ms. Jaye Panza, Naval Postgraduate School, 1 University Circle, Monterey, CA 93943–5001 or by fax 831–656–3145 by February 7, 2014.

Dated: January 15, 2014.

N. A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2014–01265 Filed 1–22–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CD–009]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Indesit Company from the Department of Energy Residential Clothes Dryer Test Procedure

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

ACTION: Decision and order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the

decision and order (Case No. CD–009) that grants to Indesit Company (Indesit) a waiver from the DOE clothes dryer test procedure. The waiver pertains to the models of condensing residential clothes dryer specified in Indesit's petition. Condensing clothes dryers cannot be tested using the currently applicable DOE test procedure. Under today's decision and order, Indesit shall not be required to test and rate its specified models of residential condensing clothes dryer pursuant to the current test procedure.

DATES: This Decision and Order is effective January 23, 2014.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mail Stop EE–5B, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR), Section 430.27(l), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Indesit a waiver from the applicable residential clothes dryer test procedure at 10 CFR part 430 subpart B, appendix D, for the three models of condensing clothes dryer specified it its petition.

DOE notes that it has promulgated a final test procedure for clothes dryers that provides a mechanism for testing condensing clothes dryers. (76 FR 972, Jan. 6, 2011). Use of this test procedure will be required on the compliance date of DOE's amended standards for clothes dryers, established by direct final rule in 2011. (76 FR 22454, April 21, 2011). The compliance date of these standards is January 1, 2015. (76 FR 26656, May 9, 2011).

Issued in Washington, DC, on January 16, 2014.

Kathleen B. Hogan,

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

Decision and Order

In the Matter of: Indesit Company (Case No. CD–009).

Background

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential clothes washers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products if at least one of the following conditions is met: (1) the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. (10 CFR 430.27(a)(1)) Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics.

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. (10 CFR 430.27(l)) Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

On October 22, 2013, Indesit filed a petition for waiver and an application for interim waiver from the test procedure applicable to residential clothes dryers set forth in 10 CFR Part 430, subpart B, appendix D. Indesit seeks a waiver from the applicable test procedure for its Ariston TCL73XNA and TCL73XSNA condensing clothes dryers because, Indesit asserts, design characteristics of these models prevent testing in accordance with the currently prescribed test procedure, as described in greater detail in the following paragraph.

In support of its petition, Indesit claims that the current clothes dryer test procedure applies only to vented clothes dryers because the test procedure requires the use of an exhaust restrictor on the exhaust port of the clothes dryer during testing. Because condensing clothes dryers operate by blowing air through the wet clothes, condensing the water vapor in the airstream, and pumping the collected water into either a drain line or an in-unit container, these products do not use an exhaust port like a vented dryer does. Indesit plans to market its condensing clothes dryers for situations in which a conventional vented clothes dryer cannot be used, such as high-rise apartments and other buildings where exhaust venting is not practical or is cost prohibitive.

The Indesit petition requests that DOE grant a waiver from the existing test procedure to allow for the sale of two models (TCL73XNA and TCL73XSNA) until DOE prescribes final test procedures and minimum energy conservation standards appropriate to condensing clothes dryers. Similar to the other manufacturers of condensing clothes dryers, Indesit did not include an alternate test procedure in its petition.

Assertions and Determinations

Indesit's Petition for Waiver

On October 22, 2013, Indesit filed a petition for waiver from the test procedure applicable to residential clothes dryers set forth in 10 CFR part 430, subpart B, appendix D for particular models of condensing clothes dryer. On November 13, 2013, DOE published in the **Federal Register** a petition for waiver from Indesit for its condensing clothes dryer and granted Indesit an interim waiver from the test procedure. DOE received no comments on the petition. DOE granted similar waivers for the same type of clothes dryer to Bosch (BSH) (76 FR 33271, June 8, 2011), Miele Appliance, Inc. (Miele) (60 FR 9330, February 17, 1995; 76 FR 17637, March 30, 2011), LG Electronics (73 FR 66641, November 10, 2008), Whirlpool Corporation (74 FR 66334, December 15, 2009), General Electric (75 FR 13122, March 18, 2010), and ASKO Appliances, Inc. (ASKO) (78 FR 53446, August 29, 2013). Indesit claims that its condensing clothes dryers cannot be tested pursuant to the DOE procedure and requests that the same waiver granted to other manufacturers be granted for Indesit's Ariston TCL73XNA and TCL73XSNA models.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

Therefore, for the reasons discussed above, and in light of the previous waivers to other manufacturers, DOE grants Indesit's petition for waiver from testing of its Ariston TCL73XNA and TCL73XSNA condenser clothes dryers.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Indesit petition for waiver. The FTC staff did not have any objections to granting a waiver to Indesit.

Conclusion

After careful consideration of all the material that was submitted by Indesit and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by Indesit Company (Case No. CD–009) is hereby granted as set forth in the paragraphs below.

(2) Indesit shall not be required to test or rate its Ariston TCL73XNA and TCL73XSNA condensing clothes dryer models on the basis of the test procedures at 10 CFR part 430, subpart B, appendix D.

(3) This waiver shall remain in effect from the date this decision and order consistent with the provisions of 10 CFR 430.27(m).

(4) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect.

(5) This waiver applies to only those models specifically set out in Indesit's petition. Indesit may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes dryers for which it seeks a waiver from the DOE test procedure. Grant of this petition for waiver also does not release a petitioner from any applicable certification requirements set forth at 10 CFR Part 429.

Issued in Washington, DC, on January 16, 2014.

Kathleen B. Hogan

Deputy Assistant Secretary for Energy Efficiency Energy Efficiency and Renewable Energy

[FR Doc. 2014–01292 Filed 1–22–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–036]

Notice of Petition for Waiver of Samsung Electronics America, Inc. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure, and Grant of Interim Waiver

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

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of a petition for waiver from Samsung Electronics America, Inc. (Samsung) regarding specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. In its petition, Samsung provides an alternate test procedure identical to the test procedure DOE published in a final rule setting out testing requirements for manufacturers to follow starting in 2014. DOE solicits comments, data, and information concerning Samsung's petition and the suggested alternate test procedure. Today's notice also grants Samsung an interim waiver from the electric refrigerator and refrigerator-freezer test procedure, subject to use of the alternative test procedure set forth in this notice.

DATES: DOE will accept comments, data, and information with respect to the Samsung Petition until February 24, 2014.

ADDRESSES: You may submit comments, identified by case number ''RF–036,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov*. Include the case number (Case No. RF–034) in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar refrigerator-freezer products. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–5B, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov*.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, and energy conservation standards for various consumer products and provides DOE with the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The current test procedure for electric refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs earlier. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h).

II. Petition for Waiver of Test Procedure and Application for Interim Waiver

On November 26, 2013, Samsung submitted a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. Samsung is designing new refrigerator-freezers that incorporate multiple defrost cycles. In its petition, Samsung seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because the existing test procedure does not account for multiple defrost cycles. Therefore, Samsung has asked to use an alternate test procedure that is the same as the test procedure provisions for products with long time or variable defrost DOE published in a final rule. See 77 FR 3559, 3564–3565 (January 25, 2012). These provisions were placed in appendix A, which is not required for use until September 15, 2014, and are not contained in the current appendix A1 test procedure.

Samsung has previously submitted similar petitions for waiver and requests for interim waiver for other basic models of refrigerator-freezers that incorporate multiple defrost cycles. DOE subsequently granted Samsung's waiver requests in each case. See 77 FR 1474 (Jan. 10, 2012), 77 FR 75428 (Dec. 20, 2012), 78 FR 35901 (June 14, 2013), and 78 FR 35898 (June 14, 2013).

Samsung also requests an interim waiver from the existing DOE test procedure. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(g).

DOE has determined that Samsung's application for interim waiver does not provide sufficient market, equipment price, shipments and other manufacturer impact information to permit DOE to evaluate the economic hardship Samsung might experience absent a favorable determination on its application for interim waiver. DOE has determined, however, that it is likely Samsung's petition will be granted, and that it is desirable for public policy reasons to grant Samsung relief pending a determination on the petition. Previously, DOE granted a waiver to Samsung for other basic models incorporating multiple defrost technology and DOE has determined that it is desirable to have similar basic models tested in a consistent manner. See 77 FR 1474 (Jan. 10, 2012) (Case Nos. RF–018, 019); 77 FR 75428 (Dec. 20, 2012) (Case No. RF–021); 78 FR 35901 (June 14, 2013) (Case No. RF–026); and 78 FR 35898 (June 14, 2013) (Case No. RF–027).

Samsung's petition included an alternate test procedure to account for the energy consumption of its refrigerator-freezer models with multiple defrost cycles. The alternate test procedure specified by Samsung is the same as the test procedure published in the final rule referenced above. The alternate test procedure specified in this interim waiver (as well as the previous waiver granted to Samsung) is identical to the test procedure provisions for products with long time or variable defrost adopted in the final test procedure rule that manufacturers of these products are required to use in 2014.

For the reasons stated above, DOE grants Samsung's application for interim waiver from the testing requirements under 10 CFR Part 430, Appendix A–1 for those specific refrigerator-freezer product lines containing multiple defrost cycles identified below. Therefore, *it is ordered that:*

The application for interim waiver filed by Samsung is hereby granted for the specified Samsung refrigerator-freezer basic model that incorporates multiple defrost cycles, subject to the specifications and conditions below. Samsung shall be required to test and rate the specified refrigerator-freezer product according to the alternate test procedure as set forth in section III, ''Alternate Test Procedure.''

The interim waiver applies to the following basic models:

RS25H5121 **
RS25H5111 **

DOE makes decisions on waivers and interim waivers for only the models specifically set out in the petition, not future models that may be manufactured by the petitioner. Samsung may submit a subsequent petition for waiver and request for grant of interim waiver, as appropriate, for additional models of refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that the grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations at 10 CFR 430.27, DOE will consider setting an alternate test procedure for Samsung in a subsequent Decision and Order.

During the period of the interim waiver granted in this notice, Samsung shall test the products listed above according to the test procedures for residential electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, subpart B, appendix A1, except that, for the Samsung products listed above only, Samsung shall include the following:

1. In section 1, Definitions, the following definition:

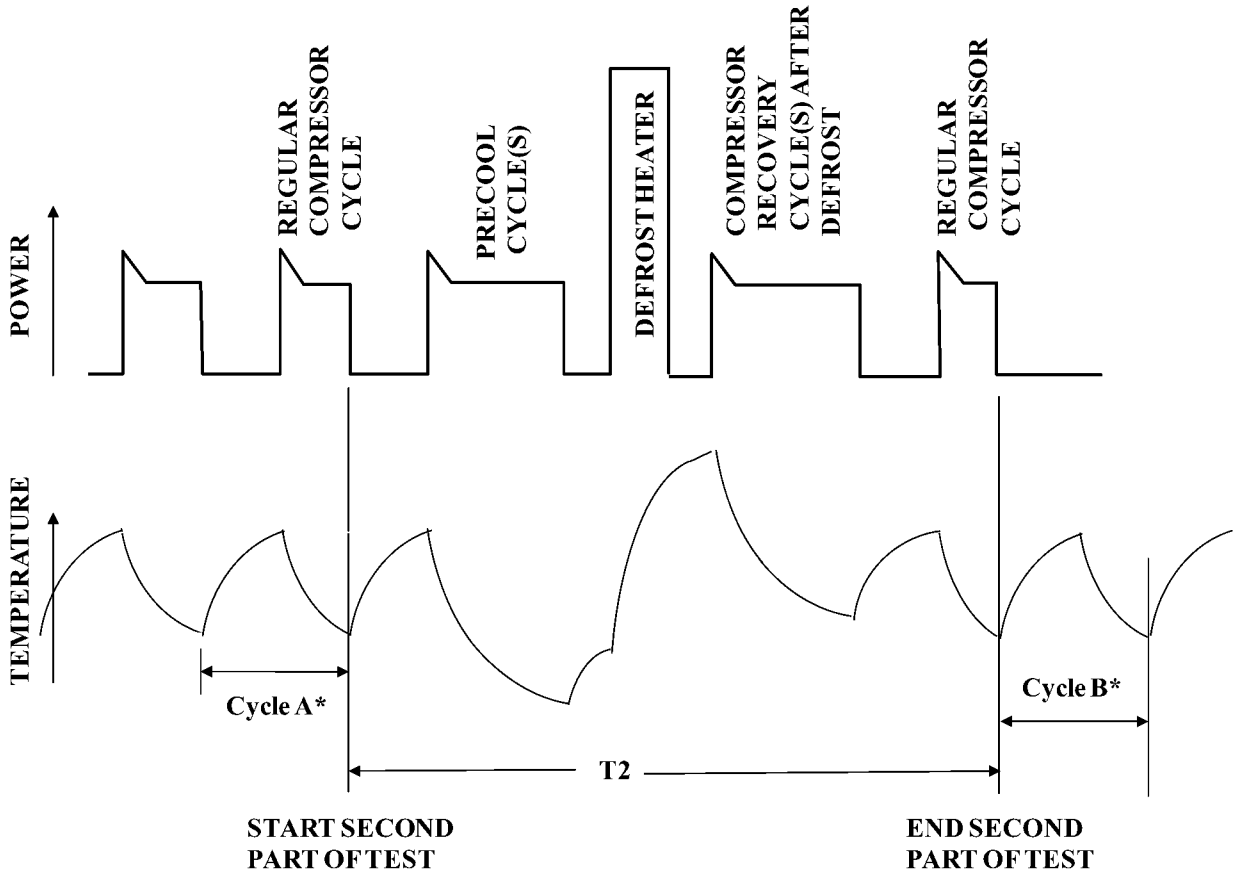
''Defrost cycle type'' means a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface. There may be variations in the defrost control sequence such as the number of defrost heaters energized. Each such variation establishes a separate distinct defrost cycle type. However, defrost achieved regularly during the compressor ''off'' cycles by warming of the evaporator without active heat addition is not a defrost cycle type.

2. In section 4, Test Period, the following:

4.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is a stable period of compressor operation that includes no portions of the defrost cycle, such as precooling or recovery, that is otherwise the same as the test for a unit having no defrost provisions (section 4.1). The second part is designed to capture the energy consumed during all of the events occurring with the defrost control sequence that are outside of stable operation.

4.2.1.1 Cycling Compressor System. For a system with a cycling compressor, the second part of the test starts at the termination of the last regular compressor ''on'' cycle. The average temperatures of the fresh food and freezer compartments measured from the termination of the previous compressor ''on'' cycle to the termination of the last regular compressor ''on'' cycle must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. If any compressor cycles occur prior to the defrost heater being energized that cause the average temperature in either compartment to deviate from its average temperature for the first part of the test by more than 0.5 °F (0.3 °C), these compressor cycles are not considered regular compressor cycles and must be included in the second part of the test. As an example, a ''precooling'' cycle, which is an extended compressor cycle that lowers the temperature(s) of one or both compartments prior to energizing the defrost heater, must be included in the second part of the test. The test period for the second part of the test ends at the termination of the first regular compressor ''on'' cycle after both compartment temperatures have fully recovered to their stable conditions. The average temperatures of the compartments measured from this termination of the first regular compressor ''on'' cycle until the termination of the next regular compressor ''on'' cycle must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. See Figure 1.

Long-time Automatic Defrost Diagram for Cycling Compressors



***Average compartment temperature(s) during cycles A & B must be within 0.5 °F of the average temperature(s) for the first part of the test.**

4.2.4 Systems with Multiple Defrost Frequencies. This section applies to models with long-time automatic or variable defrost control with multiple defrost cycle types, such as models with single compressors and multiple evaporators in which the evaporators have different defrost frequencies. The two-part method in 4.2.1 shall be used. The second part of the method will be conducted separately for each distinct defrost cycle type.

3. In section 5, Test Measurements, the following:

5.2.1.5 Long-time or Variable Defrost Control for Systems with Multiple Defrost cycle Types. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \text{ x } EP1/T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \text{ x } T2_i/T1)) \text{ x } (12/CT_i)]$$

Where:

1440 is defined in 5.2.1.1 and EP1, T1, and 12 are defined in 5.2.1.2;

i is a variable that can equal 1, 2, or more that identifies the distinct defrost cycle types applicable for the refrigerator or refrigerator-freezer;

$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for defrost cycle type i;

$T2_i$ = length of time in minutes of the second part of the test for defrost cycle type i;

CT_i is the compressor run time between instances of defrost cycle type i, for long-time automatic defrost control equal to a fixed time in hours rounded to the nearest tenth of an hour, and for variable defrost control equal to

$(CT_{Li} \times CT_{Mi})/(F \times (CT_{Mi} - CT_{Li}) + CT_{Li})$;

CT_{Li} = least or shortest compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (CT_L for the defrost cycle type with the longest compressor run time between defrosts must be greater than or equal to 6 but less than or equal to 12 hours);

CT_{Mi} = maximum compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than CT_{Li} but not more than 96 hours);

For cases in which there are more than one fixed CT value (for long-time defrost models) or more than one CT_M and/or CT_L value (for variable defrost models) for a given defrost cycle type, an average fixed CT value or average CT_M and CT_L values shall be selected for this cycle type so that 12 divided by this value or values is the frequency of occurrence of the defrost cycle type in a 24 hour period, assuming 50% compressor run time.

F = default defrost energy consumption factor, equal to 0.20.

For variable defrost models with no values for CT_{Li} and CT_{Mi} in the algorithm, the default values of 6 and 96 shall be used, respectively.

D is the total number of distinct defrost cycle types.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Samsung's petition for waiver from certain parts of the test procedure applicable to refrigerator-freezers and grants an interim waiver to Samsung. DOE is publishing Samsung's petition for waiver in its entirety. The petition contains no confidential information. The petition includes a suggested alternate test procedure to measure the energy consumption of refrigerator-freezer basic models that incorporate multiple defrost cycles.

DOE solicits comments from interested parties on all aspects of the petition. Any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Michael Moss, Director of Corporate Environmental Affairs, Samsung Electronics America, Inc., 19 Chapin Road, Building D, Pine Brook, NJ 07058. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on January 16, 2014.

Kathleen B. Hogan,

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

November 26, 2013

Dr. David Danielson
Energy Efficiency and Renewable Energy
Department of Energy
1000 Independence Avenue SW.
Washington, DC 20585

Dear Assistant Secretary Danielson:

Samsung Electronics America, Inc. (''Samsung'') respectfully submits this Application for Interim Waiver and Petition for Waiver to the Department of Energy (''DOE'' or ''the Department'') for Samsung's compressor refrigerator-freezers with multiple defrost cycles.

Reasoning

10 CFR Part 430.27(a)(1) allows a person to submit a petition to waive for a particular basic model any requirements of § 430.23 upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

Current test procedures as prescribed in Appendix A1 to Subpart B of Part 430 (''Appendix A1'') do not adequately provide a way for Samsung to accurately represent the energy consumption of its refrigerator-freezers with multiple defrost cycles. DOE concurred with Samsung's understanding in the interim waiver granted to Samsung in 76 FR 16760 and subsequently granted the waiver on January 10, 2012 (77 FR 1474). Additionally, DOE communicated that all manufacturers planning on marketing refrigerator-freezers with multiple defrost cycles must seek a waiver from the Department.

For the reasons that DOE described in its granting of waiver (77 FR 1474) for Samsung refrigerator freezers with multiple defrost cycles, Samsung believes that the granting of Interim Waiver and Waiver for the models listed below are warranted.

Request

Samsung requests that the alternate test procedure for refrigerators with multiple defrost cycles, as prescribed in the waiver (77 FR 1474) and in the interim waiver (77 FR 13109) granted to Samsung, be granted for the following basic Samsung refrigerator-freezers with multiple defrost cycles models:

RS25H5121 **
RS25H5111 **

Please feel free to contact me if you have any questions regarding this Petition for Waiver and Application for Interim Waiver. I will be happy to discuss should any questions arise.

Sincerely,

Michael Moss
Director of Corporate Environmental Affairs

[FR Doc. 2014–01295 Filed 1–22–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–035]

Notice of Petition for Waiver of Liebherr Canada Ltd. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure, and Grant of Interim Waiver

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

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of a petition for waiver and application for interim waiver (hereafter, ''petition'') from Liebherr Canada Ltd. (Liefherr) regarding specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of residential electric refrigerators and refrigerator-freezers. In its petition, Liebherr proposes to use an alternate test procedure that would permit the testing of its all-refrigerator model while physically connected to Liebherr's companion upright freezer model, which is necessary for the refrigerator to function properly. DOE solicits comments, data, and information concerning Liebherr's petition and the suggested modifications. Today's notice also grants Liebherr an interim waiver from the residential electric refrigerator and refrigerator-freezer test procedure, subject to use of the alternate test procedure set forth in this notice.

DATES: DOE will accept comments, data, and information with respect to the Liebherr Petition until February 24, 2014.

ADDRESSES: You may submit comments, identified by case number ''RF–035,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. RF–035] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar refrigerator-freezer products. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–5B, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for electric refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs earlier. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h).

II. Petition for Waiver of Test Procedure and Application for Interim Waiver

On September 27, 2013, Liebherr filed a petition for waiver and an application for interim waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A. The subject of the waiver petition is Liebherr 's all-refrigerator model, which shares a control panel with an accompanying freezer. Testing to the procedures in Title 10 of the Code of Federal Regulations (10 CFR), part 430, subpart B, appendix A, section 3 Test Control Settings requires that refrigerators with a user operable temperature control be tested with the control set in a prescribed manor according TABLE 1—TEMPERATURE SETTINGS FOR ALL–REFRIGERATORS. According to Liebherr, this is not possible for this model unless the refrigerator is connected to the accompanying freezer which has the control panel for both

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

appliances. The petition for waiver is to allow a freezer, with the appropriate connection and control panel, to be connected to the refrigerator for the sole purpose of changing the control settings in the refrigerator under test.

In its petition Liebherr proposes to use an alternate test procedure to test these products. Specifically Liebherr proposes to place the refrigerator in position for testing, locate the freezer close enough to attach the low voltage connection (approximately 18'') but not in a location where the freezer interferes with the ambient air flow or other testing conditions, connect the refrigerator's low voltage cable to the freezer, plug in the freezer, turn the freezer off on the control panel, and use the refrigerator portion of the control panel to set the appropriate temperatures for the refrigerator test.

Liebherr also requests an interim waiver from the existing DOE test procedure. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(g).

DOE has determined that Liebherr's application for interim waiver does not provide sufficient market, equipment price, shipments and other manufacturer impact information to permit DOE to evaluate the economic hardship Liebherr might experience absent a favorable determination on its application for interim waiver. DOE has determined, however, that it is likely Liebherr's petition will be granted, and that it is desirable for public policy reasons to grant Liebherr relief pending a determination on the petition. DOE has determined that it is desirable to have similar basic models tested in a consistent manner.

For the reasons stated above, DOE grants Liebherr's application for interim waiver from testing of its all-refrigerator that shares a control panel with an accompanying freezer. Therefore, *it is ordered that:*

The application for interim waiver filed by Liebherr is hereby granted for the specified Liebherr refrigerator-freezer basic models that share a control panel with an accompanying freezer, subject to the specifications and conditions below. Liebherr shall be required to test or rate the specified refrigerator-freezer products according to the alternate test procedure as set forth in section III, ''Alternate Test Procedure.''

The interim waiver applies to the following basic model groups:

RB 1420

R 1420

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Liebherr may submit a subsequent petition for waiver and request for grant of interim waiver, as appropriate, for additional models of refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that a grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, DOE will consider setting an alternate test procedure for Liebherr in a subsequent Decision and Order.

In its petition, Liebherr proposes to use an alternate test procedure. The DOE test procedure for residential refrigerators and refrigerator-freezers in Title 10 of the Code of Federal Regulations (10 CFR), part 430, subpart B, appendix A, section 3 Test Control Settings requires that refrigerators with a user operable temperature control be tested with the control set a prescribed manor according TABLE 1—TEMPERATURE SETTINGS FOR ALL–REFRIGERATORS. As described by Liebherr, these models are physically two separate cabinets, but are designed to be installed immediately adjacent, or in close proximity, to each other. In addition, the freezer model contains the control panel that controls the compartment temperatures of both appliances. Liebherr states that, because of this design feature, it is not possible to test the refrigerator model using the existing Appendix A test procedure unless the refrigerator is connected to the accompanying freezer; no provision in Appendix A allows for such an arrangement.

Liebherr proposes to use the test method of appendix A to subpart B of 10 CFR part 430 to test its refrigerator models, with a modification to address the connection of the refrigerator to the freezer. For the purposes of granting the interim waiver, DOE has modified slightly the language of Liebherr's proposal to be more consistent with the language of the DOE test procedure. For the purposes of testing the models addressed in this interim waiver, the following shall be treated as an additional requirement in Section 2 of Appendix A addressing test condition:

2.11 Connection of refrigerator cabinet to separate freezer cabinet: The refrigerator shall be positioned for testing in accordance with this section, with the freezer positioned close enough to the refrigerator to allow attachment of the low voltage connection (approximately 18''), but not in a location in which the freezer interferes with the ambient air flow or other testing conditions specified in this section. The refrigerator's low voltage cable shall be connected to the freezer prior to testing. The freezer must be plugged in in during testing, but shall be placed in the ''off'' position on the control panel. The refrigerator portion of the control panel shall then be used to set the appropriate temperatures for the refrigerator test as required by Section 3. Test Control Settings and perform the remainder of the test as prescribed by this Appendix.

DOE notes that Liebherr has not petitioned for a test procedure waiver nor requested an interim waiver for its accompanying freezer models. Thus, the freezer models shall be tested according to the applicable test procedure in appendix B to subpart B of 10 CFR part 430 without modification.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Liebherr's petition for waiver from certain parts of the test procedure in 10 CFR Part 430, subpart B, appendix A and grants an interim

waiver to Liebherr. DOE is publishing Liebherr's petition for waiver. The petition contains no confidential information. The petition includes a suggested alternate test procedure to measure the energy consumption of refrigerator-freezer basic models that shares a control panel with an accompanying freezer.

DOE solicits comments from interested parties on all aspects of the petition. Any person submitting written comments to DOE must also send a copy of such comments to the petitioner. 10 CFR 430.27(d). The contact information for the petitioner is: Gordon Tosh, Technical Advisor, Refrigerator and Freezer Division, Liebherr Canada Ltd., 1015 Sutton Drive, Burlington, Ontario, Canada, N0B 2K0. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on January 16, 2014.

Kathleen B. Hogan,

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

September 27, 2013

The Honorable David Danielson

Assistant Secretary
Energy Efficiency and Renewable Energy
U. S. Department of Energy
Mail Station EE–10
1000 Independence Avenue, SW.
Washington DC 20585–010

Liebherr Canada Ltd. (Liebherr) respectfully summits an Application for Petition of Waiver and Application for Interim Waiver to the Department of Energy (DOE) with regard to Liebherr's all-refrigerator that shares a control panel with an accompanying freezer.

Reasoning

10 CFR 430.27, Petitions for waiver and applications for interim waiver, allows any interested person to submit a petition to waive for a particular basic model any requirements of § 430.23, or of any appendix to this subpart, upon the grounds that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures.

APPENDIX A TO SUBPART B OF PART 430—UNIFORM TEST METHOD FOR MEASURING THE ENERGY CONSUMPTION OF ELECTRIC REFRIGERATORS AND ELECTRIC REFRIGERATOR-FREEZERS, SEC. 3 TEST CONTROL SETTINGS: Requires that refrigerators with a user operable temperature control be tested with the control set a prescribed manor according TABLE 1—TEMPERATURE SETTINGS FOR ALL-REFRIGERATORS. This is not possible unless the refrigerator is connected to the accompanying freezer which has the control panel for both appliances.

Liebherr petitions for waiver for a refrigerator that due to a design characteristic prevents testing of the basic model according to the prescribed test procedures because its control panel is located in an accompanying freezer. The petition for waiver is to allow a freezer, with the appropriate connection and control panel, to be connected to the refrigerator for the sole purpose of changing the control settings in the refrigerator under test.

Alternate test procedure.

When the refrigerator is in position for testing, locate the freezer close enough to attach the low voltage connection (approximately 18″) but not in a location where the freezer interferes with the ambient air flow or other testing conditions. Connect the refrigerator's low voltage cable to the freezer. Plug in the freezer. Turn the freezer off on the control panel. Use the refrigerator portion of the control panel to set the appropriate temperatures for the refrigerator test.

Conclusion

Liebherr Petitions for Waiver and application for Interim Waiver to allow the use of the control panel in an accompanying freezer to set the temperature of a refrigerator under test.

The effected models are RB 1420 and R 1420.

Please feel free to contact me if we have any questions regarding this Petition for Waiver and application for Interim Waiver. I will be happy to provide any other information or discuss any questions.

Sincerely,
Gordon Tosh
Technical Advisor
Refrigerator and Freezer Division
1015 Sutton Drive
Burlington, Ontario
Canada, N0B 2K0
Phone: 905–315–2798
Mobile: 905–220–5933
Fax: 905–319–9336
Email: *gordon.tosh@liebherr.com*

[FR Doc. 2014–01346 Filed 1–22–14; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–037]

Petition for Waiver of Samsung Electronics America, Inc. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure and Grant of Interim Waiver

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

ACTION: Notice of Petition for Waiver, Notice of Granting Application for Interim Waiver, and Request for Public Comments.

SUMMARY: This notice announces receipt of petitions for waiver from Samsung Electronics America, Inc. (Samsung) seeking an exemption from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. Samsung asks that it be permitted to use an alternate test procedure that is intended to address difficulties in testing dual compressor systems using the currently applicable DOE test procedure. DOE solicits comments, data, and information concerning Samsung's petitions and the suggested alternate test procedure. Today's notice also grants Samsung an interim waiver from the electric refrigerator-freezer test procedure, subject to use of the alternative test procedure set forth in this notice. The waiver request pertains to the basic models set forth in Samsung's petitions that incorporate dual compressors.

DATES: DOE will accept comments, data, and information with respect to the Samsung Petition until February 24, 2014.

ADDRESSES: You may submit comments, identified by case number ''RF–037,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov*. Include the case number [Case No. RF–037] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/

1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar refrigerator-freezers. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov*.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified, established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for electric refrigerators and electric refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs earlier. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h).

II. Petition for Waiver of Test Procedure and Application for Interim Waiver

On December 13 and 26, 2013, Samsung submitted petitions for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. Samsung is seeking a waiver because it is developing new refrigerator-freezers that incorporate a dual-compressor design that is not contemplated under DOE's test procedure. In its petitions, Samsung seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 for the company's dual-compressor products. In its petitions, Samsung has set forth an alternate test procedure and notes in support of its petition that DOE has already granted Sub-Zero a similar waiver pertaining to the use of dual compressor-equipped refrigerators. See 76 FR 71335 (November 17, 2011) (interim waiver) and 77 FR 5784 (February 6, 2012) (Decision and Order). DOE has also granted an interim waiver for products of this type to LG. See 77 FR 44603 (July 30, 2012). While Samsung has acknowledged that its products have some differences from the ones addressed by the Sub-Zero waiver, Samsung asserts that the procedure outlined in that waiver will be compatible with its product. In addition, Samsung requests that it be permitted to use the alternate test procedure that DOE has already permitted Sub-Zero and LG to use in response to similar waiver requests pertaining to the testing of refrigerator-freezers that use shared dual compressors, with minor modification suggested below:

Before: 5.2.1.4 Dual Compressor Systems with dual Automatic Defrost

With Minor Change: 5.2.1.4 Dual Compressor Systems with Automatic Defrost (i=1 is mono, i=2 is dual)

Samsung also requests an interim waiver from the existing DOE test procedure. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. See 10 CFR 430.27(g).

DOE has determined that Samsung's application for interim waiver does not provide sufficient market, equipment price, shipments and other manufacturer impact information to permit DOE to evaluate the economic hardship Samsung might experience absent a favorable determination on its application for interim waiver. DOE recognizes, however, that the DOE test procedure for dual compressor systems primarily addresses independent, sealed systems, which differ from the shared system used by the models listed in Samsung's petition. As a result, it is not possible to test these products using the DOE test procedure, and use of the test procedure would provide test results so unrepresentative as to provide materially inaccurate comparative data. DOE reviewed the alternate procedure and determined that it will alleviate the

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

testing problems associated with Samsung's implementation of a dual compressor system. Therefore, it appears likely that Samsung's petition for waiver will be granted. Previously, DOE granted GE, Samsung, LG, and Sub-Zero similar waivers pertaining to the use of dual compressor-equipped refrigerators. See 78 FR 38699 (June 27, 2013); 78 FR 35899 (June 14, 2013); 78 FR 18327 (March 26, 2013); and 77 FR 5784 (February 6, 2012).

For the reasons stated above, DOE grants Samsung's application for interim waiver from testing of its refrigerator-freezer product line containing dual compressors. Therefore, *it is ordered that:*

The application for interim waiver filed by Samsung is hereby granted for Samsung's refrigerator-freezer product lines that incorporate dual compressors subject to the following specifications and conditions below. Samsung shall be required to test and rate its refrigerator-freezer product line containing dual compressors according to the alternate test procedure as set forth in section III, ''Alternate test procedure.''

The interim waiver applies to the following basic models group:

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RF33H99****

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Samsung may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that granting of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, DOE will consider setting an alternate test procedure for Samsung in a subsequent Decision and Order.

During the period of the interim waiver granted in this notice, Samsung shall test the products listed above according to the test procedures for residential electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, subpart B, appendix A1, except that, for the Samsung products listed above only, include:

5.2.1.4 Dual Compressor Systems with Automatic Defrost (i=1 is mono, i=2 is dual). The two-part test method in section 4.2.1 must be used, and the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \text{ x } EP1/T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \text{ x } T2_i/T1)) \text{ x } (12/CT_i)]$$

Where:

1440 = number of minutes in a day

ET is the test cycle energy (kWh/day);

i is the variable that can equal to 1, 2 or more that identifies the compartment with distinct defrost system;

D is the total number of compartments with distinct defrost systems;

EP1 is the dual compressor energy expended during the first part of the test (it is calculated for a whole number of freezer compressor cycles at least 24 hours in duration and may be the summation of several running periods that do not include any precool, defrost, or recovery periods);

T1 is the length of time for EP1 (minutes);

EP2i is the total energy consumed during the second (defrost) part of the test being conducted for compartment i. (kWh);

T2i is the length of time (minutes) for the second (defrost) part of the test being conducted for compartment i.

CTi is the compressor on time between defrosts for only compartment i. CTi for compartment i with long time automatic defrost system is calculated as per 10 CFR part 430 subpart B appendix A1 clause 5.2.1.2. CTi for compartment i with variable defrost system is calculated as per 10 CFR part 430 subpart B appendix A1 clause 5.2.1.3. (hours rounded to the nearest tenth of an hour).

Stabilization:

The test shall start after a minimum 24 hours stabilization run for each temperature control setting.

Steady State for EP1:

The temperature average for the first and last compressor cycle of the test period must be within 1.0 °F (0.6 °C) of the test period temperature average for each compartment. Make this determination for the fresh food compartment for the fresh food compressor cycles closest to the start and end of the test period. If multiple segments are used for test period 1, each segment must comply with above requirement.

Steady State for EP2i:

The second (defrost) part of the test must be preceded and followed by regular compressor cycles. The temperature average for the first and last compressor cycle of the test period must be within 1.0 °F (0.6 °C) of the EP1 test period temperature average for each compartment.

Test Period for EP2i, T2i:

EP2i includes precool, defrost, and recovery time for compartment i, as well as sufficient dual compressor steady state run cycles to allow T2i to be at least 24 hours. The test period shall start at the end of a regular freezer compressor on-cycle after the previous defrost occurrence (refrigerator or freezer). The test period also includes the target defrost and following regular freezer compressor cycles, ending at the end of a regular freezer compressor on cycle before the next defrost occurrence (refrigerator or freezer). If the previous condition does not meet 24 hours time, additional EP1 steady state segment data could be included. Steady state run cycle data can be utilized in EP1 and EP2i.

Test Measurement Frequency:

Measurements shall be taken at regular interval not exceeding 1 minute.

[End of 5.2.1.4]

IV. Summary and Request for Comments

Through today's notice, DOE grants Samsung an interim waiver from the specified portions of the test procedure applicable to Samsung's line of refrigerator-freezers with dual compressors and announces receipt of Samsung's petitions for waiver from those same portions of the test procedure. DOE publishes Samsung's petitions for waiver in its entirety. The

petitions include a suggested alternate test procedure to determine the energy consumption of Samsung's specified refrigerator-freezers with dual compressors. Samsung is required to follow this alternate procedure as a condition of its interim waiver, and DOE is considering including this alternate procedure in its subsequent Decision and Order.

DOE solicits comments from interested parties on all aspects of the petitions, including the suggested alternate test procedure and calculation methodology. Any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Michael Moss, Director of Corporate Environmental Affairs, Samsung Electronics America, Inc., 19 Chapin Road, Building D, Pine Brook, NJ 07058. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on January 16, 2014.

Kathleen B. Hogan,

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

December 13, 2013
The Honorable David Danielson
Assistant Secretary, Energy Efficiency and Renewable Energy
United States Department of Energy
Forrestal Building (Mail Station EE–1)
1000 Independence Avenue SW
Washington, DC 20585
Dear Assistant Secretary Danielson:

Samsung Electronics America, Inc. (''Samsung'') respectfully submits the Application for Petition for Waiver and Application for Interim Waiver to the Department of Energy (''DOE'' or ''the Department'') regards to Samsung's residential refrigerator-freezers that use shared dual compressors.

Reasoning

10 CFR Part 430.27(a)(1) allows a person to submit a petition to waive for a particular basic model any requirements of § 430.23 when (1) the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

Current test procedures as prescribed in Appendix A1 to Subpart B of 10 Part 430 do not adequately provide a way for Samsung to accurately represent the energy consumption of its refrigerator-freezers that use shared dual compressors. Meanwhile, based on similar situations, DOE has already granted a waiver to Sub-Zero in 77 FR 5784 on February 6, 2012, and similarly, an interim waiver to LG in 77 FR 44603 on July 30, 2012.

However, unlike Subzero's design which features two compressors, two evaporators, and two defrost heaters, Samsung's design features two compressors, four evaporators, and three defrost heaters.

Samsung's design features four compartments that have their own evaporators. Three compartments, freezer/convertible/fresh food compartment, are accessible with an exterior door and the fourth ice room compartment is a sub compartment and located inside of the fresh food compartment. Defrost heaters are adopted at three evaporators (freezer/convertible/ice room) except the fresh food compartment evaporator and those heaters operate all together at the same time according to the control logic. So essentially, there is only one defrost type. Despite these differences of the composition, Samsung believes that the test procedure, as prescribed in the waiver granted to Subzero and in the interim waiver granted to LG, is equally applicable and appropriate.

More specifically, Samsung's residential refrigerator-freezers that use shared dual compressors can be tested and calculate to a reasonable result with same test procedure granted to Subzero's waiver because the test procedure of Subzero's waiver adopt a multiple defrost system of 1, 2 or more compartment with distinct defrost system and Samsung's dual units have one defrost system despite of having four compartments and three defrost heaters as explained above.

Therefore, Samsung respectfully requests a waiver and an interim waiver for the alternate test procedure that DOE has already granted Sub-Zero and LG pertaining to the refrigerator-freezers that use shared dual compressors, with minor modification suggested below:

Before: 5.2.1.4 Dual Compressor Systems with dual Automatic Defrost

With Minor Change: 5.2.1.4 Dual Compressor Systems with Automatic Defrost (i=1 is mono, i=2 is dual)

Alternate Test Procedure

Replace the multiple defrost system section 5.2.1.4 of Appendix A1 with the following:

5.2.1.4 Dual Compressor Systems with Automatic Defrost. The two-part test method in section 4.2.1 must be used, and the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \text{ x } EP1/T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \text{ x } T2_i/T1)) \text{ x } (12/CT_i)]$$

Where:

- 1440 = number of minutes in a day
- ET is the test cycle energy (kWh/day);
- i is the variable that can equal to 1, 2 or more that identifies the compartment with distinct defrost system;
- D is the total number of compartments with distinct defrost systems;
- EP1 is the dual compressor energy expended during the first part of the test (it is calculated for a whole number of freezer compressor cycles at least 24 hours in duration and may be the summation of several running periods that do not include any precool, defrost, or recovery periods);
- T1 is the length of time for EP1 (minutes);
- EP2i is the total energy consumed during the second (defrost) part of the test being conducted for compartment i. (kWh);
- T2i is the length of time (minutes) for the second (defrost) part of the test being conducted for compartment i.
- CTi is the compressor on time between defrosts for only compartment i. CTi for compartment i with long time automatic defrost system is calculated as per 10 CFR part 430 subpart B appendix A1 clause 5.2.1.2. CTi for compartment i with variable defrost system is calculated as per 10 CFR part 430 subpart B appendix A1 clause 5.2.1.3. (hours rounded to the nearest tenth of an hour).

Stabilization:

The test shall start after a minimum 24 hours stabilization run for each temperature control setting.

Steady State for EP1:

The temperature average for the first and last compressor cycle of the test period must be within 1.0 °F (0.6 °C) of the test period temperature average for each compartment. Make this determination for the fresh food compartment for the fresh food compressor cycles closest to the start and end of the test period. If multiple segments are used for test period 1, each segment must comply with above requirement.

Steady State for EP2i:

The second (defrost) part of the test must be preceded and followed by regular compressor cycles. The temperature average for the first and last compressor cycle of the test period must be within 1.0 °F (0.6 °C) of the EP1 test period temperature average for each compartment.

Test Period for EP2i, T2i:

EP2i includes precool, defrost, and recovery time for compartment i, as well as sufficient dual compressor steady state run cycles to allow T2i to be at least 24 hours. The test period shall start at the end of a regular freezer compressor on-cycle after the previous defrost occurrence (refrigerator or freezer). The test period also includes the target defrost and following regular freezer compressor cycles, ending at the end of a regular freezer compressor oncycle before the next defrost occurrence (refrigerator or freezer). If the previous condition does not meet 24 hours time, additional EP1 steady state segment data could be included. Steady state run cycle data can be utilized in EP1 and EP2i.

Test Measurement Frequency:

Measurements shall be taken at regular interval not exceeding 1 minute.

Request

For the reasons that DOE described in its granting of waiver and interim waiver for Sub-Zero and LG for refrigerator-freezers with shared dual compressors, Samsung believes that the expeditious granting of Waiver and Interim Waiver for the model listed below is warranted:

RF34H99****

Please feel free to contact me if you have any questions regarding this Application for Petition for Waiver and Application for Interim Waiver. I will be happy to discuss should any questions arise.

Sincerely,
Michael Moss
Director of Corporate Environmental Affairs

December 26, 2013

The Honorable David Danielson
Assistant Secretary, Energy Efficiency and Renewable Energy
United States Department of Energy
Forrestal Building (Mail Station EE–1)
1000 Independence Avenue, SW
Washington, DC 20585

Dear Assistant Secretary Danielson:

Samsung Electronics America, Inc. (''Samsung'') respectfully submits the Application for Petition for Waiver and Application for Interim Waiver to the Department of Energy (''DOE'' or ''the Department'') regards to Samsung's residential refrigerator-freezers that use shared dual compressors.

Reasoning

10 CFR Part 430.27(a)(1) allows a person to submit a petition to waive for a particular basic model any requirements of § 430.23 when (1) the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

Current test procedures as prescribed in Appendix A1 to Subpart B of 10 Part 430 do not adequately provide a way for Samsung to accurately represent the energy consumption of its refrigerator-freezers that use shared dual compressors. Meanwhile, based on similar situations, DOE has already granted a waiver to Sub-Zero in 77 FR 5784 on February 6, 2012, and similarly, an interim waiver to LG in 77 FR 44603 on July 30, 2012.

However, unlike Subzero's design which features two compressors, two evaporators, and two defrost heaters, Samsung's design features two compressors, four evaporators, and three defrost heaters.

Samsung's design features four compartments that have their own evaporators. Three compartments, freezer/convertible/fresh food compartment, are accessible with an exterior door and the fourth ice room compartment is a sub compartment and located inside of the fresh food compartment. Defrost heaters are adopted at three evaporators (freezer/convertible/ice room) except the fresh food compartment evaporator and those heaters operate all together at the same time according to the control logic. So essentially, there is only one defrost type. Despite these differences of the composition, Samsung believes that the test procedure, as prescribed in the waiver granted to Subzero and in the interim waiver granted to LG, is equally applicable and appropriate.

More specifically, Samsung's residential refrigerator-freezers that use shared dual compressors can be tested and calculate to a reasonable result with same test procedure granted to Subzero's waiver because the test procedure of Subzero's waiver adopt a multiple defrost system of 1, 2 or more compartment with distinct defrost system and Samsung's dual units have one defrost system despite of having four compartments and three defrost heaters as explained above.

Therefore, Samsung respectfully requests a waiver and an interim waiver for the alternate test procedure that DOE has already granted Sub-Zero and LG pertaining to the refrigerator-freezers that use shared dual compressors, with minor modification suggested below:

Before: 5.2.1.4 Dual Compressor Systems with dual Automatic Defrost

With Minor Change: 5.2.1.4 Dual Compressor Systems with Automatic Defrost (i=1 is mono, i=2 is dual)

Alternate Test Procedure

Replace the multiple defrost system section 5.2.1.4 of Appendix A1 with the following:

5.2.1.4 Dual Compressor Systems with Automatic Defrost. The two-part test method in section 4.2.1 must be used, and the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \text{ x } EP1/T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \text{ x } T2_i/T1)) \text{ x } (12/CT_i)]$$

Where:

- 1440 = number of minutes in a day
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- i is the variable that can equal to 1, 2 or more that identifies the compartment with distinct defrost system;
- D is the total number of compartments with distinct defrost systems;
- EP1 is the dual compressor energy expended during the first part of the test (it is calculated for a whole number of freezer compressor cycles at least 24 hours in duration and may be the summation of several running periods that do not include any precool, defrost, or recovery periods);
- T1 is the length of time for EP1 (minutes);
- EP2i is the total energy consumed during the second (defrost) part of the test being conducted for compartment i. (kWh);
- T2i is the length of time (minutes) for the second (defrost) part of the test being conducted for compartment i.
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Stabilization:

The test shall start after a minimum 24 hours stabilization run for each temperature control setting.

Steady State for EP1:

The temperature average for the first and last compressor cycle of the test period must be within 1.0 °F (0.6 °C) of the test period temperature average for each compartment. Make this determination for the fresh food compartment for the fresh food compressor cycles closest to the start and end of the test period. If multiple segments are used for test period 1, each segment must comply with above requirement.

Steady State for EP2i:

The second (defrost) part of the test must be preceded and followed by regular compressor cycles. The temperature average for the first and last compressor cycle of the test period must be within 1.0 °F (0.6 °C) of the EP1 test period temperature average for each compartment.

Test Period for EP2i, T2i:

EP2i includes precool, defrost, and recovery time for compartment i, as well as sufficient dual compressor steady state run cycles to allow T2i to be at least 24 hours. The test period shall start at the end of a regular freezer compressor on-cycle after the previous defrost occurrence (refrigerator or

freezer). The test period also includes the target defrost and following regular freezer compressor cycles, ending at the end of a regular freezer compressor oncycle before the next defrost occurrence (refrigerator or freezer). If the previous condition does not meet 24 hours time, additional EP1 steady state segment data could be included. Steady state run cycle data can be utilized in EP1 and EP2i.

Test Measurement Frequency:

Measurements shall be taken at regular interval not exceeding 1 minute.

Request

For the reasons that DOE described in its granting of waiver and interim waiver for Sub-Zero and LG for refrigerator-freezers with shared dual compressors, Samsung believes that the expeditious granting of Waiver and Interim Waiver for the model listed below is warranted:

RF33H99****

Please feel free to contact me if you have any questions regarding this Application for Petition for Waiver and Application for Interim Waiver. I will be happy to discuss should any questions arise.

Sincerely,
Michael Moss
Director of Corporate Environmental Affairs

[FR Doc. 2014–01345 Filed 1–22–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 637–097]

PUD No. 1 of Chelan County; Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters

b. *Project No:* 637–097

c. *Date Filed:* January 7, 2014

d. *Applicant:* Public Utility District No. 1 of Chelan County

e. *Name of Project:* Lake Chelan Hydroelectric Project

f. *Location:* Chelan River in Chelan County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r

h. *Applicant Contact:* Michelle Smith, Licensing and Compliance Manager, Public Utility District No. 1 of Chelan County, 327 North Wenatchee Avenue, Wenatchee, Washington 98801. Phone: 888–663–8121, ext 4180. Email: michelle@chelanpud.org.

i. *FERC Contact:* Shana High at (202) 502–8674, or email: shana.high@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests:* February 14, 2014.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–637–097) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Public Utility District No. 1 of Chelan County proposes to permit Chelan Lookout LLC to construct a 70-slip marina to provide boat moorage and lake access for property owners at the Lookout at Lake Chelan, a residential development on Lake Chelan's north shore. The 12,773 square-foot facility would be constructed on private property (29%) and Washington Department of Natural Resources leased land (71%). The application details proposed compensatory mitigation. No dredging or fill would occur, and no fuel facilities are proposed.

l. *Locations of the Applic*ation: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–637) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–01281 Filed 1–22–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0563; FRL–9905–78–OAR]

Proposed Information Collection Request; Comment Request; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''National Volatile Organic Compound Emission Standards for Consumer Products, CFR 40 Part 59, Subpart C (Renewal),'' (EPA ICR Number 1764.06, OMB Control number 2060–0348) 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.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through April 30, 2014. 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: Comments must be submitted on or before March 24, 2014.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0563, online using *www.regulations.gov* (our preferred method), by email: *a-and-r-docket@epa.gov* (include Docket ID Number EPA–HQ–OAR–2007–0563 in the subject line of the message), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

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: Ms. Kim Teal, Office of Air and Radiation, Office of Air Quality Planning and Standards, Mail Code D243–04, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5580; fax number: (919) 541–5450; email address: *teal.kim@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*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The EPA is required under section 183(e) of the Clean Air Act to regulate volatile organic compound emissions from the use of consumer and commercial products. Pursuant to section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Consumer products were included on the list, and the standards are codified at 40 CFR part 59, subpart C. The information collection includes initial reports and periodic recordkeeping necessary for EPA to ensure compliance with Federal standards for volatile organic compounds in consumer products. Responses to the collection are mandatory under 40 CFR part 59, subpart C, National Volatile Organic Compound Emission Standards for Consumer Products. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B, Confidentiality of Business Information.

Form Numbers: None.

Respondents/affected entities: Respondents are manufacturers and importers of consumer products.

Respondent's obligation to respond: Responses to the collection are mandatory under 40 CFR part 59, subpart C, National Volatile Organic Compound Emission Standards for Consumer Products.

Estimated number of respondents: 732 (total).

Frequency of response: On occasion.

Total estimated burden: 29,613 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,364,069 (per year), includes labor costs of $1,364,069 and no capital or O&M costs.

Changes in Estimates: There is no increase in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: January 16, 2014.

Peter Tsirigotis,

Director, Office Sector Policies and Programs Division.

[FR Doc. 2014–01356 Filed 1–22–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9905–77-Region-5]

Proposed Prospective Purchaser Agreement for the PCC Validation Site in Pontiac, Oakland County, Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Prospective Purchaser Agreement, notice is hereby given of a proposed administrative settlement concerning the PCC Validation Site in Pontiac, Oakland County, Michigan with the following settling party: M1 Concourse, LLC. The settlement requires the Settling Party to execute and record a Declaration of Restrictive Covenant; provide access to the Property and exercise due care with respect to existing contamination. The settlement includes a covenant not to sue the Settling Party pursuant to Comprehensive Environmental

Response, Compensation, and Liability Act or Resource Conservation and Recovery Act with respect to the Existing Contamination. Existing Contamination is defined as any Waste Material present or existing on or under the Property as of the Effective Date of the Settlement Agreement; any Waste Material that migrated from the Property prior to the Effective Date; and any Waste Material presently at the Site that migrates onto, on, under, or from the Property after the Effective Date.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA, Region 5, Records Center, 77 W. Jackson Blvd., 7th Fl., Chicago, Illinois 60604.

DATES: Comments must be submitted on or before February 24, 2014.

ADDRESSES: The proposed settlement is available for public inspection at the EPA, Region 5, Records Center, 77 W. Jackson Blvd., 7th Fl., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Peter Felitti, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., mail code: C–14J, Chicago, Illinois 60604. Comments should reference the PCC Validation Site, Pontiac, Michigan and EPA Docket No. and should be addressed to Peter Felitti, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., mail code: C–14J, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Peter Felitti, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 w. Jackson Blvd., mail code: C–14J, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: The Settling Party proposes to acquire ownership of a former General Motors Corporation North American operation, at 200 South Boulevard West, Pontiac, Michigan. The EPA identification number for the Site is # MID980568836. The Site is one of the 89 sites that were placed into an Environmental Response Trust (the ''Trust'') as a result of the resolution of the 2009 GM bankruptcy. The Trust is administrated by Revitalizing Auto Communities Environmental Response.

Dated: November 25, 2013.

Richard Karl, Director,

Superfund Division.

[FR Doc. 2014–01361 Filed 1–22–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before March 24, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* <*mailto:PRA@fcc.gov*> and to *Cathy.Williams@fcc.gov* <*mailto:Cathy.Williams@fcc.gov*>.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0706.

Title: Sections 76.952 and 76.990, Cable Act Reform.

Type of Review: Extension a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 70 respondents; 70 responses.

Estimated Time per Response: 1–8 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in the Telecommunications Act of 1996, Public Law 104–104, Sections 301 and 302, 110 Stat. 56, 114–124.

Total Annual Burden: 210 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 76.952 states that all cable operators must provide to the subscribers on monthly bills the name, mailing address and phone number of the franchising authority, unless the franchising authority in writing requests that the cable operator omits such information. The cable operator must also provide subscribers with the FCC community unit identifier for the cable system in their communities.

47 CFR 76.990(b)(1) requires that a small cable operator may certify in writing to its franchise authority at any time that it meets all criteria necessary to qualify as a small operator. Upon request of the local franchising authority, the operator shall identify in writing all of its affiliates that provide cable service, the total subscriber base of itself and each affiliate, and the aggregate gross revenues of its cable and non-cable affiliates. Within 90 days of receiving the original certification, the local franchising authority shall determine whether the operator qualifies for deregulation and shall notify the operator in writing of its decision, although this 90-day period shall be tolled for so long as it takes the

operator to respond to a proper request for information by the local franchising authority. An operator may appeal to the Commission a local franchise authority's information request if the operator seeks to challenge the information request as unduly or unreasonably burdensome. If the local franchising authority finds that the operator does not qualify for deregulation, its notice shall state the grounds for that decision. The operator may appeal the local franchising authority's decision to the Commission within 30 days.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–01170 Filed 1–22–14; 8:45 am]

BILLING CODE 6712–01–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 February 6, 2014.

A. Federal Reserve Bank of Minneapolis (Jacqueline K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *The Ardath K. Solsrud 2012 Irrevocable Trust dated December 28, 2012, Robb B. Kahl, as trustee, and The Glenn A. Solsrud 2012 Irrevocable Trust dated December 28, 2012, Robb B. Kahl, as trustee,* all of Monona, Wisconsin; to each acquire voting shares of Augusta Financial Corporation, and thereby indirectly acquire voting shares of Unity Bank, both in Augusta, Wisconsin.

2. *The Ardath K. Solsrud 2012 Irrevocable Trust dated December 28, 2012, Robb B. Kahl, as trustee, and The Glenn A. Solsrud 2012 Irrevocable Trust dated December 28, 2012, Robb B. Kahl, as trustee,* all of Monona, Wisconsin; to each voting shares of Caprice Corporation, Augusta, Wisconsin, and thereby indirectly acquire voting shares of Unity Bank North, Red Lake Falls, Minnesota.

Board of Governors of the Federal Reserve System, January 17, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–01279 Filed 1–22–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 14, 2014.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Cabool State Bank Employees Stock Ownership Plan,* Cabool, Missouri; to acquire up to an additional 2.13 percent, for control of 31.30 percent of the voting shares of Cabool Bancshares, Inc., and thereby indirectly acquire additional voting shares of Cabool State Bank, both in Cabool, Missouri.

Board of Governors of the Federal Reserve System, January 16, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–01177 Filed 1–22–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 112 3108]

Apple Inc.; 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 of Proposed Consent Order 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 February 14, 2014.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/appleconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Apple Inc.—Consent Agreement; File No. 112 3108'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/appleconsenthttps://ftcpublic.commentworks.com/ftc/fidelitynationalconsent* 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: Duane Pozza, Bureau of Consumer Protection, (202–326–2042), 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 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 January 15, 2014), 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 February 14, 2014. Write ''Apple Inc.—Consent Agreement; File No. 112 3108'' 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/appleconsent* 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 ''Apple Inc.—Consent Agreement; File No. 112 3108'' 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 February 14, 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 Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Apple Inc. (''Apple'').

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 will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Apple bills consumers for charges related to activity within software applications (''apps'') that consumers download to their iPhone, iPod Touch, or iPad devices from Apple's App Store. This matter concerns Apple's billing for charges incurred by children in apps that are likely to be used by children without having obtained the account holders' express informed consent.

The Commission's proposed complaint alleges that Apple offers thousands of apps, including games that children are likely to play, and that in many instances, children can obtain virtual items within a game app that cost money. Apple bills parents and other adult account holders for items that cost money within an app—''in-app charges.'' In connection with billing for children's in-app charges, Apple sometimes requests a parent's iTunes password. In many instances, Apple ''caches'' (that is, stores) the iTunes password for fifteen minutes after it is entered. During this process, Apple in many instances has not informed account holders that password entry will approve a charge or initiate a fifteen-minute window during which children using the app can incur charges without further action by the account holder. The Commission's proposed complaint alleges that, through these practices, Apple often fails to obtain parents' informed consent to charges incurred by children, which constitutes an unfair practice under Section 5 of the FTC Act.

The proposed order contains provisions designed to prevent Apple from engaging in the same or similar acts or practices in the future. Part I of the proposed order requires Apple to obtain express, informed consent to in-app charges before billing for such charges, and to allow consumers to revoke consent to prospective in-app charges at any time. As defined in the proposed order, express, informed consent requires an affirmative act communicating authorization of an in-app charge (such as entering a password), made proximate to both an in-app activity for which Apple is billing a charge and a clear and conspicuous disclosure of material information about the charge. Under the definition, the act and disclosure must be reasonably calculated to ensure that the person providing consent is the account holder (as opposed to the child). The proposed order would require the disclosure to appear at least once per mobile device. Apple must come into compliance with the Part I requirements by March 31, 2014.

[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).

Part II of the proposed order requires Apple to provide full refunds to Apple account holders who have been billed by Apple for unauthorized in-app charges incurred by minors. Apple will refund no less than $32.5 million for these in-app charges in the year following entry of the order, and if such refunds total less than $32.5 million, Apple will remit any remaining balance to the Commission to be used for informational remedies, further redress, or payment to the U.S. Treasury as equitable disgorgement. To effectuate refunds, Apple must send an electronic notice to its consumers that clearly and conspicuously discloses the availability of refunds and instructions on how to obtain such refunds. Within 30 days of the end of the one-year redress period, Apple must provide the Commission with records of refund requests, refunds paid, and any refunds denied.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III of the proposed order requires Apple to maintain and upon request make available certain compliance-related records, including certain consumer complaints and refund requests, for a period of five years. Part IV is an order distribution provision that requires Apple to provide the order to current and future principals, officers, and corporate directors, as well as current and future managers, employees, agents, and representatives who participate in certain duties related to the subject matter of the proposed complaint and order, and to secure statements acknowledging receipt of the order.

Part V requires Apple to notify the Commission of corporate changes that may affect compliance obligations within 14 days of such a change. Part VI requires Apple to submit a compliance report 90 days after March 31, 2014, the date by which Apple is required to come into full compliance with Part I of the order. It also requires Apple to submit additional compliance reports within 10 business days of a written request by the Commission. Part VII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission, Commissioner Wright dissenting.

Donald S. Clark,

Secretary.

Statement of Chairwoman Edith Ramirez and Commissioner Julie Brill

The Commission has issued a complaint and proposed consent order to resolve allegations that Apple Inc. unfairly failed to obtain informed consent for charges incurred by children in connection with their use of mobile apps on Apple devices in violation of Section 5 of the Federal Trade Commission Act. Consistent with prior application of the Commission's unfairness authority, our action today reaffirms that companies may not charge consumers for purchases that are unauthorized—a principle that applies regardless of whether consumers are in a retail store, on a Web site accessed from a desktop computer, or in a digital store using a mobile device.

As alleged in the Commission's complaint, Apple violated this basic principle by failing to inform parents that, by entering a password, they were permitting a charge for virtual goods or currency to be used by their child in playing a children's app and at the same time triggering a 15-minute window during which their child could make unlimited additional purchases without further parental action. As a consequence, at least tens of thousands of parents have incurred millions of dollars in unauthorized charges that they could not readily have avoided. Apple, however, could have prevented these unwanted purchases by including a few words on an existing prompt, without disrupting the in-app user experience. As explained below, we believe the Commission's allegations are more than sufficient to satisfy the standard governing the FTC Act's prohibition against ''unfair acts or practices.''

I. Overview of In-App Purchases on Apple Mobile Devices

Apple distributes apps, including games, that are likely to be used by children on Apple mobile devices through its iTunes App Store. While playing these games, kids may incur charges for the purchase of virtual items such as digital goods or currency (known as ''in-app charges'') at prices ranging from $.99 to $99.99. These in-app charges are billed to their parents' iTunes accounts. Apple retains thirty percent of the revenues from in-app charges. As part of the in-app purchasing process, Apple displays a general prompt that calls for entry of the password for the iTunes account associated with the mobile device. Apple treats this password entry as authorizing a specific transaction and simultaneously allowing additional in-app purchases for 15 minutes.

While key aspects of the in-app purchasing sequence have changed over time, as described in the Commission's complaint, one constant has been that Apple does not explain to parents that entry of their password authorizes an in-app purchase and also opens a 15-minute window during which children are free to incur unlimited additional charges. We allege that, since at least March 2011, tens of thousands of consumers have complained about millions of dollars in unauthorized in-app purchases by children, with many of them individually reporting hundreds to thousands of dollars in such charges. As a result, we have reason to believe, and have alleged in our complaint, that Apple's failure to disclose the 15-minute window is an unfair practice that violates Section 5 because it has caused or is likely to cause substantial consumer injury that is neither reasonably avoidable by consumers nor outweighed by countervailing benefits to consumers or competition.[1]

The proposed consent order resolves these allegations by requiring Apple to obtain informed consent to in-app charges. The order also requires Apple to provide full refunds, an amount no less than $32.5 million, to all of its account holders who have been billed for unauthorized in-app charges incurred by minors.[2]

II. Application of the Unfairness Standard

Importantly, the Commission does not challenge Apple's use of a 15-minute purchasing window in apps used by kids. Rather, our charge is that, even after receiving at least tens of thousands of complaints about unauthorized charges relating to in-app purchases by kids, Apple continued to fail to disclose to parents and other Apple account holders that entry of a password in a children's app meant they were approving a single in-app charge plus 15 minutes of further, unlimited charges.

In asserting that Apple violated Section 5's prohibition against unfair practices by failing to obtain express informed consent for in-app charges incurred by kids, we follow a long line of FTC cases establishing that the imposition of unauthorized charges is

[1] 15 U.S.C. 45(n).

[2] Any sum below $32.5 million that is not returned to account holders is to be paid to the FTC.

an unfair act or practice.[3] This basic tenet applies regardless of the technology or platform used to bill consumers and regardless of whether a company engages in deliberate fraud. Indeed, there is nothing in the unfairness authority we have been granted by Congress or in the Commission's Unfairness Policy Statement to suggest that our power is in any way constrained or should be applied differently depending on the technology or platform at issue, or the intentions of the accused party.[4]

Our task here, as in all instances in which we assert jurisdiction over unfair acts or practices, is to determine whether the alleged unlawful conduct causes or is likely to cause substantial injury that is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or competition. After a full investigation, we have reason to believe that Apple's conduct constitutes an unfair practice.

A. Substantial Injury to Consumers

We begin by addressing the issue of harm. It is well established that substantial injury may be demonstrated by a showing of either small harm to a large number of people or large harm in the aggregate.[5] Both are present here. As alleged in the complaint, in many individual instances, Apple customers paid hundreds of dollars in unauthorized charges while thousands of others incurred lower charges that together totaled large sums. We allege that, in the aggregate, at least tens of thousands of consumers have complained of millions of dollars of unauthorized in-app charges by children. Moreover, we have reason to believe that, for a variety of reasons, many more affected customers never complained. Some, for example, were undoubtedly deterred by Apple's stated policy that all App Store transactions are final. Others who incurred low charges likely did not protest because of the relatively small dollar value at issue. Indeed, extensive Commission experience teaches that consumer complaints typically represent only a small fraction of actual consumer injury.[6]

In his dissent, Commissioner Wright expresses the view that the harm alleged by the Commission involves ''a miniscule percentage of consumers'' and is therefore insubstantial.[7] We respectfully disagree. We find it of little consequence that the number of complainants is a small fraction of all app downloads, as Commissioner Wright asserts.[8] As an initial matter, our complaint focuses on conduct affecting Apple account holders whose children may unwittingly incur in-app charges in games likely to be played by kids. The proportion of complaints about children's in-app purchases as compared to total app downloads, revenue from the sale of Apple mobile devices, or Apple's total sales revenue sheds no light on the extent of harm alleged in this case. More fundamentally, the FTC Act does not give a company with a vast user base and product offerings license to injure large numbers of consumers or inflict millions of dollars of harm merely because the injury affects a small percentage of its customers or relates to a fraction of its product offerings.

It is also incorrect that ''in order to qualify as substantial, the harm must be large compared to any offsetting benefits.'' [9] This conflates the third prong of the unfairness test, calling for a weighing of countervailing benefits against the relevant harm, with the substantial injury requirement. As shown above, the allegations in the complaint are more than sufficient to establish substantial injury.[10]

B. Injury Not Reasonably Avoidable by Consumers

We also have reason to believe that consumers could not reasonably avoid the alleged injury. An injury is not reasonably preventable by consumers unless they had an opportunity to make a ''free and informed choice'' to avoid the harm.[11] Before billing parents for in-app charges by children, Apple presented parents with a generic password prompt devoid of any explanation that password entry approves a single charge as well as all charges within the 15 minutes to follow. We do not think parents acted unreasonably by not averting harm from a 15-minute window that was not disclosed to them. Consumers cannot avoid or protect themselves from a practice of which they are not made aware, and companies like Apple cannot impose on consumers the responsibility for ferreting out material aspects of payment systems, as FTC enforcement actions in a variety of contexts make clear.[12] Apple's disclosure of the 15-minute window in its Terms and Conditions was not sufficient to provide consumers with adequate notice.

Over time, through experience, some parents may infer that entry of a password opens a 15-minute window during which unlimited purchases can be made. The receipt of an invoice with unauthorized charges may be sufficient to alert some parents about the unwanted charges. But that does not relieve Apple of the obligation to take reasonable steps to inform consumers of the 15-minute window before the user opens that window and before Apple places charges on a bill. In light of Apple's failure to disclose the 15-minute purchasing window, it was reasonable for parents not to expect that when they input their iTunes password they were authorizing 15 minutes of unlimited purchases without the child having to ask the parent to input the password again. There was nothing to suggest this and thus no ''obligation for them to investigate further'' as Commissioner Wright suggests.[13]

[3] *See, e.g., FTC* v. *Willms,* No. 2:11–CV–828 MJP, 2011 WL 4103542, at *9 (W.D. Wash. Sept. 13, 2011); *FTC* v. *Inc21.com Corp.,* 745 F. Supp. 2d 975 (N.D. Cal. 2010), *aff'd,* 475 Fed. Appx. 106 (9th Cir. Mar. 30, 2012); *FTC* v. *Crescent Publ'g Grp., Inc.,* 129 F. Supp. 2d 311, 322 (S.D.N.Y. 2001); *see also* Complaint, *FTC* v. *Jesta Digital, LLC,* No. 1:13-cv-01272 (D.D.C. filed Aug. 20, 2013).

[4] The FTC need not prove intent to establish a violation of the FTC Act. *See, e.g., Orkin Exterminating Co.* v. *FTC,* 849 F. 2d 1354, 1368 (11th Cir. 1988); Federal Trade Commission Policy Statement on Unfairness, appended to *Int'l Harvester Co.,* 104 F.T.C. 949, 1070 (1984) (''FTC Unfairness Statement'').

[5] *See FTC* v. *Neovi, Inc.,* 604 F.3d 1150, 1157 (9th Cir. 2010), *amended,* 2010 WL 2365956 (9th Cir. June 15, 2010); *Orkin,* 849 F.2d at 1365; FTC Unfairness Statement n.12.

[6] Likewise, there is research indicating consumers do not register the vast majority of their complaints about problems with goods and services. *See* Amy J. Schmitz, *Access to Consumer Remedies in the Squeaky Wheel System,* 39 Pepp. L. Rev. 279, 286 (2012).

[7] Dissenting Statement of Commissioner Joshua D. Wright (''Wright Dissent'') at 1.

[8] *See id.* at 6.

[9] *Id.* (citation and internal quotation marks omitted).

[10] *See, e.g., Orkin,* 849 F.2d at 1365 (substantial injury demonstrated by small injury to large number of customers); *FTC* v. *Neovi, Inc.,* 598 F. Supp. 2d 1104, 1115 (S.D. Cal. 2008) (substantial consumer injury resulted from unauthorized charges to tens of thousands of consumers), *aff'd,* 604 F.3d 1150 (9th Cir. 2010); *FTC* v. *Global Mktg. Group, Inc.,* 594 F. Supp. 2d 1281, 1288–89 (M.D. Fla. 2008) (millions of dollars in unlawful charges demonstrated substantial injury); *FTC* v. *Windward Mktg., Inc.,* No. 1:96–CV–615F, 1997 WL 33642380, at *11 (N.D. Ga. Sept. 30, 1997) (harm to large number of consumers sufficient to establish substantial injury).

[11] *Neovi,* 598 F. Supp. 2d at 1115.

[12] *See, e.g., Facebook, Inc.,* No. C–4365, at 4 (F.T.C. July 27, 2012) (consent order) (requiring ''clear and prominent'' disclosure of certain information material to privacy protections ''separate and apart from'' the detailed privacy policy or terms of use); *Google Inc.,* No.C–4336, at 3–4 (F.T.C. Oct. 13, 2011) (consent order) (setting similar requirements).

[13] Wright Dissent at 10.

C. Injury Not Outweighed by Benefits to Consumers or Competition

Finally, we also have reason to believe that the harm alleged outweighs any countervailing benefits to consumers or competition from Apple's practices. This is not a case about Apple's ''choice to integrate the fifteen-minute window into Apple users' experience on the platform,'' as Commissioner Wright implies.[14] What is at issue is Apple's failure to disclose the 15-minute window to parents and other account holders in connection with children's apps, not Apple's use of a 15-minute window as part of the in-app purchasing sequence.

Under the proposed consent order, Apple is permitted to bill for multiple charges within a 15-minute window upon password entry provided it informs consumers what they are authorizing, allowing consumers to make an informed choice about whether to open a period during which additional charges can be incurred without further entry of a password.[15] The order gives Apple full discretion to determine how to provide this disclosure. But we note that the information called for, while important, can be conveyed through a few words on an existing prompt. The burden, if any, to users who have never had unauthorized charges for in-app purchases, or to Apple, from the provision of this additional information is *de minimis*.[16] Nor do we believe the required disclosure would detract in any material way from a streamlined and seamless user experience. In our view, the absence of such minimal, though essential, information does not constitute an offsetting benefit to Apple's users that even comes close to outweighing the substantial injury the Commission has identified.

Moreover, we are confident that our action today fully preserves the incentive to innovate and develop digital platforms that are user-friendly and beneficial for consumers. In this respect, we emphasize that we do not expect companies ''to anticipate *all* things that might go wrong'' when designing a complicated platform or product.[17] Our action against Apple is based on its failure to provide any meaningful disclosures about the 15-minute window in the purchase sequence, despite receiving at least tens of thousands of complaints about unauthorized in-app purchases by children and despite having the issue flagged in high-profile media reports in late 2010 and early 2011.[18] We recognize that Apple did make certain changes to its in-app purchase sequence in an attempt to resolve the issue. Most notably, Apple added a password prompt to the in-app purchase sequence in March 2011. But for well over two-and-a-half years after that point, the password prompt has lacked any information to signal that the account holder is about to open a 15-minute window in which unlimited charges could be made in a children's app.

The extent and duration of the unauthorized in-app charges alleged in the complaint support our conclusion that, while Apple has strong incentives to cultivate customer goodwill in order to encourage the purchase of in-app goods and currency and promote the sale of its mobile devices, these incentives may not be sufficient to produce the necessary disclosures. Because customers are often unaware of the way in-app charges work, let alone the possibility of Apple disclosing its practices, we do not think that Commissioner Wright's belief that Apple ''has more than enough incentives to disclose'' [19] is justified. Indeed, his argument appears to presuppose that a sufficient number of Apple customers will respond to the lack of adequate information by leaving Apple for other companies. But customers cannot switch suppliers easily or quickly. Mobile phone and data contracts typically last two years, with a penalty for early termination. In addition, the time and effort required to learn another company's operating system and features, not to mention the general inertia often observed for consumers with plans for cellular, data, and Internet services, could very well mean that Apple customers may not be as responsive to Apple's disclosure policies as seems to be envisioned by Commissioner Wright.

* * * * *

We applaud the innovation that is occurring in the mobile arena. Today, parents have access to an enormous number and variety of apps for use by their children. We firmly believe that technological innovation and fundamental consumer protections can coexist and, in fact, are mutually beneficial. Such innovation is enhanced, and will only reach its full potential, if all marketplace participants abide by the basic principle that they must obtain consumers' informed consent to charges before they are imposed.

Statement of Commissioner Maureen K. Ohlhausen

I voted to accept for public comment the accompanying proposed administrative complaint and consent order, settling allegations that Apple Inc. engaged in unfair acts or practices by billing iTunes account holders for charges incurred by children in apps that are likely to be used by children without the account holders' express informed consent.[1] I write separately to emphasize that our action today is consistent with the fundamental principle that any commercial entity, before billing customers, has an obligation to notify such customers of what they may be charged for and when, a principle that applies even to reputable and highly successful companies that offer many popular products and services.

In his dissent, Commissioner Wright lauds the iterative software design process of rapid prototyping, release, and revision based on market feedback; this approach has proven to be one of the most successful methods for balancing design tradeoffs. He also notes that it can be difficult to forecast problems that may arise with complicated products across millions of users and expresses concern that our decision today requires companies to anticipate and fix all such problems in advance.

I agree with Commissioner Wright that we should avoid actions that would chill an iterative approach to software development or that would unduly burden the creation of complex products by imposing an obligation to foresee all problems that may arise in a

[14] *Id.* at 4.

[15] *See* Proposed Order ¶¶ 3, 5 (defining ''Clear and Conspicuous'' and ''Express, Informed Consent'').

[16] For this reason alone, it was unnecessary for the Commission to undertake a study of how consumers react to different disclosures before issuing its complaint against Apple, as Commissioner Wright suggests. We also note that the Commission need only determine that it has a ''reason to believe'' that there has been an FTC Act violation in order to issue a complaint. 15 U.S.C. § 45(b).

[17] Wright Dissent at 15 (emphasis in original).

[18] *See, e.g.,* Cecilia Kang, *In-app purchases in iPad, iPhone, iPod kids' games touch off parental firestorm,* Wash. Post, Feb. 8, 2011, *available at http://www.washingtonpost.com/wp-dyn/content/article/2011/02/07/AR2011020706073.html;* Associated Press, *Apple App Store: Catnip for Free-Spending Kids?,* CBS News, Dec. 9, 2010, *available at http://www.cbsnews.com/news/apple-app-store-catnip-for-free-spending-kids/.*

[19] Wright Dissent at 14.

[1] For the reasons given in the Statement of Chairwoman Ramirez and Commissioner Brill, I believe the complaint meets the requirements of 15 U.S.C. 45(n) and the Commission's Unfairness Statement.

widely-used product.[2] I do not believe, however, that today's action implicates such concerns. First, Apple's iterative approach was not the cause of the harm the complaint challenges. In fact, Apple's iterative approach should have made it easier for the company to update its design in the face of heavy consumer complaints. Second, we are not penalizing Apple for failing to have anticipated every potential issue in its complex platform.[3] The complaint challenges only one billing issue of which Apple became well aware but failed to address in subsequent design iterations. By March 2011, consumers had submitted more than ten thousand complaints to Apple stating that its billing platform for in-app purchases for children's apps was failing to inform them about what they were being billed for and when. Although Apple adjusted certain screens in response and offered refunds, it still failed to notify account holders that by entering their password they were initiating a fifteen-minute window during which children using the app could incur charges without further action by the account holder. Even if Apple chose to forgo providing this information—the type of information that is critical for any billing platform, no matter how innovative, to provide—in favor of what it believed was a smoother user experience for some users, the result was unfair to the thousands of consumers who subsequently experienced unauthorized in-app charges totaling millions of dollars.[4]

Commissioner Wright also argues that under our unfairness authority ''substantiality is analyzed relative to the magnitude of any offsetting benefits,'' [5] and concludes that compared to Apple's total sales or in-app sales, injury was not substantial and that any injury that did occur is outweighed by the benefits to consumers and competition of Apple's overall platform. The relevant statutory provision focuses on the substantial injury caused by an individual act or practice, which we must then weigh against countervailing benefits to consumers or competition from that act or practice.[6] Thus, we first examine whether the harm caused by the practice of not clearly disclosing the fifteen-minute purchase window is substantial and then compare that harm to any benefits from that particular practice, namely the benefits to consumers and competition of not having a clear and conspicuous disclosure of the fifteen-minute billing window. It is not appropriate, however, to compare the injury caused by Apple's lack of clear disclosure with the benefits of the entire Apple mobile device ecosystem. To do so implies that all of the benefits of Apple products are contingent on Apple's decision not to provide a clear disclosure of the fifteen-minute purchase window for in-app purchases. Such an approach would skew the balancing test for unfairness and improperly compare injury ''oranges'' from an individual practice with overall ''Apple'' ecosystem benefits.

Dissenting Statement of Commissioner Joshua D. Wright

Today, through the issuance of an administrative complaint, the Commission alleges that Apple, Inc. (''Apple'') has engaged in ''unfair acts or practices'' by billing parents and other iTunes account holders for the activities of children who were engaging with software applications (''apps'') likely to be used by children that had been downloaded onto Apple mobile devices.[1] In particular, the Commission takes issue with a product feature of Apple's platform that opens a fifteen-minute period during which a user does not need to re-enter a billing password after completing a first transaction with the password.[2] Because Apple does not expressly inform account holders that the entry of a password upon the first transaction triggers the fifteen-minute window during which users can make additional purchases without once again entering the password, the Commission has charged that Apple bills parents and other iTunes account holders for the activities of children without obtaining express informed consent.[3]

Today's action has been characterized as nothing more than a reaffirmance of the concept that ''companies may not charge consumers for purchases that are unauthorized.'' [4] I respectfully disagree. This is a case involving a miniscule percentage of consumers—the parents of children who made purchases ostensibly without their authorization or knowledge. There is no disagreement that the overwhelming majority of consumers use the very same mechanism to make purchases and that those charges are properly authorized. The injury in this case is limited to an extremely small—and arguably, diminishing—subset of consumers. The Commission, under the rubric of ''unfair acts and practices,'' substitutes its own judgment for a private firm's decisions as to how to design its product to satisfy as many users as possible, and requires a company to revamp an otherwise indisputably legitimate business practice. Given the apparent benefits to some consumers and to competition from Apple's allegedly unfair practices, I believe the Commission should have conducted a much more robust analysis to determine whether the injury to this small group of consumers justifies the finding of unfairness and the imposition of a remedy.

Section 5 of the FTC Act prohibits, in part, ''unfair . . . acts or practices in or affecting commerce.'' [5] As set forth in Section 5(n), in order for an act or practice to be deemed unfair, it must ''cause[] or [be] likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or competition.'' [6]

[2] I am concerned about any action that this agency takes that is likely to have adverse effects on firms' incentives to innovate. For example, in the antitrust context, I voted against the Commission's complaints in *Bosch* and *Google/MMI* based in significant part on my concern that those enforcement actions would hamper intellectual property rights and innovation more generally. *See In re* Motorola Mobility LLC & Google Inc., FTC File No. 121–0120, Dissenting Statement of Commissioner Maureen K. Ohlhausen (Jan. 3, 2013), *available at http://www.ftc.gov/sites/default/files/documents/cases/2013/01/130103googlemotorolaohlhausenstmt.pdf; In re* Robert Bosch GmbH, FTC File No. 121–0081, Statement of Commissioner Maureen K. Ohlhausen (Nov. 26, 2012), *available at http://www.ftc.gov/sites/default/files/documents/cases/2013/04/121126boschohlhausenstatement.pdf.*

[3] The complaint challenges harm that occurred since March 2011, after Apple changed its process to require the entry of the account holder's iTunes password before incurring any in-app charges immediately after installation. Previously, the entry of the password to install an app also opened a fifteen-minute window during which charges could be incurred without again entering a password.

[4] It is also important to note that the Commission's proposed order does not prohibit the use of the fifteen-minute window nor require that the account holder input a password for each purchase.

[5] Dissenting Statement of Commissioner Joshua D. Wright at 5.

[6] ''The Commission shall have no authority under this section or section 57a of this title to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.'' 15 U.S.C. 45(n).

[1] Complaint, Apple, Inc., FTC File No. 1123108, at para. 28–30 (Jan. 15, 2014) [hereinafter *Apple Complaint*].

[2] As indicated in the complaint, initially the fifteen-minute window was triggered when an app was downloaded. *Id.* at para. 16. Apple changed the interface in March 2011 and subsequently the fifteen-minute window was triggered upon the first in-app purchase. *Id.* at para. 17. *See also infra* note 13.

[3] *Apple Complaint, supra* note 1, at para. 4, 20, 28.

[4] Statement of Chairwoman Ramirez and Commissioner Brill at 1.

[5] 15 U.S.C. 45(a).

[6] 15 U.S.C. 45(n).

The test the Commission uses to evaluate whether an unfair act or practice is unfair used to be different. Previously the Commission considered: whether the practice injured consumers; whether it violated established public policy; and whether it was unethical or unscrupulous.[7] Only after an aggressive enforcement initiative that culminated in a temporary rulemaking suspension and Congressional threats of stripping the Commission of its unfairness authority altogether, was the current iteration of the unfairness test reached.[8] Importantly, this articulation, as set forth in the FTC Policy Statement on Unfairness (''Unfairness Statement''), not only requires that the alleged injury be substantial, it also includes the critical requirements that such injury ''must not be outweighed by any countervailing benefits to consumers or competition that the practice produces'' and ''it must be an injury that consumers themselves could not reasonably have avoided.'' [9]

As set forth in more detail below, I do not believe the Commission has met its burden to satisfy all three requirements in the unfairness analysis. In particular, although Apple's allegedly unfair act or practice has harmed some consumers, I do not believe the Commission has demonstrated the injury is substantial. More importantly, any injury to consumers flowing from Apple's choice of disclosure and billing practices is outweighed considerably by the benefits to competition and to consumers that flow from the same practice. Accordingly, I respectfully dissent from the issuance of this administrative complaint and consent order.

Introduction

This case requires the Commission to analyze consumer injury under the unfairness theory in a novel context: an allegation of a failure to disclose a product feature to consumers that results in some injury to one group of consumers but that generates benefits for another group.

The circumstances surrounding Apple's decision to forgo disclosing during the transaction the fifteen-minute window to its users—and according to the Commission's complaint, thereby failing to obtain express informed consent—are distinguishable from any other prior Commission case alleging unfairness. The economic consequences of the allegedly unfair act or practice in this case—a product design decision that benefits some consumers and harms others—also differ significantly from those in the Commission's previous unfairness cases.

The Commission commonly brings unfairness cases alleging failure to obtain express informed consent. These cases invariably involve conduct where the defendant has intentionally obscured the fact that consumers would be billed. Many of these cases involve unauthorized billing or cramming—the outright fraudulent use of payment information.[10] Other cases involve conduct just shy of complete fraud—the consumer may have agreed to one transaction but the defendant charges the consumer for additional, improperly disclosed items.[11] Under this scenario, the allegedly unfair act or practice injures consumers and does not provide economic value to consumers or competition. In such cases, the requirement to provide adequate disclosure itself does not cause significant harmful effects and can be satisfied at low cost.

However, the particular facts of this case differ in several respects from the above scenario. First, there is no evidence Apple intended to harm consumers by not disclosing the fifteen-minute window.[12] For example, when Apple began receiving complaints about children making unauthorized in-app purchases on their parents' iTunes accounts, the company took steps to address the problem.[13] In addition, Apple has an established relationship with its customers and its business model depends upon customer satisfaction and repeat business.

Second, rather than an unscrupulous or questionable practice, the nature of Apple's disclosures on its platform is an important attribute of Apple's platform that affects the demand for and consumer benefits derived from Apple devices and services. Disclosures made on the screen while consumers interact with mobile devices are a fundamental part of the user experience for products like mobile computing devices. It is well known that Apple invests considerable resources in its product design and functionality.[14] In streamlining disclosures on its platform and in its choice to integrate the fifteen-minute window into Apple users' experience on the platform, Apple has apparently determined that most consumers do not want to experience excessive disclosures or to be inconvenienced by having to enter their passwords every time they make a purchase.

The Commission has long recognized that in utilizing its authority to deem an act or practice as ''unfair'' it must undertake a much more rigorous

[7] FTC Policy Statement on Unfairness, *appended to* Int'l Harvester Co., 104 F.T.C. 949, 1070 (1984), *available at http://www.ftc.gov/ftc-policy-statement-on-unfairness* [hereinafter *Unfairness Statement*].

[8] ABA Section of Antitrust Law, Consumer Protection Law Developments, 57–59 (2009); J. Howard Beales III, Director, Bureau of Consumer Protection, Fed. Trade Comm'n, The FTC's Use of Unfairness Authority: Its Rise, Fall, and Resurrection at 9 (May 2003), *available at http://www.ftc.gov/public-statements/2003/05/ftcs-use-unfairness-authority-its-rise-fall-and-resurrection* [hereinafter *Beales' Unfairness Speech*].

[9] *Unfairness Statement, supra* note 7, at 1073.

[10] *See, e.g.,* Complaint at 6, *FTC* v. *Jesta Digital, LLC,* Civ. No. 1:13-cv-01272 (D.D.C. Aug. 20, 2013) (alleging that ''Jesta charged consumers who did not click on the subscribe button and charged consumers for products they did not order.''); Complaint, *FTC* v. *Wise Media, LLC,* Civ. No. 1:13–CV–1234 (N.D. Ga. Apr. 16, 2013) (alleging that defendants charge consumers for purported services without consumers ever knowingly signing up for such services).

[11] Complaint at 15–16, *FTC* v. *JAB Ventures, LLC,* Civ No. CV08–04648 (RZx) (C.D. Cal. July 8, 2008) (alleging unauthorized billing when defendants charged consumers who had cancelled their enrollment or who had not been adequately informed about negative option features); *FTC* v. *Crescent Publ'g Group, Inc.,* 129 F. Supp. 2d 311 (S.D.N.Y. 2001) (pornography Web site failing to disclose the point at which a ''free tour'' ended and a monthly membership would begin).

[12] By distinguishing the facts of this case from other unfairness cases brought by the Commission alleging the failure to obtain express informed consent, I do not imply that intent is a required element of the analysis. However, I think drawing the distinction informs the discussion. Furthermore, I am unaware that the Commission has ever exercised its unfairness authority where it has alleged only that the defendant inadvertently charged consumers.

[13] *See* Chris Foresman, *Apple facing class-action lawsuit over kids' in-app purchases,* arstechnica, Apr. 15, 2011, *http://arstechnica.com/apple/2011/04/apple-facing-class-action-lawsuit-over-kids-in-app-purchases/* (''After entering a password to purchase an app from the App Store, the password now has to be reentered in order to make any initial in-app purchases.'').

[14] Nigel Hollis, *The Secret to Apple's Marketing Genius (Hint: It's Not Marketing),* The Atlantic, July 11, 2011, *http://www.theatlantic.com/business/archive/2011/07/the-secret-to-apples-marketing-genius-hint-its-not-marketing/241724/*(in discussing Apple's functionality, ''[u]sing an Apple product feels so natural, so intuitive, so transparent, that sometimes, even people paid to know what makes products great completely miss the cause of their addiction to Apple products. It's the natural, intuitive transparency of the technology. The superlative product experience comes from an unusual combination of human and technical understanding, and it creates the foundation of all the other positive aspects of the brand.''); Peter Eckert, *Dollars And Sense: The Business Case For Investing In UI Design,* Fast Company, Mar. 15, 2012, *http://www.fastcodesign.com/1669283/dollars-and-sense-the-business-case-for-investing-in-ui-design* (''As we have seen with Apple's success, creating products that offer as much simplicity as functionality drives market share and premium pricing.''). *See also* Neil Hughes, *Apple's research & development costs ballooned 32% in 2013 to $4.5B,* Apple Insider, Oct. 30, 2013, *http://appleinsider.com/articles/13/10/30/apples-research-development-costs-ballooned-32-in-2013-to-45b;* Cliff Kuang, *The Six Pillars of Steve Jobs' Design Philosophy,* Fast Company, Nov. 7, 2011, *http://www.fastcodesign.com/1665375/the-6-pillars-of-steve-jobss-design-philosophy.*

analysis than is necessary under a deception theory.[15] As a former Bureau Director has noted, ''the primary difference between full-blown unfairness analysis and deception analysis is that deception does not ask about offsetting benefits. Instead, it presumes that false or misleading statements either have no benefits, or that the injury they cause consumers can be avoided by the company at very low cost.'' [16] It is also well established that one of the primary benefits of performing a cost-benefit analysis is to ensure that government action does more good than harm.[17] The discussion below explains why I believe the Commission's action today fails to satisfy the elements of the unfairness framework and thereby conclude that placing Apple under a twenty-year order in a marketplace in which consumer preferences and technology are rapidly changing is very likely to do more harm to consumers than it is to protect them.

I. The Evidence Does Not Support a Finding of Substantial Injury as Required by the Unfairness Analysis

Apple's choice to include the fifteen-minute window in its platform design, and its decision on how to disclose this window, resulted in harm to a small fraction of consumers. Any consumer harm is limited to parents who incurred in-app charges that would have been avoided had Apple instead designed its platform to provide specific disclosures about the fifteen-minute window for apps with in-app purchasing capability that are likely to be used by children. That harm to some consumers results from a design choice for a platform used by millions of users with disparate preferences is not surprising. The failure to provide perfect information to consumers will always result in ''some'' injury to consumers. The relevant inquiry is whether the injury to the subset of consumers is ''substantial'' as contemplated by the Commission's unfairness analysis. Consumer injury may be established by demonstrating the allegedly unfair act or practice causes ''a very severe harm to a small number'' [18] of people or ''a small harm to a large number of people.'' [19] While it is possible to demonstrate substantial injury occurred as a result of an act or practice causing a small harm to a large number of consumers, substantiality is analyzed relative to the magnitude of any offsetting benefits.[20] This is particularly critical when the allegedly unfair practice is not a fraudulent activity such as unauthorized billing or cramming, where there are no offsetting benefits.

By reasonable measures of the potential harms and benefits available to the Commission, the injury is relatively small and not necessarily substantial in this case. The complaint alleges Apple has received ''at least tens of thousands of complaints related to unauthorized in-app charges by children'' [21] while playing games acquired on Apple's platform, which supports all music, books, and applications purchased for use with Apple mobile devices (e.g., iPhone, iPad, iPod, hereinafter ''iDevices''). Although ''tens of thousands'' sounds like a large number, the unfairness inquiry requires this number be evaluated in an appropriate context. Apple announced its 50 billionth app download in May 2013.[22] Even 200,000 complaints in 50 billion downloads would represent only four complaints in a million, which is quite a small fraction.

In addition, the complaint presents a few examples in which children made unauthorized in-app purchases that were relatively large, some greater than $500, and one bill as high as $2,600.[23] There is undoubtedly consumer harm in these instances, assuming the purchases are correctly attributed to the alleged failure to disclose, but again, in order to qualify as substantial, the harm ''must be large compared to any offsetting benefits.'' [24]

The relevant economic context required to understand substantiality of injury in this case includes the proportions of populations potentially harmed and benefitted by the failure to disclose product features in this case. A measure of harm that gives weight to both the number of consumers harmed and the size of the individual harms is the ratio of the value of unauthorized purchases to the total sales affected by the practice. We can construct such a measure as follows. The $32.5 million in consumer refunds required by the consent decree presumably relates in some way to the harm arising from Apple's disclosure practices. Recognizing that monetary amounts emerging from consent decrees are a product of compromise and an assessment of litigation risk, suppose that the value of unauthorized purchases is ten times higher than the negotiated settlement amount. This assumption gives a conservatively high estimate of $325 million in unauthorized purchases since the inception of the App Store. The total sales affected by Apple's disclosure practices likely include not only the sale of apps and in-app purchases, but also the sale of iDevices. This is likely because the benefits from using apps and making in-app purchases are components of the stream of benefits generated by iDevices, and a customer's decision to purchase an iDevice will depend upon the stream of benefits derived from the device. Indeed, the degree of integration across all components of Apple's platform is remarkably high, suggesting that Apple's disclosure practices may affect all Apple's sales. For completeness, Charts 1 and 2 below measure the estimated harm as a fraction of all three variants of Apple's sales—App Store sales, iDevice sales, and total sales. These data are available from Apple's Annual Reports and press releases.

Chart 1 shows that the estimated value of the harm is a miniscule fraction of both Apple total sales (about six one-hundredths of one percent) and iDevice sales (about eight one-hundredths of one percent) over the five-year period from the inception of the App Store to September 2013. This measure of harm, a conservatively high estimate, is also a relatively small fraction of App Store sales (about 4.6 percent).

[15] Int'l Harvester Co., 104 F.T.C. 949, 1070 (1984); *Beales' Unfairness Speech, supra* note 8, § III.

[16] *Beales' Unfairness Speech, supra* note 8, § III.

[17] Int'l Harvester, 104 F.T.C. at 1070.

[18] Int'l Harvester, 104 F.T.C. at 1064.

[19] *Unfairness Statement, supra* note 7, at n.12.

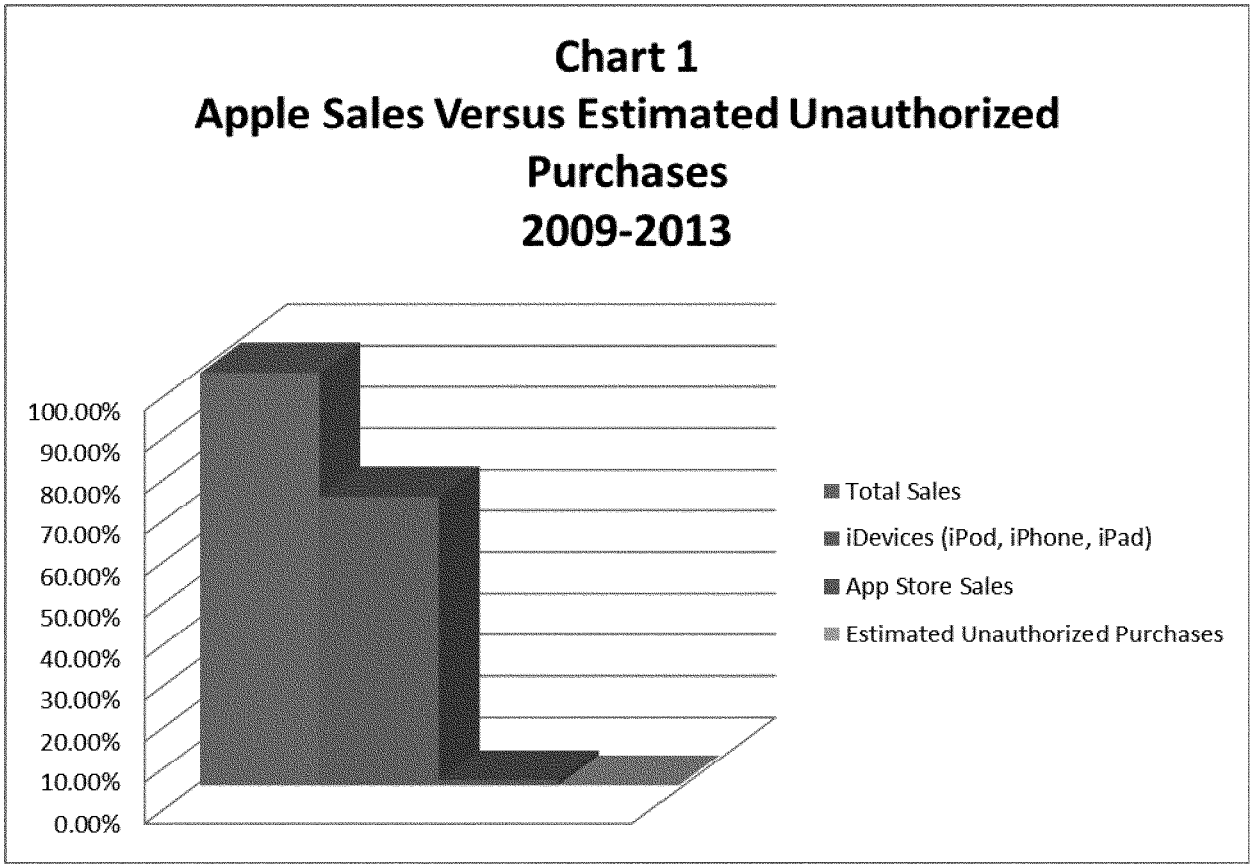
[20] *Beales' Unfairness Speech, supra* note 8, § III (''relative to the benefits, the injury may still be substantial'' and ''[t]o qualify as substantial, an injury must be real, and it must be large compared to any offsetting benefits.'').

[21] *Apple Complaint, supra* note 1, at para. 24.

[22] Press Release, Apple, Inc., Apple's App Store Marks Historic 50 Billionth Download (May 16, 2013), *available at http://www.apple.com/pr/library/2013/05/16Apples-App-Store-Marks-Historic-50-Billionth-Download.html.*

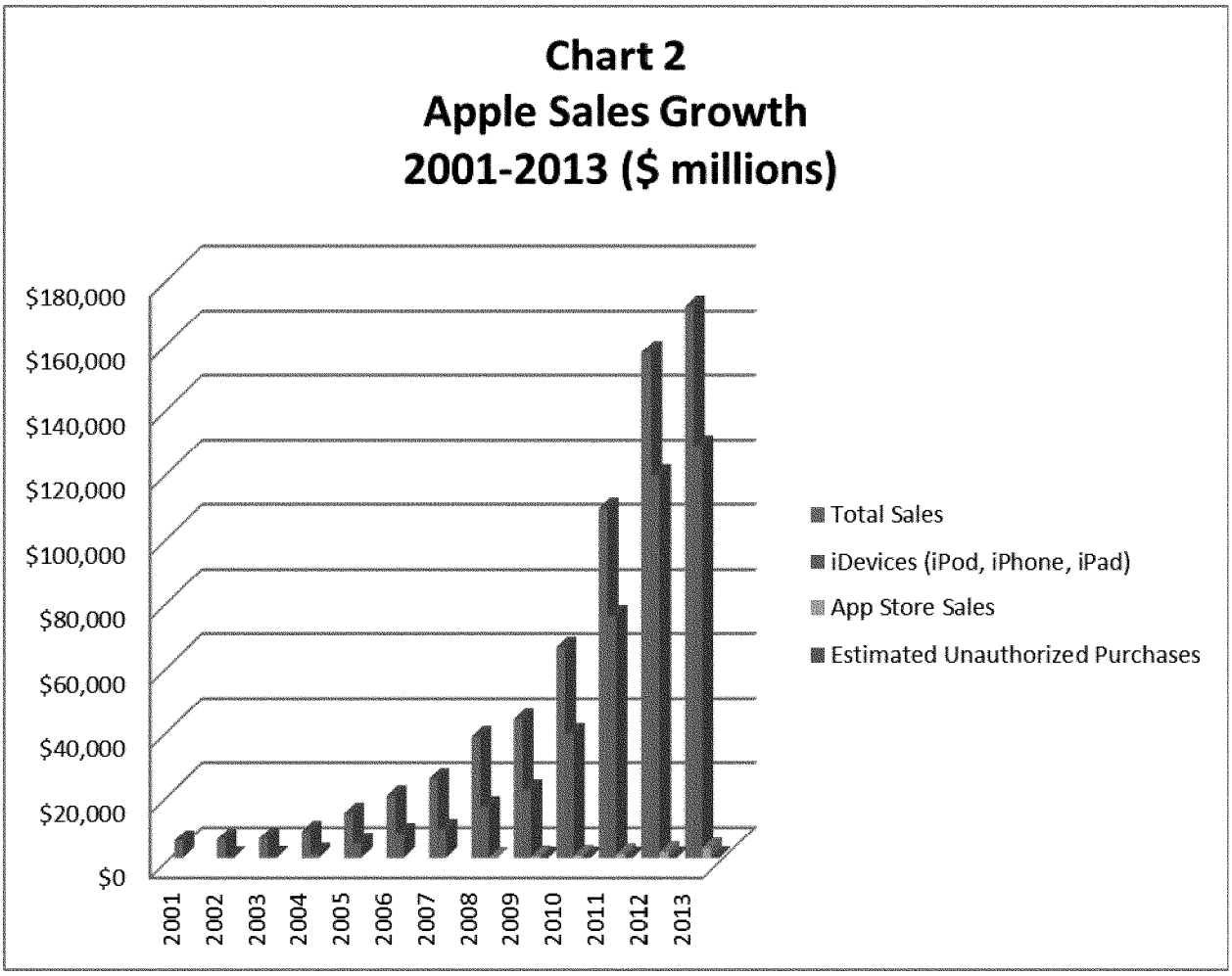
[23] *Apple Complaint, supra* note 1, at para. 25–26.

[24] *Beales' Unfairness Speech, supra* note 8, § III.



Sources: Apple, Inc., Annual Reports for 2009–2013 (Form 10–K); Marin Perez, *Apple App Store A $1.2 Billion Business In 2009,* InformationWeek, June 11, 2008, *available at http://www.informationweek.com/mobile/mobile-devices/apple-app-store-a-$12-billion-business-in-2009/d/d-id/1068794; Apple Complaint, supra* note 1 (for the $32.5 million settlement amount).

Chart 2 illustrates the same relationship with respect to Apple sales growth over the last 13 years.



Sources: Same as Chart 1, plus Apple, Inc., Annual Reports for 2002–2008 (Form 10–K). Calculations assume the App Store sales and estimated unauthorized purchases grew at a constant percentage growth rate from 2009 through 2013.

Taking into account the full economic context of Apple's choice of disclosures relating to the fifteen-minute window undermines the conclusion that any consumer injury is substantial.

II. At Least Some of the Injury Could Be Reasonably Avoided by Consumers

The Unfairness Statement provides that the ''injury must be one which consumers could not reasonably have avoided.'' [25] In explaining that requirement the Commission noted, ''[i]n some senses any injury can be avoided—for example, by hiring independent experts to test all products in advance, or by private legal actions for damages—but these courses may be too expensive to be practicable for individual consumers to pursue.'' [26] The complaint does not allege that the undisclosed fifteen-minute window is an unfair practice as to any consumer other than parents of children playing games likely to be played by children that have in-app purchasing capability.[27] In the instant case, it is very likely that most parents were able to reasonably avoid the potential for injury, and this avoidance required nothing as drastic as hiring an independent expert, but rather common sense and a modicum of diligence.

The harm to consumers contemplated in the complaint involves app functionality that changed over time. In the earliest timeframe, the harm occurred when a parent typed in their Apple password to download an app with in-app purchase capability, handed the Apple device to their child, and then unbeknownst to the parent, the child was able to make in-app purchases by pressing the ''buy'' button during the fifteen-minute window in which the password was cached. This was apparently an oversight on Apple's part. When it came to the company's attention, Apple implemented a password prompt for the first in-app purchase after download.[28]

During the later timeframe, after being handed the Apple device, a child again would press the ''buy'' button to make an in-app purchase. At this point, the child would have needed to turn the device back over to the parent for entry of the password. Alternatively, some children may have known their parent's password and entered it themselves. In either case, the fifteen-minute window was opened and additional in-app purchases could be made without further password prompts.

Under the first scenario, account holders received no password prompt for the first in-app purchase and thus

[25] *Unfairness Statement, supra* note 7, at 1074.

[26] *Unfairness Statement, supra* note 7, at n.19.

[27] Indeed, there are many financial, banking, and retail apps and Web sites that allow consumers to conduct a series of transactions after entering a password only once. These services usually only require re-entry of a password after a certain amount of time has elapsed, or the session expires because of inactivity on the user's part. It is doubtful that the Commission would bring an unfairness case because these services do not disclose this window.

[28] *See* Foresman, *supra* note 13.

the injury experienced by some consumers arguably may not have been reasonably avoidable. Because the opening of the fifteen-minute window *in this context* does not appear to be a product design feature, but rather an unintended oversight, I will focus my attention upon the harm experienced by consumers in the latter scenario and discuss their ability to reasonably avoid it.

Irrespective of the existence of the fifteen-minute window, a user can only make an in-app purchase by pressing a ''buy'' button while engaging with the app. In other words, the user must decide to make an in-app purchase. To execute the first in-app purchase, the user must enter a password. The fifteen-minute window eliminates the second step of verification—entering a password—only *after* the user has made the first in-app purchase by clicking the ''buy'' button and entering the password.

By entering their password into the Apple device—an action that is performed in response to a request for permission—parents were effectively put on notice that they were authorizing a transaction.[29] Although the complaint alleges that the fifteen-minute window was not expressly disclosed to parents, regular users of Apple's platform become familiar with the opportunity to make purchases without entering a password every time.[30] Even if some parents were not familiar with the fifteen-minute window, the requirement to re-enter their password to authorize a transaction arguably triggered some obligation for them to investigate further, rather than just to hand the device back to the child without further inquiry.[31]

III. Any Consumer Injury Caused by Apple's Platform Is Outweighed by Countervailing Benefits to Consumers and Competition

Assuming for the moment there is at least some harm that consumers cannot reasonably avoid, the question turns to whether the harms are substantial relative to any benefits to competition or consumers attributable to the conduct. In performing this balancing, the Commission must also take ''account of the various costs that a remedy would entail. These include not only the costs to the parties directly before the agency, but also the burdens on society in general in the form of increased paperwork, increased regulatory burdens on the flow of information, reduced incentives to innovation and capital formation, and similar matters.'' [32] I now turn to that question.

A. Apple's Platform as a Benefit to Consumers and Competition

Unfairness analysis requires an evaluation and comparison of the benefits and costs of Apple's decision not to increase or enhance its disclosure of how Apple's platform works, including the fifteen-minute window. The fifteen-minute window is a *feature* of Apple's platform that applies to purchases of songs, books, apps, and in-app purchases. This feature has long been a part of the iTunes Store for downloading music, and regular users of iTunes apparently value it. In the context here, disclosure is perhaps better thought of as a product attribute—*guidance*—that Apple provides to the customer through on-screen and other explanations of how to use Apple's platform.[33]

In deciding what guidance to provide and how to provide it, firms face two important issues. First, since it is generally not possible to customize guidance for every individual customer, the optimal guidance inevitably balances the needs of different customers. In drawing this balance, the potential for harm from misinterpretation is likely important in deciding which customer on the sophistication spectrum might represent the least common denominator for directing the guidance. For any given degree of guidance, some customers will get it immediately, while others will have to work harder. If the potential for harm is very large, e.g., harm from a drug overdose, then both the firm and consumers want obvious, strong disclosures about dosage, and perhaps other steps like childproof caps. If the potential for harm is small, then strong guidance (or caps that are hard to open in the drug context) may make it more costly for consumers to use the product. Platform designers clearly face such tradeoffs in their decision-making regarding guidance and disclosures. Apple clearly faces the same tradeoff with respect to its decisions concerning the fifteen-minute window. This tradeoff is relevant for evaluating the benefit-cost test at the core of unfairness analysis.

Second, because it is difficult to anticipate the full set of issues that might benefit from guidance of various types, the firm must decide how much time to spend researching, discovering, and potentially fixing possible issues *ex ante* versus finding and fixing issues as they arise. With complex technology products such as computing platforms, firms generally find and address numerous problems as experience is gained with the product. Virtually all software evolves this way, for example. This tradeoff—between time spent perfecting a platform up front versus solving problems as they arise—is also relevant for evaluating unfairness.

Apple presumably weighs the costs and benefits to Apple of different ways to provide guidance. In doing so, Apple must consider: (i) The benefit to Apple of greater sales of mobile devices, music, books, apps, and in-app components to customers who benefit from the additional guidance and make more purchases; (ii) the cost to Apple of fewer sales of mobile devices, music, books, apps, and in-app components by customers who find that more real-time guidance hampers their experience; and (iii) the cost to Apple of developing and implementing more guidance. In weighing (i) and (ii), Apple is particularly concerned about the effects on the sales of mobile devices that use Apple's platform, as they constitute the bulk of Apple's business, as indicated in Charts 1 and 2.[34]

[29] Furthermore, Apple sends an email receipt to the iTunes account holder after a purchase has been made in the either the iTunes or App Store. *See e.g., http://www.apple.com/privacy/.*

[30] To the extent that users read the Apple Terms and Conditions when they opened their iTunes accounts, consumer injury would also have been avoided. The Terms and Conditions explain the fifteen-minute window and other aspects of how Apple's platform works, including the App Store. It appears that Apple has included these explanations since at least June 2011. *See http://www.apple.com/legal/internet-services/itunes/us/terms.html#SALE* (Apple's current Terms and Conditions) and *http://www.proandcontracts.com/wp-content/uploads/2011/06/2011.06.09-iTunes-Terms-and-Conditions-June-2011-Update-with-Highlighting.pdf* (cached copy of what appears to be its Terms and Conditions as of June 2011).

[31] The Terms and Conditions also explain how to use the parental control settings to control how the App Store works. *See http://support.apple.com/kb/HT1904* and *http://support.apple.com/kb/HT4213.* These parental control settings allow users to disable in-app purchasing capability as well as establish settings that require a password each time a purchase is made, thereby eliminating the fifteen-minute window.

[32] *Unfairness Statement, supra* note 7, at 1073–74.

[33] Compare the disclosure contemplated here with disclosure in the mortgage context, for example. Here, the disclosure itself—or the guidance offered while the user is interacting with the product—is an intrinsic part of the product's value. Indeed, Apple's business model is built on offering an integrated platform with a clean design that customers find intuitive and easy to use. The way the platform is presented, including disclosures or guidance offered during use, is a critically important component of value. In the mortgage context, the disclosures signed at closing are not a significant component of the value of the mortgage.

[34] In 2012, sales of the iPhone, iPad, and iPod accounted for over 76 percent of Apple's $157 billion in sales. *See* Apple, Inc., Annual Report (Form 10–K), at 73 (Oct. 31, 2012), *available at http://files.shareholder.com/downloads/AAPL/*

Continued

The relevant universe for assessing unfairness of Apple's guidance provision, including disclosures relating to the fifteen-minute window, is the set of users to whom the guidance is directed. This includes all users of Apple's platform who might make online purchases through the platform.

The ratio of estimated unauthorized purchases in this case to all purchases made by users of Apple's platform is miniscule, as Charts 1 and 2 illustrate. This fact, by itself, does not establish that the benefits of Apple's decision to forgo additional guidance of the type required by the consent order outweigh its costs. However, the remarkably low ratio does provide perspective on the following question: How much would the average non-cancelling customer need to be harmed by a requirement of additional guidance in order to outweigh the benefit of preventing harm to other consumers? Suppose the fraction of customers that would benefit from additional guidance is approximated by the ratio of estimated unauthorized purchases to total sales of iDevices. The analysis in Charts 1 and 2 indicates that estimated unauthorized purchases have been about 0.08 percent of iDevice-related sales since the App Store was launched. Suppose that customers that make unauthorized purchases cancel them and seek a refund. Suppose also that the time cost involved in seeking a refund return is $11.95.[35] Then, if the average harm to non-cancelling customers from additional guidance sufficient to prevent cancellations is more than about a penny per transaction, the additional guidance will be counter-productive.[36]×

To be clear, the sales of iDevices are not an estimate of consumer benefits but rather they approximate the total universe of economic activity implicated by the Commission's consent order. Similarly, estimated unauthorized purchases merely approximate the total universe of consumers potentially harmed by Apple's practices. The harm from Apple's disclosure policy is limited to users that actually make unauthorized purchases. However, the potential benefits from Apple's disclosure choices are available to the entire set of iDevice users because these are the consumers capable of purchasing apps and making in-app purchases. The disparity in the relative magnitudes of these universes of potential harms and benefits suggests, at a minimum, that further analysis is required before the Commission can conclude that it has satisfied its burden of demonstrating that any consumer injury arising from Apple's allegedly unfair acts or practices exceeds the countervailing benefits to consumers and competition.[37]

Nonetheless, the Commission effectively rejects an analysis of tradeoffs between the benefits of additional guidance and potential harm to some consumers or to competition from mandating guidance by assuming that ''the burden, if any, to users who have never had unauthorized charges for in-app purchases, or to Apple, from the provision of this additional information is *de minimis''* and that any mandated disclosure would not ''detract in any material way from a streamlined and seamless user experience.'' I respectfully disagree. These assumptions adopt too cramped a view of consumer benefits under the Unfairness Statement and, without more rigorous analysis to justify their application, are insufficient to establish the Commission's burden.

B. The Costs and Benefits to Consumers and Competition of Apple's Product Design and Disclosure Choices

To justify a finding of unfairness, the Commission must demonstrate the allegedly unlawful conduct results in net consumer injury. This requirement, in turn, logically implies the Commission must demonstrate Apple's chosen levels of guidance are less than optimal because consumers would benefit from additional disclosure. There is a considerable economic literature on this subject that sheds light upon the conditions under which one might reasonably expect private disclosure levels to result in net consumer harm.[38]

To support the complaint and consent order the Commission issues today requires evidence sufficient to support a reason to believe that Apple will undersupply guidance about its platform relative to the socially optimal level. Economic theory teaches that such a showing would require evidence that ''marginal'' customers—the marginal consumer is the customer that is just indifferent between making the purchase or not at the current price—would benefit *less* from the consent order than the ''inframarginal'' customers who are willing to pay significantly more for the product than the current price and therefore would purchase the product irrespective of a small adjustment in an attribute. Nobel Laureate Michael Spence points out in his seminal work on the subject that this analysis generally requires information on the valuations of inframarginal consumers.[39] Here, marginal consumers are those who would not have made in-app purchases if Apple would have disclosed the fifteen-minute window. Inframarginal consumers are those Apple customers who would not change their purchasing behavior in response to a change in Apple's disclosures.

Staff has not conducted a survey or any other analysis that might ascertain the effects of the consent order upon consumers. The Commission should not support a case that alleges that Apple has underprovided disclosure without establishing this through rigorous analysis demonstrating—whether qualitatively or quantitatively—that the costs to consumers from Apple's disclosure decisions have outweighed benefits to consumers and the competitive process. The absence of this sort of rigorous analysis is made more troublesome in the context of a platform with countless product attributes and where significant consumer benefits are intuitively obvious and borne out by data available to the Commission. We cannot say with certainty whether the average consumer would benefit more or less than the marginal consumer from additional disclosure without empirical evidence. This evidence might come

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[35] The $11.95 figure represents the seasonally adjust average earnings per half hour across all employees on private nonfarm payrolls, as reported by the Bureau of Labor and Statistics in May 2013. See *http://www.bls.gov/news.release/empsit.t19.htm* for the most recent report. The assumption is that customers that asked for returns were reimbursed for the charges as Apple attests, and that obtaining a reimbursement takes half an hour.

[36] Let Y be the harm to non-cancelling customers from additional guidance sufficient to prevent cancellations. This harm will just equal the benefit of avoiding cancellations if (% Cancelling) × (Refund Time Cost) − (% Not Cancelling) × Y = 0. Assuming (% Cancelling) is .0008, (Refund Time Cost) is $11.95, and (% Not Cancelling) is .9992, solving for Y gives Y = $.009. In other words, if the harm to non-cancelling customers from additional guidance is more than roughly one cent for each transaction, then then the costs of the additional guidance will outweigh the benefits.

[37] Commissioner Ohlhausen suggests that our unfairness analysis compares inappropriately the injury caused by Apple's lack of clear disclosure with the benefits of Apple's disclosure policy to the entire ecosystem. She argues that this approach ''skew[s] the balancing test for unfairness and improperly compare[s] injury 'oranges' from an individual practice with overall 'Apple' ecosystem benefits.'' Statement of Commissioner Ohlhausen at 3. For the reasons discussed, this analysis misses the point.

[38] Disclosure in this context is analogous to a quality decision that may affect different customers differently. A. Michael Spence, *Monopoly, Quality and Regulation,* 6 Bell J. of Econ. 417–29 (1975); Eytan Sheshinski, *Price, Quality and Quantity Regulation in Monopoly Situations,* 43 Economica 127–37 (1976). The analysis of this issue is also explained in Jean Tirole, The Theory of Industrial Organization § 2.2.1 (MIT Press 1988).

[39] Spence, *supra* note 38.

from a study of how customers react to different disclosures. However, given the likelihood that the average benefit of more disclosure to unaffected customers is less than the benefit to affected customers who are likely to be customers closer to the margin, I am inclined to believe that Apple has more than enough incentive to disclose.[40]

C. Other Considerations When Examining the Costs and Benefits of Platforms and Other Multi-Attribute Products

Unfairness analysis also requires the Commission to consider the impact of contemplated remedies or changes in the incentives to innovate new product features upon consumers and competition.[41] I close by discussing some additional dimensions of an economic analysis of the costs and benefits of product disclosures in the context of complicated products and platforms with many attributes, like Apple's platform, where such disclosures are a critical component of the user experience and have considerable impact upon the value consumers derive from the product.

For complicated products—for example, a web-based platform for purchasing and interacting with potentially millions of items using a mobile device—there are many things that can negatively impact user experience. The number of potential issues for products that involve hardware, software, and a human interface is large. This is the nature of technology. When designing a complex product, it is prohibitively costly to try to anticipate *all* the things that might go wrong. Indeed, it is very likely impossible. Even when potential problems are found, it is sometimes hard to come up with solutions that one can be confident will fix the problem. Sometimes proposed solutions make it worse. In deciding how to allocate its scarce resources, the creator of a complex product weighs the tradeoffs between (i) researching and testing to identify and determine whether to fix potential problems in advance, versus (ii) waiting to see what problems arise after the product hits the marketplace and issuing desirable fixes on an ongoing basis. We observe the latter strategy in action for virtually all software.

The relevant analysis of benefits and costs for allegedly unfair omissions requires weighing of the benefits and costs of discovering and fixing the issue that arose *in advance* versus the benefits and costs of finding the problem and fixing it *ex post.* These considerations fit comfortably within the unfairness framework laid out by the Commission.[42] The Commission also takes account of the various costs that a remedy would entail. These include not only the costs to the parties directly before the agency, but also the burdens on society in general in the form of increased regulatory burdens on the flow of information, reduced incentives to innovate and invest capital, and other social costs.[43]

Here, Apple did not anticipate the problems customers would have with children making in-app purchases that parents did not expect. When the problem arose in late 2010, press reports indicate that Apple developed a strategy for addressing the problem in a way that it believed made sense, and it also refunded customers that reported unintended purchases.[44] This is precisely the efficient strategy described above when complex products like Apple's platform develop problems that are difficult to anticipate and fix in advance. Establishing that it is ''unfair'' unless a firm anticipates and fixes such problems in advance—precisely what the Commission's complaint and consent order establishes today—is likely to impose significant costs in the context of complicated products with countless product attributes. These costs will be passed on to consumers and threaten consumer harm that is likely to dwarf the magnitude of consumer injury contemplated by the complaint.

This investigation began largely because of complaints that arose when in-app purchases were first introduced into the marketplace and Apple had not had enough experience with the platform to recognize how parents and children would use the App Store. In late 2010, complaints began to emerge. In March 2011, Apple first altered its platform to address complaints about unauthorized in-app purchases. It is not unreasonable to surmise that as Apple has modified its policies based on experience, and customers have learned more about how to use the platform, unauthorized in-app purchases by children have most likely steadily declined.

The Commission has no foundation upon which to base a reasonable belief that consumers would be made better off if Apple modified its disclosures to confirm to the parameters of the consent order. Given the absence of such evidence, enforcement action here is neither warranted nor in consumers' best interest.

[FR Doc. 2014–01197 Filed 1–22–14; 8:45 am]

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[40] This argument does not, as Chairwoman Ramirez and Commissioner Brill suggest, ''*presuppose* that a sufficient number of Apple customers will respond to the lack of adequate information by leaving Apple for other companies.'' Statement of Chairwoman Ramirez and Commissioner Brill at 5–6. Nor does the economic logic require any belief about the magnitude of switching costs. Rather, the analysis relies only upon the standard economic assumption that Apple chooses disclosure to maximize shareholder value, weighing how customers react to different disclosure policies. If Apple behaves this way, the average benefit of more disclosure to unaffected customers is less than the benefit to affected customers, and affected customers are more likely to be on the margin than unaffected customers, then economic theory implies that Apple is likely to have more than enough incentive to disclose.

[41] *Unfairness Statement, supra* note 7, at 1073–74.

[42] The Commission must take ''account of the various costs that a remedy would entail'' including ''reduced incentives to innovation and capital formation, and similar matters.'' *Unfairness Statement, supra* note 7, at 1073–74.

[43] *Unfairness Statement, supra* note 7, at 1073–74.

[44] *See* Foresman, *supra* note 13.

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of Section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by Section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $29,945,000 for Section 8(a)(1), and $2,994,500 for Section 8(a)(2)(A).

DATES: Effective January 23, 2014.

FOR FURTHER INFORMATION CONTACT: James F. Mongoven, Bureau of Competition, Office of Policy and Coordination, (202) 326–2879.

Authority: 15 U.S.C. 19(a)(5).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–01284 Filed 1–22–14; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 7A of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 required by the 2000 amendment of Section 7A of the Clayton Act.

DATES: Effective February 24, 2014.

FOR FURTHER INFORMATION CONTACT: Kathryn E. Walsh, Federal Trade Commission, Bureau of Competition, Premerger Notification Office, 600 Pennsylvania Avenue NW., Room 301, Washington, DC 20580, Phone (202) 326–3100.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94–435, 90 Stat. 1390 (''the Act''), requires all persons contemplating certain mergers or acquisitions, which meet or exceed the jurisdictional thresholds in the Act, to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Section 7A(a)(2) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product, in accordance with Section 8(a)(5). Note that while the filing fee thresholds are revised annually, the actual filing fees are not similarly indexed and, as a result, have not been adjusted for inflation in over a decade. The new thresholds, which take effect on February 24, 2014, are as follows:

Subsection of 7A	Original threshold ($ million)	Adjusted threshold ($ million)
7A(a)(2)(A)	200	303.4
7A(a)(2)(B)(i)	50	75.9
7A(a)(2)(B)(i)	200	303.4
7A(a)(2)(B)(ii)(i)	10	15.2
7A(a)(2)(B)(ii)(i)	100	151.7
7A(a)(2)(B)(ii)(II)	10	15.2
7A(a)(2)(B)(ii)(II)	100	151.7
7A(a)(2)(B)(ii)(III)	100	151.7
7A(a)(2)(B)(ii)(III)	10	15.2
Section 7A note: Assessment and Collection of Filing Fees[1](3)(b)(1)	100	151.7
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2)	100	151.7
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2)	500	758.6
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(3)	500	758.6

Any [1] reference to these thresholds and related thresholds and limitation values in the HSR rules (16 CFR parts 801–803) and the Antitrust Improvements Act Notification and Report Form and its Instructions will also be adjusted, where indicated by the term ''(as adjusted)'', as follows:

Original threshold	Adjusted threshold ($ million)
$10 million	15.2
$50 million	75.9
$100 million	151.7
$110 million	166.9
$200 million	303.4
$500 million	758.6
$1 billion	1,517.1

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–01285 Filed 1–22–14; 8:45 am]

BILLING CODE 6750–01–P

[1] Public Law 106–553, Sec. 630(b) amended Sec. 18a note.

GOVERNMENT ACCOUNTABILITY OFFICE

Exposure Draft—Standards for Internal Control in the Federal Government

AGENCY: U.S. Government Accountability Office.

ACTION: Notice of Comment Period Extension.

SUMMARY: The U.S. Government Accountability Office (GAO) is extending the comment period for the proposed revisions to the Standards for Internal Control in the Federal Government, known as the ''Green Book,'' to February 18, 2014. We are requesting public comments on the proposed revisions in the exposure draft. The proposed changes contained in the 2013 Exposure Draft update to the Standards for Internal Control in the Federal Government reflect major developments in the accountability and financial management profession and emphasize specific considerations applicable to the government environment.

The draft of the proposed changes to Standards for Internal Control in the Federal Government, 2013 Exposure Draft, is available and can be downloaded from GAO's Web page at *www.gao.gov.* All comments will be considered a matter of public record and will ultimately be posted on the GAO Web page.

DATES: The exposure period will be from September 2, 2013 to February 18, 2014.

ADDRESSES: Comment letters should be emailed to *GreenBook@gao.gov.* Please include Comment Letter in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: For information on the Standards for Internal Control in the Federal Government please contact Kristen Kociolek, Assistant Director, Financial Management and Assurance telephone 202–512–2989, 441 G Street NW., Washington, DC 20548–0001.

Authority: 31 U.S.C. 3512 (c), (d).

James Dalkin,

Director, Financial Management and Assurance, U.S. Government Accountability Office.

[FR Doc. 2014–01341 Filed 1–22–14; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting for Software Developers on the Common Formats for Patient Safety Data Collection and Event Reporting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) provides for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety Act (at 42 U.S.C. 299b–23) authorizes the collection of this information in a standardized manner, as explained in the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008: 73 FR 70731–70814. AHRQ coordinates the development of common definitions and reporting formats (Common Formats) that allow health care providers to voluntarily collect and submit standardized information regarding patient safety events. In order to support the Common Formats, AHRQ has provided technical specifications to promote standardization by ensuring that data collected by PSOs and other entities are clinically and electronically comparable. More information on the Common Formats, including the technical specifications, can be obtained through AHRQ's PSO Web site: *http://www.PSO.AHRQ.GOV/index.html.*

The purpose of this notice is to announce a meeting to discuss the Common Formats. This meeting is designed as an interactive forum where PSOs and software developers can provide input on the formats. AHRQ especially requests participation by and input from those entities which have used AHRQ's technical specifications and implemented, or plan to implement, the formats electronically.

DATES: The meeting will be held from 10:00 a.m. to 3:30 p.m. on Friday, April 25, 2014.

ADDRESSES: The meeting will be held at the John M. Eisenberg Conference Center, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Glenn Egelman, M.D., Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *PSO@AHRQ.HHS.GOV.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act and Patient Safety Rule establish a framework by which doctors, hospitals, skilled nursing facilities, and other health care providers may voluntarily report information regarding patient safety events and quality of care. Information that is assembled and developed by providers for reporting to PSOs and the information received and analyzed by PSOs—called patient safety work product—is privileged and confidential. Patient safety work product is used to identify events, patterns of care, and unsafe conditions that increase risks and hazards to patients. Definitions and other details about PSOs and patient safety work product are included in the Patient Safety Rule.

The Patient Safety Act and Patient Safety Rule require PSOs, to the extent practicable and appropriate, to collect patient safety work product from providers in a standardized manner in order to permit valid comparisons of similar cases among similar providers. The collection of patient safety work product allows the aggregation of sufficient data to identify and address underlying causal factors of patient safety problems. Both the Patient Safety Act and Patient Safety Rule, including any relevant guidance, can be accessed electronically at: *http://www.PSO.AHRQ.GOV/REGULATIONS/REGULATIONS.htm*

In collaboration with the interagency Federal Patient Safety Workgroup (PSWG), the National Quality Forum (NQF) and the public, AHRQ has developed Common Formats for two settings of care — acute care hospitals and skilled nursing facilities — in order to facilitate standardized data collection. The term Common Formats refers to the common definitions and reporting formats that allow health care providers to collect and submit standardized information regarding patient safety events. AHRQ's Common Formats include:

- Event descriptions (descriptions of patient safety events and unsafe conditions to be reported),
- Specifications for patient safety aggregate reports and individual event summaries,
- Delineation of data elements to be collected for different types of events to populate the reports,
- A user's guide and quick guide, and
- Technical specifications for electronic data collection and reporting.

AHRQ convenes the PSWG to assist AHRQ with developing and maintaining the Common Formats. The PSWG includes major health agencies within the Department of Health and Human Services (HHS)—the Centers for Disease Control and Prevention, Centers for Medicare and Medicaid Services, Food and Drug Administration, Health Resources and Services Administration, Indian Health Service, National Institutes of Health, National Library of Medicine, Office of the National Coordinator for Health Information Technology, Office of Public Health and Science, and Substance Abuse and Mental Health Services Administration—as well as the Department of Defense and Department of Veterans Affairs.

When developing Common Formats, AHRQ first reviews existing patient safety event reporting systems from a variety of health care organizations. In collaboration with the PSWG and Federal subject matter experts, AHRQ drafts and releases beta versions of the Common Formats for public review and comment.

Through a contract with AHRQ, NQF solicits feedback on the beta (and subsequent) versions of the Common Formats from private sector organizations and individuals. The NQF, a nonprofit organization that focuses on health care quality, then convenes an expert panel to review the comments received and provide feedback to AHRQ. Based upon the expert panel's feedback, AHRQ, in conjunction with the PSWG, further revises the Common Formats.

The technical specifications promote standardization of collected patient safety event information by specifying rules for data collection and submission, as well as by providing guidance for how and when to create data elements, their valid values, conditional and go-to logic, and reports. These specifications will ensure that data collected by PSOs and other entities have comparable clinical meaning.

The technical specifications also provide direction to software developers, so that the Common Formats can be implemented electronically, and to PSOs, so that the Common Formats can be submitted electronically to the PSO Privacy Protection Center (PSOPPC) for data de-identification and transmission to the

Network of Patient Safety Databases (NPSD).

The Software Developer's meeting will focus on discussion of the implementation and use of Common Formats for Event Reporting—Hospital 1.1 and 1.2; the technical specifications, which provide direction to software developers that plan to implement the Common Formats electronically; and future development plans for the Common Formats. The technical specifications are a critical component that allow for the aggregation of patient safety event data.

The technical specifications consist of the following:

○ data dictionary—defines data elements and their attributes (data element name, answer values, field length, guide for use, etc.) included in Common Formats;

○ clinical document architecture (CDA) implementation guide—provides instructions for developing a file to transmit the Common Formats Patient Safety data from the PSO to the PSO PPC using the Common Formats;

○ validation rules and errors document—specifies and defines the validation rules that will be applied to the Common Formats data elements submitted to the PSO PPC;

○ Common Formats flow charts—diagrams the valid paths to complete generic and event specific formats (a complete event report);

○ local specifications—provides specifications for processing, linking and reporting on events and details specifications for reports; and

○ metadata registry—includes descriptive facts about information contained in the data dictionary to illustrate how such data corresponds with similar data elements used by other Federal agencies and standards development organizations [e.g., HL—7, International Standards Organization (ISO)].

Agenda, Registration and Other Information About the Meeting

The 2014 meeting will be an interactive forum designed to allow meeting participants not only to provide input, but also to respond to the input provided by others. The meeting agenda will include: an overview of Federal efforts related to the Common Formats; presentations and discussion of implementations of Common Formats Event Reporting—Hospital Version 1.1 and 1.2; discussion of next steps for upcoming Common Formats releases; and a review of data submission both by PSOs and by vendors on behalf of PSOs.

AHRQ requests that interested persons send an email to the PSO PPC at *support@psoppc.ORG* for registration information. The meeting space will accommodate approximately 150 participants. A detailed agenda and logistical information will be provided to meeting registrants before the meeting. Prior to the meeting, AHRQ invites review of the technical specifications for Common Formats which can be accessed through AHRQ's PSO Web site at *http://www.pso.AHRQ.GOV/formats/commonfmt.htm.*

Dated: January 14, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–01242 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the Presidential Commission for the Study of Bioethical Issues

AGENCY: Presidential Commission for the Study of Bioethical Issues, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The Presidential Commission for the Study of Bioethical Issues (the Commission) will conduct its sixteenth meeting on February 10–11, 2014. At this meeting, the Commission will discuss the BRAIN Initiative and ongoing work in neuroscience.

DATES: The meeting will take place Monday, February 10, 2014, from 9 a.m. to approximately 5 p.m. and Tuesday, February 11, 2014, from 9 a.m. to approximately 5 p.m.

ADDRESSES: Washington Marriott, 1221 22nd St. NW., Washington, DC 20037. Telephone (202) 872–1500.

FOR FURTHER INFORMATION CONTACT: Hillary Wicai Viers, Communications Director, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. Telephone: 202–233–3960. Email: *Hillary.Viers@bioethics.gov.* Additional information may be obtained at *www.bioethics.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of 1972, Public Law 92–463, 5 U.S.C. app. 2, notice is hereby given of the sixteenth meeting of the Commission. The meeting will be open to the public with attendance limited to space available. The meeting will also be webcast at *www.bioethics.gov.*

Under authority of Executive Order 13521, dated November 24, 2009, the President established the Commission. The Commission is an expert panel of not more than 13 members who are drawn from the fields of bioethics, science, medicine, technology, engineering, law, philosophy, theology, or other areas of the humanities or social sciences. The Commission advises the President on bioethical issues arising from advances in biomedicine and related areas of science and technology. The Commission seeks to identify and promote policies and practices that ensure scientific research, health care delivery, and technological innovation are conducted in a socially and ethically responsible manner.

The main agenda item for the Commission's sixteenth meeting is to discuss the BRAIN Initiative and ongoing work in neuroscience.

The draft meeting agenda and other information about the Commission, including information about access to the webcast, will be available at *www.bioethics.gov.*

The Commission welcomes input from anyone wishing to provide public comment on any issue before it. Respectful debate of opposing views and active participation by citizens in public exchange of ideas enhances overall public understanding of the issues at hand and conclusions reached by the Commission. The Commission is particularly interested in receiving comments and questions during the meeting that are responsive to specific sessions. Written comments will be accepted at the registration desk and comment forms will be provided to members of the public in order to write down questions and comments for the Commission as they arise. To accommodate as many individuals as possible, the time for each question or comment may be limited. If the number of individuals wishing to pose a question or make a comment is greater than can reasonably be accommodated during the scheduled meeting, the Commission may make a random selection.

Written comments will also be accepted in advance of the meeting and are especially welcome. Please address written comments by email to *info@bioethics.gov,* or by mail to the following address: Public Commentary, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. Comments will be made publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Anyone planning to attend the meeting who needs special assistance,

such as sign language interpretation or other reasonable accommodations, should notify Esther Yoo by telephone at (202) 233–3960, or email at *Esther.Yoo@bioethics.gov* in advance of the meeting. The Commission will make every effort to accommodate persons who need special assistance.

Dated: January 9, 2014.

Lisa M. Lee,

Executive Director, Presidential Commission for the Study of Bioethical Issues.

[FR Doc. 2014–01344 Filed 1–22–14; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Diagnostic Tests of Right Lower Quadrant Pain (Suspected Acute Appendicitis)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Scientific Information Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public on medical devices used for the diagnosis of right lower quadrant pain (suspected acute appendicitis), for example: Magnetic resonance imaging (MRI), computed tomography (CT), ultrasound (US), laparoscopic equipment, or assays. Scientific information is being solicited to inform our review of *Diagnosis of Right Lower Quadrant Pain (Suspected Acute Appendicitis),* which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information on medical devices used for the diagnosis of suspected acute appendicitis will improve the quality of this review. AHRQ is conducting this comparative effectiveness review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, and Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

DATES: *Submission Deadline* on or before February 24, 2014.

ADDRESSES: *Online submissions: http://effectivehealthcare.AHRQ.gov/index.cfm/submit-scientific-information-packets.* Please select the study for which you are submitting information from the list to upload your documents.

Email submissions: SIPS@epc-src.org.

Print submissions:

Mailing Address: Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, PO Box 69539, Portland, OR 97239.

Shipping Address (FedEx, UPS, etc.): Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, 3710 SW U.S. Veterans Hospital Road, Mail Code: R&D 71, Portland, OR 97239.

FOR FURTHER INFORMATION CONTACT: Robin Paynter, Research Librarian, Telephone: 503–220–8262 ext. 58652 or Email: *SIPS@epc-src.org.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a review of the evidence for *Diagnosis of Right Lower Quadrant Pain (Suspected Acute Appendicitis).*

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (e.g., details of studies conducted). We are looking for studies that report on the *Diagnosis of Right Lower Quadrant Pain (Suspected Acute Appendicitis),* including those that describe adverse events. The entire research protocol, including the key questions, is also available online at: *http://effectivehealthcare.AHRQ.gov/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productID=1827.*

This notice is to notify the public that the EHC program would find the following information on devices for the *Diagnosis of Right Lower Quadrant Pain (Suspected Acute Appendicitis)* helpful:

▪ A list of completed studies your company has sponsored for this indication. In the list, *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*

▪ *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.

▪ *A list of ongoing studies your company has sponsored for this indication.* In the list, please provide the ClinicalTrials.gov trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.

▪ Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your company for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. The contents of all submissions will be made available to the public upon request. Materials submitted must be publicly available or can be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the Effective Health Care Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions. The entire research protocol, is also available online at: *http://effective healthcare.AHRQ.gov/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productID=1827.*

Key Questions (KQ)

KQ 1

What is the performance of alternative diagnostic tests, alone or in combination, for patients with right lower quadrant (RLQ) pain and suspected acute appendicitis?

I. What is the performance and comparative performance of alternative diagnostic tests in the following patient populations:

A. Children

B. Adults

C. Non pregnant women of reproductive age

D. Pregnant women
E. The elderly (age greater than or equal to 65 years)
II. What factors modify the test performance and comparative test performance of available diagnostic tests in these populations?

KQ 2

What is the comparative effectiveness of alternative diagnostic tests, alone or in combination, for patients with RLQ pain and suspected acute appendicitis?
I. For the populations listed under Key Question 1a, what is the effect of alternative testing strategies on diagnostic thinking, therapeutic decision making, clinical outcomes, and resource utilization?
II. What factors modify the comparative effectiveness of testing for patients with RLQ pain and suspected acute appendicitis?

KQ 3

What are the harms of diagnostic tests per se, and what are the treatment-related harms of test-directed treatment for tests used to diagnose RLQ pain and suspected acute appendicitis?

PICOTS (Population, Interventions, Comparators, Outcomes, Timing, Setting)

Population(s)

I. Patients with acute RLQ abdominal pain (less than or equal to 7 days duration) for whom appendicitis is considered in the differential diagnosis
II. Separate analyses will be performed for the following populations:
A. Children (age less than 18 years); additional analyses will be performed for younger children (less than 2 years and 2–5 years of age)
B. Adults (age greater than or equal to 18 years)
C. Non pregnant women of reproductive age
D. Pregnant women
E. Elderly (age greater than or equal to 65 years)

Interventions

I. Diagnostic tests (alone or in combination) for diagnosing appendicitis
A. Clinical signs (e.g., psoas sign, obturator sign, Rovsing sign, McBurney sign)
B. Clinical symptoms (e.g., fever, migrating pain, guarding)
C. Laboratory tests (e.g., white blood cell count, C-reactive protein concentration, left shift)
D. Clinical prediction or decision rules (e.g., Alvarado score, Pediatric Appendicitis Score, other predictive models)
E. Imaging tests (e.g., US; multidetector or helical CT with or without contrast administered orally, rectally, or intravenously; MRI with or without contrast; abdominal X-ray)
F. Nuclear imaging studies
G. Diagnostic laparoscopy

Comparators

Alternative tests or test combinations (as listed above), clinical observation

Outcomes

I. Test performance (e.g., sensitivity, specificity, accuracy, proportion of ''negative'' appendectomies) using pathology or clinical followup as the reference standard
II. Intermediate outcomes
A. Impact on diagnostic thinking (e.g., change in diagnosis after testing; change in subsequent diagnostic approach after obtaining initial test results)
B. Impact on therapeutic decision making (e.g., change in treatment plan after testing; time from admission to surgery)
III. Final health or patient-centered outcomes
A. Bowel perforation (ruptured appendix)
B. Fistula formation
C. Infectious complications (abscess formation, peritonitis, sepsis, stump appendicitis)
D. Delay in diagnosis (time from presentation to definitive diagnosis; time from presentation to initiation of treatment; time from presentation to resolution of pain)
E. Length of hospital stay
F. Fetal/maternal outcomes (for pregnant women; including premature labor, pregnancy loss, fetal morbidity, fetal mortality, maternal morbidity, maternal mortality)
G. Mortality
IV. Adverse effects of intervention(s)
A. Direct harms of testing (e.g., harms from exposure to ionizing radiation, allergic reactions/kidney injury caused by contrast agents)
B. Harms of test-directed treatment (indirect)

Timing

Studies will be considered regardless of duration of followup.

Setting

All health care settings will be considered.

Dated: January 14, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–01241 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–308 and CMS–10508]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (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.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by February 24, 2014.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions:
OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*
To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:
1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number,

and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''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 publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* State Children's Health Insurance Program and Supporting Regulations; *Use:* States must submit title XXI plans and amendments for approval by the Secretary. We use the plan and its subsequent amendments to determine if the state has met the requirements of title XXI. Information provided in the state plan, state plan amendments, and from the other information we are collecting will be used by advocacy groups, beneficiaries, applicants, other governmental agencies, providers groups, research organizations, health care corporations, health care consultants. States will use the information collected to assess state plan performance, health outcomes and an evaluation of the amount of substitution of private coverage that occurs as a result of the subsidies and the effect of the subsidies on access to coverage. *Form Number:* CMS–R–308 (OCN: 0938–0841); *Frequency:* Yearly, Once, and Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 400; *Total Annual Hours:* 1,473,817. (For policy questions regarding this collection contact Judith Cash at 410–786–4473).

2. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Evaluation of the Rural Community Hospital Demonstration (RCHD); *Use:* Section 10313 of the Affordable Care Act of 2010 (ACA) extended and expanded the Rural Community Hospital Demonstration (RCHD). Originally authorized under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), the RCHD provides enhanced reimbursement for inpatient services to small rural hospitals that do not qualify as critical access hospitals (CAHs). The RCHD is intended to increase the capability of these hospitals to meet the health care needs of rural beneficiaries in their service areas. As a demonstration, the RCHD aims to provide information that can be used to assess the feasibility and advisability of establishing a new category of rural community hospitals for reimbursement policy. As of January 2013, 23 hospitals from 11 states are participating in the RCHD. This number includes seven hospitals continuing from the original demonstration as authorized under the MMA and 15 new hospitals that joined under the expansion authorized under the ACA.

For the original demonstration, the MMA required a Report to Congress six months after the end of the demonstration, a requirement unchanged by the ACA. An initial evaluation was conducted between 2007 and 2011 toward preparing for a Report to Congress and focused on the 17 hospitals that had participated at some point between October 2004 and March 2011. Findings from this evaluation were reported to the Centers for Medicare and Medicaid Services (CMS) in the *Interim Evaluation Report of the Rural Community Hospital Demonstration* (an unpublished report).

The current five-year evaluation of the RCHD will extend and build on the prior evaluation and produce the Report to Congress required by the MMA. It will assess the impact of the RCHD in meeting its goals: to enable hospitals to achieve community benefits such as improved services for their communities (especially Medicare beneficiaries), meet their individual strategic goals, and improve the financial solvency and viability of the participating hospitals. In addition, the evaluation will determine if it is feasible and advisable to create a new payment category of rural hospitals. To achieve this objective, the evaluation will examine how RCHD hospitals responded to payment options and assess how the costs to Medicare under RCHD compare to existing alternative payment options.

The evaluation will also summarize the characteristics of the markets served by RCHD hospitals, including beneficiaries' proximity to inpatient providers and competition among providers in the area. The information will be used to assess the implications of expanding the RCHD payment system to hospitals in various market environments. In addition, the evaluation will examine the potential costs of expanding the RCHD payment methodology, accounting for alternative approaches to targeting rural hospitals. *Form Number:* CMS–10508 (OCN: 0938–NEW); *Frequency:* Annually; *Affected Public:* State, Local or Tribal Governments, Private sector (Business or other for-profit and Not-for-profit organizations); *Number of Respondents:* 57; *Total Annual Responses:* 101; *Total Annual Hours:* 245. (For policy questions regarding this collection contact Woolton Lee at 410–786–4942.)

Dated: January 16, 2014.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–01208 Filed 1–22–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1064]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Application for Participation in the Medical Device Fellowship Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 24, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX:

202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0551. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Application for Participation in the Medical Device Fellowship Program—(OMB Control Number 0910–0551)—(Extension)

Sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of Title 5 of the United States Code authorize Federal Agencies to rate applicants for Federal jobs. Collecting applications for the Medical Device Fellowship Program will allow FDA's Center for Devices and Radiological Health (CDRH) to easily and efficiently elicit and review information from students and health care professionals who are interested in becoming involved in CDRH activities. The process will reduce the time and cost of submitting written documentation to the Agency and lessen the likelihood of applications being misrouted within the Agency mail system. It will assist the Agency in promoting and protecting the public health by encouraging outside persons to share their expertise with CDRH.

In the **Federal Register** of September 10, 2013 (78 FR 55260), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA based these estimates on the number of inquiries that have been received concerning the program and the number of requests for application forms over the past 3 years.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Application Form (Form FDA 3608)	250	1	250	1	250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 16, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01221 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0377]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Tobacco Health Document Submission

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Tobacco Health Document Submission'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On August 28, 2013, the Agency submitted a proposed collection of information entitled ''Tobacco Health Document Submission'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0654. The approval expires on December 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: January 16, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01222 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1089]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Recommended Glossary and Educational Outreach To Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 24, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0553. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Recommended Glossary and Educational Outreach To Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use—(OMB Control Number 0910–0553)—Extension

Section 502 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 352), among other things, establishes requirements for the label or labeling of a medical device so that it is not misbranded. Section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262) establishes requirements that manufacturers of biological products must submit a license application for FDA review and approval prior to marketing a biological product for introduction into interstate commerce.

In the **Federal Register** of November 30, 2004 (69 FR 69606), FDA published a notice of availability of the guidance entitled ''Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use.'' The guidance document provides guidance for the voluntary use of selected symbols in place of text in labeling. It provides the labeling guidance required for: (1) In vitro diagnostic devices (IVDs), intended for professional use under 21 CFR 809.10, FDA's labeling requirements for IVDs; and (2) FDA's labeling requirements for biologics, including IVDs, under 21 CFR parts 610 and 660. Under section 502(c) of the FD&C Act, a drug or device is misbranded, ''. . . If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.''

The guidance document recommends that a glossary of terms accompany each IVD to define the symbols used on that device's labels and/or labeling. Furthermore, the guidance recommends an educational outreach effort to enhance the understanding of newly introduced symbols. Both the glossary and educational outreach information help to ensure that IVD users have enough general familiarity with the symbols used, as well as provide a quick reference for available materials, thereby further ensuring that such labeling satisfies the labeling requirements under section 502(c) of the FD&C Act and section 351 of the PHS Act.

The likely respondents for this collection of information are IVD manufacturers who plan to use the selected symbols in place of text on the labels and/or labeling of their IVDs.

The glossary activity is inclusive of both domestic and foreign IVD manufacturers. FDA receives submissions from approximately 689 IVD manufacturers annually. The 4-hour estimate for a glossary is based on the average time necessary for a manufacturer to modify the glossary for the specific symbols used in labels or labeling for the IVDs manufactured.

In the **Federal Register** of September 11, 2013 (78 FR 55724), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Glossary	689	1	689	4	2,756

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 16, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01220 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0530]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Requests for Feedback on Medical Device Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Requests for Feedback on Medical Device Submissions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On November 08, 2013, the Agency submitted a proposed collection of information entitled ''Requests for Feedback on Medical Device Submissions'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0756. The approval expires on December 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: *January 17, 2014.*

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01311 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0578]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, Postmarketing Studies Status Reports, and Forms FDA 356h and 2567

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, Postmarketing Studies Status Reports, and Forms FDA 356h and 2567'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On November 13, 2013, the Agency submitted a proposed collection of information entitled ''Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, Postmarketing Studies Status Reports, and Forms FDA 356h and 2567'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0338. The approval expires on January 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: January 15, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01233 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0731]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Human Cells, Tissues, and Cellular and Tissue-Based Products: Establishment Registration and Listing; Form FDA 3356; Eligibility Determination for Donors; and Current Good Tissue Practice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 24, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0543. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Human Cells, Tissues, and Cellular and Tissue-Based Products: Establishment Registration and Listing; Form FDA 3356; Eligibility Determination for Donors; and Current Good Tissue Practice—(OMB Control Number 0910–0543)—Extension

Under section 361 of the Public Health Service Act (the PHS Act) (42 U.S.C. 264), FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or possessions or from foreign countries into the States. As derivatives of the human body, all Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps) pose some risk of carrying pathogens that could potentially infect recipients or handlers. FDA has issued regulations related to HCT/Ps involving establishment registration and listing using Form FDA 3356, eligibility determination for donors, and Current Good Tissue Practice (CGTP).

Establishment Registration and Listing; Form FDA 3356

The regulations in part 1271 (21 CFR part 1271) require domestic and foreign establishments that recover, process, store, label, package, or distribute an HCT/P described in § 1271.10(a), or that perform screening or testing of the cell or tissue donor to register with FDA (§ 1271.10(b)(1)) and submit a list of each HCT/P manufactured (§ 1271.10(b)(2)). Section 1271.21(a) requires an establishment to follow certain procedures for initial registration and listing of HCT/Ps, and § 1271.25(a) and (b) identifies the required initial registration and HCT/P listing information. Section 1271.21(b), in brief, requires an annual update of the establishment registration. Section 1271.21(c)(ii) requires establishments to submit HCT/P listing updates if a change as described in § 1271.25(c) has occurred. Section 1271.25(c) identifies the required HCT/P listing update information. Section 1271.26 requires establishments to submit an amendment if ownership or location of the establishment changes. FDA requires the use of a registration and listing form (Form FDA 3356: Establishment Registration and Listing for Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)) to submit the required information (§§ 1271.10, 1271.21, 1271.25, and 1271.26). To further facilitate the ease and speed of submissions, electronic submission is accepted at (*http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/EstablishmentRegistration/TissueEstablishmentRegistration/default.htm*).

Eligibility Determination for Donors

In brief, FDA requires certain HCT/P establishments described in § 1271.1(b) to determine donor eligibility based on donor screening and testing for relevant communicable disease agents and diseases except as provided under § 1271.90. The documented determination of a donor's eligibility is made by a responsible person as defined in § 1271.3(t) and is based on the results of required donor screening, which includes a donor medical history interview (defined in § 1271.3(n)), and testing (§ 1271.50(a)). Certain records must accompany an HCT/P once the donor-eligibility determination has been made (§ 1271.55(a)). This requirement applies both to an HCT/P from a donor who is determined to be eligible as well as to an HCT/P from a donor who is determined to be ineligible or where the donor-eligibility determination is not complete if there is a documented urgent medical need, as defined in § 1271.3(u) (§ 1271.60). Once the donor-eligibility determination has been made, the HCT/P must be accompanied by a summary of records used to make the donor-eligibility determination (§ 1271.55(b)), and a statement whether,

based on the results of the screening and testing of the donor, the donor is determined to be eligible or ineligible (§ 1271.55(a)(2)). Records used in determining the eligibility of a donor, i.e., results and interpretations of testing for relevant communicable disease agents, the donor-eligibility determination, the name and address of the testing laboratory or laboratories, and the name of the responsible person (defined in § 1271.3(t)) who made the donor-eligibility determination and the date of the determination, must be maintained (§ 1271.55(d)(1)). If any information on the donor is not in English, the original record must be maintained and translated to English, and accompanied by a statement of authenticity by the translator (§ 1271.55(d)(2)). HCT/P establishments must retain the records pertaining to a particular HCT/P at least 10 years after the date of its administration, or, if the date of administration is not known, then at least 10 years after the date of the HCT/P's distribution, disposition, or expiration, whichever is latest (§ 1271.55(d)(4)).

When a product is shipped in quarantine, as defined in § 1271.3(q), before completion of screening and testing, the HCT/P must be accompanied by records identifying the donor stating that the donor-eligibility determination has not been completed and stating that the product must not be implanted, transplanted, infused, or transferred until completion of the donor-eligibility determination, except in cases of urgent medical need, as defined in § 1271.3(u) (§ 1271.60(c)). When an HCT/P is used in cases of documented urgent medical need, the results of any completed donor screening and testing, and a list of any required screening and testing that has not yet been completed also must accompany the HCT/P (§ 1271.60(d)(2)). When an HCT/P is used in cases of urgent medical need or from a donor who has been determined to be ineligible (as permitted under § 1271.65), documentation by the HCT/P establishment is required showing that the recipient's physician received notification that the testing and screening were not complete (in cases of urgent medical need), and upon the completion of the donor-eligibility determination, of the results of the determination (§§ 1271.60(d)(3) and (d)(4), and 1271.65(b)(3).

An HCT/P establishment is also required to establish and maintain procedures for all steps that are performed in determining eligibility (§ 1271.47(a)), including the use of a product from a donor of viable, leukocyte-rich cells or tissue testing reactive for cytomegalovirus (§ 1271.85(b)(2)). The HCT/P establishment must record and justify any departure from a procedure relevant to preventing risks of communicable disease transmission at the time of its occurrence (§ 1271.47(d)).

Current Good Tissue Practice (CGTP)

FDA requires HCT/P establishments to follow CGTP (§ 1271.1(b)). Section 1271.155(a) permits the submission of a request for FDA approval of an exemption from or an alternative to any requirement in subpart C or D of part 1271. Section 1271.290(c) requires establishments to affix a distinct identification code to each HCT/P that they manufacture that relates the HCT/P to the donor and to all records pertaining to the HCT/P. Whenever an establishment distributes an HCT/P to a consignee, § 1271.290(f) requires the establishment to inform the consignee, in writing, of the product tracking requirements and the methods the establishment uses to fulfill these requirements. Non-reproductive HCT/P establishments described in § 1271.10 are required under § 1271.350(a)(1) and (a)(3) to investigate and report to FDA adverse reactions (defined in § 1271.3(y)) using Form FDA–3500A (§ 1271.350(a)(2)). Form FDA–3500A is approved under OMB control number 0910–0291. Section 1271.370(b) and (c) requires establishments to include specific information either on the HCT/P label or with the HCT/P.

The standard operating procedures (SOPs) provisions under part 1271 include the following: (1) Section 1271.160(b)(2) (receiving, investigating, evaluating, and documenting information relating to core CGTP requirements, including complaints, and for sharing information with consignees and other establishments); (2) § 1271.180(a) (to meet core CGTP requirements for all steps performed in the manufacture of HCT/Ps); (3) § 1271.190(d)(1) (facility cleaning and sanitization); (4) § 1271.200(b) (cleaning, sanitizing, and maintenance of equipment); (5) § 1271.200(c) (calibration of equipment); (6) § 1271.230(a) and (c) (validation of a process and review and evaluation of changes to a validated process); (7) § 1271.250(a) (controls for labeling HCT/Ps); (8) § 1271.265(e) (receipt, predistribution shipment, availability for distribution, and packaging and shipping of HCT/Ps); (9) § 1271.265(f) (suitable for return to inventory); (10) § 1271.270(b) and (d) (records management system); (11) § 1271.290(b)(1) (system of HCT/P tracking); and (12) § 1271.320(a) (review, evaluation, and documentation of complaints as defined in § 1271.3(aa)).

Section 1271.155(f) requires an establishment operating under the terms of an exemption or alternative to maintain documentation of FDA's grant of the exemption or approval and the date on which it began operating under the terms of the exemption or alternative. Section 1271.160(b)(3) requires the quality program of an establishment that performs any step in the manufacture of HCT/Ps to document corrective actions relating to core CGTP requirements. Section 1271.160(b)(6) requires documentation of HCT/P deviations. Section 1271.160(d) requires, in brief, documentation of validation of computer software if the establishment relies upon it to comply with core CGTP requirements. Section 1271.190(d)(2) requires documentation of all cleaning and sanitation activities performed to prevent contamination of HCT/Ps. Section 1271.195(d) requires documentation of environmental control and monitoring activities. Section 1271.200(e) requires documentation of all equipment maintenance, cleaning, sanitizing, calibration, and other activities. Section 1271.210(d) requires, in brief, documentation of the receipt, verification, and use of each supply or reagent. Section 1271.230(a) requires documentation of validation activities and results when the results of processing described in § 1271.220 cannot be fully verified by subsequent inspection and tests. Section 1271.230(c) requires that when changes to a validated process subject to § 1271.230(a) occur, documentation of the review and evaluation of the process and revalidation, if necessary, must occur. Section 1271.260(d) and (e) requires documentation of any corrective action taken when proper storage conditions are not met and documentation of the storage temperature for HCT/Ps. Section 1271.265(c)(1) requires documentation that all release criteria have been met before distribution of an HCT/P. Section 1271.265(c)(3) requires documentation of any departure from a procedure relevant to preventing risks of communicable disease transmission at the time of occurrence. Section 1271.265(e) requires documentation of the activities in paragraphs (a) through (d) of this section, which must include identification of the HCT/P and the establishment that supplied the HCT/P, activities performed and the results of each activity, date(s) of activity, quantity of HCT/P subject to the

activity, and disposition of the HCT/P. Section 1271.270(a) requires documentation of each step in manufacturing required in part 1271, subparts C and D. Section 1271.270(e) requires documentation of the name and address, and a list of responsibilities of any establishment that performs a manufacturing step for the establishment. Section 1271.290(d) and (e) require documentation of a method for recording the distinct identification code and type of each HCT/P distributed to a consignee to enable tracking from the consignee to the donor and to enable tracking from the donor to the consignee or final disposition. Section 1271.320(b) requires an establishment to maintain a record of each complaint that it receives. The complaint file must contain sufficient information about each complaint for proper review and evaluation of the complaint and for determining whether the complaint is an isolated event or represents a trend.

Respondents to this information collection are establishments that recover, process, store, label, package or distribute any HCT/P, or perform donor screening or testing. The estimates provided below are based on most recent available information from FDA's database system and trade organizations. The hours per response and hours per record are based on data provided by the Eastern Research Group, or FDA experience with similar recordkeeping or reporting requirements.

There are an estimated 2,706 HCT/P establishments (conventional tissue, eye tissue, peripheral blood stem cell, stem cell products from cord blood, reproductive tissue, and sperm banks), including 741 manufacturers of HCT/P products regulated under the Federal Food, Drug, and Cosmetic Act and section 351 of the PHS Act (42 U.S.C 262), that have registered and listed with FDA. In addition, we estimate that 218 new establishments have registered with FDA (§§ 1271.10(b)(1) and (b)(2) and 1271.25(a) and (b)). There are an estimated 3,737 listing updates (§§ 1271.10(b)(2), 1271.21(c)(ii), and 1271.25(c)) and 1,222 location/ownership amendments (§ 1271.26).

Under § 1271.55(a), an estimated total of 2,167, 396 HCT/Ps (which include conventional tissues, eye tissues, hematopoetic stem cells/progenitor cells, and reproductive cells and tissues), and an estimated total of 2,026,861 non-reproductive cells and tissues (total HCT/Ps minus reproductive cells and tissues) are distributed per year by an estimated 1,965 establishments (2,706 − 741 = 1,965) with approved applications.

Under § 1271.60(c) and (d)(2), FDA estimates that 1,375 establishments shipped an estimated 286,000 HCT/Ps under quarantine, and that an estimated 26 establishments requested 40 exemptions from or alternative to any requirement under part 1271, subpart C or D, specifically under § 1271.155(a).

Under §§ 1271.290(c) and 1271.370(b) and (c), the estimated 1,694 non-reproductive HCT/P establishments label each of their 2,026,861 HCT/Ps with certain information. These establishments are also required to inform their consignees in writing of the requirements for tracking and of their established tracking system under § 1271.290(f).

FDA estimates 24 HCT/P establishments submitted 206 adverse reaction reports with 167 involving a communicable disease (§ 1271.350(a)(1)).

FDA estimates that 218 new establishments will create SOPs, and that 2,706 establishments will review and revise existing SOPs annually.

FDA estimates that 1,353 HCT/P establishments (2,706 × 50 percent = 1,353) and 847 non-reproductive HCT/P establishments (1,694 × 50 percent = 847) record and justify a departure from the procedures (§§ 1271.47(d) and 1271.265(c)(3)).

Under § 1271.50(a), HCT/P establishments are required to have a documented medical history interview about the donor's medical history and relevant social behavior as part of the donor's relevant medical records for each of the estimated total of 91,756 donors (which include conventional tissue donors, eye tissue donors, peripheral and cord blood stem cell donors, and reproductive cell and tissue donors), and the estimated total of 86,156 non-reproductive cells and tissue donors (total donors minus reproductive cell and tissue donors).

FDA estimates that 812 HCT/P establishments (2,706 × 30 percent = 812) document an urgent medical need of the product to notify the physician using the HCT/P (§§ 1271.60(d)(3) and 1271.65(b)(3)).

FDA also estimates that 2,165 HCT/P establishments (2,706 × 80 percent = 2,165) have to maintain records for an average of 2 contract establishments to perform their manufacturing process (§ 1271.270(e) and 1,353 HCT/P establishments maintain an average of 5 complaint records annually (§ 1271.320(b)).

In some cases, the estimated burden may appear to be lower or higher than the burden experienced by individual establishments. The estimated burden in these charts is an estimated average burden, taking into account the range of impact each regulation may have.

In the **Federal Register** of July 12, 2013 (78 FR 41934), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
1271.10(b)(1) and 1271.21(b) [2]	2,706	1	2,706	.5 (30 minutes)	1,353
1271.10(b)(1) and (b)(2), 1271.21(a), and 1271.25(a) and (b) [2].	218	1	218	.75 (45 minutes)	164
1271.10(b)(2), 1271.21(c)(ii), and 1271.25(c) [2]	3,737	1	3,737	.5 (30 minutes)	1,869
1271.26 [2]	1,222	1	1,222	.25 (15 minutes)	306
1271.155(a)	26	1.54	40	3	120
1271.350(a)(1) and (a)(3)	24	8.58	206	1	206
Total					4,018

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Using Form FDA 3356.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
New SOPs [2]	218	1	218	48	10,464
SOP Update [2]	2,706	1	2,706	24	64,944
1271.47(d)	1,353	1	1,353	1	1,353
1271.50(a)	2,706	33.91	91,756	5	458,780
1271.55(d)(1)	2,706	33.91	91,756	1	91,756
1271.55(d)(2)	2,706	1	2,706	1	2,706
1271.55(d)(4)	2,706	1	2,706	120	324,720
1271.60(d)(3) and (d)(4) 1271.65(b)(3)	812	1	812	2	1,624
1271.155(f)	26	1.54	40	.25 (15 minutes)	10
1271.160(b)(3) and (b)(6)	1,694	12	20,328	1	20,328
1271.160(d)	1,694	12	20,328	1	20,328
1271.190(d)(2)	1,694	12	20,328	1	20,328
1271.195(d)	1,694	12	20,328	1	20,328
1271.200(e)	1,694	12	20,328	1	20,328
1271.210(d)	1,694	12	20,328	1	20,328
1271.230(a)	1,694	12	20,328	1	20,328
1271.230(c)	1,694	1	1,694	1	1,694
1271.260(d)	1,694	12	20,328	.25 (15 minutes)	5,082
1271.260(e)	1,694	365	618,310	.083 (5 minutes)	51,320
1271.265(c)(1)	1,694	1,196.49	2,026,861	.083 (5 minutes)	168,229
1271.265(c)(3)	847	1	847	1	847
1271.265(e)	1,694	1,196.49	2,026,861	.083 (5 minutes)	168,229
1271.270(a)	1,694	1,196.49	2,026,861	.25 (15 minutes)	506,715
1271.270(e)	2,165	2	4,330	.5 (30 minutes)	2,165
1271.290(d) and (e)	1,694	50.86	86,156	.25 (15 minutes)	21,539
1271.320(b)	1,353	5	6,765	1	6,765
Total					2,031,238

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Sections 1271.47(a), 1271.85(b)(2), 1271.160(b)(2) and (d)(1), 1271.180(a), 1271.190(d)(1), 1271.200(b), 1271.200(c), 1271.230(a) and (c), 1271.250(a), 1271.265(e) and (f), 1271.270(b) and (d), 1271.290(b)(1), and 1271.320(a).

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual Disclosures	Average burden per disclosure	Total hours
1271.55(a)	1,965	1,103	2,167,396	.5 (30 minutes)	1,083,698
1271.60(c) and (d)(2)	1,375	208	286,000	.5 (30 minutes)	143,000
1271.290(c)	1,694	1,196.49	2,026,861	.083 (5 minutes)	168,229
1271.290(f)	1,694	1	1,694	1	1,694
1271.370(b) and (c)	1,694	1,196.49	2,026,861	.25 (15 minutes)	506,715
Total					1,903,336

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 14, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01223 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0403]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Protection of Human Subjects: Informed Consent; Institutional Review Boards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Protection of Human Subjects: Informed Consent; Institutional Review Boards'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On July 30, 2013, the Agency submitted a proposed collection of information entitled ''Protection of Human Subjects: Informed Consent; Institutional Review Boards'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0755. The approval expires on December 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: *January 17, 2014.*

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01310 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0663]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Investigational New Drug Safety Reporting Requirements for Human Drug and Biological Products and Safety Reporting Requirements for Bioavailability and Bioequivalence Studies in Humans

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Investigational New Drug Safety Reporting Requirements for Human Drug and Biological Products and Safety Reporting Requirements for Bioavailability and Bioequivalence Studies in Humans'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On November 13, 2013, the Agency submitted a proposed collection of information entitled ''Investigational New Drug Safety Reporting Requirements for Human Drug and Biological Products and Safety Reporting Requirements for Bioavailability and Bioequivalence Studies in Humans'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0672. The approval expires on December 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: January 16, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01219 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1574]

Medical Devices Containing Materials Derived From Animal Sources (Except for In Vitro Diagnostic Devices); Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Medical Devices Containing Materials Derived From Animal Sources (Except for In Vitro Diagnostic Devices).'' FDA is issuing this draft guidance to update the policy regarding the use of animal-derived material in medical device manufacturing. These animal-derived materials may carry a risk of transmitting infectious disease when improperly collected, stored, or manufactured. The guidance describes the information you should document at the manufacturing facility and include in any premarket submissions. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 23, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Medical Devices Containing Materials Derived From Animal Sources (Except for In Vitro Diagnostic Devices)'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify

comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Scott McNamee, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3416, Silver Spring, MD 20993–0002, 301–796–5523; or Charles Durfor, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G424, Silver Spring, MD 20993–0002, 301–796–6970.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance entitled ''Medical Devices Containing Materials Derived From Animal Sources (Except for In Vitro Diagnostic Devices)'' is intended to update the 1998 guidance of the same name regarding the use of animal-derived material in medical device manufacturing. The 1998 guidance addressed ways to reduce the potential for exposure to bovine spongiform encephalopathy. The draft guidance continues to focus on the control of transmissible disease, and contains recommendations for documenting the source of animal tissue, conducting viral inactivation validation studies, as well as recommendations about the role of careful animal husbandry in ensuring safe tissue sources.

The information in this guidance is applicable to all medical devices that contain or are exposed to animal-derived materials (e.g., bovine, ovine, porcine, avian materials) with the exception of in vitro diagnostic devices. The guidance describes the information you should document at the manufacturing facility and include in any premarket submissions. Consideration of these issues should aid in reducing the risk of infectious disease transmission by medical devices.

This draft guidance, when finalized, will supersede the guidance entitled ''Medical Devices Containing Materials Derived from Animal Sources (Except for In Vitro Diagnostic Devices)'', announced in the **Federal Register** of November 6, 1998 (63 FR 60009).

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on medical devices containing materials derived from animal sources (except for in vitro diagnostic devices). It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. To receive ''Medical Devices Containing Materials Derived from Animal Sources (Except for In Vitro Diagnostic Devices)'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 2206 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807 subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 814 subpart H have been approved under OMB control number 0910–0332; and the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

V. Comments

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

Dated: January 14, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01232 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0319]

Guidance for Industry and Food and Drug Administration Staff on Dear Health Care Provider Letters: Improving Communication of Important Safety Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry and FDA staff entitled ''Dear Health Care Provider Letters: Improving Communication of Important Safety Information.'' This guidance offers specific recommendations to industry on the content and format of Dear Health Care Provider (DHCP) letters. These letters are sent by manufacturers or distributors to health care providers to communicate an important drug warning, a change in prescribing information, or a correction of misinformation in prescription drug promotional labeling or advertising. This guidance provides recommendations on when to use a DHCP letter, the types of information to include in the DHCP letter, how to organize the information so that it is communicated effectively to health care providers, and formatting techniques to make the information more accessible. This guidance finalizes the draft guidance issued in November 2010.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that

office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lori A. Bickel, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6353, Silver Spring, MD 20993, 301–796–0210; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry and FDA staff entitled ''Dear Health Care Provider Letters: Improving Communication of Important Safety Information.'' This document offers specific guidance to industry and FDA staff on the content and format of DHCP letters. These letters are sent by manufacturers or distributors to health care providers to communicate an important drug warning, a change in prescribing information, or a correction of misinformation in prescription drug promotional labeling or advertising. This guidance gives specific instruction on what should and should not be included in DHCP letters. To date, some DHCP letters have been too long, have contained promotional material, or otherwise have not met the goals set forth in the applicable regulation (21 CFR 200.5). In some cases, health care providers have not been aware of important new information, and have been unable to communicate it to patients, because the letters' content and length have made it difficult to find the relevant information. In addition, letters have sometimes been sent for the wrong reasons.

In addition to content and format recommendations for each type of DHCP letter, the guidance also includes advice on consulting with FDA to develop a DHCP letter, when to send a letter, what type of letter to send, and conducting an assessment of the letter's impact.

In the **Federal Register** of November 12, 2010 (75 FR 69449), FDA announced the availability of a draft guidance for industry and FDA staff entitled ''Dear Health Care Provider Letters: Improving Communication of Important Safety Information.'' The notice gave interested persons an opportunity to comment by January 11, 2011. The Agency received several comments from health care providers, firms, and other groups. We have carefully considered the comments and, where appropriate, have made corrections, added information, or clarified information in the guidance in response to the comments or on our own initiative. This guidance finalizes the draft guidance issued in November 2010.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on ''Dear Health Care Provider Letters: Improving Communication of Important Safety Information.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB control number 0910–0754.

III. Comments

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

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.regulations.gov.*

Dated: January 16, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01305 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0032]

Improving the Quality of Abbreviated New Drug Application Submissions to the Food and Drug Administration; Establishment of a Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is establishing a public docket to receive input and suggestions from the public on ways to improve the quality of abbreviated new drug applications (ANDAs) and associated amendments and supplements to FDA's Office of Generic Drugs (OGD). Specifically, FDA is interested in hearing about any difficulties sponsors are having developing and preparing their ANDA submissions that FDA could help address, for example by providing more or better information to industry. This action is intended to solicit suggestions that will improve the completeness and quality of ANDA submissions to FDA. FDA is also seeking input on how to best share suggestions for improving the quality of ANDAs with the generic drug industry. More complete, higher quality ANDA submissions will positively affect the availability of low-cost, high-quality generic drugs to the public.

DATES: Although FDA welcomes comments at any time, to help FDA address issues related to ANDA submission quality in a timely fashion, we encourage submission of electronic or written comments by March 24, 2014.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Giaquinto, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519

Standish Pl., Rockville, MD 20885, 240–276–8607, *elizabeth.giaquinto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 2012, the President signed the Generic Drug User Fee Amendments (GDUFA) (Pub. L. 112–144, Title III) into law. With the enactment of GDUFA, OGD committed to expedite the availability of high-quality, lower cost generic drugs by bringing greater predictability to the review times for ANDAs and associated amendments and supplements. OGD agreed to specific performance review metrics to reduce the time needed to bring a generic drug to market compared to typical pre-GDUFA review times. However, OGD's review is often hindered by the quality of the ANDA submissions.

As part of efforts to fulfill its GDUFA commitments, OGD is soliciting input and suggestions from all interested stakeholders on how to improve the completeness and quality of ANDA submissions to OGD. FDA is interested in hearing about any difficulties sponsors are having developing and preparing their applications for submission that FDA could help address (please see specific questions for comment listed in this section of the document). FDA is also seeking input on how to best share suggestions for improving the quality of ANDA submissions with industry. To receive comments and suggestions from the public, FDA is establishing a public docket. Improving the quality of ANDA submissions will result in more submissions accepted for filing, fewer amendments, and easily correctable deficiencies, and ultimately, more generic drug approvals.

FDA review staff routinely note common, recurring deficiencies found in ANDA submissions to OGD and try to communicate these deficiencies to industry in guidance documents and during presentations. Common, recurring deficiencies include, but are not limited to:

- *Filing:* Failure to provide a completed Form FDA 356h; unjustified inactive ingredient levels; inadequate dissolution data; packaging less than the recommended threshold amount without justification; inadequate or insufficient stability data; submissions of non-qualitative and non-quantitative (not Q/Q) same formulations; electronic submission and formatting deficiencies; applications containing an incorrect or unfounded basis of submission.
- *Chemistry:* Poor or inadequate justification of impurities limits; failure to provide a list of potential impurities and their origins; failure to provide adequate verification of analytical procedures for active pharmaceutical ingredient and finished dosage forms, where appropriate; failure to identify the critical manufacturing process parameters or to link in-process controls to development studies; failure to provide appropriate acceptance criteria of manufacturing yields for the critical steps, or providing yield values varying without adequate rationale or explanation.
- *Sterility assurance for sterile drug product applications manufactured by aseptic processing:* Failure to describe sterilization and/or depyrogenation of relevant equipment and components that may come in contact with the sterile drug; failure to provide relevant validation data for sterilization and/or depyrogenation of relevant equipment and components that may come in contact with the sterile drug; failure to provide validation data for sterilizing grade filters, if needed; failure to provide process simulation data for the proposed aseptic filling process/line/room.
- *Bioequivalence:* Inaccurate and/or incomplete information contained in electronic tables; submission of pharmacokinetic repeats; inaccurate and/or incomplete biowaiver requests (e.g., inappropriate method of solubility determination, lack of dissolution data for all strengths, missing standard operating procedures for analytical methods).
- *Fatal flaws:* Significant flaws in the design of a drug product such that the proposed product will not be able to meet all conditions of use of the reference listed drug.
- *Drug master files:* Submission contains more than a single drug substance or more than a single drug manufacturing process; failure to update the drug master file following a large number of amendments or time lapse since the original submission; failure to provide a complete description of manufacturing process and controls; failure to justify appropriate starting materials.

As noted previously, this list provides examples of common, recurring deficiencies FDA has identified. FDA is particularly interested to learn what steps it can take to help reduce these deficiencies and enhance the completeness and quality of ANDA submissions. Comments submitted to this docket are encouraged to address one or more of the following points, as well as any others that the commenter thinks are important:

1. What aspects of the ANDA application process are confusing or not well defined?
2. What problems do ANDA applicants encounter when developing a submission that FDA could help address?
3. Prior to GDUFA, were ANDA submissions consistently slowed or stalled at certain recurring review points post-filing? If so, why?
4. How should FDA share suggestions for improving ANDA submissions with industry, beyond issuing regulatory guidance?

II. Comments

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

Dated: *January 16, 2014.*

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01309 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Society of Clinical Research Associates—Food and Drug Administration: Food and Drug Administration Clinical Trial Requirements, Regulations, Compliance, and Good Clinical Practice; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing an educational conference co-sponsored with the Society of Clinical Research Associates (SoCRA). The public workshop regarding FDA's clinical trial requirements is designed to aid the clinical research professional's understanding of the mission, responsibilities, and authority of FDA, and to facilitate interaction with FDA representatives. The program will focus on the relationships among FDA and

clinical trial staff, investigators, and institutional review boards (IRBs). Individual FDA representatives will discuss the informed consent process including the informed consent documents, regulations relating to drugs, devices, and biologics, as well as inspections of clinical investigators, of IRBs, and of research sponsors.

Date and Time: The public workshop will be held on March 12 and 13, 2014, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Hyatt Regency Newport Beach Hotel, 1107 Jamboree Rd., Newport Beach, CA 92660, 949–729–6061. Attendees are responsible for their own accommodations. Please mention SoCRA to receive the hotel room rate of $152.00 plus applicable taxes (available until February 18, 2014, or until the SoCRA room block is filled).

Contact: Jane Kreis, Food and Drug Administration, 1301 Clay St., Suite 1180N, Oakland, CA 94612, 510–287–2708, FAX: 510–287–2739, or Society of Clinical Research Associates (SoCRA), 530 West Butler Ave., Suite 109, Chalfont, PA 18914, 800–762–7292 or 215–822–8644, FAX: 215–822–8633, email: *SoCRAmail@aol.com,* Web site: *www.socra.org.*

Registration: The registration fee will cover actual expenses including refreshments, lunch, materials, and speaker expenses. Seats are limited; please submit your registration as soon as possible. Workshop space will be filled in order of receipt of registration. Those accepted into the workshop will receive confirmation. The cost of registration is as follows:

SoCRA member	$575
SoCRA nonmember (includes membership).	$650
Federal Government SoCRA member.	$450
Federal Government SoCRA non-member.	$525
FDA Employee	Fee Waived

If you need special accommodations due to a disability, please contact SoCRA, 800–762–7292 or 215–822–8644, FAX: 215–822–8633, or email: *SoCRAmail@aol.com* at least 21 days in advance.

Extended periods of question and answer and discussion have been included in the program schedule. SoCRA designates this education activity for a maximum of 13.3 Continuing Education (CE) credits for SoCRA CE and continuing nurse education (CNE). SoCRA designates this live activity for a maximum of 13.3 American Medical Association Physicians Recognition Award Category 1 Credit(s)™. Physicians should claim only the credit commensurate with the extent of their participation. *Continuing Medical Education for physicians:* SoCRA is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians. *CNE for nurses:* SoCRA is an approved provider of CNE by the Pennsylvania State Nurses Association (PSNA), an accredited approver by the American Nurses Credentialing Center's Commission on Accreditation (ANCC). ANCC/PSNA Provider Reference Number: 205–3–A–09.

Registration Instructions: To register, please submit a registration form with your name, affiliation, mailing address, telephone, fax number, and email, along with a check or money order payable to ''SoCRA''. Mail to: Society of Clinical Research Associates (SoCRA), 530 West Butler Ave., Suite 109, Chalfont, PA 18914. To register via the Internet, go to: *http://www.socra.org/html/FDA_Conference.htm.* (FDA has verified the Web site addresses throughout this document, but we are not responsible for any subsequent changes to the Web sites after this document is published in the **Federal Register**).

Payment by major credit card is accepted (Visa/MasterCard/AMEX only). For more information on the meeting registration, or for questions on the public workshop, contact SoCRA, 800–762–7292 or 215–822–8644, FAX: 215–822–8633, or email: *SoCRAmail@aol.com.*

SUPPLEMENTARY INFORMATION: The public workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The public workshop will provide those engaged in FDA-regulated (human) clinical trials with information on a number of topics concerning FDA requirements related to informed consent, clinical investigation requirements, IRB inspections, electronic record requirements, and investigator initiated research. Topics for discussion include the following: (1) The Role of the FDA District Office Relative to the Bioresearch Monitoring Program (BIMO); (2) Modernizing FDA's Clinical Trials/BIMO Programs; (3) What FDA Expects in a Pharmaceutical Clinical Trial; (4) Medical Device Aspects of Clinical Research; (5) Adverse Event Reporting—Science, Regulation, Error, and Safety; (6) Working with FDA's Center for Biologics Evaluation and Research; (7) Ethical Issues in Subject Enrollment; (8) Keeping Informed and Working Together; (9) FDA Conduct of Clinical Investigator Inspections; (10) Investigator Initiated Research; (11) Meetings with FDA—Why, When, and How; (12) Part 11 Compliance—Electronic Signatures; (13) IRB Regulations and FDA Inspections; (14) Informed Consent Regulations; (15) The Inspection is Over—What Happens Next? Possible FDA Compliance Actions; and (16) Question and Answer Session/Panel Discussion.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the safety and effectiveness of FDA-regulated drugs and devices. The public workshop helps to achieve objectives set forth in section 406 of the FDA Modernization Act of 1997 (21 U.S.C. 393) which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The public workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), as outreach activities by Government Agencies to small businesses.

Dated: January 16, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01300 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Risk Communication Advisory Committee; Notice of Postponement of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is postponing the meeting of the Risk Communication Advisory Committee scheduled for February 3 and 4, 2014. The meeting was announced in the **Federal Register** of January 3, 2014 (79 FR 398). The meeting is postponed due to unavoidable operational changes. Future meeting dates will be announced in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Luis G. Bravo, Office of Planning, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3274, Silver Spring, MD 20993, 240–402–5274, or email: *RCAC@fda.hhs.gov* or FDA Advisory Committee Information

Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). Please call the Information Line for up-to-date information on this meeting.

Dated: January 17, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01312 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Science Board to the Food and Drug Administration; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Science Board to the Food and Drug Administration. This meeting was announced in the **Federal Register** of January 9, 2014 (79 FR 1645). The amendment is being made to reflect a change in the *Date and Time* and the *Agenda* portions of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Martha Monser, Office of the Chief Scientist, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4286, Silver Spring, MD 20993, 301–796–4627, *martha.monser@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). Please call the information line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 9, 2014, FDA announced that a meeting of the Science Board to the Food and Drug Administration would be held on February 5, 2014.

1. On page 1645, in the second column, the *Date and Time* portion of the document is changed to read as follows:

Date and time: The meeting will be held on February 5, 2014, from approximately 8:30 a.m. until 1 p.m.

2. On page 1645, in the second column, under *Agenda,* in the first paragraph, after the third sentence, the following sentence is added to read as follows:

The Office of Women's Health (OWH) will seek input from the Board on the development of the OWH Research Roadmap.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: January 17, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01298 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–E–0456]

Determination of Regulatory Review Period for Purposes of Patent Extension; DALIRESP

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for DALIRESP and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written petitions (two copies are necessary) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA 2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6284, Silver Spring, MD 20993–0002, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product DALIRESP (roflumilast). DALIRESP is indicated as a treatment to reduce the risk of chronic obstructive pulmonary disease (COPD) exacerbations in patients with severe COPD associated with chronic bronchitis and a history of exacerbations. Subsequent to this approval, the U.S. Patent and Trademark Office received a patent term restoration application for DALIRESP (U.S. Patent No. 5,712,298) from Nycomed GmbH, and the U.S. Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 7, 2012, FDA advised the U.S. Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of DALIRESP represented the first permitted commercial marketing or use of the product. Thereafter, the U.S. Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for DALIRESP is 4,237 days. Of this time, 3,645 days occurred during the testing phase of the regulatory review period, while 592 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* July 26, 1999. The applicant claims December 19, 1999, as the date the investigational

new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 26, 1999, when clinical trials were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* July 17, 2009. FDA has verified the applicant's claim that the new drug application (NDA) for DALIRESP (NDA 22–522) was submitted on July 17, 2009.

3. *The date the application was approved:* February 28, 2011. FDA has verified the applicant's claim that NDA 22–522 was approved on February 28, 2011.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by March 24, 2014. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 22, 2014. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, you must submit two copies of the written petition. A petition submitted electronically must be submitted to *http://www.regulations.gov*, Docket No. FDA 2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 16, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01306 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–E–0760]

Determination of Regulatory Review Period for Purposes of Patent Extension; GADAVIST

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for GADAVIST and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are necessary) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA 2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6284, Silver Spring, MD 20993–0002, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product GADAVIST (gadobutrol). GADAVIST is indicated for intravenous use in diagnostic magnetic resonance imaging in adults and children (2 years of age and older) to detect and visualize areas with disrupted blood brain barrier and/or abnormal vascularity of the central nervous system. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for GADAVIST (U.S. Patent No. 5,980,864) from Bayer Schering Pharma Aktiengesellschaft and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 10, 2012, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of GADAVIST represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for GADAVIST is 4,269 days. Of this time, 3,964 days occurred during the testing phase of the regulatory review period, while 305 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* July 8, 1999. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on July 8, 1999.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* May 14, 2010. FDA has verified the applicant's claim that the new drug application (NDA) for GADAVIST (NDA 201–277) was initially submitted on May 14, 2010.

3. *The date the application was approved:* March 14, 2011. FDA has verified the applicant's claim that NDA 201–277 was approved on March 14, 2011.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,470 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by March 24, 2014. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 22, 2014. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, you must submit two copies of the written petition. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA 2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 16, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–01307 Filed 1–22–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request: Customer and Other Partners Satisfaction Surveys

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health Clinical Center (CC) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 6, 2013, pp. 66750–66751, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health Clinical Center (CC), National Institutes of Health, 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.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact Dr. David K. Henderson, Deputy Director for Clinical Care, National Institutes of Health Clinical Center, Building 10, Room 6–1480, 10 Center Drive, Bethesda, Maryland 20892, or call non-toll free: 301–496–3515, or email your request or comments, including your address to: < *dkh@nih.gov* >. Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Title: Generic Clearance for Surveys of Customers and Other Partners, 0925–0458, Expiration Date 12/31/2013, Type of Submission: REINSTATEMENT WITHOUT CHANGE, National Institutes of Health Clinical Center (CC), National Institutes of Health (NIH).

Need and Use of Information Collection: The information collected in these surveys will be used by Clinical Center personnel: (1) To evaluate the perceptions of various Clinical Center customers and other partners of Clinical Center services; (2) to assist with the design of modifications of these services, based on customer input; (3) to develop new services, based on customer need; (4) to evaluate the perceptions of various Clinical Center customers and other partners of implemented service modifications, and (5) for hospital accreditation. These surveys are voluntary and necessary for the proper performance of Clinical Center functions and will almost certainly lead to quality improvement activities that will enhance and/or streamline the Clinical Center's operations. The major mechanisms by which the Clinical Center will request customer input is through surveys and focus groups. The surveys will be tailored specifically to each class of customer and to that class of customer's needs. Surveys will either be collected as written documents, as faxed documents, mailed electronically or collected via the web or by telephone from customers. Information gathered from these surveys of Clinical Center customers and other partners will be presented to, and used directly by, Clinical Center management to enhance the services and operations of our organization.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 4,900.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual hour burden
FY 2014				
Clinical Center Patients	5000	1	30/60	2500
Family Members of Patients	2000	1	30/60	1000
Visitors to the Clinical Center	500	1	10/60	84
NIH Intramural Collaborators	2000	1	10/60	334
Vendors and Collaborating Commercial Enterprises	500	1	20/60	167
Professionals and Organizations Referring Patients	2000	1	20/60	667
Regulators	30	1	20/60	10
Volunteers	275	1	30/60	138
FY 2015				
Clinical Center Patients	5000	1	30/60	2500
Family Members of Patients	2000	1	30/60	1000
Visitors to the Clinical Center	500	1	10/60	84
NIH Intramural Collaborators	2000	1	10/60	334
Vendors and Collaborating Commercial Enterprises	500	1	20/60	167
Professionals and Organizations Referring Patients	2000	1	20/60	667
Regulators	30	1	20/60	10
Volunteers	275	1	30/60	138
FY 2016				
Clinical Center Patients	5000	1	30/60	2500
Family Members of Patients	2000	1	30/60	1000
Visitors to the Clinical Center	500	1	10/60	84
NIH Intramural Collaborators	2000	1	10/60	334
Vendors and Collaborating Commercial Enterprises	500	1	20/60	167
Professionals and Organizations Referring Patients	2000	1	20/60	667
Regulators	30	1	20/60	10
Volunteers	275	1	30/60	138

Dated: January 14, 2014.

David K. Henderson,

Deputy Director for Clinical Care, CC, National Institutes of Health.

[FR Doc. 2014–01343 Filed 1–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Improved Therapeutic Immunotoxins

Description of Technology: Immunotoxins kill cancer cells while allowing healthy, essential cells to survive. As a result, patients receiving immunotoxins are less likely to experience the deleterious side-effects associated with non-discriminate therapies, such as chemotherapy or radiation therapy. Unfortunately, the continued administration of immunotoxins often leads to a reduced patient response due to the formation of neutralizing antibodies against immunogenic epitopes contained within the toxin. One such toxin is Pseudomonas exotoxin A (PE). To improve the therapeutic effectiveness of PE-based immunotoxins through multiple rounds of drug administration, NIH inventors previously reduced the immunogenicity of PE through the removal of B-cell and T-cell epitopes by mutation or deletion. Although this resulted in immunotoxins with improved therapeutic activity, the modifications to reduce immunogenicity decreased the activity of PE. Through further specific modification, the inventors have now created a PE that has reduced immunogenicity with limited loss of activity. The resulting PE-based immunotoxins have increased resistance to the formation of neutralizing antibodies, while retaining greater activity, and are expected to have improved therapeutic efficacy.

Potential Commercial Applications:

- Essential payload component of immunotoxins
- Treatment of any disease associated with increased or preferential expression of a specific cell surface receptor
- Specific diseases include hematological cancers, lung cancer, ovarian cancer, breast cancer, and head and neck cancers

Competitive Advantages:

• New modifications allow for the reduction of immunogenicity with less loss of activity
• Less immunogenic immunotoxins with greater activity results in improved therapeutic efficacy by permitting multiple rounds of administration in humans
• Targeted therapy decreases non-specific killing of healthy, essential cells, resulting in fewer non-specific side-effects and healthier patients

Development Stage:
• Early-stage
• In vitro data available
• In vivo data available (animal)

Inventors: Ira H. Pastan et al. (NCI)

Intellectual Property:
• HHS Reference No. E–771–2013/0—U.S. Provisional Patent Application No. 61/887,418 filed 06 October 2013
• HHS Reference No. E–771–2013/1—U.S. Provisional Patent Application No. 61/908,464 filed 25 November 2013

Related Technologies:
• HHS Reference No. E–117–2011/0—PCT Patent Publication WO 2012/154530
• HHS Reference No. E–174–2011/0—PCT Patent Publication WO 2012/170617
• HHS Reference No. E–263–2011/0—PCT Patent Publication WO 2012/032022
• HHS Reference No. E–269–2009/0—US Patent Publication 20120263674 A1
• HHS Reference No. E–292–2007/0—US Patent Publication US 20100215656 A1
• HHS Reference No. E–262–2005/0—US Patent Publication US 20090142341 A1
• Multiple additional patent families

Licensing Contact: David A. Lambertson, Ph.D.; 301–435–4632; *lambertsond@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Center for Cancer Research, Laboratory of Molecular Biology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize a new immunotoxin target. For collaboration opportunities, please contact John D. Hewes, Ph.D., at *hewesj@mail.nih.gov*.

Respiratory Syncytial Virus Vaccines Based on G Protein Subunit

Description of Technology: The invention pertains to cross-neutralizing vaccines against human respiratory syncytial virus subtypes A and B employing immunogenic G protein subunit and fragments thereof that are preferably derived from the ectodomain. Various candidate G protein subunits are provided spanning amino acid sequence 67–298 of RSV G protein and combinations thereof. Also envisioned within the scope of this invention are tandem repeated recombinant G protein subunit vaccines that provide higher immunogenicity. Recombinant G protein can be codon optimized for expression in various hosts (e.g., mammalian cells or *E. coli*).

Potential Commercial Applications:
• Vaccine
• Childhood vaccines

Competitive Advantages: Cross neutralizing

Development Stage:
• Early-stage
• In vitro data available

Inventors: Surender Khurana and Hana Golding (FDA)

Intellectual Property: HHS Reference No. E–735–2013/0—U.S. Provisional Patent Application No. 61/863,100 filed 02 December 2013

Licensing Contact: Michael Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov*

Collaborative Research Opportunity: The Food and Drug Administration, Center for Biologics Evaluation and Research, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize RSV G protein subunit vaccine. For collaboration opportunities, please contact Surender Khurana, Ph.D., at 301–827–0739.

Pyrrole Derivative Inhibitors of Wip1 for the Treatment of Cancer

Description of Technology: Wild-type p53-induced phosphatase 1 (Wip1) is an enzyme that is overexpressed in a number of human cancers, including breast cancer, neuroblastoma and ovarian cancer. Wip1 has a suppressive effect on the tumor suppressor p53, allowing the unregulated growth that is associated with tumors. Inhibiting Wip1 could restore the tumor suppressor activity of p53, leading to the arrest of unregulated tumor growth and induction of apoptosis. This suggests that inhibitors of Wip1 could be of therapeutic value for the treatment of cancer.

This invention concerns novel small molecules that can inhibit Wip1 activity. The particular structure of the small molecules allows for specific targeting to Wip1. Specifically, the structure is a derivative of a pyrrole ring having five (5) points of substitution. These small molecules have the ability to significantly inhibit Wip1 phosphatase activity at the micromolar level, with substitutions of biphenyl groups having the highest level of inhibition. Based on their potential ability to restore the activity of a tumor suppressor protein and activate apoptosis, these small molecules may be useful in the treatment of cancers that overexpress Wip1.

Potential Commercial Applications:
• Treatment of cancer, including but not limited to breast cancer, ovarian cancer and neuroblastoma
• Can be used either alone or in combination with other known anti-cancer therapeutics

Competitive Advantages:
• Structure of the inhibitor allows specific targeting of Wip1, possibly leading to fewer undesired effects during treatment
• The molecules are designed to be more stable and effectively penetrate mammalian cells
• The current lack of Wip1 inhibitors can lead the occupation of a significant position in the cancer therapeutic market with a first-in-class drug

Development Stage: Early-stage

Inventors: Daniel H. Appella et al. (NIDDK)

Publication: Hayashi R, et al. Optimization of a cyclic peptide inhibitor of Ser/Thr phosphatase PPM1D (Wip1). Biochemistry. 2011 May 31;50(21):4537–49. [PMID 21528848]

Intellectual Property: HHS Reference No. E–537–2013/0—U.S. Provisional Patent Application No. 61/865,845 filed 14 August 2013

Related Technology: HHS Reference No. E–302–2007/0—US Patent Application No. 12/675,167 filed 25 February 2010

Licensing Contact: David A. Lambertson, Ph.D.; 301–435–4632; *lambertsond@mail.nih.gov*

Methods of Treating or Preventing Pruritis (Itch)

Description of Technology: This technology provides a novel method of treating or preventing pruritis (itch) using natriuretic polypeptide b (Nppb) blocking agents. Itch (also known as pruritis) is a sensation that may be perceived as an unpleasant skin irritation and may drive an urge to scratch. Conditions such as, for example, psoriasis, atopic dermatitis, renal failure, liver cirrhosis and some cancers may cause persistent itch. Itch is triggered by somatosensory neurons expressing the ion channel TRPV1 (transient receptor potential cation channel subfamily V member 1). The inventors of this technology show that the Nppb is expressed in a subset of TRPV1 neurons and found that Nppb–/– mice selectively lose all behavioral responses to itch-inducing agents. Nppb triggered potent scratching when

injected intrathecally in wild-type and Nppb–/– mice. Itch responses were blocked by toxin-mediated ablation of Nppb-receptor-expressing cells, but a second neuropeptide, gastrin-releasing peptide, still induced strong responses in the toxin-treated animals.

Potential Commercial Applications:

• Therapeutics for preventing or treating pruritis/itching.

• Screening of novel Nppb blocking agents.

Competitive Advantages: A new mode of treating itch and itch induced conditions using selective Nppb antagonists.

Development Stage:

• Early-stage

• In vitro data available

Inventors: Mark A. Hoon and Santosh K. Mishra (NIDCR)

Publication: Mishra SK, Hoon MA. The cells and circuitry for itch responses in mice. Science. 2013 May 24;340(6135):968–71. [PMID 23704570]

Intellectual Property: HHS Reference No. E–485–2013/0—U.S. Provisional Patent Application No. 61/912,334 filed 05 December 2013

Licensing Contact: Suryanarayana (Sury) Vepa, Ph.D., J.D.; 301–435–5020; *vepas@mail.nih.gov*

Recombinant Stabilized Prefusion Protein of Respiratory Syncytial Virus for Use as a Subunit Vaccine

Description of Technology: The invention, a stabilized recombinant prefusion F protein (pre F), is a candidate subunit vaccine for Respiratory Syncytial Virus (RSV). Pre-F is stabilized in the prefusion conformation and displays epitopes not present in postfusion F protein. Several potent RSV neutralizing antibodies bind pre F, but not postfusion F. Therefore, immunization with pre F may elicit an immune response superior to the response generated by postfusion F.

NIH researchers have engineered pre F to expose an antigenic site 0, which is targeted by extremely potent RSV neutralizing antibodies. Structure-based design yielded several stabilized variants of pre F that maintained exposure of antigenic site 0 when subjected to extremes of pH, osmolality and temperature.

Preclinical in vivo data on stabilized pre F is available. Immunization of mice and macaques with antigenic site 0 stabilized pre F variants elicited high levels of RSV specific neutralizing activity.

Potential Commercial Applications: Vaccine for Respiratory Syncytial Virus

Competitive Advantages:

• Vaccine stably exposes antigenic site in RSV F that permits generation of potent RSV neutralizing antibodies.

• There is currently no RSV vaccine on the market.

Development Stage:

• Pre-clinical

• In vivo data available (animal)

Inventors: Jason S. McLellan, Barney S. Graham, Peter D. Kwong (all of VRC/NIAID)

Publications:

1. McLellan JS, et al. Structure of RSV fusion glycoprotein trimer bound to a prefusion-specific neutralizing antibody. Science 2013 May 31;340(6136):1113–7. [PMID 23618766]

2. McLellan JS, et al. Structure-based design of a fusion glycoprotein vaccine for respiratory syncytial virus. Science 2013 Nov 1:342 (6158)592–8. [PMID 24179220]

Intellectual Property:

• HHS Reference No. E–081–2013/0—U.S. Application No. 61/780,910 filed 13 March 2013

• HHS Reference No. E–081–2013/1—U.S. Application No. 61/798,389 filed 15 March 2013

• HHS Reference No. E–081–2013/2—U.S. Application No. 61/857,613 filed 23 July 2013

• HHS Reference No. E–081–2013/3—U.S. Application No. 61/863,909 filed 09 August 2013

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D., M.B.A.; 301–435–4507; *ThalhamC@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Vaccine Research Center, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize an RSV vaccine based on pre F, a stabilized recombinant RSV F protein. For collaboration opportunities, please contact Rosemary C. Walsh, Ph.D. at 301–541–3528 or *rcwalsh@niaid.nih.gov*.

Dated: January 16, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–01186 Filed 1–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Hypersensitivity, Autoimmune, and Immune-mediated Disease Overflow.

Date: February 7, 2014.

Time: 8:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Jin Huang, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1187, *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Liver and Gastrointestinal Physiology & Pathophysiology.

Date: February 11, 2014.

Time: 1:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martha Garcia, PhD., Scientific Reviewer Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, Bethesda, MD 20892, 301–435–1243, *garciamc@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Neuroscience.

Date: February 13, 2014.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Laurent Taupenot, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4811, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.

Date: February 20–21, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hilton Woodland Hills/Los Angeles, 6360 Canoga Avenue, Woodlands Hills, CA 91367.

Contact Person: Pat Manos, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neural Oxidative Metabolism and Death Study Section.

Date: February 20–21, 2014.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Carol Hamelink, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical and Integrative Cardiovascular Sciences Study Section.

Date: February 20, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Delvin R Knight, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 4128, Bethesda, Md 20892–7814, 301–435–1850, *knightdr@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Cardiovascular Differentiation and Development Study Section.

Date: February 20, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Woodland Hills, 6360 Canoga Avenue, Woodland Hills, CA 91367.

Contact Person: Sara Ahlgren, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, Md 20817–7814, 301–435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Molecular Neuropharmacology and Signaling Study Section.

Date: February 20–21, 2014.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Deborah L Lewis, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: February 20, 2014.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Olga A Tjurmina, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Sensory and Motor Neurosciences, Cognition and Perception.

Date: February 20–21, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Riverwalk, 420 S. Market St., San Antonio, TX 78205.

Contact Person: Sharon S Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 5104, Bethesda, MD 20892–5104, 301–237–1487, *lowss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

Date: February 20–21, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Riverwalk, 420 W. Market St., San Antonio, TX 78205.

Contact Person: Mary Schueler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301–451–0996, *marygs@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Molecular Neurogenetics Study Section.

Date: February 20–21, 2014.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell St., San Francisco, CA 94102.

Contact Person: Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Adult Psychopathology and Disorders of Aging Study Section.

Date: February 20–21, 2014.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 500–5829, *sechu@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: February 20–21, 2014.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Long Beach and Executive Center, 701 West Ocean Boulevard, Long Beach, CA 90831.

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Mechanisms of Neurodegeneration.

Date: February 20, 2014.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Geoffrey G Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Biomaterials, Nanotechnology, Drug Screening and Delivery, Bioengineering Sciences.

Date: February 20, 2014.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ping Fan, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–408–9971, *fanp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biochemistry and Biophysics of Membranes.

Date: February 20, 2014.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Villa Florence Hotel, 225 Powell Street, San Francisco, CA 94102.

Contact Person: John L Bowers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1725, *bowersj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biology of Neurodegeneration.

Date: February 20, 2014.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Long Beach and Executive Center, 701 West Ocean Boulevard, Long Beach, CA 90831.

Contact Person: Carole L Jelsema, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Surgical Sciences and Bioengineering.

Date: February 20, 2014.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 3.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 16, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–01191 Filed 1–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and contract proposals 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 or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Career Development Awards: K01, K08.

Date: February 20–21, 2014.

Time: 8:30 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City at Washington Reagan National, 2399 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Keith A. Mintzer, Ph.D., Scientific Review Officer, Office of Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–594–7947, *mintzerk@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel NHLBI Resource-Related Research Projects for the Human Heart.

Date: February 20, 2014.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Melissa E Nagelin, Ph.D. Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892, 301–594–8518, *nagelinmh2@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Value of Information Models.

Date: February 21, 2014.

Time: 10:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Charles Joyce, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0289, *cjoyce@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel NHLBI Conference Grant Review (R13).

Date: February 25–26, 2014.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, 301–443–8788, Bethesda, MD 20892, *sunnarborgsw@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel NHLBI SBIR Phase I Contract Review, Cardiovascular MRI 81.

Date: February 25, 2014.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: YingYing Li-Smerin, Ph.D., MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel NHLBI SBIR Phase I Contract Review, Cardiovascular MRI 82.

Date: February 25, 2014.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: YingYing Li-Smerin, Ph.D., MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 16, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–01188 Filed 1–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, January 23, 2014, 09:00 a.m. to January 24, 2015, 04:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on December 23, 2013, 78 FR 77474.

The meeting will be held on January 23, 2014 to January 24, 2014. The meeting location and time remain the same. The meeting is closed to the public.

Dated: January 16, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–01190 Filed 1–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Supplement SEP: Medications Development for Substance Related Disorders.

Date: February 5, 2014.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–3086, *ruizjf@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA Research ''Center of Excellence'' Grant Program (P50).

Date: February 18, 2014.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4245, MSC 9550, Bethesda, MD 20892–9550, 301–451–4530, *el6r@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; FY14 NIDA Avant-Garde Award Program for HIV/AIDS Research.

Date: February 19–20, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA Core ''Center of Excellence'' Grant Program (P30).

Date: February 19, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4245, MSC 9550, Bethesda, MD 20892–9550, 301–451–4530, *el6r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 16, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–01189 Filed 1–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Societal and Ethical Issues in Research Study Section.

Date: February 10, 2014.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Karin F Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3144, MSC 7770, Bethesda, MD 20892, (301) 254–9975, *helmersk@csr.nih.gov*.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Tumor Cell Biology Study Section.

Date: February 13–14, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–451–4467, *morrowcs@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: MESH and CPDD.

Date: February 13–14, 2014

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mark Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *mark.lindner@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR13–195—Preclinical Research on Model Organisms to Predict Treatment Outcomes for Disorders Associated with Intellectual and Developmental Disabilities.

Date: February 13–14, 2014

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mark Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *mark.lindner@csr.nih.gov*.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Cancer Genetics Study Section.

Date: February 13, 2014

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Michael L Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301–451–0132, *bloomm2@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Neurobiology of visual perception and eye movement.

Date: February 13, 2014.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review, Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181 MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Related Small Business Review.

Date: February 14, 2014.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yuan Luo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–915–6303, *luoy2@mail.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Chronic Dysfunction and Integrative Neurodegeneration Study Section.

Date: February 18–19, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Alexei Kondratyev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kondratyevad@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section.

Date: February 18–19, 2014.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Long Beach and Executive Center, 701 West Ocean Boulevard, Long Beach, CA 90831.

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Bioengineering, Technology and Surgical Sciences Study Section.

Date: February 18–19, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Sheraton San Diego Hotel and Marina, 1380 Harbor Island Drive, San Diego, CA 92101.

Contact Person: Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cardiovascular Sciences.

Date: February 18, 2014.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence E. Boerboom, Ph.D., Chief, CVRS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–11–100: Alzheimer's Disease Pilot Clinical Trials.

Date: February 18, 2014.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mark Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *mark.lindner@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 16, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–01187 Filed 1–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information on the Proposed Framework for Developing Study Content and Protocols for the National Children's Study

SUMMARY: The National Children's Study (NCS) is soliciting comments and suggestions from the public on the proposed Study content framework. The questions solicited in this Request for Information (RFI) focus on the validity and acceptability of the using a composite outcome for the higher-level functions of a healthy 21-year-old person as an important operational construct to help frame data collection throughout the duration of the study. Responses to this RFI will be used to inform Study protocol development.

DATES: The National Children's Study Request for Information is open for public comment for a period of 30 days. Comments must be received by February 24, 2014 to ensure consideration. After the public comment period has closed, the comments received by the NCS will be considered in a timely manner by the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development and the National Children's Study.

ADDRESSES: Questions about this request for information should be directed to Kate Winseck, MSW, The National Children's Study, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5C01, Bethesda, MD 20891, *NCS_RFI@mail.nih.gov,* 301–594–9147.

SUPPLEMENTARY INFORMATION: The National Children's Study is a congressionally-mandated longitudinal birth cohort study intended to examine the effects of environmental exposures on the growth, development, and wellbeing of children. The NCS was mandated by the Children's Health Act of 2000 (Pub. L. 106–310).

1. Goals and Requirements

The primary objective of the NCS is to conduct a national longitudinal study of environmental influences (including physical, chemical, biological, and psychosocial) on children's health and development. These factors include environmental exposures (with a broad definition of environment) and biological/genetic contexts. The Study objectives stated in the Children's Health Act of 2000 include: (1) Evaluate the effects of both chronic and intermittent exposures on child health and human development; (2) investigate basic mechanisms of developmental disorders and environmental factors; (3) incorporate behavioral, emotional, educational, and contextual consequences to enable a complete assessment of the physical, chemical, biological and psychosocial environmental influences on children's well-being; (4) gather data from diverse populations of children including prenatal exposures; and (5) consider health disparities among children.

2. Proposed Study Content Framework

The NCS proposes to organize data collection priorities to support measurement of health and healthy development at critical stages. This requires understanding and identifying

known and potential factors that may influence health outcomes and characteristics along the developmental spectrum. For example, data collected during pregnancy are designed to look not only at antecedents of disease but also to look for factors associated with health. Which exposures are associated with a healthy, full term infant? What factors are predictive of a normal birth weight? What factors are associated with normal neurologic development? Areas that will be examined include, but are not limited to (1) physical factors such as maternal and paternal height, weight and Body Mass Index (BMI); (2) health behaviors such as sleep, diet and physical activity; (3) outcomes of past pregnancies and other medical conditions and history; (4) medication use (including alternative and complementary medicines); (5) presence or absence of components of the physical environment, such as noise, mold and mildew, pets, chemicals, and environmental tobacco smoke; and (6) psychosocial factors, such as social support, social networks, and psychological well-being and other factors that may protect and mediate reactions to stress. Biological and environmental samples will be collected to allow examination of in-utero exposures.

The NCS intends to follow all children from birth until they reach age 21, an endpoint consistent with the Food and Drug Administration Amendments Act of 2007 that defines ''pediatric patients'' as ''those who are 21 years of age or younger at the time of diagnosis or treatment (FDA Amendments Act of 2007).'' As such it is important to identify the characteristics of a healthy 21-year-old person. Reaching age 21 is one of many important developmental milestones and it serves as a useful life stage for illustration of how the NCS data collection framework can be organized.

To ensure the Study content framework is comprehensive, the NCS is working with subject matter experts to characterize health. As developmental trajectories are multi-dimensional, multi-directional, and multi-level, this effort not only helps characterize the distal end of the childhood developmental trajectory, but also identifies potential antecedent factors that could be measured earlier in life in assessing exposures that may contribute to later outcomes. For example, supportive family relationships during adolescence has been associated with positive outcomes ranging from reduced risk of poor mental health to higher levels of interpersonal and occupational functioning; these outcomes being independent of any effect of gender, socioeconomic status, or family disruption, for example death or divorce (Child Adolescent Mental Health 16(1): 30–37).

At 21 years old, the thriving individual is a manifestation of complex, dynamic, non-linear developmental processes that are products of personal characteristics (including genetics), person-to-person, and person-to-environment interactions in the broadest sense. This characterization is consistent with the World Health Organization (WHO) construct (*http://www.who.int/hia/evidence/doh/en/*) which recognizes the following determinants of health:

- The social and economic environment
- The physical environment
- The person's individual characteristics and behaviors

A healthy 21-year-old person may possess such attributes as a BMI between 19 and 25, blood pressure about 120/80 mm mercury, sound mental health, and the ability to develop and maintain relationships with other people. A healthy 21-year-old person may be able to obtain employment if desired or circumstances warrant. A healthy 21-year-old person should be able to provide food, clothing, and shelter for themselves and, if desired or if circumstances warrant, for others. One would expect that a 21-year-old person would possess a solid foundation in literacy (including written and oral communication skills), numeracy, and problem solving skills. As young adults, they may have positive relationships with friends or family, a network of peers, and feel that they are part of a community. Furthermore, a healthy 21-year-old person is not defined on the basis of an individual who is free of disease or disability. If an individual has a limitation, she or he may still be able to function well, and even thrive, in society with the proper access to care, social support, and adaptations.

The NCS will measure health as well as the presence or absence of disease-related signs, symptoms, and limitations. This requires a data collection protocol that captures a full description of an individual—a health profile—rather than just known determinants of disease and subsequent outcomes. This is consistent with the Life Course Health Development model which ''not only measures an individual's deficits but also calculates his or her health assets (The Millbank Quarterly 80(3): 433).''

As an organizing principle, the construction of a data collection approach around the characteristics of a healthy 21-year-old person allows the NCS to identify and measure the full range of experiences that may later influence individual outcomes. Measures must address the range of potential influences, from individuals, family, peers, the environment, communities or the larger society. This collection will supplement the conventional measurement of known or theorized antecedents of disease-related outcomes. The NCS does not intend to evaluate each participant using a particular paradigm as a preferred outcome, but rather to ensure that generally accepted health characteristics can be captured across the spectrum of the NCS. The NCS is not and cannot be a national screening program for various conditions but should be able to identify a wide range of phenotypic characteristics. The NCS will emphasize recording primary signs and symptoms, capacities and limitations, and a description of the whole person rather than diagnosing individuals as having particular diseases or conditions. Nonetheless, all relevant information from medical records, therapeutic interventions, and descriptions from participants and care takers will be captured and become part of the analytic data sets.

In such a model, however, the linking of a particular participant with a particular disease or condition may not offer all the necessary or even accurate information about either that individual or the population at large. By maintaining a focus on primary signs and symptoms, performance, any limitations, trends, developmental progress, experience, adaptation to changes in environment and context and relationships to the people and world around each participant, the NCS intends to maintain flexibility and precision for future analyses.

Health disparities will be addressed using a definition from the Centers for Disease Control and Prevention that notes disease burden, injury, violence, and health potential as key parameters (CDC, HHS, 2008). Each participant in the NCS will be evaluated for each of these parameters, regardless of any other demographic or socioeconomic characteristics. Through this approach, the NCS can maintain continuity of purpose through the ever-present changes in a dynamic society.

In sum, the NCS is proposing the use of a framework of distal outcomes, health determinants, primary signs and symptoms, phenotypic and environmental descriptions, and capture

of parameters associated with health disparities to guide the selection of the specific assessments along with their sequence and frequency. Related materials with additional information can be found here: *http://www.nationalchildrensstudy.gov/about/organization/advisorycommittee/Pages/January-2014-NCSAC-Meeting-Briefing-Book.aspx.*

3. Information Requested

This RFI invites the scientific community, health professionals, and the general public to provide comments and suggestions on the proposed framework of using the characteristics of a healthy, functional 21-year-old person, plus the other principles and factors noted, above for developing Study content and protocols. Given the requirements as stated in the Children's Health Act of 2000, please include in responses to the questions below whether the Study proposed content framework balances the complex requirements.

1. Please comment on the validity and acceptability of using a composite outcome—the higher-level functions of a healthy 21-year-old person—as an operational construct to help frame data collection.

2. Are there additional outcomes or developmental endpoints that should be considered?

3. What factors should the NCS use to prioritize assessments? Some examples of factors to consider are:

a. Potential public health impact.
b. Technical feasibility, including timing of data collection with regard to potential developmental vulnerability.
c. Scientific opportunity to address knowledge gaps and illuminate developmental pathways.

This RFI is for planning purposes only and should not be construed as a solicitation for applications or proposals, or as an obligation in any way on the part of the United States Federal government. The Federal government will not pay for the preparation of any information submitted or for the government's use. Additionally, the government cannot guarantee the confidentiality of the information provided.

Dated: January 15, 2014.

Dean J. Coppola,

Acting Director, National Children's Study, Eunice Kennedy Shriver National Institute of Child Health and Human Development.

[FR Doc. 2014–01339 Filed 1–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Declaration of the Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information: 1651–0036.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Declaration of the Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (78 FR 69101) on November 18, 2013, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before February 24, 2014 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Declaration of the Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes.

OMB Number: 1651–0036.

Form Number: None.

Abstract: The Declaration of the Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes is used to document duty free entry under conditions when articles are temporarily exported solely for scientific or educational purposes. This declaration, which is completed by the ultimate consignee and submitted to CBP by the importer or the agent of the importer, is used to assist CBP personnel in determining whether the imported articles should be free of duty. It is provided for under 19 U.S.C. 1202, HTSUS Subheading 9801.00.40, and 19 CFR 10.67(a)(3) which requires a declaration to Customs and Border Protection (CBP) stating that the articles were sent from the United States solely for temporary scientific or educational use and describing the specific use to which they were put while abroad.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 55.

Estimated Number of Annual Responses per Respondent: 3.

Estimated Number of Total Annual Responses: 165.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 27.

Dated: January 16, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–01238 Filed 1–22–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities; Cost Submission

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-day notice and request for comments; extension of an existing collection of information: 1651–0028.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning: Cost Submission. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507).

DATES: Written comments should be received on or before March 24, 2014, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Cost Submission.

OMB Number: 1651–0028.

Form Number: 247.

Abstract: The information collected on Form 247, Cost Submission, is used by CBP to assist in correctly calculating the duty on imported merchandise. This form includes details on actual costs and helps CBP determine which costs are dutiable and which are not. This collection of information is provided for by subheadings 9801.00.10, 9802.00.40, 9802.00.50, 9802.00.60 and 9802.00.80 of the Harmonized Tariff Schedule of the United States (HTSUS) and by 19 CFR 10.11–10.24, 19 CFR 141.88 and 19 CFR 152.106. Form 247 can be found at *http://www.cbp.gov/xp/cgov/toolbox/forms.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated time per Response: 50 hours.

Estimated Total Annual Burden Hours: 50,000.

Dated: January 16, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–01236 Filed 1–22–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U. S. Customs and Border Protection

Agency Information Collection Activities: e-Allegations Submission

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0131.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the e-Allegations Submission. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507).

DATES: Written comments should be received on or before March 24, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP

request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: e-Allegations Submission.

OMB Number: 1651–0131.

Abstract: In the interest of detecting trade violations to customs laws, Customs and Border Protection (CBP) established the e-Allegations Web site to provide a means for concerned members of the trade community to confidentially report violations to CBP. The e-Allegations site allows the public to submit pertinent information that assists CBP in its decision whether or not to pursue the alleged violations by initiating an investigation. The information collected includes the name, phone number and email address of the member of the trade community reporting the alleged violation. It also includes a description of the alleged violation, and the name and address of the potential violators. The e-Allegations Web site is accessible at *https://apps.cbp.gov/eallegations/.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours. There is no change to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals.

Estimated Number of Respondents: 1,600.

Estimated Number of Total Annual Responses: 1,600.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 400.

Dated: January 16, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–01237 Filed 1–22–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–06]

30-Day Notice of Proposed Information Collection: Requirements for Designating Housing Projects

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:* February 24, 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 November 4, 2013.

A. Overview of Information Collection

Title of Information Collection: Requirements for Designating Housing Projects.

OMB Approval Number: 2577–0192.

Type of Request: Revision of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: The information collection burden associated with designated housing is required by statute. Section 10 of the Housing Opportunity and Extension Act of 1996 modified Section 7 of the U.S. Housing Act of 1937 to require Public Housing Agencies (PHAs) to submit to HUD a plan for designation before they designate projects for only elderly families, disabled families, or elderly families and disabled families. In this plan, PHAs must document why the designation is needed, information on the proposed designation and the total PHA inventory, and what additional housing resources will be available to the non-designated group.

Respondents (i.e. affected public): State, or Local Government.

Estimated Number of Respondents: 25.

Estimated Number of Responses: 1.

Frequency of Response: Annually.

Average Hours per Response: 15 hours.

Total Estimated Burdens: 375 hours.

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: January 16, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–01342 Filed 1–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–01]

30-Day Notice of Proposed Information Collection: Alaska Native/Native Hawaiian Institutions Assisting Communities (AN/NHAIC)

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:* February 24, 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 October 23, 2013.

A. Overview of Information Collection

Title of Information Collection: Alaska Native/Native Hawaiian Institutions Assisting Communities (AN/NHAIC).

OMB Approval Number: 2528–0206.

Type of Request: Reinstatement with change of a previously approved collection.

Form Number: SF–425 and HUD–40077.

Description of the need for the information and proposed use: The information is being collected to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Respondents (i.e. affected public): Alaska Native Institutions (ANI) and Native Hawaiian Institutions (NHI) of Higher Education that meet the statutory definition established in Title III, Part A, Section 317 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1998 (Pub. L. 105–244; enacted October 7, 1998).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on an annual and semi-annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Quarterly Reports	10	40	8	320
Final Reports	3	3	12	36
Recordkeeping	10	10	10	100
Total	23	53	30	456

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: *January 16, 2014.*

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–01326 Filed 1–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5753–N–01]

60-Day Notice of Proposed Information Collection: State Community Development Block Program

AGENCY: Office of Community Planning and Development, 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:* March 24, 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 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: Eva Fontheim, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; email, *Eva.C.Fontheim@hud.gov* or telephone 202–402–3461 for copies of forms and documents.

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: State Community Development Block Grant (CDBG) Program.

OMB Approval Number: 2506–0085.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–40108.

Description of the need for the information and proposed use: The Housing and Community Development Act of 1974, as amended (HCDA), requires grant recipients that receive CDBG funding to retain records necessary to document compliance with statutory and regulatory requirements on an on-going basis. Grantees must also submit an annual performance and evaluation report to demonstrate progress that it has made in carrying out its consolidated plan, and such records as may be necessary to facilitate review and audit by HUD of the grantee's administration of CDBG funds [Section 104(e)]. The statute also requires [Section 104(e)(2)] that HUD conduct an annual review to determine whether states have distributed funds to units of general local government in a timely manner.

Respondents (i.e. affected public): This information collection applies to 50 State CDBG Grantees (49 states and Puerto Rico but not Hawaii).

Estimated Number of Respondents: 50.

Estimated Number of Responses: 50.

Frequency of Response: The frequency of the response to the collection of information is annual at 1.5 hour per response with a total of 75 hours reporting burden. The record keeping burden for program compliance is already included under the currently approved information collection. The estimate of the annual reporting and recordkeeping is 112,180 hours for 50 grant recipients.

Total Estimated Burdens: 112,180.

Note: Preparer of this notice may substitute the chart for everything beginning with estimated number of respondents above:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual Burden Hours	Hourly cost per response	Annual cost
PER	50	1	1	237	11,850		
Recordkeeping:		On-going	On-going	8,800			
States Localities	50			176	91,456		
Localities	3,500			26.13			
Timely Distribution Form:	50	1	1	1.5	75		
Total					112,180		

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: January 14, 2014.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2014–01328 Filed 1–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–08]

30-Day Notice of Proposed Information Collection: Housing Discrimination Information Form HUD–903.1, HUD 903.1A, HUD–903–1B, HUD–903.1F, HUD–903.1KOR, HUD–903.1C, HUD–903.1CAM, HUD–903.1RUS, 903–1_Somali

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:* February 24, 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 November 8, 2013.

A. Overview of Information Collection

Title of Information Collection: Housing Discrimination Information Form HUD–903.1, HUD 903.1A, HUD–903–1B, HUD–903.1F, HUD–903.1KOR, HUD–903.1C, HUD–903.1CAM, HUD–903.1RUS, 903–1_Somali.

OMB Approval Number: 2529–0011.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–903.1.

Description of the need for the information and proposed use: HUD uses the Housing [disability], familial status, or national origin Discrimination Information Form HUD–903.1 (Form) to collect pertinent information from persons wishing to file housing discrimination complaints with HUD under the Fair Housing Act. The Fair Housing Act makes it unlawful to

discriminate in the sale, rental, occupancy, advertising, or insuring of residential dwellings; or to discriminate in residential real estate-related transactions; or in the provision of brokerage services, based on race, color, religion, sex, handicap.

Any person who claims to have been injured by a discriminatory housing practice, or any person who believes that he or she will be injured by a discriminatory housing practice that is about to occur, may file a complaint with HUD not later than one year after the alleged discriminatory housing practice occurs or terminates. The Form promotes consistency in the collection of information necessary to contact persons who file housing discrimination complaints with HUD. It also aids in the collection of information necessary for initial assessments of HUD's authority to investigate alleged discriminatory housing practices under the Fair Housing Act.

This information may subsequently be provided to persons against whom complaints are filed [''respondents''], as required under section 810(a)(1)(B)(ii) of the Fair Housing Act.

Agency form number: Form HUD–903.1 (English), Form HUD–903.1A (Spanish), Form HUD–903–1B (Chinese), Form HUD–903.1F (Vietnamese), Form HUD–903.1K (Korean), Form HUD–903.1AR (Arabic), Form HUD–903.1CAM (Cambodian), Form HUD–903.1R (Russian), and Form HUD–903–1_(Somali).

Respondents (i.e. affected public): Individuals or households; businesses or other for-profit, not-for-profit institutions; State, Local, or Tribal Governments.

Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of responses: During FY 2012, HUD staff received approximately 15,688 information submissions from persons wishing to file housing discrimination complaints with HUD. Telephone contacts accounted for 3,694 of this total. The remaining 11,994 complaint submissions were transmitted to HUD by mail, in-person, and via the Internet. HUD estimates that an aggrieved person requires approximately 45 minutes in which to complete this Form. The Form is completed once by each aggrieved person. Therefore, the total number of annual burden hours for this Form is 8,996 hours.

11,994 × 1 (frequency) × .45 minutes (.75 hours) = 8,996 hours.

Annualized cost burden to complainants: HUD does not provide postage-paid mailers for this information collection. Accordingly, persons who choose to submit this Form to HUD by mail must pay the prevailing cost of First Class Postage. As of the date of this Notice, the annualized cost burden per person, based on a one-time submission of this Form to HUD via First Class Postage, is Forty-Six Cents ($0.46) per person. During FY 2012, FHEO staff received approximately 4,875 submissions of potential complaint information by mail. Based on this number, HUD estimates that the total annualized cost burden for aggrieved persons who submit this Form to HUD by mail is $2,242.50. Aggrieved persons also may submit this Form to HUD in person, by facsimile, or electronically via the Internet.

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: January 16, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–01333 Filed 1–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–05]

30-Day Notice of Proposed Information Collection: Grant Drawdown Payment Request/LOCCS/VRS Voice Activated

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:* February 24, 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 October 24, 2013.

A. Overview of Information Collection

Title of Information Collection: Grant Drawdown Payment Request/LOCCS/VRS Voice Activated.

OMB Approval Number: 2577–0166.

Type of Request: Revision of a currently approved collection.

Form Number: 50080–CFP; 50080–NN, RSDE, RSDF, SC; 50080–PHTA; 50080–URP; 50080–FSS; 50080–IHBG; 50080–HOMI; 50080–TIHD.

Description of the need for the information and proposed use: Grant

recipients use the applicable payment information to request funds from HUD through the LOCCS/VRS voice activated system. The information collected on the payment voucher will also be used as an internal control measure to ensure the lawful and appropriate disbursement of Federal funds as well as provide a service to program recipients.

Respondents (i.e. affected public): PHAs, state or local government. Tribes and tribally designated housing entities.

Grant program	Form 50080–XXXX	Number of respondents*	Frequency of responses (drawdowns) annually per program	Hours per response	Burden hours
Capital Fund	50080–CFP		56,876	.15	8,531.4
Resident Opportunities and Supportive Services (ROSS)	50080–NN, RSDE, RSDF, SC		8,400	.15	1,260
Public Housing Technical Assistance	50080–PHTA		134	.15	20.1
Hope VI	50080–URP		460	.15	115
Family Self-Sufficiency	50080–FSS		0	.15	0
Indian Housing Block Grant	50080–IHBG		7,290	.15	1,093.5
Indian HOME	50080–HOMI		10	.15	1.5
Traditional Indian Housing Development	50080–TIHD		510	.15	76.5
		4,746	73,266		10,990

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: January 16, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–01351 Filed 1–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–04]

30-Day Notice of Proposed Information Collection: Survey of Market Absorption of New Multifamily Units

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:* February 24, 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 October 3, 2013.

A. Overview of Information Collection

Title of Information Collection: Survey of Market Absorption of New Multifamily Units.

OMB Approval Number: 2528–0013.

Type of Request: Revision of a currently approved collection.

Form Number: H–31.

Description of the need for the information and proposed use: The Survey of Market Absorption (SOMA) provides the data necessary to measure the rate at which new rental apartments and new condominium apartments are absorbed; that is, taken off the market, usually by being rented or sold, over the course of the first twelve months following completion of a building. The data are collected at quarterly intervals until the twelve months conclude, or until the units in a building are completely absorbed. The survey also provides estimates of certain characteristics, including asking rent/price, number of units, and number of bedrooms. The survey provides a basis for analyzing the degree to which new apartment construction is meeting the present and future needs of the public. Beginning April 2014 the survey will transition from paper questionnaire to

Computer-Assisted Personal Interviewing (CAPI).

Respondents (i.e. affected public): Rental Agents/Builders.

Estimated Number of Respondents: 12,000 yearly (maximum).

Estimated Time per Response: 15 minutes/initial interview and 5 minutes for any subsequent interviews (up to three additional, if necessary).

Frequency of Response: Four times (maximum).

Estimated Total Annual Burden Hours: 6,000 (12,000 buildings × 30 minutes).

Estimated Total Annual Cost: The only cost to respondents is that of their time. The total estimated cost in FY 2014 is $1,750,000.

Respondent's Obligation: Voluntary.

Legal Authority: The survey is taken under Title 12, United States Code, Section 1701Z.

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: January 16, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–01355 Filed 1–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–07]

30-Day Notice of Proposed Information Collection: The Impact of Housing and Services Interventions on Homeless Families-36-Month Follow-Up Data Collection

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:* February 24, 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 16, 2013.

A. Overview of Information Collection

Title of Information Collection: The Impact of Housing and Services Interventions on Homeless Families-36-month Follow-up Data Collection.

OMB Approval Number: 2528–0259.

Type of Request: Revision of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: The 36-Month Head of Household Follow-up Survey Instrument and the 36-Month Child Data Collection Instruments will support the collection of data from families enrolled in the Family Options Study. The Family Options Study, formerly referred to as The Impact of Housing and Services Interventions on Homeless Families, was launched by HUD in 2008 in response to Senate Report 109–109 for the FY 2006 Transportation, Treasury, the Judiciary, Housing and Urban Development and Related Agencies Appropriations Bill, which directed the HUD to ''undertake research to ascertain the impact of various service and housing interventions in ending homelessness for families.'' The Family Options Study is comparing several combinations of housing assistance and services in a rigorous, multi-site experiment to determine which interventions work best to promote housing stability, family preservation, child well-being, adult well-being, and self-sufficiency. Between 2010 and 2012, over 2,300 families in twelve communities enrolled in the study. Prior rounds of data collection from the adult head of household have been conducted at the point of study enrollment/random assignment, and eighteen (18) months following the date of study enrollment/random assignment. Extensive data collection from a sample of children within study families has also been conducted by the research team with funding from the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD). This next phase of data collection in the Family Options Study will support the continued collection of data from study families 36 months following the date of study enrollment/random assignment. Given the length of time which families are eligible to remain in the interventions being tested (one of the four interventions being studied can serve families for up to 18-months, and a second can serve families for up to 24 months), this final wave of data is critical to understanding how families fare after an intervention ends, and whether the same interventions that are effective in the short-term (18 months), are also effective in the longer-term (36 months).

Respondents (i.e. affected public): Study households.

Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of responses:

Form	Respondent sample	Number of respondents	Average time to complete (minimum, maximum) in minutes	Frequency	Total burden (hours)
36-Month Head of Household Follow-up Survey Instrument.	All enrolled study families (N=2,307)	2,307	65 (55–75)	1	2,500
36-Month Child Data Collection	Up to two children per family	2,800	60 (50–70)	1	2,800
Total Burden Hours					5,300

Respondent's Obligation: Voluntary.

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: January 16, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–01348 Filed 1–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–02]

30-Day Notice of Proposed Information Collection: Doctoral Dissertation Research Grant Program Application and Monitoring Reports

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:* February 24, 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 October 23, 2013.

A. Overview of Information Collection

Title of Information Collection: Doctoral Dissertation Research Grant Program Application and Monitoring Reports.

OMB Approval Number: 2528–0213.

Type of Request: Reinstatement with change of a previously approved collection.

Form Number: SF–425.

Description of the need for the information and proposed use: The information is being collected to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Respondents (i.e. affected public): Ph.D. students preparing their dissertations on HUD-related topics.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on a quarterly, semi-annual and annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Semi-Annual Reports	10	20	4	80
Final Reports	6	6	2	12
Recordkeeping	10	10	4	40
Total	26	36	10	132

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: January 16, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–01321 Filed 1–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–03]

30-Day Notice of Proposed Information Collection: Historically Black Colleges and Universities Program

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: February 24, 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 October 23, 2013.

A. Overview of Information Collection

Title of Information Collection: Historically Black Colleges and Universities Program.

OMB Approval Number: 2528–0235.

Type of Request: Reinstatement without change of a previously approved collection.

Form Number: SF–425 and HUD–40077.

Description of the need for the information and proposed use: The information is being collected to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Respondents (i.e. affected public): Historically Black Colleges and Universities (HBCU).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on a quarterly, semi-annual and annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Quarterly Report	27	108	8	864
Final Reports	8	8	12	96
Recordkeeping	27	27	10	270
Total	62	143	30	1,230

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: January 16, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–01359 Filed 1–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5766–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

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

ACTION: Notice.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for

debentures issued under section 221(g)(4) of the Act during the 6-month period beginning January 1, 2014, is 2 ½ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2014, is 3 ⅝ percent. However, as a result of an amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

FOR FURTHER INFORMATION CONTACT: Yong Sun, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5148, Washington, DC 20410–8000; telephone (202) 402–4778 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 2014, is 3 ⅝ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 3 ⅝ percent for the 6-month period beginning January 1, 2014. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the first 6 months of 2014.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9 1/2	Jan. 1, 1980	July 1, 1980.
9 7/8	July 1, 1980	Jan. 1, 1981.
11 3/4	Jan. 1, 1981	July 1, 1981.
12 7/8	July 1, 1981	Jan. 1, 1982.
12 3/4	Jan. 1, 1982	Jan. 1, 1983.
10 1/4	Jan. 1, 1983	July 1, 1983.
10 3/8	July 1, 1983	Jan. 1, 1984.
11 1/2	Jan. 1, 1984	July 1, 1984.
13 3/8	July 1, 1984	Jan. 1, 1985.
11 5/8	Jan. 1, 1985	July 1, 1985.
11 1/8	July 1, 1985	Jan. 1, 1986.
10 1/4	Jan. 1, 1986	July 1, 1986.
8 1/4	July 1, 1986	Jan. 1. 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9 1/8	Jan. 1, 1988	July 1, 1988.
9 3/8	July 1, 1988	Jan. 1, 1989.
9 1/4	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8 1/8	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8 3/4	Jan. 1, 1991	July 1, 1991.
8 1/2	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7 3/4	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6 5/8	Jan. 1, 1994	July 1, 1994.
7 3/4	July 1, 1994	Jan. 1, 1995.
8 3/8	Jan. 1, 1995	July 1, 1995.
7 1/4	July 1, 1995	Jan. 1, 1996.
6 1/2	Jan. 1, 1996	July 1, 1996.
7 1/4	July 1, 1996	Jan. 1, 1997.
6 3/4	Jan. 1, 1997	July 1, 1997.
7 1/8	July 1, 1997	Jan. 1, 1998.
6 3/8	Jan. 1, 1998	July 1, 1998.
6 1/8	July 1, 1998	Jan. 1, 1999.
5 1/2	Jan. 1, 1999	July 1, 1999.
6 1/8	July 1, 1999	Jan. 1, 2000.
6 1/2	Jan. 1, 2000	July 1, 2000.
6 1/2	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5 7/8	July 1, 2001	Jan. 1, 2002.
5 1/4	Jan. 1, 2002	July 1, 2002.
5 3/4	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.
4 1/2	July 1, 2003	Jan. 1, 2004.
5 1/8	Jan. 1, 2004	July 1, 2004.
5 1/2	July 1, 2004	Jan. 1, 2005.
4 7/8	Jan. 1, 2005	July 1, 2005.
4 1/2	July 1, 2005	Jan. 1, 2006.
4 7/8	Jan. 1, 2006	July 1, 2006.
5 3/8	July 1, 2006	Jan. 1, 2007.
4 3/4	Jan. 1, 2007	July 1, 2007.
5	July 1, 2007	Jan. 1, 2008.
4 1/2	Jan. 1, 2008	July 1, 2008.
4 5/8	July 1, 2008	Jan. 1, 2009.
4 1/8	Jan. 1, 2009	July 1, 2009.
4 1/8	July 1, 2009	Jan. 1, 2010.
4 1/4	Jan. 1, 2010	July 1, 2010.
4 1/8	July 1, 2010	Jan. 1, 2011.
3 7/8	Jan. 1, 2011	July 1, 2011.
4 1/8	July 1, 2011	Jan. 1, 2012.
2 7/8	Jan. 1, 2012	July 1, 2012.
2 3/4	July 1, 2012	Jan. 1, 2013.
2 1/2	Jan. 1, 2013	July 1, 2013.
2 7/8	July 1, 2013	Jan. 1, 2014.
3 5/8	Jan. 1, 2014	July 1, 2014.

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be

borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning January 1, 2014, is 2 1/2 percent.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(**Authority:** Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).)

Dated: January 10, 2014.

Carol J. Galante,

Assistant Secretary for Housing–Federal Housing Commissioner.

[FR Doc. 2014–01329 Filed 1–22–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2013–N298; FXES11130100000–145–FF01E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application for a recovery permit to conduct activities with the purpose of enhancing the survival of an endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by February 24, 2014.

ADDRESSES: Program Manager for Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Application Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following application. Please refer to the appropriate permit number for the application when submitting comments.

Documents and other information submitted with this application are available for review by request from the Program Manager for Restoration and Endangered Species Classification at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–24048B

Applicant: Power Engineers, Incorporated, Meridian, Idaho.

The applicant requests a new recovery permit to take (survey) the Snake River physa (*Physa natricina*) in Idaho for the purpose of scientific research and enhancing the species' survival.

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: January 9, 2014.

Richard Hannan,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2014–00836 Filed 1–22–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2014–N002; FXES11130300000F3–145–FF03E00000]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: We must receive any written comments on or before February 24, 2014.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Karl Tinsley, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Karl Tinsley, (612) 713–5330.

SUPPLEMENTARY INFORMATION:

Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR part 17. Submit your written data, comments, or request for a copy of the

complete application to the address shown in **ADDRESSES.**

Permit Applications

Permit Application Number: TE48832A
Applicant: Kevin J. Roe, Iowa State University, Ames, IA.

The applicant requests a permit renewal to take (capture and release; non-destructive sampling) scaleshell (*Leptodea leptodon*) and pink mucket (*Lampsilis abrupta*) mussels within the States of Alabama, Arkansas, Kentucky, Missouri, Oklahoma, Tennessee, and West Virginia. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE151107
Applicant: Redwing Ecological Services, Inc., Louisville, KY.

The applicant requests a permit renewal to take (capture and release) Indiana bats (*Myotis sodalis*), gray bats (*Myotis grisescens*), Virginia big-eared bats (*Corynorhinus townsendii virginianus*), and Ozark big-eared bats (*Corynorhinus townsendii ingens*) within the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE02651A
Applicant: The Ohio Department of Transportation, Columbus, OH.

The applicant requests a permit renewal to take (capture and release) Indiana bats and American burying beetle (*Nicrophorus americanus*) within the State of Ohio. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE217351
Applicant: Katrina L. Schultes, USDA–Forest Service, Nelsonville, OH.

The applicant requests a permit renewal, with amendments, to take (capture and release) Indiana bats, gray bats, Virginia big-eared bats, and northern long-eared bats (*Myotis septentrionalis*) within the States of Ohio and Kentucky. Proposed activities are aimed at enhancement of survival of the species in the wild.

Permit Application Number: TE234121
Applicant: Western Ecosystems Technology, Inc., Cheyenne, WY.

The applicant requests a permit renewal to take (capture and release) Indiana bats, gray bats, Ozark big-eared bats, and Virginia big-eared bats within the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE08603A
Applicant: Michelle Malcosky, Hudson, OH.

The applicant requests a permit renewal to take (capture and release) Indiana bats throughout the species' range within the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE049738
Applicant: Third Rock Consultants, LLC, Lexington, KY.

The applicant requests a permit renewal, with amendments, to take (capture and release) the Indiana bat, gray bat, Virginia big-eared bat, Ozark big-eared bat, American burying beetle, and the following Federally listed fish and mussel species:

Erimystax cahni	Slender chub
Etheostoma chienense	Relict darter
Etheostoma percnurum	Duskytail darter
Hybopsis monacha	Spotfin chub
Notropis albizonatus	Palezone shiner
Phoxinus cumberlandensis	Blackside dace
Noturus flavipinnis	Yellowfin madtom
Noturus stanauli	Pygmy madtom
Scaphirhynchus albus	Pallid sturgeon
Alasmidonta atropurpurea	Cumberland elktoe
Cyprogenia stegaria	Fanshell
Dromus dromas	Dromedary pearlymussel
Epioblasma brevidens	Cumberland combshell
Epioblasma capsaeformis	Oyster mussel
Epioblasma obliquata obliquata	Purple cat's paw
Epioblasma torulosa rangiana	Northern riffleshell
Lampsilis orbiculata (=l. abrupta)	Pink mucket
Obovaria retusa	Ring pink
Pegias fibula	Littlewing pearlymussel
Plethobasus cooperianus	Orangefoot pimpleback
Pleurobema clava	Clubshell
Pleurobema gibberum	Cumberland pigtoe
Pleurobema plenum	Rough pigtoe
Potamilus capax	Fat pocketbook
Quadrula intermedia	Cumberland monkeyface
Villosa perpurpurea	Purple bean
Villosa trabilis	Cumberland bean

Activities are proposed throughout the range of the species within the States of Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Michigan, Mississippi, Missouri, North Carolina, Ohio, South Carolina, and Tennessee. Proposed activities are for the enhancement of survival of the species in the wild through surveys to document presence/absence of the species, population monitoring, and

evaluation of potential impacts to the species.

Permit Application Number: TE235639

Applicant: Davey Resource Group, Kent, OH.

The applicant requests a permit renewal, with amendments, to take (capture and release) Indiana bats within the States of Alabama, Arkansas, Connecticut, Georgia, Illinois, Indiana, Kentucky, Michigan, Missouri, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE06801A

Applicant: Pittsburgh Wildlife & Environmental, Inc., McDonald, PA.

The applicant requests a permit renewal, with amendments, to take (capture and release) Indiana bats and gray bats within the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. Proposed activities are for the enhancement of survival and recovery of the species in the wild.

Permit Application Number: TE02373A

Applicant: Environmental Solutions and Innovations, Inc., Cincinnati, OH.

The applicant requests a permit renewal, with amendments, to take (capture and release) Indiana bats, gray bats, Virginia big-eared bats, Ozark big-eared bats, northern long-eared bats, Running buffalo clover (*Trifolium stoloniferum*), Northeastern bulrush (*Scirpus ancistrocheatus*), and the following mussel species:

Alasmidonta atropurpurea	Cumberland elktoe
Alasmidonta heterodon	Dwarf wedgemussel
Cyprogenia stegaria	Fanshell
Cumberlandia monodonta	Spectaclecase
Dromus dromas	Dromedary pearlymussel
Epioblasma brevidens	Cumberland combshell
Epioblasma capsaeformis	Oyster mussel
Epioblasma florentina florentina	Yellow blossom
Epioblasma florentina walkeri	Tan riffleshell
Epioblasma obliquata obliquata	Purple catspaw
Epioblasma obliquata perobliqua	White catspaw
Epioblasma torulosa rangiana	Northern riffleshell
Epioblasma torulosa torulosa	Tubercled-blossom pearlymussel
Epioblasma triquetra	Snuffbox
Hemistena lata	Cracking pearlymussel
Lampsilis abrupta	Pink mucket
Leptodea leptodon	Scaleshell
Obovaria retusa	Ring pink
Pegias fibula	Littlewing pearlymussel
Plethobasus cicatricosus	White wartyback pearlymussel
Plethobasus cooperianus	Orangefoot pimpleback
Plethobasus cyphyus	Sheepnose
Pleurobema clava	Clubshell
Pleurobema collina	James spiny mussel
Pleurobema plenum	Rough pigtoe
Potamilus capax	Fat pocketbook
Quadrula cylindrical strigillata	Rough rabbitsfoot
Quadrula fragosa	Winged mapleleaf
Villosa fabalis	Rayed bean
Villosa trabilis	Cumberland bean
Epioblasma florentina curtisi	Curtis' pearly mussel
Lampsilis powellii	Arkansas fatmucket
Lampsilis virescens	Alabama lampmussel
Alasmidonta raveneliana	Appalachian elktoe
Quadrula sparsa	Appalachian monkeyface pearlymussel
Lemiox rimosus	Birdwing pearlymussel
Medionidus parvulus	Coosa moccasinshell
Quadrula intermedia	Cumberland monkeyface pearlymussel
Pleurobema gibberum	Cumberland pigtoe
Lampsilis altilis	Fineline pocketbook
Fusconaia cuneolus	Finerayed pigtoe
Ptychobranchus subtentum	Fluted kidneyshell
Pleurobema hanleyianum	Georgia pigtoe
Epioblasma torulosa gubernaculum	Green bloom pearlymussel
Pleurobema perovatum	Ovate clubshell
Toxolasma cylindrellus	Pale Lilliput pearlymussel
Villosa perpurpurea	Purple bean
Quadrula cylindrical cylindrical	Rabbitsfoot
Fusconaia Cor	Shiny pigtoe
Pleuronaia dolabelloides	Slabside pearlymussel
Epioblasma othcaloogensis	Southern acornshell
Pleurobema georgianum	Southern pigtoe
Ptychobranchus greenii	Triangular kidneyshell
Epioblasma turgidula	Turgid blossom pearlyshell
Epioblasma metastriata	Upland combshell

As part of the same application, the applicant also requests a permit renewal to take (capture and release) the following fish species:

Cyprinella caerulea	Blue shiner
Etheostoma sellare	Maryland darter
Percina rex	Roanoke logperch
Phoxinus cumberlandensis	Blackside Dace
Crystallaria cincotta	Diamond darter

Proposed work would take place in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities include presence/absence surveys, habitat evaluation, and other activity designed to enhance the survival of the species in the wild.

Permit Application Number: TE181256

Applicant: Lewis Environmental Consulting, LLC, Murray, KY.

The applicant requests a permit renewal to take (capture and release) clubshell, Northern riffleshell, orange-footed pimpleback pearlymussel, pink mucket pearlymussel, rough pigtoe, purple cat's paw pearlymussel, white cat's paw pearlymussel, fanshell, fat pocketbook, Higgins' eye pearlymussel (*Lampsilis higginsii*), winged mapleleaf, rabbitsfoot, rayed bean, sheepnose, spectaclecase, snuffbox, scaleshell, ring pink, and white wartyback mussels within the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Illinois, Indiana, Iowa, Michigan, Mississippi, Missouri, Ohio, Pennsylvania, Tennessee, West Virginia and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE60999A

Applicant: Levi D. Miller, Logan, OH.

The applicant requests a permit renewal, with amendments, to take (capture and release) Indiana bats within the States of Ohio and Kentucky. Proposed activities are for the enhancement of survival of the species in the wild.

Permit Application Number: TE24334B

Applicant: Shaylyn K. Hatch, Covington, PA.

The applicant requests a permit to take (capture and release) Indiana bats within the State of Ohio. Proposed activities are for the enhancement of survival of the species in the wild.

Public Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. 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.

Dated: January 14, 2014.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2014–01264 Filed 1–22–14; 8:45 a.m.]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES– 2012–0081;FF04EF1000 FGES11130400000 134]

Marine Mammal Protection Act; Stock Assessment Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of final revised marine mammal stock assessment reports; response to comments.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA), and its implementing regulations, we, the U.S. Fish and Wildlife Service (Service), announce that we have revised our stock assessment reports (SAR) for two West Indian manatee stocks: the Florida manatee stock and the Puerto Rico stock of Antillean manatees (*Trichechus manatus latirostris* and *Trichechus manatus manatus,* respectively), including incorporation of public comments. We now make these two final revised SARs available to the public.

ADDRESSES: You may view both revised SARs on *http://www.regulations.gov* under Docket No. FWS–R4–ES–2012–0081. Send requests for printed copies of the Florida Manatee SAR to: Field Supervisor, U.S. Fish and Wildlife Service, Jacksonville Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, Florida 32256–7517. You may also view or download it at *http://www.fws.gov/northflorida.* Send requests for printed copies of the Antillean Manatee SAR to: Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Office, P.O. Box 491, Puerto Rico 00622. You may also view or download it at *http://www.fws.gov/caribbean/ES.*

FOR FURTHER INFORMATION CONTACT: For information on the methods, data, and results of the Florida manatee stock assessment, contact Jim Valade by phone at 904–731–3116 or by email at *Jim_Valade@fws.gov.* For information on the methods, data, and results of the Antillean manatee stock assessment, contact Marelisa Rivera by phone at 787–851–7297 or by email at *Marelisa_Rivera@fws.gov.* Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Under the MMPA (16 U.S.C. 1361 *et seq.*) and its implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 18, the Service regulates the taking, possession, transportation, purchasing, selling, offering for sale, exporting, and importing of marine mammals. One of the goals of the MMPA is to ensure that stocks of marine mammals occurring in waters under U.S. jurisdiction do not experience a level of human-caused mortality and serious injury that is likely to cause the stock to be reduced below its *optimum sustainable population* (OSP) level. OSP is defined under the MMPA as " . . . the number

of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element'' (16 U.S.C. 1362(9)).

To help accomplish the goal of maintaining marine mammal stocks at their OSPs, section 117 of the MMPA requires the Service and the National Marine Fisheries Service (NMFS) to prepare a SAR for each marine mammal stock that occurs in waters under U.S. jurisdiction. Each SAR must include:

1. A description of the stock and its geographic range;
2. A minimum population estimate, maximum net productivity rate, and current population trend;
3. An estimate of human-caused mortality and serious injury;
4. A description of commercial fishery interactions;
5. A categorization of the status of the stock; and
6. An estimate of the *potential biological removal* (PBR) level.

The MMPA defines the PBR as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its OSP'' (16 U.S.C. 1362(20)). The PBR is the product of the minimum population estimate of the stock (N_{min}); one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size (R_{max}); and a recovery factor (F_r) of between 0.1 and 1.0. This can be written as:

$$PBR = (N_{min})(\tfrac{1}{2} \text{ of the } R_{max})(F_r)$$

Section 117 of the MMPA also requires the Service and NMFS to review the SARs: (a) At least annually for stocks that are specified as strategic stocks; (b) at least annually for stocks for which significant new information is available; and (c) at least once every 3 years for all other stocks. If our review of the status of a stock indicates that it has changed or may be more accurately determined, then the SAR must be revised accordingly.

A *strategic stock* is defined in the MMPA as a marine mammal stock (a) for which the level of direct human-caused mortality exceeds the PBR; (b) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) [the ''ESA''], within the foreseeable future; or (c) which is listed as a threatened species or endangered species under the [ESA], or is designated as depleted under [the MMPA]'' 16 U.S.C. 1362(19).

SARs for both the Puerto Rico stock of Antillean manatees and the Florida manatee were last revised in December of 2009. Both are classified as strategic stocks by virtue of their listing as an endangered species under the ESA. The Service reviewed the SARs in 2010 and concluded that a revision of these SARs was not warranted at that time because the status of these stocks had not changed since 2009, nor could they be more accurately determined. Upon subsequent review in 2011, the Service determined that revision was warranted for both stocks in light of recent elevated Florida manatee mortality levels that could affect the status of this stock and the development of new methods that could more accurately determine the number of Antillean manatees in Puerto Rico. Before releasing our draft SARs for public review and comment, we reviewed the drafts with the Atlantic Scientific Review Group and submitted them for an internal technical review.

In a March 28, 2013 (78 FR 19002) **Federal Register** notice, we made our draft SARs available for the MMPA-required 90-day public review and comment period. We reviewed all comments received for substantive issues and new information and revised the final SARs as necessary (see **RESPONSE TO PUBLIC COMMENTS**). Between publication of the draft and final revised SARs, we have not revised the status of the stocks itself. However, we have updated the SARs to include the most recent information available.

The following table summarizes the information we are now making available in the final revised SARs for both stocks of the West Indian manatees, which lists the stock's N_{min}, R_{max}, F_r, PBR, annual estimated human-caused mortality and serious injury, and status.

FINAL REVISED STOCK ASSESSMENT REPORTS FOR STOCKS OF THE WEST INDIAN MANATEE

Stocks of West Indian Manatees	N_{min}	R_{max}	F_r	PBR	Annual estimated average human-caused mortality	Stock status
Florida manatee (Southeastern U.S.)	4,834	0.062	0.1	14	99	Strategic.
Antillean manatee (Puerto Rico)	142	0.04	0.1	0	1	Strategic.

Response to Public Comments

Manatee Stock Assessments

We received three comment submissions on the draft revised SARs (78 FR 19002). Commenters included the Atlantic Scientific Review Group, the Marine Mammal Commission, and the Humane Society of the United States. We present substantive issues raised in those comments, along with our responses, below.

(1) Comment: A commenter stated that the Service failed to review and revise its manatee stock assessment reports (SARs) since 2009, consistent with its responsibilities under the MMPA, i.e., 16 U.S.C. 1386 117(c)(1)(A).

Our Response: Consistent with its responsibilities under section 117(c)(1)(A) of the MMPA, the Service reviewed both manatee SARs in 2010 and 2011. As stated in the Service's March 28, 2013 Notice of Availability, and reiterated above, the Service reviewed the SARs in 2010 and concluded there was no new information indicative of a change in the status of these stocks nor was there any information to suggest that the status of these stocks could be more accurately determined and, therefore, revision was not warranted at that time. However, upon review in 2011, the Service concluded revision was warranted for both stocks in light of elevated Florida manatee mortality levels and new methods that could more accurately determine the number of Antillean manatees in Puerto Rico and began the revision process.

The Service's obligation to revise a SAR is contingent upon whether or not a review indicates that the status of the stock has changed or can be more accurately determined. If a review indicates that the status of a stock has changed or can be more accurately determined, the Service revises the SAR in accordance with section 117(b), which includes a public review and comment period. However, section

117(c)(1) does not include a similar requirement of public notice and comment on the Service's review of stock assessments. In view of this, we acknowledge the public may not be aware of the results of the Service's review of stock assessments. Therefore, although not required under the MMPA, we will update our Web pages at *http://www.fws.gov/northflorida* for the Florida stock and at *http://www.fws.gov/caribbean/ES* for the Puerto Rico stock to inform the public of the results of our annual review of these strategic stocks.

(2) Comment: Commenters recommended that the Service consistently describe the listed entity, i.e., the West Indian manatee, at the beginning of both SARs and then segue to the particular subspecies in each of the SARs.

Our Response: We have revised both SARs to clarify the listing and subspecies.

(3) Comment: We received comments encouraging continued and expanded research efforts such as examining manatee survival rates, genetics, ecological drivers, etc.

Our Response: Although these comments are outside the scope of review for these SARs, the Service appreciated this input and will continue to work with partners (e.g., U.S. Geological Survey, Florida Fish and Wildlife Research Institute, Puerto Rico Department of Natural and Environmental Resources, universities, aquaria, etc.) to collect important information on manatees and their environment.

Florida Manatee Stock Assessment

(4) Comment: Commenters stated that the identification of four stocks would facilitate management efforts because SARs, developed for each management unit, could more accurately identify unit-specific threats and, therefore, better promote recovery within the management units.

Our Response: Current and previous Florida manatee management activities have relied on the use of a state-of-the-art core biological model (CBM) to assess manatee population status and threats to the population as a whole and to assess status and threats in each of the four management units. Service and State manatee management efforts rely on the CBM for information on threats and consequently target identified threat levels through management activities described in respective recovery and management plans. The use of recovery plans to address threats is prescribed by the ESA and has been used effectively by the Service and other resource agencies for over 30 years. As such, specific management actions targeted to achieving the ''conservation and survival'' of the West Indian manatee are appropriately described in the recovery plan for this species issued under section 4(f) of the ESA.

In addition, section 117 of the MMPA requires the Service to prepare an assessment for each marine mammal ''stock,'' and the term ''stock'' is defined under section 3(11) of the MMPA as ''a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature.'' Thus, although the SAR has been revised to include a discussion describing the four management units identified within Florida, the Service recognizes the Florida manatee population as a single ''stock'' within the meaning of that term as defined under the MMPA.

(5) Comment: Commenters asked that the Service include the 2012 Florida manatee deaths in the Florida manatee SAR.

Our Response: We have revised the Florida manatee SAR to include the 2012 Florida manatee deaths.

(6) Comment: A commenter suggested the Florida manatee SAR include a table showing annual death totals by year and region along with cause of death and a chart listing declared unusual mortality events (UMEs) and number of deaths.

Our Response: The SAR includes a table that provides annual death totals and causes for the Florida stock. A more detailed listing of annual deaths by County in Florida can be found on the Florida Fish and Wildlife Conservation Commission's (FWC) Web site (*http://www.myfwc.com/research/manatee/rescue-mortality-response/mortality-statistics/*). Rather than duplicate these tables, the Service directs interested parties to the FWC Web site. This link is provided in the SAR in the list of references. With regard to UMEs, NMFS maintains a running list of all UMEs on its ''Marine Mammal Unusual Mortality Events'' Web site (*http//www.nmfs.noaa.gov/pr/health/mmume*), which includes those declared for manatees. Although mortality events are discussed in the Florida manatee SAR, the Service does not believe it is necessary to duplicate the list of manatee UMEs in the revised SAR.

(7) Comment: A commenter recommended additional citations for consideration in the Florida manatee SAR in addition to a few specific editorial recommendations for both SARs.

Response: The Service appreciates these recommendations and has incorporated them into the final SARs. The additional citations referenced have been added to the complete list of scientific literature, which is available on the Federal eRulemaking portal (*http://www.regulations.gov*) under Docket No. FWS–R4–ES–2012–0081.

Antillean Manatee Stock Assessment

(8) Comment: The Antillean manatee SAR should include a map of the Antillean subspecies range as a whole, as well as a map that identifies key locations referenced in the text.

Our Response: We have revised the SAR for the Puerto Rico stock of Antillean manatees to include a map that references coastal municipalities and offshore islands mentioned in the SAR. Since this SAR is specific to the Puerto Rico stock, we believe the overall range of the Antillean manatee is appropriately described in the text.

(9) Comment: Tables 1 and 2 in the Antillean manatee SAR do not include data for the same time periods. Can they be modified to reflect the same periods?

Our Response: We have revised the SAR for the Puerto Rico stock of Antillean manatees to reflect the same periods.

References

In accordance with section 117(b)(1) of the MMPA, we include in this notice a list of the sources of information or published reports upon which we based the revised SAR. The Service consulted technical reports, conference proceedings, refereed journal publications, and scientific studies prepared or issued by Federal agencies, nongovernmental organizations, and individuals with expertise in the fields of marine mammal biology and ecology, population dynamics, modeling, and commercial fishing practices.

These agencies and organizations include: the Service, the U.S. Geological Survey, the National Oceanic and Atmospheric Administration, the Puerto Rico Department of Natural and Environmental Resources, the Georgia Department of Natural Resources, the Florida Fish and Wildlife Conservation Commission, Hubbs Sea World Research Institute, the Gulf and Caribbean Fisheries Institute, the Caribbean Stranding Network, and Mote Marine Laboratory. In addition, the Service consulted publications such as the Journal of Wildlife Management, Marine Mammal Science, Marine Pollution Bulletin, Marine Technology Society Journal, Wildlife Monographs, Gulf and Caribbean Research, Journal of Zoo and Wildlife Medicine, Molecular Ecology, and Molecular Ecology Notes, as well as other refereed journal literature,

technical reports, and data sources in the development of these SARs.

A complete list of citations to the scientific literature relied on for each of these SARs is available on the Federal eRulemaking portal (*http://www.regulations.gov*) under Docket No. FWS–R4–ES–2012–0081. The list can also be viewed in Adobe Acrobat format at *http://www.fws.gov/northflorida* or at *http://www.fws.gov/caribbean/es/manatee.*

Authority

The authority for this action is the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Dated: January 10, 2014.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–01271 Filed 1–22–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DR.5A211.IA000414]

Proposed Finding Against Acknowledgment of the Meherrin Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed finding.

SUMMARY: The Department of the Interior (Department) gives notice that the Assistant Secretary—Indian Affairs (AS–IA) proposes to determine that the petitioner known as the ''Meherrin Indian Tribe'' (MTB), Petitioner #119b, is not an Indian tribe within the meaning of Federal law. This notice is based on an investigation which determined that the petitioner does not satisfy criterion 83.7(e) as set forth in the applicable regulations, and therefore, does not meet the requirements for a government-to-government relationship with the United States.

DATES: Comments on this proposed finding (PF) are due on or before July 22, 2014. The petitioner then has a minimum of 60 days to respond to those comments. See the **SUPPLEMENTARY INFORMATION** section of this notice for more information about these dates.

ADDRESSES: Comments on the PF and requests for a copy of the summary evaluation which summarizes the evidence, reasoning, and analysis that are the basis for the PF should be addressed to the Office of Federal Acknowledgment, 1951 Constitution Avenue NW., MS 34B–SIB, Washington, DC 20240. The **Federal Register** notice is also available through *http://www.bia.gov/WhoWeAre/AS–IA/OFA/RecentCases/index.htm.* Interested or informed parties must send a copy of their comments to the petitioner at Meherrin Indian Tribe c/o Wayne Brown, P.O. Box 274, Ahoskie, NC 27910.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513–7650.

SUPPLEMENTARY INFORMATION: The Department publishes this notice in the exercise of authority that the Secretary of the Interior delegated to the Assistant Secretary—Indian Affairs (AS–IA) by 209 DM 8.

A Meherrin Indian Tribe organization formed in 1976 and obtained State recognition from North Carolina in 1986. In 1990, the group submitted to the AS–IA a letter of intent to petition for Federal acknowledgment as an Indian tribe. The Department received the letter of intent on August 2, 1990, and designated the group as Petitioner #119. A part of Petitioner #119 submitted a separate letter of intent and partial petition documentation that the Department received on June 27, 1995. The Department designated the original petitioner as #119a and the subsequent petitioner as #119b. This PF evaluates Petitioner #119b (MTB).

Petitioner #119b initially claimed to constitute the descendants of Sallie M. (Smith) Lewis (b.ca.1844–d.1904) of Hertford County, NC. The petitioner identified her as ''the last full-blooded Meherrin Indian'' or ''Susquehanna'' Indian who migrated as an adult from Pennsylvania to North Carolina. The petitioner's 2011 submission of petition documentation identified a 1994 master's thesis as its official history. The thesis does not describe the modern-day members as descendants of Sallie M. (Smith) Lewis but as descendants of the Iroquois-speaking historical Meherrin Indian tribe that, it claims, in the mid-1700s left its reservation adjoining the Meherrin and Chowan Rivers in what is now Hertford County, NC, and continued to reside nearby on Potecasi Creek.

For the purposes of this PF, the historical Indian tribe is the Meherrin Indian tribe that was last identified in North Carolina about 1763. The Assistant Secretary has directed that, if an Indian tribe existed in 1789, the petitioner needs to demonstrate its ''continuous tribal existence'' from such a historical Indian tribe only for the period since 1789 (AS–IA 5/23/2008). The evidence in the petition record, however, does not demonstrate that the Meherrin Indian tribe, or a group that evolved from it, existed in 1789. In response to this PF, the petitioner may submit evidence to show it has evolved as a group from the Meherrin Indian tribe whose existence was last noted about 1763. Alternatively, the petitioner may provide evidence that a historical Meherrin Indian tribe, or another historical Indian tribe, existed in 1789, and that since 1789 the petitioner has continued the existence of that historical Indian tribe or has evolved as a group from that historical Indian tribe.

The Department conducted a technical assistance review of the partial petition and issued Petitioner #119b a letter on March 15, 1996, describing the petition's lack of evidence under all seven of the mandatory criteria. The petitioner provided additional petition documentation on August 22, 1997. The OFA advised the MTB that its continued lack of evidence demonstrating descent from the historical tribe—required under criterion 83.7(e)—meant that the Department could proceed to conduct an expedited review under 83.10(e) that would result in a finding against Federal acknowledgment. However, since the MTB governing body advised that its petition was complete, the Department placed Petitioner #119b on the ''ready, waiting for active consideration'' list on October 6, 1997. An OFA genealogist made a field visit in February 1998.

The OFA conducted informal technical assistance with MTB representatives in Washington, DC, in February 2008. The Department placed the MTB petitioner on active consideration on November 1, 2010. The AS–IA's March 31, 2005, guidance directive provides for a 60-day period after notification that a petitioner will be placed on active consideration during which a petitioner may update and supplement its documented petition. The MTB petitioner submitted additional petition documentation within the extended 60-day period, which ended February 14, 2011. On June 21, 2013, the AS–IA announced a ''preliminary discussion draft of potential revisions to Part 83.'' By letter dated May 31, 2013, the Department provided the petitioner the option to request a suspension of consideration of its petition during the process of revising the regulations or to continue under the existing Part 83 regulations. By letter dated July 13, 2013, received at OFA on July 22, Petitioner #119b requested to proceed with a FD under the existing regulations.

The acknowledgment process is based on the regulations at 25 CFR part 83. Under these regulations, the petitioner

has the burden to present evidence that it meets the mandatory criteria in section 83.7. Petitioner #119b does not meet criterion 83.7(e), which requires that the petitioner's members descend from a historical Indian tribe or tribes that combined and functioned as a single autonomous political entity. Pursuant to guidance issued in 2008, the proposed finding is issued on the basis of Petitioner's failure to satisfy 83.7(e). See 73 Fed. Reg. 30146, 30148 (May 23, 2008). If following an evaluation of the evidence and argument submitted during the comment period it is determined that the petitioner meets the criterion, then the Assistant Secretary will issue an amended proposed finding evaluating all seven criteria.

The petitioner submitted a membership list, separately certified by its governing body in February 2011, identifying 203 adult and minor members. As required under criterion 83.7(e), the membership list furnished each member's full name (including maiden name), date of birth, and residential address, with minor omissions. The current members represent part of the larger group to which North Carolina provided recognition as a tribe in 1986. The evidence does not demonstrate that Sallie M. (Smith) Lewis or the historical landowners allegedly near Potecasi Creek were Indian, Meherrin Indian, or members of a Meherrin Indian or other Indian tribe. The petitioner has not documented, nor has the OFA identified, a historical Indian tribe, or tribes that combined, from which its members descend. The petitioner also has not provided sufficient evidence to verify descent from those individuals it asserted were Meherrin. The evidence in the record does not demonstrate that any of the petitioner's members descend from a historical Indian tribe. Therefore, the petitioner does not meet the requirements of criterion 83.7(e).

Based on this preliminary factual determination, the Department proposes not to extend Federal acknowledgment as an Indian tribe to Petitioner #119b known as the Meherrin Indian Tribe. A report summarizing the evidence, reasoning, and analyses that are the basis for the PF will be provided to the petitioner and interested parties, and is available to other parties upon written request as provided by 25 CFR 83.10(h). Requests for a copy of the summary evaluation should be addressed to the Federal Government as instructed in the **ADDRESSES** section of this notice. The summary evaluation and the **Federal Register** notice are also available through *http://www.bia.gov/WhoWeAre/AS–IA/OFA/RecentCases/index.htm.*

Publication of this notice of the PF in the **Federal Register** initiates a 180-day comment period during which the petitioner and interested and informed parties may submit arguments and evidence to support or rebut the evidence relied upon in the PF. Comments on the PF should be addressed to both the petitioner and the Federal Government as required by 25 CFR 83.10(i) and as instructed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Commenters should be aware that personal identifying information in their comments—such as address, telephone number, or email address—may be made publicly available at any time. Commenters may request that the Department withhold any personal identifying information from public review, but the Department cannot guarantee that it can do so.

During the comment period, the Meherrin petitioner and the interested parties may request in writing that the AS–IA hold a formal, on-the-record technical assistance meeting as provided by the acknowledgment regulations at 25 CFR 83.10(j)(2). Such requests must include a proposed agenda of topics and must be received by the Department within 60 calendar days of the publication of this **Federal Register** notice.

The regulations, 25 CFR 83.10(k), provide the petitioner a minimum of 60 days to respond to any submissions on the PF received from interested and informed parties during the comment period. After the expiration of the comment and response periods described above, the Department will consult with the petitioner concerning establishment of a schedule for preparation of the final determination (FD). The AS–IA will publish the FD of the petitioner's status in the **Federal Register** as provided in 25 CFR 83.10(l), at a time that is consistent with that schedule.

Dated: January 16, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–01353 Filed 1–22–14; 8:45 am]

BILLING CODE 4310–G1–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DR.5A211.IA000414]

Proposed Finding for Federal Acknowledgment of the Pamunkey Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Proposed Finding.

SUMMARY: The Department of the Interior (Department) gives notice that the Assistant Secretary—Indian Affairs (AS–IA) proposes to determine that the petitioner known as the Pamunkey Indian Tribe (Petitioner #323), 331 Pocket Road, King William, VA 23086, c/o Mr. Kevin M. Brown, is an Indian tribe within the meaning of Federal law. This notice is based on a proposed finding (PF) that the petitioner satisfies the seven mandatory criteria for acknowledgment set forth in the applicable regulations, and thus, meets the requirements for a government-to-government relationship with the United States.

DATES: Comments on this PF are due on or before July 22, 2014. The petitioner then has until September 22, 2014 to respond to those comments. The Department must receive requests for a formal, on-the-record technical assistance meeting by February 20, 2014. See the **SUPPLEMENTARY INFORMATION** section of this notice for more information about these dates.

ADDRESSES: Comments on the PF and/or requests for a copy of the report of the summary evaluation of the evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgment, 1951 Constitution Avenue NW., Mail Stop 34B–SIB, Washington, DC 20240. Interested and informed parties who make submissions to the Assistant Secretary—Indian Affairs (AS–IA) must also provide copies of their comments to the petitioner at Pamunkey Indian Tribe, c/o Mr. Kevin M. Brown, 331 Pocket Road, King William, VA 23086.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513–7650.

SUPPLEMENTARY INFORMATION: Under 25 CFR 83.10(h), the Department gives notice the AS–IA proposes to determine that the Pamunkey Indian Tribe is an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner satisfies all seven mandatory criteria set forth in part 83 of 25 CFR 83(a) through

(g), and thus meets the requirements for a government-to-government relationship with the United States.

The Department publishes this notice in the exercise of authority that the Secretary of the Interior delegated to the AS–IA by 209 DM 8.

A group known as the Pamunkey Indian Tribe submitted a letter of intent to petition for Federal acknowledgment as an Indian tribe to the AS–IA. The Department received the letter of intent on June 29, 2009. The Department designated this group as Petitioner #323. The Pamunkey petitioner submitted its first documentation that included a narrative as well as some documents outlined in the petitioner's narrative. The Department received this material on October 14, 2010, and received an additional petition submission on December 7, 2011. The group claimed to descend from the historical Pamunkey Indian tribe of the Commonwealth of Virginia. The historical Pamunkey Indian tribe occupied a land base in King William County, VA, formally defined during the Colonial Era in the 1600s and shown as ''Indian Town'' on a 1770 map, which still exists today as a state reservation in the same location.

The Department conducted an initial review of the petition, determined the petitioner was ready for consideration and placed the Pamunkey petitioner on the ''ready, waiting for active consideration list'' on January 3, 2012. In response to the petitioner's request for expedited processing on July 5, 2011, the Department began a review for expedited processing on January 16, 2012, and recommended a waiver of the priority provisions of the regulations for the Pamunkey petitioner. On July 20, 2012, the Acting AS–IA approved the waiver under the May 23, 2008, directive (73 FR 30147) and moved the petitioner to the top of the ready list. Thereafter, OFA received three additional petition submissions from the Pamunkey petitioner on March 28, April 12, and July 11, 2012.

The Department placed the Pamunkey petitioner on active consideration for the PF on August 21, 2012, and received a submission of additional petitioner documents from the group during the 60 days following (on October 19, 2012), as allowed by the directive of March 31, 2005 (70 FR 16513). The Department will consider any additional material that it received after the submission deadline of October 21, 2012, for the final determination (FD), pursuant to that 2005 directive.

The acknowledgment process is based on the regulations at 25 CFR part 83. Under these regulations, the petitioner has the burden to present evidence that it meets the seven mandatory criteria in section 83.7. The PF finds that the Pamunkey petitioner satisfies all seven mandatory criteria for acknowledgment: 83.7(a), 83.7(b), 83.7(c), 83.7(d), 83.7(e), 83.7(f), and 83.7(g).

If ''substantial evidence'' demonstrates the petitioner had ''unambiguous'' previous Federal acknowledgment as an Indian tribe, then the requirements of some of the acknowledgment criteria in section 83.7 are modified by the provisions of section 83.8(d). The Pamunkey petitioner has not claimed, and the Department has not located evidence, that the Federal Government took any action clearly premised on identification of the petitioner as a tribal political entity and recognition of a relationship between that entity and the United States. Therefore, the Department did not evaluate the petitioner under 25 CFR 83.8.

Criterion 83.7(a) requires that external observers have identified the petitioner as an American Indian entity on a substantially continuous basis since 1900. External observers consistently identified the petitioning group during these years as the ''Pamunkey Indian Tribe,'' or as a ''tribe,'' a ''band,'' a ''group,'' or a ''settlement'' of Pamunkey Indians. They usually associated the identified group with a state Indian reservation in Virginia. As such identifications of the petitioning group were made in almost all of the years since 1900, the petitioner meets criterion 83.7(a).

Criterion 83.7(b) requires that a predominant portion of the petitioning group has comprised a distinct community since historical times. The evidence in the record demonstrates that a predominant portion of the Pamunkey petitioner has maintained interaction and significant social relationships through history. From 1789 until 1899, the petitioner satisfies the requirements with a combination of evidence under criterion 83.7(b)(1). Such evidence includes the group's concern about maintaining the exclusivity of the settlement, its assertion of a collective Indian identity that lasts for more than 50 years, and members joining the Colosse Baptist Church as a group. Additional evidence includes the knowledge of people across kin groups, communication and interaction among members, and significant rates of marriage within the group. Combined, this evidence meets criterion 83.7(b) before 1900. From 1900 until the present, the petitioner satisfies the requirements via the ''cross-over'' provision of criterion 83.7(b)(2)(v), as the petitioner demonstrated criterion 83.7(c) using evidence described in 83.7(c)(2).

Criterion 83.7(c) requires that the petitioning group has maintained political influence over its members as an autonomous entity since historical times. The evidence for 1789 to 1899 shows the Pamunkey Indians had a functioning decision-making process. The Pamunkey group used this political process to represent its interests to outsiders, approved any actions taken by the trustees appointed by the state to supervise the tribe, had a code of laws that dealt with issues of importance to the group, such as legal residency on the reservation, and mobilized to protect its resources. For the period 1900 to the present, the group demonstrated control over residence rights on the reservation, imposition of sanctions to control individuals' behavior, and control and allocation of group resources. This evidence in the record for 1900 until the present is specified in 83.7(c)(2), which also satisfies criterion 83.7(b) for that time.

Criterion 83.7(d) requires that the petitioner provide a copy of its governing document including its membership criteria. The petitioner submitted a copy of its governing document which includes it membership criteria. Therefore, the Pamunkey petitioner meets criterion 83.7(d).

Criterion 83.7(e) requires that the petitioner's members descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. For this PF, the Department defines the historical Pamunkey Indian tribe as 81 Indian individuals named on any one of six King William County, Virginia, tax lists of personal property owners at Indian Town between 1787 and 1802; three Pamunkey petitions to the Virginia state legislature dated 1798, 1812, and 1836; and one Colosse Baptist Church record of ''descendants of an Indian tribe on Indian Island'' circa 1835. The October 18, 2012, Pamunkey membership list includes 203 living members, both adults and minors. The evidence in the record shows that 162 of these members, or 80 percent, demonstrated descent from members of the historical Pamunkey Indian tribe. Therefore, the Pamunkey petitioner meets criterion 83.7(e).

Criterion 83.7(f) requires that the petitioner's membership be composed principally of persons who are not members of another federally recognized Indian tribe. The Department found no evidence that any of the petitioner's current members are

enrolled with any federally recognized Indian tribe. Therefore, the petitioner meets criterion 83.7(f).

Criterion 83.7(g) requires that the petitioner not be subject to congressional legislation that has terminated or forbidden the Federal relationship. The Department found no record that the petitioner was subject of legislation terminating or forbidding the Federal relationship. Therefore, the Pamunkey petitioner meets criterion 83.7(g).

Based on this PF, the Department proposes to acknowledge as an Indian tribe the petitioner known as the Pamunkey Indian Tribe.

A report summarizing the evidence, reasoning, and analyses that are the basis for the PF will be provided to the petitioner and interested parties, and is available to other parties upon written request as provided by 25 CFR 83.10(h) or available on the Department of the Interior's Web site at *http://www.doi.gov*. Requests for a copy of the summary evaluation of the evidence should be addressed to the Federal Government as instructed in the **ADDRESSES** section of this notice.

Publication of this notice of the PF in the **Federal Register** initiates a 180-day comment period during which the petitioner and interested and informed parties may submit arguments and evidence to support or rebut the evidence relied upon in the PF. Comments on the PF should be addressed to both the petitioner and Federal Government as required by 25 CFR 83.10(i) and as instructed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

The regulations, 25 CFR 83.10(k), provide the petitioner a minimum of 60 days to respond to any submissions on the PF received from interested and informed parties during the comment period. After the expiration of the comment and response periods described above, the Department will consult with the petitioner concerning establishment of a schedule for preparation of the FD. The AS–IA will publish the FD of the petitioner's status in the **Federal Register** as provided in 25 CFR 83.10(l), at a time that is consistent with that schedule.

Dated: January 16, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–01349 Filed 1–22–14; 8:45 am]

BILLING CODE 4310–G1–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[14X/A11220000.224200/AAK4004800/AX.480ADM1.0000]

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of rate adjustments.

SUMMARY: The Bureau of Indian Affairs (BIA) owns, or has an interest in, irrigation projects located on or associated with various Indian reservations throughout the United States. We are required to establish irrigation assessment rates to recover the costs to administer, operate, maintain, and rehabilitate these projects. We are notifying you that we have adjusted the irrigation assessment rates at several of our irrigation projects and facilities to reflect current costs of administration, operation, maintenance, and rehabilitation.

DATES: *Effective Date:* The irrigation assessment rates shown in the tables as final were effective as of January 1, 2013.

FOR FURTHER INFORMATION CONTACT: For details about a particular BIA irrigation project or facility, please use the tables in the **SUPPLEMENTARY INFORMATION** section to contact the regional or local office where the project or facility is located.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rate Adjustment was published in the **Federal Register** on October 17, 2012 (77 FR 63850) to propose adjustments to the irrigation assessment rates at several BIA irrigation projects. The public and interested parties were provided an opportunity to submit written comments during the 60-day period that ended December 17, 2012.

Did the BIA defer or change any proposed rate increases?

No.

Did the BIA receive any comments on the proposed irrigation assessment rate adjustments?

Written comments were received related to the proposed rate adjustment for the San Carlos Irrigation Project for 2014 and the Wind River Irrigation Project for 2013.

What issues were of concern to the commenters?

One commenter raised concerns specific to the San Carlos Irrigation Project on the proposed rates about the following issues: (1) The methodology for the O&M rate setting; and (2) the timely receipt of information for commenting, budget formulation and accounting, items related to staffing, contract payments, cylinder gate replacement, permits and leasing, reserve account, and reservoir area capacity.

One commenter raised concerns specific to the Wind River Irrigation Project on the proposed rates about the following issues: (1) Opposing a rate increase based on the project's asserted inability to deliver water to many portions of the system as well as to maintain equitable access to paying users; and (2) postponing a rate increase while a cooperative agreement is considered by an irrigator's group.

The Following Comments Are Specific to the San Carlos Irrigation Project

Written comments relating to the FY 2014 proposed O&M rate for the San Carlos Irrigation Project–Joint Works (SCIP–JW) were received by letter dated December 17, 2012, from the San Carlos Irrigation and Drainage District (District). The District raised several issues in its letter. The BIA's summary of the District's issues and the BIA's responses are provided below.

Comment: The commenter questioned the methodology by which BIA establishes O&M rates and the schedule for consultation meetings with the commenter.

Response: The methodology used by the BIA to determine a 2014 O&M rate was reasonable. Based on a review of historical income receipts and expenditures, a budget of projected income receipts and expenditures was developed approximately two years before the O&M assessments are collected and expenses are incurred. The BIA relies on financial reports generated by the Financial and Business Management System for reviewing past expenditures and projecting a future budget and expenditures. Procurement files and records maintained by the SCIP–JW were also reviewed and considered. For example, with regard to development of the FY 2014 budget, the BIA reviewed: (1) The year-end reconciled income and expenditure information for 2010 and 2011; (2) available income and expenditure information for 2012; (3) previous budget projections for 2012; and (4) other information relevant to potential future expenses, such as cost information for replacement of the Coolidge Dam cylinder gates.

The BIA has provided the District with draft budget and supporting

information, held budget fact-finding meetings over the period from December 2011 to April 2012, and received feedback from the District. In addition, in accordance with BIA policy, meetings have been held with SCIP–JW water users (including the District) in order to discuss O&M rates and maintenance needs. The cited settlement agreement stipulates that two fact-finding meetings are to be held annually. In an effort to accommodate and address the concerns raised by the District and other water users during the 2014 O&M rate setting process, a total of four fact-finding meetings were held. Each of these meetings was held at least 30 days apart, which afforded ample time for comments, requests of additional information, and clarification of items.

Furthermore, SCIP–JW uses its best effort to conform to budget and data templates suggested by the water users during the meetings. These templates are susceptible to adjustment from year to year based on the water user meetings. In response to water user concerns about O&M expenditures, SCIP–JW currently uses the services of the Accountant employed by the Office of Trust Services, Division of Water and Power to complete a detailed annual reconciliation of the O&M funds. This service involves reviewing thousands of accounting lines in the BIA's official financial system. The Accountant's reconciliation for FY 2011 was completed and presented to the District and the other water users on January 5, 2012. None of the water users has provided any information that would undermine the accuracy and completeness of the reconciliation.

Comment: The commenter questioned the timely receipt of budget information and supporting documentation for FY's 2012, 2013, and 2014.

Response: The BIA does not believe that the information provided to the District and the other water users for FY 2014 was untimely. In addition to providing detailed fund reconciliations to the District and the other water users for FY 2010 and 2011, SCIP–JW conducted fact-finding meetings with the District and other water users on December 6, 2011; January 5, 2012; February 29, 2012; and April 2, 2012 to discuss the proposed FY 2014 O&M budget and the fund reconciliations for FY 2011. SCIP–JW provides information such as staff position descriptions and salary tables, updates on well repairs, encroachment permitting specifics, and other information in extensive detail to the District and other water users. SCIP–JW does what any reasonable program does when managing an annual $3.0 million budget—it conducts periodic re-evaluations and updates of the revenues and expenditures to display the most accurate budget information possible, and shares this information with the water users. The SCIP–JW used the guidance of the Certified Government Financial Manager, who is also a Certified Public Accountant employed by the Office of Trust Services, Division of Water and Power during the FY 2014 rate setting process to refine the presentation of O&M budget information, make the budget presentations more transparent, and employ more precise accounting terminology. SCIP–JW will continue to look for ways to refine its accounting presentation format and produce a budget presentation that facilitates water user review. The District is encouraged to continue its communications with SCIP–JW and available BIA staff to review and discuss the SCIP–JW O&M issues.

Comment: The commenter questioned the timing of budget information submitted for FY 2011.

Response: The Accountant's reconciliation for FY 2011 was completed and presented to the District and the other water users on January 5, 2012. The FY 2011 reconciliation was available to the water users for nearly all of the 2014 rate setting meetings. None of the water users have provided any information that would undermine the accuracy and completeness of the reconciliation.

Comment: The commenter questioned the justification of the numbers for the 2011 budget.

Response: With regard to the budget information provided to the water users in past fiscal years, SCIP–JW has provided the best available budget information at each point in time. The initial budget, upon which proposed rates are developed in consultation with the water users, is projected two years in advance as required by SCIP–JW's governing authorities. SCIP–JW does periodic re-evaluations and updates of the budget information in consultation with the water users. It is expected that budget updates done in the specific fiscal year, based on reconciled expenditures, will differ from the budget line items forecasted two to three years prior to the fiscal year the expenditures are made. Factors influencing this situation include unforeseen expenditures, undelivered orders, price changes, etc. It makes little sense to use figures from two years prior to determine the required future assessment rate when current figures are available. Budget figures and expenditures are subject to periodic re-evaluation and adjustment, but a ''Notice of Rate Adjustment'' established by the Assistant Secretary–Indian Affairs (AS–IA) cannot be changed by SCIP–JW.

Comment: The commenter questioned the personnel costs for FY's 2009, 2010, and 2011 and questioned the staffing levels and use of overtime in 2011.

Response: SCIP–JW, the District, and the other water users have discussed this concern numerous times during the last three years. See our response to the District's concern in **Federal Register** Notices for ''Rate Adjustments for Indian Irrigation Projects'', dated May 9, 2011 and February 23, 2012. We understand that the District disagrees with the manner in which SCIP–JW managed its irrigation staff during the time periods in question. The District was made aware of the policy at its inception and been advised through monthly budgeting reports that personnel expenditures in FY 2011 were going to exceed the previously budgeted amounts as a result of the additional staffing and overtime necessitated by the policy. We believe that these personnel expenditures were reasonable and appropriate, and well within SCIP–JW's authority to manage its personnel to assure that its water delivery obligations are satisfied.

Comment: The commenter questioned the availability of funds for payments to the Joint Control Board (JCB).

Response: The third and final JCB funding transfer ($200,000) was completed in March 2012. The $300,000 payment to the JCB on behalf of the Community is available for payment as soon as the JCB reactivates its registration in SAM.GOV.

Comment: The commenter questioned the status of unused funds in a contract with Transcon Environmental and requested the status of de-obligation of those funds.

Response: In early FY 2012, the Transcon Environmental Contract ended. An unexpended amount of $54,862.11 was de-obligated and made available to SCIP–JW as unobligated cash in FY 2012.

Comment: The commenter questioned status of unused funds in a contract with Coolidge Engine and Pump, Jonovitch Companies and Southwest Water and Minerals and requested the status of de-obligation of those funds.

Response: Funds obligated in FY 2011 for the Well Rehabilitation Contract, awarded to Coolidge Engine and Pump, remained obligated in FY 2012 and will remain obligated until all of the scheduled pump repairs are completed. Any remaining funds will be utilized toward rehabilitating additional wells. SCIP–JW does not foresee a de-

obligation of funds from this contract in FY 2013.

Comment: The commenter questioned the reconciliation of funds collected in FY 2011, 2012 and 2013 for the Cylinder Gate Replacement Project.

Response: The FY 2011 Reconciliation does not need to be corrected. Reserve and sinking funds are not differentiated from other funds available to SCIP–JW in the Financial and Business Management System (formerly Federal Financial System) employed by SCIP–JW. The reconciliation figures are based on output from this financial management program and consequently do not differentiate the reserve and sinking funds from other available cash. The funds cannot be separated until they become obligated, and the sinking funds cannot become obligated until a contract is in place. Please rely on the budget reports provided to the water users to track the balance of the Coolidge Dam Cylinder Gate Replacement fund.

Comment: The commenter recommended that excess pumping charges for FY 2011 should be shown as revenue for FY 2012.

Response: Excess pumping charges were shown as income in the most recent FY 2012 budget distributed during the FY 2014 O&M rate setting process.

Comment: The commenter was concerned that the revenues shown for wood gathering permits and grazing leases in recent years appears to be lower than previous years and requested a list of all existing wood gathering permits and grazing leases as well as the payments received from each in FY 2011.

Response: Total payments recorded for Wood Permits and Grazing Permits were shown individually in the FY 2011 reconciliation spreadsheet presented to the water users in the January 5, 2012 meeting. The individual amounts received for each wood permit are reflected in the GL 4114 tab (rows 89 through 106 of the Excel sheet), and are reproduced below. Similarly the amount received for a single grazing permit is also reflected in the GL 4114 tab (row 80 of the Excel sheet), and is reproduced below.

2011 WOOD PERMIT INCOME

H59100	51000	5914	4114	10/25/2010	2011	SANCARIRR 1	$5.00	XFM0CKW
H59100	51000	5914	4114	11/3/2010	2011	SANCARIRR 1	5.00	XFM0CKW
H59100	51000	5914	4114	12/7/2010	2011	SANCARIRR 1	5.00	XFM0CKW
H59100	51000	5914	4114	12/7/2010	2011	SANCARIRR 1	5.00	XFM0CKW
H59100	51000	5914	4114	12/15/2010	2011	SANCARIRR 1	5.00	XFM0CKW
H59100	51000	5914	4114	1/20/2011	2011	SANCARIRR 1	5.00	DFM0LXW
H59100	51000	5914	4114	1/31/2011	2011	SANCARIRR 1	10.00	DFMABRG
H59100	51000	5914	4114	2/8/2011	2011	SANCARIRR 1	5.00	DFM0LXW
H59100	51000	5914	4114	2/8/2011	2011	SANCARIRR 1	5.00	DFM0LXW
H59100	51000	5914	4114	2/24/2011	2011	SANCARIRR 1	10.00	DFM0LXW
H59100	51000	5914	4114	3/4/2011	2011	SANCARIRR 1	5.00	DFM0LXW
H59100	51000	5914	4114	3/31/2011	2011	SANCARIRR 1	5.00	DFM0LXW
H59100	51000	5914	4114	5/13/2011	2011	SANCARIRR 1	5.00	XFM0CAK
H59100	51000	5914	4114	5/17/2011	2011	SANCARIRR 1	5.00	DFM0DDH
H59100	51000	5914	4114	5/24/2011	2011	SANCARIRR 1	5.00	DFM0DDH
H59100	51000	5914	4114	6/17/2011	2011	SANCARIRR 1	5.00	DFM0LXW
H59100	51000	5914	4114	8/10/2011	2011	SANCARIRR 1	5.00	DFM0LXW
H59100	51000	5914	4114	8/26/2011	2011	SANCARIRR 1	5.00	DFM0LXW
							$100.00	

2011 GRAZING PERMIT INCOME

H59100	51000	5914	4114	5/9/2011	2009	BLM	$794.13	XFM0CAK

Comment: The commenter requested backup documentation for each line item included under the Expenses section of the actual reconciliation and requested that actual paid invoices for all accounts over budget be shown in the documentation.

Response: The BIA views the request to be over-broad, burdensome, and lacking a reasonable basis for the request. SCIP–JW has previously provided the vendor names and payment amounts in the annual reconciliation compact disks. Additionally, SCIP–JW provides monthly updates to the District about the status of various contracts and obligations on a form developed by the District. SCIP–JW will continue to document and discuss a specific expenditure in the FY 2011 reconciliation if the District can describe a reason for questioning a specific expenditure. The District has insisted that SCIP–JW keep its program and staff costs at a reasonable level but this request is inconsistent with the District's insistence that SCIP–JW keep its program and staff costs at a reasonable level. Since 2008, the BIA has not charged SCIP–JW's annual reconciliations to the Irrigation O&M budget, and the BIA has made staff available to provide technical assistance to the District related to the Federal financial system upon which annual reconciliations are based.

Comment: The commenter recommended that the budgets shared with the District during Fact Finding Meetings include the expected actual income and expenses for previous years, as well as the expected carry-over moneys available at the beginning and end of each Fiscal Year and that the data be provided to the District in multiple file formats

Response: The AS–IA establishes an O&M rate based on the recommendation of SCIP–JW and the Regional Director for the Western Region. Supporting budget information along with the recommended O&M rate is submitted to this office by SCIP–JW and the Regional Director. The establishment of the O&M rate by this office does not freeze-in-time SCIP–JW's budget for the fiscal year in question.

SCIP–JW has utilized the most up-to-date budget figures available for FY 2012 and 2013 in the proposed FY 2014 budget accompanying SCIP–JW's recommended O&M rate for FY 2014.

SCIP–JW has shared this updated information with all of the water users.

Comment: The commenter quoted a Bureau of Reclamation cost estimate of $1.1 million for the replacement of two cylinder gates at Coolidge Dam, questioned the funding amount set aside by BIA for the project, and requested that any residual funding be returned to the operating budget of SCIP for future expenses.

Response: SCIP–JW does not have any record of a cost estimate totaling $1.1 million for replacement of the Coolidge Dam Cylinder gates. The most recent estimate (2008) produced by the Bureau of Reclamation projects the cost of the project to be just under $1.8 million when construction management costs are combined with the costs of supplies and other services. This cost estimate was provided to the District prior to the Coolidge Dam Cylinder Gate Technical Work Group Meeting held on June 28, 2011. This cost estimate is in the process of being updated along with addressing other pre-construction issues.

After careful consideration of the District's comments in the rate setting meetings for FY 2014, SCIP–JW removed the contribution to the Coolidge Dam cylinder gate replacement sinking fund from the recommended rate submitted to this office for the FY 2014 budget. This action allowed the proposed FY 2014 O&M rate to remain at $30/acre rather than increasing to $35/acre. However, the 2008 cost estimate exceeds the funds currently set aside for this project. Consequently, SCIP–JW proposes to set aside an additional $300,000 in FY 2015 for the project. This proposed sinking fund contribution was a major factor influencing the decision of the SCIP–JW to recommend to this office an O&M rate of $35/acre for FY 2015. The SCIP–JW recommendation for the 2015 O&M rate is under consideration by this office. As planning and design proceeds for replacement of the cylinder gates, SCIP–JW will continue to refine and update cost estimates for final design and implementation of the cylinder gate replacement project. Any additional funding requirements will be considered during the rate setting process for FY 2016. SCIP–JW will continue to update the O&M budgets with the best available information as this matter develops and will keep the water users informed when the federal procurement processes are triggered.

Comment: Regarding the San Carlos Reservoir Area/Capacity Study, the commenter recommended that the study costs be funded through assessment by the Gila Water Commissioner on all Gila Decree acres, including those lands within the Upper Valley Districts.

Response: SCIP–JW wanted to have this Area/Capacity Study performed as soon as possible in order to take advantage of the low reservoir water levels. The field work for this Study was conducted in August 2012. SCIP–JW believes that this undertaking was a valid O&M activity related to the irrigation operations of SCIP–JW. If the District would like the Gila Water Commissioner to reimburse SCIP–JW for a portion of the costs associated with the study, SCIP–JW recommends that the District file a petition with the Federal Court with jurisdiction over the Gila Water Commissioner and request that the reimbursement costs be included in the annual assessment approved by the Federal Court for the Gila Water Commissioner's Office.

Comment: The commenter questioned staffing levels for ISO Positions, given the potential completion of canal and structure automation projects.

Response: SCIP–JW will continue to evaluate its staffing requirements as the various phases of rehabilitation are completed. SCIP–JW does not believe it is reasonable or appropriate at the present time to predict the downsizing of irrigation staff. There are many contingencies which affect construction schedules, such as the rehabilitation construction schedules managed by the District under the Arizona Water Settlements Act. We look forward to continuing this discussion with the water users in the future.

Comment: The commenter questioned Stand-by Charges that are calculated for field staff who are available for call-out on a 7 day, 24 hour basis.

Response: The ten percent salary differential is known as Administratively Uncontrollable Overtime (AUO) pay, which compensates for ''irregular'' or ''occasional'' overtime work during a tour of duty (please refer to 5 CFR 550.151—550.164, which authorizes AUO pay). SCIP–JW has determined that this compensation method is more cost effective than paying the prevailing overtime rate for the actual amount of irregular hours or overtime worked. We concur with SCIP–JW's program judgment in this matter. The nature of the position requires irrigation field personnel to be on-call and readily available to meet water user requests in a large geographical area, and make critical water adjustments (e.g. pump operations and gate changes) in a timely manner. This is especially important during emergencies. SCIP–JW appreciates receiving advance notification from the SCIDD Watermaster and/or zanjeros when water delivery changes or adjustments are required. This allows SCIP–JW irrigation field personnel to adjust their daily schedules to meet the needs of the water users.

Comment: The commenter questioned the management of overtime for field personnel to cover evening, night and weekend shifts.

Response: SCIP–JW's discontinuation of the policy requiring ISOs to work in pairs has reduced the amount of overtime worked by SCIP–JW Irrigation field personnel. However, the need to make emergency repairs has increased recently due to vandalism and as a result of outdated well components on SCIP–JW wells. Therefore, SCIP–JW will continue to authorize overtime for Well & Pump personnel to allow for necessary repairs for the benefit of the water users, and to assure that water deliveries under the Federal Gila Decree are satisfied.

Comment: The commenter questioned salary escalation for SCIP staff.

Response: Increases to pay systems and pay schedules is not a discretionary authority of the SCIP–JW.

Comment: The commenter questioned overtime allowance and benefit calculations for SCIP staff.

Response: In response to the District's comment, SCIP re-examined its overtime and benefit compensation estimates. The amount of overtime that is worked by each employee varies from year to year and is influenced by several factors outside of SCIP–JW's control. Consequently, the total amount of overtime compensation that will be required in any given year is difficult to predict. SCIP–JW has found that recent annual overtime compensation averages about 12.5 percent of total employee compensation, including benefits. Although some SCIP–JW irrigation employees do not work overtime, SCIP–JW believes that the method of applying a 12.5 percent overtime adjustment to all personnel costs results in a reasonably accurate estimate of overtime costs. Most Federal employee benefits (except for health insurance and life insurance premiums) do also accrue on overtime compensation. However, SCIP–JW will continue to re-evaluate its overtime allowances and benefit calculations and determine if adjustments would result in a more accurate estimate of overtime compensation. Any revisions will be considered in next year's rate assessment proposal.

Comment: The commenter questioned the need for a Program Assistant Position.

Response: The updated draft personnel spreadsheet no longer includes a Program Assistant position. SCIP–JW is now proposing the addition of a Program Analyst position. This position will be advertised at a GS 7/9/11 level. By advertising the position at this level SCIP–JW hopes to procure the services of a well-qualified employee capable of assisting the Supervisory Civil Engineer in management decisions, tracking expenditures, and developing accurate budgets. The actual cost of the position will be influenced by the qualifications of the employee that is hired. The employee will only perform work in the SCIP–JW Irrigation Division and therefore the employee's entire salary will be paid by the Irrigation Division.

Comment: The commenter questioned the funding allocation of the Project Manager position for oversight of the Irrigation Division and suggested that it be something less than 10 percent of the total.

Response: Historically, the funding ratio for the Project Manager has always been 25 percent by the Irrigation Division and 75 percent by the Power Division. The Project Manager's oversight of the Irrigation Program has increased with the enactment of the Arizona Water Settlements Act and the extensive contract and pre-construction activities required by this Act. SCIP–JW will evaluate this charge annually in conjunction with the fact-finding meetings with the District and the other water users.

Comment: The commenter recommended that the Foreman II, Pump Shop, and Pump Shop Mechanic Helper positions be assigned to other entities.

Response: SCIP–JW will continue to evaluate its staffing requirements as the various phases of rehabilitation construction are completed. The extent to which the SCIP–JW wells are to be transferred from SCIP–JW management is defined in the settlement documents for the Arizona Water Settlements Act. SCIP–JW does not believe it is reasonable or appropriate at the present time to predict downsizing of this staff. There are many contingencies that affect construction schedules, such as the rehabilitation construction schedules managed by the District under the Arizona Water Settlements Act. We look forward to continuing this discussion with the water users in the future. Funding for these positions is being retained in the FY 2014 projected budget.

Comment: The commenter requested that BIA evaluate the appropriate funding allocation of the Environmental/Archeologist and Secretary Positions with the Power Division and provide documentation of labor hours for budget reconciliation.

Response: The SCIP–JW Irrigation Division has estimated the budget for the Environmental/Archaeologist position at a rate of 10 percent in our proposed O&M budgets. However, SCIP–JW will charge the position's services to the Irrigation Division when services are provided to the Irrigation Division. This may result in actual charges to the Irrigation Division for this position to be greater or less than the estimated 10 percent in any given year; actual charges will be reflected in the annual reconciliation. The Secretary position has been eliminated. We respectfully decline the District's request for copies of time sheets, work assignments, work accomplishments, and related documents for audit by the District. SCIP–JW will continue to document the salary/benefits expenditures for the Environmental/Archaeologist position in the annual reconciliations for the Irrigation O&M program. SCIP–JW believes that its estimation of the contribution of this staff member to the Irrigation Division and the Power Division is reasonable.

Comment: The commenter believes the salaries for the Dam Tender and Laborer position at Coolidge Dam should be shared equally between the Irrigation Division and Power Division.

Response: Dam Tenders are full time Irrigation employees and will continue to be funded by Irrigation funds. The work duties of these employees are not in any way related to the functions of the Power Division.

Comment: The commenter believes that starting in FY 2014, the drip tanks should be removed, rather than replaced.

Response: We expect the wells to be maintained by SCIP throughout FY 2014. However, replacement of the drip oil tanks has been removed from the proposed FY 2014 budget. Drip oil will now be purchased directly from local suppliers on an as needed basis.

Comment: The commenter suggested that the revised encroachment permit be implemented immediately.

Response: The revised Encroachment Permit application was submitted, along with the recommended FY 2014 assessment rate, to the AS–IA for consideration. However, the revised Encroachment Permit application and fee schedule was shared with the District and other water users during the FY 2014 O&M rate setting process. No comments were received on the proposed permit. SCIP–JW will advise the water users when further action has been taken on this proposal by the AS–IA.

Comment: The commenter recommended that costs for meter panels should not be included in the SCIP FY 2014 budget or assessment.

Response: Meter panels are scheduled to be replaced by SCIP–JW starting in FY 2014. SCIP–JW will continue to reflect the budgeting for this activity until there is better information available concerning the anticipated dates for the transfer of maintenance responsibility of SCIP–JW wells.

Comment: The commenter suggests that pumping power costs should not be included in the FY 2013 and 2014 budget or the 2014 assessment.

Response: Budgeting for power for pumping in FY 2014 will continue to be carried out assuming that well O&M will continue to be the responsibility of SCIP–JW in FY 2014.

Comment: The commenter suggests that the energy usage rate for new facilities be at the same rate used for Project wells.

Response: All the energy usage accounts have been transferred to the JCB.

Comment: The commenter recommended that the per acre assessment for 2014 needs to reflect income from all sources (encroachment and crossing permits, late payments, excess pumping, wood gathering permits and grazing leases) and that income be credited against the 2014 assessment.

Response:

- Other water income for FY 2014 has been estimated and is included in the current projected budget spreadsheet.
- Excess pumping is highly dependent on the amount of stored water available in San Carlos Reservoir, which is impossible to predict two years in advance. In many years no income is derived from excess pumping.
- The recent administrative practice of the District is to pay its assessment one year late, and incur penalty charges under the Repayment Contract. However, SCIP–JW is reluctant to memorialize the District's recent contract breaches into the annual O&M budget process.
- The combined effect on the assessment rate of income derived from encroachment permits, wood permits, and grazing leases is projected to be approximately one cent per acre. Consequently, no effort will be made to include estimates for these sources of income in the projected budgets.

Comment: The commenter suggests that unexpended funds from prior years be de-obligated and made available to meet future expenses.

Response: Please refer to the previous response concerning this issue.

Comment: The commenter questioned the current reserve fund balance and the future funding allocation for this budget item.

Response: We do not believe that a change in this budget item is reasonable or justified. The $400,000 reserve fund maintained by SCIP–JW since 2010 is near the minimum amount recommended by BIA policy for an irrigation project with annual obligations approaching $3,000,000.

As a consequence of the current practice of water users to pay their assessments a year or more late, SCIP–JW has realized the need to maintain a sufficient reserve fund that can be used to sustain operations until payments are received. In addition, SCIP–JW has recently become aware of the need to increase the amount held in reserve for unanticipated expenses. Several expense items in FY 2012 were either not anticipated or much higher than anticipated when the FY 2012 irrigation assessment rate was determined in 2010. For example, the $117,969 charge on principle and the costs to repair wells not in the original well rehabilitation schedule were not foreseen; and the electrical charges associated with higher than normal groundwater pumping and the annual river commissioner assessment were both significantly higher than expected. All of these factors combined resulted in more than $400,000 in unanticipated expenses. Consequently, the reserve fund for the SCIP–JW will be increased to $550,000 for FY 2014.

Comment: The commenter suggested that the responsibility and associated contract costs for services provided for wells be removed from the FY 2013 and 2014 budget and from the 2014 assessment.

Response: SCIP–JW will retain responsibility for the wells as provided in the Arizona Water Settlements Act. Please refer to the previous responses concerning this issue.

Comment: The commenter suggested that the responsibility and associated costs for supplies for the drip oil for pumps be removed from the FY 2013 and 2014 budget and the 2014 assessment.

Response: SCIP will retain responsibility for the wells as provided in the Arizona Water Settlements Act. Please refer to the previous responses concerning this issue.

Comment: The commenter believes the costs for utilities that supply power for new gates and facilities be removed from the FY 2014 budget and assessment.

Response: Please refer to the previous response concerning this issue.

Comment: The commenter suggests that with potential staffing reductions, BIA should review the need for replacement vehicles and provide improved justification for this expenditure.

Response: SCIP–JW will continue to budget for the number of replacement vehicles reflected until there is a verified need to reduce Irrigation Division staffing. Also, please refer to the previous response concerning the issue of possible reduced staffing requirements as rehabilitation construction is completed on SCIP facilities.

Comment: The commenter suggested that the funds estimated for equipment necessary for the replacement of the drip oil tanks be reduced to reflect only the tank removal costs.

Response: An item to replace the above ground drip oil tanks is not included in the current projected budget. Please refer to the previous response concerning the replacement of the drip oil tanks. Also, please refer to the previous response related to the transfer of the O&M responsibility of SCIP–JW wells.

Comment: The commenter is displeased with what it views as ''material deviations from approved budgets.'' The commenter believes the Project makes changes to the budget with little or no documentation or consultation with the District.

Response: The BIA disagrees with the District's position on this matter. The assumption that SCIP–JW is limited to an approved budget in any given year is misplaced. SCIP–JW updates its O&M budget regularly as more information becomes available from the time the O&M budget is prepared two years in advance for rate setting purposes, to the fiscal year in which SCIP–JW performs the actual work. The SCIP–JW provides the District with an update on SCIP–JW's budget at nearly every monthly District Board meeting, at regularly scheduled water user meetings, and upon specific request from the District.

One Comment Was Received Concerning the Wind River Irrigation Project

A written comment relating to the FY 2013 proposed O&M rate for the Wind River Irrigation Project was received by an undated letter from a project water user. The commenter was opposed to any O&M rate increases, based on their concerns about the project's ability to deliver water to portions of the project and the potential formation of water user groups that might impact project funding opportunities.

Response: At this time, the BIA does not have discretionary funding to supplement O&M revenues. Without the necessary O&M rate increases, lack of adequate funds could result in the inability of the project to maintain irrigation system components and deliver water. The BIA remains committed to working with all project water users to review and develop options for cost savings and alternate revenue sources. If water users are interested in assuming the O&M responsibilities for their project, the BIA will consider proposals and work with the appropriate parties to facilitate the transfer of these functions. For those farm units where BIA determines that our irrigation facilities are not capable of delivering adequate irrigation water, an Annual Assessment Waiver can be granted to waive the O&M assessment.

Does this notice affect me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects or if you have a carriage agreement with one of our irrigation projects.

Where can I get information on the regulatory and legal citations in this notice?

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the Internet site for the Government Printing Office at *www.gpo.gov.*

What authorizes you to issue this notice?

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

Whom can I contact for further information?

The following tables are the regional and project/agency contacts for our irrigation facilities.

Project Name	Project/Agency Contacts
Northwest Region Contacts	
Stanley Speaks, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, Telephone: (503) 231–6702.	
Fort Hall Irrigation Project	Dean Fox, Superintendent Fort Hall Agency, P.O. Box 220, Fort Hall, ID 83203–0220, Telephone: (208) 238–2301.
Wapato Irrigation Project	Edwin Lewis, Project Administrator, Wapato Irrigation Project, P.O. Box 220, Wapato, WA 98951–0220, Telephone: (509) 877–3155.
Rocky Mountain Region Contacts	
Ed Parisian, Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 316 North 26th Street, Billings, Montana 59101 Telephone: (406) 247–7943.	
Blackfeet Irrigation Project	Stephen Pollock, Superintendent, Greg Tatsey, Irrigation Project Manager, Box 880, Browning, MT 59417 Telephones: (406) 338–7544, Superintendent, (406) 338–7519, Irrigation Project Manager.
Crow Irrigation Project	Vianna Stewart, Superintendent Vacant, Irrigation Project Manager, P.O. Box 69, Crow Agency, MT 59022 Telephones: (406) 638–2672, Superintendent (406) 638–2863, Irrigation Project Manager.
Fort Belknap Irrigation Project	Cliff Hall, Superintendent Vacant, Irrigation Project Manager, (Project operations & management contracted to Tribes) R.R.1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901, Superintendent (406) 353–8454, Irrigation Project Manager (Tribal Office).
Fort Peck Irrigation Project	Rhonda Knudsen, Superintendent, P.O. Box 637, Poplar, MT 59255, Huber Wright, Acting Irrigation Project Manager, 602 6th Avenue North, Wolf Point, MT 59201, Telephones: (406) 768–5312, Superintendent (406) 653–1752, Irrigation Project Manager.
Wind River Irrigation Project	Ray Nation, Superintendent Brent Allen, Irrigation Project Manager, P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810, Superintendent, (307) 332–2596, Irrigation Project Manager.
Southwest Region Contacts	
William T. Walker, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road, Albuquerque, New Mexico 87104, Telephone: (505) 563–3100.	
Pine River Irrigation Project	John Waconda, Superintendent Vacant, Irrigation Systems Operator, Irrigation Engineer, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent, (970) 563–9484, Irrigation Engineer.
Western Region Contacts	
Bryan Bowker, Regional Director, Bureau of Indian Affairs, Western Regional Office, 2600 N. Central Ave., 4th Floor Mailroom, Phoenix, Arizona 85004, Telephone: (602) 379–6600.	
Colorado River Irrigation Project	Janice Staudte, Superintendent Gary Colvin, Acting Irrigation Project Manager, 12124 1st Avenue, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Joseph McDade, Superintendent, 1555 Shoshone Circle, Elko, NV 89801, Telephone: (775) 738–0569.
Fort Yuma Irrigation Project	Irene Herder, Superintendent, 256 South Second Avenue, Suite D, Yuma, AZ 85364, Telephone: (928) 782–1202.
San Carlos Irrigation Project Joint Works.	Ferris Begay, Acting Project Manager, Clarence Begay, Irrigation Manager, P.O. Box 250, Coolidge, AZ 85228, Telephone: (520) 723–6203.
San Carlos Irrigation Project Indian Works.	Cecilia Martinez, Superintendent, Pima Agency, Land Operations, P.O. Box 8, Sacaton, AZ 85247, Telephone: (520) 562–3326, Telephone: (520) 562–3372.
Uintah Irrigation Project	Dinah Peltier, Acting Superintendent, P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4300, Telephone: (435) 722–4341.
Walker River Irrigation Project	Athena Brown, Superintendent, 311 E. Washington Street, Carson City, NV 89701, Telephone: (775) 887–3500.

What irrigation assessments or charges are adjusted by this notice?

The rate table below contains the current rates for all irrigation projects where we recover costs of administering, operating, maintaining, and rehabilitating them. The table also contains the final rates for the 2013 season and subsequent years where applicable. An asterisk immediately following the name of the project notes the irrigation projects where 2013 are different from the 2012 rates.

NORTHWEST REGION RATE TABLE

Project name	Rate category	Final 2012 rate	Final 2013 rate
Fort Hall Irrigation Project *	Basic per acre	$45.50	$47.00
	Minimum Charge per tract	32.50	32.50
Fort Hall Irrigation Project—Minor Units *	Basic per acre	23.50	24.00
	Minimum Charge per tract	32.50	32.50
Fort Hall Irrigation Project—Michaud *	Basic per acre	45.00	47.50

NORTHWEST REGION RATE TABLE—Continued

Project name	Rate category	Final 2012 rate	Final 2013 rate
	Pressure per acre	62.00	65.50
	Minimum Charge per tract	32.50	32.50
Wapato Irrigation Project—Toppenish/Simcoe Units *	Minimum Charge for per bill	20.00	21.00
	Basic per acre	20.00	21.00
Wapato Irrigation Project—Ahtanum Units *	Minimum Charge per bill	20.00	24.00
	Basic per acre	20.00	24.00
Wapato Irrigation Project—Satus Unit *	Minimum Charge for per bill	65.00	71.00
	"A" Basic per acre	65.00	71.00
	"B" Basic per acre	70.00	77.00
Wapato Irrigation Project—Additional Works*	Minimum Charge per bill	67.00	71.00
	Basic per acre	67.00	71.00
Wapato Irrigation Project—Water Rental*	Minimum Charge	72.00	79.00
	Basic per acre	72.00	79.00

ROCKY MOUNTAIN REGION RATE TABLE

Project name	Rate category	Final 2012 rate	Final 2013 rate
Blackfeet Irrigation Project*	Basic-per acre	$19.00	$19.50
Crow Irrigation Project—Willow Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units)*.	Basic-per acre	23.30	23.80
Crow Irrigation Project—All Others (includes Bighorn, Soap Creek, and Pryor Units)*.	Basic-per acre	23.00	23.50
Crow Irrigation Two Leggins Drainage District	Basic-per acre	2.00	2.00
Fort Belknap Irrigation Project*	Basic-per acre	14.75	15.00
Fort Peck Irrigation Project*	Basic-per acre	24.70	25.00
Wind River Irrigation Project—Units 2, 3 and 4*	Basic-per acre	20.00	21.00
Wind River Irrigation Project –LeClair District * (see Note #1).	Basic-per acre	20.00	30.84
Wind River Irrigation Project—Crow Heart Unit*	Basic-per acre	14.00	17.10
Wind River Irrigation Project—A Canal Unit*	Basic-per acre	14.00	13.60
Wind River Irrigation Project—Riverton Valley Irrigation District.	Basic-per acre	16.00	16.00

SOUTHWEST REGION RATE TABLE

Project name	Rate category	Final 2012 rate	Final 2013 rate
Pine River Irrigation Project	Minimum Charge per tract	$50.00	$50.00
	Basic-per acre	15.00	15.00

WESTERN REGION RATE TABLE

Project name	Rate category	Final 2012 rate	Final 2013 rate	Proposed 2014 rate
Colorado River Irrigation Project	Basic per acre up to 5.75 acre-feet	$54.00	$54.00	To be determined.
	Excess Water per acre-foot over 5.75 acre-feet.	$17.00	$17.00.	
Duck Valley Irrigation Project	Basic per acre	$5.30	$5.30.	
Fort Yuma Irrigation Project (See Note #2).	Basic per acre up to 5.0 acre-feet	$86.00	$86.00.	
	Excess Water per acre-foot over 5.0 acre-feet.	$14.00	$14.00.	
	Basic per acre up to 5.0 acre-feet (Ranch 5).	$86.00	$86.00.	
San Carlos Irrigation Project (Joint Works) (See Note #3).	Basic per acre	$30.00	$30.00	$30.00
	Final 2012—2013 Construction Water Rate Schedule:			
		Off Project Construction	On Project Construction—Gravity Water	On Project Construction—Pump Water
	Administrative Fee	$300.00	$300.00	$300.00
	Usage Fee	$250.00 per month	No Fee	$100.00 per acre-foot
	Excess Water Rate†	$5 per 1000 gal	No charge	No charge

WESTERN REGION RATE TABLE—Continued

Project name	Rate category	Final 2012 rate	Final 2013 rate	Proposed 2014 rate
		Off Project Construction	On Project Construction—Gravity Water	On Project Construction—Pump Water
	†The excess water rate applies to all water used in excess of 50,000 gallons in any one month.			
San Carlos Irrigation Project (Indian Works)* (See Note #4).	Basic per acre	$73.00	$81.00	To be determined.
Uintah Irrigation Project	Basic per acre	$16.00	$16.00.	
	Minimum Bill	$25.00	$25.00.	
Walker River Irrigation Project*	Indian per acre	$25.00	$28.00.	
	non-Indian per acre	$25.00	$28.00.	

* Notes irrigation projects where rates are proposed for adjustment.

Note #1—The O&M rate varies yearly based upon the budget submitted by the LeClair District.

Note #2—The O&M rate for the Fort Yuma Irrigation Project has two components. The first component is the O&M rate established by the Bureau of Reclamation (BOR), the owner and operator of the Project. The BOR rate for 2013 is yet to be determined. The second component is for the O&M rate established by BIA to cover administrative costs including billing and collections for the Project. The 2013 BIA rate remains unchanged at $7.00/acre. The rates shown include the 2012 Reclamation rate and the 2013 BIA rate. The rates shown include the estimated FY 2013 rate.

Note #3—The 2013 rate was established by final notice in the FEDERAL REGISTER on February 23, 2012 (Vol. 77 No. 36, page 10767). In addition, a Construction Water Rate Schedule for the San Carlos Irrigation Project—Joint Works is now being formally established. The rate schedule establishes the fees assessed for use of irrigation water for non-irrigation purposes. This notice establishes $30/acre as the rate in FY 2014 for the Joint Works.

Note #4—The 2013 O&M rate for the San Carlos Irrigation Project—Indian Works has three components. The first component is the O&M rate established by the San Carlos Irrigation Project—Indian Works, the owner and operator of the Project; this rate is proposed to be $43 per acre. The second component is for the O&M rate established by the San Carlos Irrigation Project—Joint Works and is determined to be $30.00 per acre. The third component is the O&M rate established by the San Carlos Irrigation Project Joint Control Board and is proposed to be $ 8 per acre.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

To fulfill its consultation responsibility to tribes and tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by Project, Agency, and Regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to, and request comments from, these entities when we adjust irrigation assessment rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies) should the proposed rate adjustments be implemented. This is a notice for rate adjustments at BIA-owned and operated irrigation projects, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

These rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

Unfunded Mandates Reform Act of 1995

These rate adjustments do not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than $130 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, the Department is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.).

Takings (Executive Order 12630)

The Department has determined that these rate adjustments do not have significant ''takings'' implications. The rate adjustments do not deprive the public, state, or local governments of rights or property. Federalism (Executive Order 13132)

The Department has determined that these rate adjustments do not have significant Federalism effects because they will not affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

Civil Justice Reform (Executive Order 12988)

In issuing this rule, the Department has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires March 31, 2016.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute

a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

Data Quality Act

In developing this notice, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

Dated: January 15, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–01280 Filed 1–22–14; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR–936000–L14300000–ET0000–14XL1109AF; HAG–14–0025; WAOR–50706]

Notice of Application for Withdrawal Extension and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior extend the duration of Public Land Order (PLO) No. 7133 for an additional 20-year term. PLO No. 7133 withdrew approximately 496.22 acres of National Forest System land from location and entry under the mining laws in order to protect the Brown Mountain, Pal Moore Meadows, Teepee, Cedar Creek, and Flowery Trail Seed Orchards. The withdrawal created by PLO No. 7133 will expire on April 12, 2015, unless it is extended. This notice also gives the public an opportunity to comment on the proposed application and action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by April 23, 2014.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, OR 97208–2965 or 1220 SW 3rd Avenue, Portland, OR 97204.

FOR FURTHER INFORMATION CONTACT: Sara Copp, BLM Oregon/Washington State Office, 503–808–6189, or Candice Polisky, USFS Pacific Northwest Region, 503–808–2479.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The USFS has filed an application requesting that the Secretary of the Interior extend PLO No. 7133 (60 FR 18777 (1995)), which withdrew approximately 496.22 acres in Ferry, Stevens, and Pend Oreille Counties, Washington, from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), for an additional 20-year term, subject to valid existing rights. PLO No. 7133 is incorporated herein by reference.

The purpose of the proposed withdrawal extension is to continue the protection of the integrity and functionality of the seed orchards, along with the investment of Federal funds at the Brown Mountain, Pal Moore Meadows, Teepee, Cedar Creek, and Flowery Trail Seed Orchards.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection because these instruments do not provide the ability to preclude all forms of location and entry under the mining laws.

The USFS would not need to acquire water rights to fulfill the purpose of the requested withdrawal extension.

Records related to the application may be examined by contacting Sara Copp at the above address or phone number.

For a period until April 23, 2014, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM State Director at the address indicated above.

Comments, including names and street addresses of respondents, will be available for public review at the address indicated above during regular business hours. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM State Director at the address indicated above by April 23, 2014. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.4.

Fred O'Ferrall,

Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2014–01272 Filed 1–22–14; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD–0800–1430–ER; CACA 54713]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Inyo County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and conveyance under the Recreation and Public Purposes (R&PP) Act, as amended, 61.81 acres of public land in Inyo County, California. The public land contains a solid waste landfill that has been closed to public use. The County of Inyo proposes to use the land to implement a long-term monitoring and closure plan for the landfill.

DATES: Comments of interested persons must be received in the BLM Barstow Field Office at the address below on or before March 10, 2014. Only written comments will be accepted.

ADDRESSES: Bureau of Land Management, Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311.

FOR FURTHER INFORMATION CONTACT: Birgit Hoover, Realty Specialist, BLM Barstow Field Office, 760–252–6035. Detailed information concerning this action including, but not limited to, documentation related to compliance with applicable environmental and cultural resource laws, is available for review at the BLM Barstow Field Office at the address above.

SUPPLEMENTARY INFORMATION: The following described public land in Inyo County, California has been examined and found suitable for classification for lease and conveyance under Section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and the provisions of the R&PP Act as amended, 43 U.S.C. 869 *et seq.:*

San Bernardino Meridian

T. 20 N., R. 7 E.,
Sec. 12, Lot 3;

The area described contains 61.81 acres in Inyo County.

The land is not needed for any Federal purpose. The County of Inyo previously leased a portion of the land described above for landfill purposes beginning in 1972. The County of Inyo has applied to purchase the land described to implement a long term closure and monitoring plan for the landfill. The land described above includes the landfill footprint and additional adjacent public land not within the original lease area, but now considered necessary for access, monitoring wells and slope stabilization. The conveyance is consistent with current BLM land use planning and would be in the public interest. The patent, if issued, would be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, in particular, but not limited to 43 CFR 2743.3–1, and would contain the following additional reservations, terms, and conditions:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals under applicable laws and such regulations as the Secretary of the Interior may prescribe, including all necessary access and exit rights.

3. The patent, if issued, will be subject to all valid existing rights.

4. The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances and shall indemnify and hold harmless the United States against any legal liability or future costs that may arise out of any violation of such laws.

5. Except as provided in provision 7 below, the land conveyed shall revert to the United States unless substantially used in accordance with an approved plan and schedule of development on or before the date 5 years after the date of conveyance.

6. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and the approved plan of development, the patentee shall pay the BLM the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

7. No portion of the land used for solid waste disposal or for any other purpose that may have resulted in the disposal, placement, or release of any hazardous substance shall under any circumstance revert to the United States.

8. Portions of the above described land have been used for solid waste disposal. Records regarding the solid waste disposal on the land are maintained by the County. Solid waste commonly includes small quantities of commercial hazardous waste and household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication that these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner or final cover of the landfill unless excavation is conducted subject to applicable State and Federal requirements.

On March 24, 2014, the public land described above will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a closed solid waste facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a solid waste facility. Any adverse comments will be reviewed by the BLM California State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification of the land described in this notice will become effective on March 24, 2014. The land will not be available for conveyance until after the classification becomes effective.

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: 43 CFR 2741.5.

Cynthia Staszak,

Associate Deputy State Director, Natural Resources.

[FR Doc. 2014–01275 Filed 1–22–14; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau Of Land Management

[LLORB00000.L17110000.CB0000. L.X.SS.020H0000.14XL1109AF; HAG14–0004]

Call for Nominations for the Steens Mountain Advisory Council, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) requests public nominations for seven people to serve on the Steens Mountain Advisory Council (SMAC). Citizens who serve on this group provide advice and recommendations to the BLM on land use planning and management of the Steens Mountain Cooperative Management and Protection Area. The BLM will accept public nominations for 30 days after the publication of this notice.

DATES: All nominations must be received no later than February 24, 2014.

ADDRESSES: Send completed Advisory Council nominations to BLM Burns District Office; 28910 Highway 20 West; Hines, OR 97738–9424. Nomination forms are available at the BLM Burns District Office, or online at *http://www.blm.gov/or/rac/steensac.php.*

FOR FURTHER INFORMATION CONTACT: Tara Martinak, Public Affairs Specialist, BLM Burns District Office, 28910 Highway 20 West, Hines, OR 97738–9424, 541–573–4519, or email *tmartina@blm.gov.* Persons who use a telecommunications

device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Any individual may nominate himself/herself or others to serve on the Council. Positions currently open or with terms expiring in 2014 include a representative of the State government to serve as a liaison to the advisory council, a representative of a State environmental organization, a representative of a local environmental organization, a person interested in mechanized and consumptive recreation in the Steens Mountain Cooperative Management and Protection Area (CMPA), a person with a grazing permit within the the CMPA, a private landowner within the CMPA, and a person with no financial intersest in the CMPA. All nomination applications should include letters of reference and/or recommendations from the represented interests or organizations and any other information explaining the nominee's qualifications (*e.g.,* resume, curriculum vitae). The BLM Burns District will collect the nomination forms and letters of reference and distribute them to the officials responsible for submitting nominations (County Court of Harney County, the Governor of Oregon, and the BLM). The BLM will then forward recommended nominations to the Secretary of the Interior, who appoints Council members.

The BLM initiated the SMAC on August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Pub. L. 106–399). The SMAC provides representative counsel and advice to the BLM regarding new and unique approaches to management of the land within the bounds of the Steens Mountain CMPA; recommending cooperative programs and incentives for landscape management that meet human needs, and the maintenance and improvement of the ecological and economic integrity of the area. The BLM is publishing this notice under Section 9(a)(2) of the Federal Advisory Committee Act (FACA), to seek public nominations for membership on the SMAC. Applicants must be qualified through education, training, knowledge, or experience to give informed advice regarding an industry, discipline, or interest to be represented. Nominees must also demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists from serving on all FACA and non-FACA boards, committees or councils.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your nomination–including your personal identifying information–may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Brendan Cain,

Burns District Manager.

[FR Doc. 2014–01273 Filed 1–22–14; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[XXXR4081X3 RX.05940913.7000000, RR04073000]

Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Glen Canyon Dam Adaptive Management Work Group (AMWG) makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

DATES: The meeting will be held on Wednesday, February 19, 2014, from approximately 9:30 a.m. to approximately 5:30 p.m., and Thursday, February 20, 2014, from approximately 8:00 a.m. to approximately 4:00 p.m.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 4400 S. Rural Road, Tempe, Arizona, 85282.

FOR FURTHER INFORMATION CONTACT: Glen Knowles, Bureau of Reclamation, telephone (801) 524–3781; facsimile (801) 524–3858; email at *gknowles@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Glen Canyon Dam Adaptive Management Program (GCDAMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The GCDAMP includes a Federal advisory committee, the AMWG, a technical work group (TWG), a Grand Canyon Monitoring and Research Center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

Agenda: The purpose of the meeting will be for the AMWG to discuss several items which will be of interest to the public: (1) Long-Term Experimental and Management Plan EIS, (2) preliminary results from the November 2013 high flow experiment, (3) current basin hydrology and Glen Canyon Dam operations, (4) impacts to the Fiscal Year 2014 budget as a result of sequestration, (5) preliminary development of the Fiscal Year 2015–16 Budget and Work Plan, and (6) update from the Annual Reporting Meeting held in January 2014. The AMWG will also address other administrative and resource issues pertaining to the GCDAMP.

To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's Web site at *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/14feb19/.* Time will be allowed at the meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Glen Knowles, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138; telephone 801–524–3781; facsimile 801–524–3858; email at *gknowles@usbr.gov* at least five (5) days prior to the meeting. Any written comments received will be provided to the AMWG members.

Public Disclosure of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: *December 16, 2013.*

Glen Knowles,

Chief, Adaptive Management Work Group, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 2014–01263 Filed 1–22–14; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0008]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Federal Coordination and Compliance Section (FCS), FCS Complaint and Consent Form Civil Rights Division, United States Department of Justice

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Civil Rights Division, 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. Comments are encouraged and will be accepted for ''sixty days'' until March 24, 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 Deeana L. Jang, Chief, USDOJ–CRT–FCS, 950 Pennsylvania Avenue NW–NWB, Washington, DC 20530.

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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Complaint and Consent Form

(3) *Agency form number:* 1190–0008

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* General Public.

Information is used to find jurisdiction to investigate the alleged discrimination, to seek whether a referral to another agency is necessary and to provide information needed to initiate investigation of the complaint. Respondents are individuals.

(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 4000 respondents will complete each form within approximately 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2000 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, Room 3W–1407B, 145 N Street, NE., Washington, DC 20530.

Dated: January 16, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–01196 Filed 1–22–14; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

On January 16, 2014, the Department of Justice lodged a proposed consent decree with the United States District Court for the Northern District of California, San Jose Division, in the lawsuit entitled *United States* v. *CTS Printex, Inc. and ADN Corporation,* Civil Action No. 5:14–cv–00256.

The United States filed this lawsuit under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The United States' complaint names CTS Printex, Inc. and ADN Corporation as defendants. The complaint requests recovery of costs that the United States incurred responding to releases of hazardous substances at the CTS Printex Superfund Site in the city of Mountain View, Santa Clara County, California. The complaint also seeks injunctive relief. Under the proposed consent decree, the defendants agree to pay $850,000 of the United States' response costs, and to perform the remedial action that EPA selected for the site. In return, the United States agrees not to sue the defendants under sections 106 and 107 of CERCLA.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *CTS Printex, Inc. and ADN Corporation* D.J. Ref. No. 90–11–2–849/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $53.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $17.25.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–01245 Filed 1–22–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

President's Committee on the International Labor Organization Charter Renewal

AGENCY: Bureau of International Labor Affairs, Labor.

ACTION: Notice of charter renewal.

SUMMARY: On September 30, 2013, President Obama continued the President's Committee on the International Labor Organization (ILO) for two years through September 30, 2015 (E.O. 13652, 78 FR 61817 (September 30, 2013)). In response, and pursuant to the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), the Secretary of Labor approved on January 14, 2014, renewal of the committee's charter.

Purpose: The President's Committee on the International Labor Organization was established in 1980 by Executive Order 12216 to monitor and assess the work of the ILO and make recommendations to the President regarding United States policy towards the ILO. The committee is chaired by the Secretary of Labor and the Department of Labor's Bureau of International Labor Affairs is responsible for providing the necessary support for the committee.

The committee is comprised of seven members: The Secretary of Labor (chair), the Secretary of State, the Secretary of Commerce, the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and one representative each from organized labor and the business community, designated by the Secretary. The labor and business members are the presidents of the most representative organizations of U.S. workers and employers engaged in ILO matters.

Authority: The authority for this notice is granted by the Federal Advisory Committee Act (5 U.S.C. App. 2) and Executive Order No. 13652 of September 20, 2013.

FOR FURTHER INFORMATION CONTACT: Robert B. Shepard, Director, Office of International Relations, Bureau of International Labor Affairs, U.S. Department of Labor, telephone (202) 693–4808.

Signed at Washington, DC, on January 16, 2014.

Carol Pier,

Deputy Undersecretary, Bureau of International Labor Affairs.

[FR Doc. 2014–01332 Filed 1–22–14; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0029]

Whistleblower Protection Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of a meeting of the Whistleblower Protection Advisory Committee (WPAC).

SUMMARY: WPAC will meet March 11, 2014, in Washington, DC.

DATES:

WPAC meeting: WPAC will meet from 9 a.m. to 5 p.m., E.T., Tuesday, March 11, 2014. WPAC Work Groups will meet on Monday, March 10, 2014.

Written comments, requests to speak, speaker presentations, and requests for special accommodation: You must submit (postmark, send, transmit) comments, requests to address the WPAC meeting, speaker presentations (written or electronic), and requests for special accommodations for the WPAC meeting by February 21, 2014.

ADDRESSES:

WPAC meeting: WPAC will meet in Room N–3437A–C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak, and speaker presentations: You may submit comments, requests to speak at the WPAC meeting, and speaker presentations using one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the on-line instructions for submissions.

Facsimile (Fax): If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Regular mail, express mail, hand delivery, or messenger (courier) service: You may submit your materials to the OSHA Docket Office, Docket No. OSHA–2013–0029, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627). OSHA's Docket Office accepts deliveries (hand deliveries, express mail, and messenger service) during normal business hours, 8:15 a.m.–4:45 p.m., E.T., weekdays.

Requests for special accommodations: Please submit your request for special accommodations to attend the WPAC meeting to Ms. Frances Owens, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; *email owens.frances@dol.gov.*

Instructions: Your submissions must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2013–0029). Due to security-related procedures, submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about security procedures for making submissions. For additional information on submitting comments, requests to speak, and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OSHA will post comments, requests to speak, and speaker presentations, including any personal information you provide, without change, at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

mailto:For general information about WPAC and WPAC meetings: Ms. Meghan Smith, OSHA, Directorate of Whistleblower Protection Programs, Room N–4624, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2199; email *smith.meghan.p@dol.gov.*

SUPPLEMENTARY INFORMATION:

WPAC Meeting

WPAC will meet Tuesday, March 11, 2014, in Washington, DC. WPAC meetings are open to the public.

The tentative agenda of the WPAC meeting includes:

Remarks from the Assistant Secretary of Labor for Occupational Safety and Health (OSHA);

WPAC work group reports and discussion;

WPAC and WPAC Work Group administrative business; and Public comments.

OSHA transcribes WPAC meetings and prepares detailed minutes of the meetings. OSHA places the meeting transcripts and minutes in the public record of the WPAC meeting. The public record also includes Work Group reports, speaker presentations,

comments and other materials submitted to WPAC.

WPAC Work Groups

The WPAC work group meetings (11(c), Transportation Industry, and Best Practices and Corporate Culture) on March 10, 2014, are open to the public. The purpose of the work groups is to provide recommendations to the full WPAC committee on their subject matters. The work groups will report to WPAC at the March 11, 2014, meeting for discussion by the full committee.

For additional information on WPAC work group meetings or participating in them, please contact Ms. Smith or look on the WPAC page on OSHA's Web page at *http://www.whistleblowers.gov.*

Public Participation, Submissions, and Access to Public Record

WPAC meetings: All WPAC meetings are open to the public. Individuals attending meetings at the U.S. Department of Labor must enter the building at the visitors' entrance, 3rd and C Streets NW., and pass through building security. Attendees must have valid government-issued photo identification (such as a driver's license) to enter the building. For additional information about building security measures for attending WPAC meetings, please contact Ms. Owens (see **ADDRESSES** section).

Individuals needing special accommodations to attend the WPAC meeting should contact to Ms. Owens as well.

Submission of written comments: You may submit comments using one of the methods identified in the **ADDRESSES** section. Your submissions must include the Agency name and docket number for this WPAC meeting (Docket No. OSHA–2013–0029). OSHA will provide copies of submissions to WPAC members.

Because of security-related procedures, submissions by regular mail may experience significant delays. For information about security procedures for submitting materials by hand delivery, express mail, and messenger or courier service, please contact the OSHA Docket Office (see **ADDRESSES** section).

Requests to speak and speaker presentations: If you want to address WPAC at the meeting you must submit your request to speak, as well as any written or electronic presentation, by February 21, 2014, using one of the methods listed in the **ADDRESSES** section. Your request must state:

- The amount of time requested to speak;
- The interest you represent (e.g., business, organization, affiliation), if any; and
- A brief outline of your presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats.

The WPAC Chair may grant requests to address WPAC as time and circumstances permit.

Public docket of the WPAC meeting: OSHA will place comments, requests to speak, and speaker presentations, including any personal information you provide, in the public docket of this WPAC meeting without change, and those documents may be available online at *http://www.regulations.gov*. Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

OSHA also places in the public docket the meeting transcript, meeting minutes, documents presented at the WPAC meeting, and other documents pertaining to the WPAC meeting. These documents are available online at *http://www.regulations.gov*.

Access to the public record of WPAC meetings: To read or download documents in the public docket of this WPAC meeting, go to Docket No. OSHA–2013–0029 at *http://www.regulations.gov*. The *http://www.regulations.gov* index also lists all documents in the public record for this meeting; however, some documents (e.g., copyrighted materials) are not publicly available through that Web page. All documents in the public record, including materials not available through *http://www.regulations.gov*, are available for inspection and copying in the OSHA Docket Office (see **ADDRESSES** section). Please contact the OSHA Docket Office for assistance in making submissions to, or obtaining materials from, the public docket.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This notice, as well as news releases and other relevant information, also are available on the OSHA Web page at *http://www.osha.gov*.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), its implementing regulations (41 CFR part 102–3), chapter 1600 of Department of Labor Management Series 3 (Mar. 17, 2008), Secretary of Labor's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012), and the Secretary of Labor's authority to administer the whistleblower provisions found in Section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c); the Surface Transportation Assistance Act, 49 U.S.C. 31105; the Asbestos Hazard Emergency Response Act, 15 U.S.C. 2651; the International Safe Container Act, 46 U.S.C. 80507; the Safe Drinking Water Act, 42 U.S.C. 300j–9(i); the Federal Water Pollution Control Act, 33 U.S.C. 1367; the Toxic Substances Control Act, 15 U.S.C. 2622; the Solid Waste Disposal Act, 42 U.S.C. 6971; the Clean Air Act, 42 U.S.C. 7622; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9610; the Energy Reorganization Act, 42 U.S.C. 5851; the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121; the Sarbanes-Oxley Act, 18 U.S.C. 1514A; the Pipeline Safety Improvement Act, 49 U.S.C. 60129; the Federal Railroad Safety Act, 49 U.S.C. 20109; the National Transit Systems Security Act, 6 U.S.C. 1142; the Consumer Product Safety Improvement Act, 15 U.S.C. 2087; Section 1558 of the Affordable Care Act, Public Law 111–148; the Consumer Financial Protection Act of 2010, 12 U.S.C.A. 5567; the Seaman's Protection Act, 46 U.S.C. 2114; Section 402 of the FDA Food Safety Modernization Act, Public Law 111–353; and Section 31307 of the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141.

Signed at Washington, DC on January 17, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–01308 Filed 1–22–14; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0218, Death Benefit Payment Rollover Election, RI 94–7

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0218, Death Benefit Payment

Rollover Election, RI 94–7. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on September 9, 2013 at Volume 78 FR 55124 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;
2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until February 24, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 94–7 provides Federal Employees Retirement System (FERS) surviving spouses and former spouses with the means to elect payment of FERS rollover-eligible benefits directly or to an Individual Retirement Arrangement.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Death Benefit Payment Rollover Election.

OMB: 3206–0218.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 3,444.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 3,444.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–01228 Filed 1–22–14; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0216, We Need Important Information About Your Eligibility for Social Security Disability Benefits, RI 98–7

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Office of Personnel Management's (OPM) Retirement Services offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0216, We Need Important Information About Your Eligibility for Social Security Disability Benefits, RI 98–7. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106) OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on June 20, 2013, at Volume 78 FR 37244 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;
2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until February 24, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 98–7 is used by OPM to verify receipt of Social Security Administration (SSA) disability benefits, to lessen or avoid overpayment to Federal Employees Retirement System (FERS) disability retirees. It notifies the annuitant of the responsibility to notify OPM if SSA awards disability benefits and the subsequent overpayment that will occur with the receipt of both benefits.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: We Need Important Information About Your Eligibility for Social Security Disability Benefits.

OMB Number: 3206–0216.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 4,300.

Estimated Time Per Respondent: 5 minutes.

Total Burden Hours: 358.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–01211 Filed 1–22–14; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0032, Self-Certification of Full-Time School Attendance for the School Year, RI 25–14 and Information and Instructions for Completing the Self-Certification of Full-Time School Attendance for the School Year, RI 25–14A

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0032, Self-Certification of Full-Time School Attendance For The School Year, RI 25–14 and Information and Instructions for Completing the Self-Certification of Full-Time School Attendance For The School Year, RI 25–14A. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on September 9, 2013 at Volume 78 FR 55121 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until February 24, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 25–14 is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirements of Section 8341(a)(4)(C), and Section 8441, title 5, U.S. Code, to receive benefits as a student. RI 25–14A provides instructions for completing the Self-Certification of Full-Time School Attendance For The School Year survey form.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Self-Certification of Full-Time School Attendance For The School Year and Information and Instructions for Completing the Self-Certification of Full-Time School Attendance For The School Year.

OMB Number: 3206–0032.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 14,000.

Estimated Time per Respondent: 12 minutes.

Total Burden Hours: 2,800.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–01215 Filed 1–22–14; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0190, Application for Deferred or Postponed Retirement: Federal Employees Retirement System, RI 92–19

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0190, Application for Deferred or Postponed Retirement: Federal Employees Retirement System, RI 92–19. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on August 16, 2013 at 78 FR 50119 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until February 24, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 92–19 is used by separated employees to apply for either a deferred or a postponed FERS annuity benefit.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application for Deferred or Postponed Retirement: Federal Employees Retirement System (FERS).

OMB Number: 3206–0190.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1964.

Estimated Time Per Respondent: 60 minutes.

Total Burden Hours: 1964.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–01212 Filed 1–22–14; 8:45 am]

BILLING CODE 6325–38P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Revision of an Existing Information Collection, USAJOBS®, OMB Control No. 3206–0219

AGENCY: Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0219, USAJOBS. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

The information collection was previously published in the **Federal Register** on September 9, 2013 at Volume 78 FR 55122 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

In particular, we invite comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until March 24, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Chief Information Officer, USAJOBS, 1900 E Street NW., Washington, DC 20415, Attention: John Still or send them by email to *john.still@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the U.S. Office of Personnel Management, Chief Information Officer, USAJOBS, 1900 E Street NW., Washington, DC 20415, Attention: John Still, or by sending a request by email to *john.still@opm.gov.*

SUPPLEMENTARY INFORMATION: USAJOBS is the Federal Government's centralized source for most Federal jobs and employment information, including both positions that are required by law to be posted at that location and positions that can be posted there at an agency's discretion. The Applicant Profile and Resume Builder are two components of the USAJOBS application system. USAJOBS reflects the minimal critical elements collected across the Federal Government to assess an applicant's qualifications for Federal jobs under the authority of sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of title 5, United States Code. This revision proposes to:

(A.) Acknowledge the newest revision to the USAJOBS 3.0 system as USAJOBS.

(B.) Make changes to the USAJOBS Applicant Profile to make the section more concise and easier for the applicant to understand and complete. Changes to the Applicant Profile include adding a new question for Willingness to relocate. New fields will be added for Telephone Extension and Name prefix and Suffix. The ''Current Goal'' field will be removed. In addition we will add and edit help language and make text and format and User Interface changes which will make the pages easier for applicants to navigate.

(C.) Make changes to the USAJOBS Resume Builder that will improve navigation, make the builder both concise and easier for the applicant to complete. Changes include adding check boxes that read, ''I do not wish to provide work experience'', ''I do not wish to provide education'' and ''References available upon request''. We will also make text and user interface changes throughout the resume builder, also designed to make the pages easier for the applicant to navigate, understand and complete. ''Pursuant to a separate submission, we recently modified ''Do you claim Veterans' Preference'' to include a new option for 0-point Sole Survivorship Preference; to replace ''wife'' with spouse in the option for derived preference; and to add mother to the option for derived preference. In addition, we modified the Document Upload section to instruct current service members how to claim veterans' preference under the VOW (Veterans Opportunity to Work) to Hire Heroes Act of 2011.''

Analysis

Agency: Office of Personnel Management.

Title: USAJOBS.

OMB Number: 3206–0219.

Frequency: Annually.

Affected Public: Individuals.
Number of Respondents: 1,060,591.
Estimated Time per Respondent: 43.
Total Burden Hours: 760,090.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–01202 Filed 1–22–14; 8:45 am]

BILLING CODE 6325–47–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0204, Court Orders Affecting Retirement Benefits, 5 CFR 838.221, 838.421, and 838.721

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Office of Personnel Management's (OPM) Retirement Services offers the general public and other Federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0204, Court Orders Affecting Retirement Benefits. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;
2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until March 24, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Retirement Services, Union Square Room 370, 1900 E Street, NW., Washington, DC 20415–3500, Attention: Alberta Butler, or sent by email to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street, NW., Room 3316–AC, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: Court Orders Affecting Retirement Benefits, 5 CFR 838.221, 838.421, and 838.721, describe how a former spouse gives us written notice of a court order requiring us to pay benefits to the former spouse. Specific information is needed before OPM can make court-ordered benefit payments.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.
Title: Court Orders Affecting Retirement Benefits, 5 CFR 838.221, 838.421, and 838.721.
OMB Number: 3206–0204.
Frequency: On occasion.
Affected Public: Individuals or Households.
Number of Respondents: 19,000.
Estimated Time Per Respondent: 30 minutes.
Total Burden Hours: 9,500.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–01209 Filed 1–22–14; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0254, Request for Case Review for Enhanced Disability Annuity Benefit, RI 20–123

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0254, Request for Case Review for Enhanced Disability Annuity Benefit, RI 20–123. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. This information collection was previously published in the **Federal Register** on August 23, 2013 at Volume 78 FR 52580 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;
2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until February 24, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 20–123 is available only on the OPM Web site. It is used by retirees separated for disability and the survivors of retirees

separated for disability to request that Retirement Operations review the computations of disability annuities to include the formulae provided in law for individuals who performed service as law enforcement officers, firefighters, nuclear materials carriers, air traffic controllers, Congressional employees, and Capitol and Supreme Court police.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Request for Case Review for Enhanced Disability Annuity Benefit.

OMB Number: 3206–0254.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 100.

Estimated Time Per Respondent: 5 minutes.

Total Burden Hours: 25.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–01213 Filed 1–22–14; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0235, Letter Reply To Request for Information, RI 20–64; Former Spouse Survivor Annuity Election, RI 20–64A; Information on Electing a Survivor Annuity for Your Former Spouse, RI 20–64B

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request, (ICR) 3206–0235, Letter Reply to Request for Information, RI 20–64 and Information on Electing a Survivor Annuity for Your Former Spouse, RI 20–64A. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until March 24, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Retirement Services, Union Square Room 370, 1900 E Street, NW., Washington, DC 20415–3500, Attention: Alberta Butler or sent by email to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street, NW., Room 3316–AC, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: RI 20–64, Letter Reply to Request for Information, is used by the Civil Service Retirement System (CSRS) to provide information about the amount of annuity payable after a survivor reduction, to explain the annuity reductions required to pay for the survivor benefit, and to give the beginning rate of survivor annuity. RI 20–64A, Former Spouse Survivor Annuity Election, is used by the CSRS to obtain a survivor benefits election from annuitants who are eligible to elect to provide survivor benefits for a former spouse. RI 20–64B, Information on Electing a Survivor Annuity for Your Former Spouse, is a pamphlet that provides important information to retirees under the CSRS who want to provide a survivor annuity for a former spouse.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Letter Reply to Request for Information; Former Spouse Survivor Annuity Election.

OMB Number: 3206–0235.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 38.

Estimated Time Per respondent: 45 minutes for RI 20–64A and 8 minutes for RI 20–64.

Total Burden Hours: 24.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–01204 Filed 1–22–14; 8:45 am]

BILLING CODE 6325–38–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service™.

ACTION: Notice of modification to existing systems of records.

SUMMARY: The United States Postal Service® (Postal Service) is proposing to modify a Customer Privacy Act System of Records (SOR) to permit the collection and retrieval of additional categories of information from customers who register on usps.com. These changes will enable the Postal Service to verify a customer's identity online. Additionally, the Postal Service is amending this SOR to permit information in this system to be used to identify, prevent, or mitigate the effects of fraudulent transactions.

DATES: These revisions will become effective without further notice on February 24, 2014 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to the Privacy and Records Office, United States Postal Service, 475 L'Enfant Plaza SW., Room 9517, Washington, DC 20260–1101. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Matthew J. Connolly, Chief Privacy Officer, Privacy and Records Office, 202–268–8582.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. The Postal Service™ has determined that this

Customer Privacy Act System of Records should be revised to modify categories of records in the system, purpose(s), and retrievability.

I. Background

The Postal Service Customer Registration application enables individual and corporate customers to conduct business online with the Postal Service. To date, approximately 20 million users have registered through the Customer Registration application. The Postal Service is modifying the system of records associated with this application to enable the Postal Service to validate the email and text message numbers of customers who register on usps.com. Additionally, the proposed modifications will enable customer-supplied information to be analyzed for the purposes of detecting, preventing, and mitigating fraudulent activity.

II. Rationale for Changes to USPS Privacy Act Systems of Records

Currently, to register on usps.com, a customer is asked to supply several types of personal information, including his or her name, address information, phone number(s), and email address(es). Customers must also create a username and password which are used to authenticate the customer when the customer accesses his or her account. Additionally, customers must provide answers to two security questions which will be used to verify the identity of returning customers who have forgotten their passwords, thereby enabling them to regain access to their accounts.

Customer Registration is making changes to the customer registration process to enhance the identity verification portion of the process and to provide customers with an additional option for accessing their accounts in the event that a customer forgets, or is otherwise unable to supply, his or her password. The Postal Service intends to ask each new and existing usps.com registrant to verify the email address that he or she used to create his or her account by responding to a communication that will be sent to the email that was previously supplied by the user. Customers who complete this verification process will be allowed to use their verified email address to reset their account passwords. Accordingly, the Postal Service is modifying the purpose of this SOR to account for these new uses of customer-supplied information. Because the Postal Service intends to establish the same verification process for text message numbers, the Postal Service is also modifying this SOR to include ''text message number(s)'' among the categories of information it currently collects during the customer registration process.

To protect the Postal Service and its customers from fraudulent activities, the Postal Service intends to analyze information received from the user for the purpose of detecting, preventing, and mitigating fraud within the Customer Registration application. Specifically, the Postal Service will use commercially available software to analyze user-supplied information for the purpose of identifying patterns of suspected fraudulent activity. In so doing, the Postal Service will obscure the original information supplied by customers when such information is analyzed. If the Postal Service determines that such activity warrants a formal criminal investigation by the Postal Inspection Service, then any potentially relevant information will be provided to the Inspection Service in its original format. Accordingly, amendments are being made to the purpose(s) and retrievability sections of the SOR.

The Postal Service is also proposing to partner with a consumer credit rating company for the purpose of securely validating the identities of customers online, a process known as ''identity proofing.'' Accordingly, the Postal Service is amending this SOR to enable the organization to implement identity proofing for personal (non-business) customers who select this option. Individual (non-business) customers who wish to validate their identities in this manner, and who select this option, would be required to answer questions submitted by a consumer credit reporting company. These questions would relate to the customer's history, such as past residences, employment, and credit data. Any answers provided by the customer would be sent directly to the credit reporting company. That company would then issue a pass/fail rating which would be sent to the Postal Service. The Postal Service would then store this rating in association with the customer's account. The pass/fail rating is the only information the Postal Service would store in the identity-proofing process. Accordingly, the Postal Service is modifying this SOR to indicate that results of identity proofing validation would be stored as a record category. Identity verification using this process would only be a requirement for certain products and services to be determined by postal management.

III. Description of Changes to Systems of Records

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed modifications has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect this amended system of records to have any adverse effect on individual privacy rights. The affected systems are as follows:

USPS 810.100

SYSTEM NAME: *www.usps.com* Registration

Accordingly, for the reasons stated, the Postal Service proposes changes in the existing system of records as follows:

USPS 810.100

SYSTEM NAME:

www.usps.com Registration

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

[CHANGE TO READ]

1. *Customer information:* Name; customer ID(s); company name; job title and role; home, business, and billing address; phone number(s) and fax number; email(s); URL; text message number(s) and carrier; and Automated Clearing House (ACH) information.

2. *Identity verification information:* Question, answer, username, user ID, password, email address, text message number and carrier, and results of identity proofing validation.

* * * * *

PURPOSE:

* * * * *

[CHANGE TO READ]

6. To verify a customer's identity when the customer establishes, or attempts to access, his or her account.

7. To identify, prevent, and mitigate the effects of fraudulent transactions.

RETRIEVABILITY:

[CHANGE TO READ]

By customer name, customer ID(s), phone number, mail, email address, IP address, text message number, and any customer information or online user information.

* * * * *

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2014–01243 Filed 1–22–14; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30883; File No. 812–14215]

Nuveen Real Estate Income Fund and Nuveen Fund Advisors, LLC; Notice of Application

January 16, 2014.

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 19(b) of the Act and rule 19b–1 under the Act.

Applicants: Nuveen Real Estate Income Fund (''JRS'') and Nuveen Fund Advisors, LLC (''NFA'').

Summary of Application: Applicants request an order to permit certain registered closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as monthly in any one taxable year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

DATES: *Filing Dates:* The application was filed on September 25, 2013 and amended on December 23, 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 February 10, 2014 and should be accompanied by proof of service on 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, 333 West Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Mary Kay Frech, Branch Chief, at (202) 551–6814 (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 for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. JRS is registered as a non-diversified, closed-end management investment company organized as a Massachusetts business trust.[1] The investment objective of JRS is high current income and capital appreciation, which it seeks to achieve by investing in income-producing common stocks, preferred stocks, convertible preferred stocks, and debt securities issued by real estate investment trusts (''REITs''). Shares of the common stock of JRS are listed and traded on the New York Stock Exchange. JRS currently has no outstanding preferred stock and does not intend to issue any, but may do so in the future. Applicants believe that investors in closed-end funds may prefer an investment vehicle that provides regular current income through fixed distribution policies that would be available through a Distribution Policy (as defined below).

2. NFA, a Delaware limited liability company, is registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') as an investment adviser. NFA provides investment advisory services to JRS. Security Capital Research & Management Incorporated (''SCRM''), a Delaware corporation, is a registered investment adviser under the Advisers Act and is the sub-adviser to JRS. Any sub-adviser to a Fund will be registered as an investment adviser under the Advisers Act or not subject to registration.

3. Applicants state that prior to a Fund's implementing a distribution policy (''Distribution Policy'') in reliance on the order, the board of directors or trustees (the ''Board'') of each Fund, including a majority of the directors or trustees who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), will request, and the Adviser will provide, such information as is reasonably necessary to make an informed determination of whether the Board should adopt a proposed Distribution Policy. In particular, the Board and the Independent Trustees will review information regarding the purpose and terms of the Distribution Policy; the likely effects of the policy on the Fund's long-term total return (in relation to market price and its net asset value per share of common stock (''NAV'')); the expected relationship between the Fund's distribution rate on its common stock under the policy and the Fund's total return (in relation to NAV); whether the rate of distribution would exceed such Fund's expected total return in relation to its NAV; and any foreseeable material effects of the policy on the Fund's long-term total return (in relation to market price and NAV). The Independent Trustees also will consider what conflicts of interest the Adviser and the affiliated persons of the Adviser and the Fund might have with respect to the adoption or implementation of the Distribution Policy. Applicants state that, only after considering such information will the Board, including the Independent Trustees, of each Fund approve a Distribution Policy and in connection with such approval will determine that the Distribution Policy is consistent with a Fund's investment objectives and in the best interests of the holders of the Fund's common stock.

4. Applicants state that the purpose of a Distribution Policy, generally, would be to permit a Fund to distribute over the course of each year, through periodic distributions in relatively equal amounts (plus any required special distributions) that are composed of payments received from portfolio companies (REITs), supplemental amounts generally representing capital gains or, possibly, returns of capital that may represent unrealized capital gains. The Fund seeks to establish a distribution rate that approximates the Fund's projected total return that can reasonably be expected to be generated by the Fund over an extended period of time, although the distribution rate will not be solely dependent on the amount of income earned or capital gains realized by the Fund. Under the Distribution Policy of a Fund, such Fund would distribute to its respective

[1] All existing registered closed-end investment companies that currently intend to rely on the order have been named as applicants. Applicants request that the order also apply to each other registered closed-end investment company advised or to be advised in the future by NFA or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with NFA (including any successor in interest) (each such entity, including NFA, the ''Adviser'') that in the future seeks to rely on the order (such investment companies, together with JRS, are collectively, the ''Funds'' and individually, a ''Fund''). Any Fund that may rely on the order in the future will comply with the terms and conditions of the application. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

common stockholders a fixed percentage of the market price of such Fund's common stock at a particular point in time or a fixed percentage of NAV at a particular time or a fixed amount per share of common stock, any of which may be adjusted from time to time. It is anticipated that under a Distribution Policy, the minimum annual distribution rate with respect to such Fund's common stock would be independent of the Fund's performance during any particular period but would be expected to correlate with the Fund's performance over time. Except for extraordinary distributions and potential increases or decreases in the amount of the distributions in the final dividend period in light of a Fund's projected performance for the entire calendar year and to enable the Fund to comply with the distribution requirements of Subchapter M of the Internal Revenue Code (''Code'') for the calendar year, each distribution on the Fund's common stock would be at the stated rate then in effect.

5. Applicants state that prior to the implementation of a Distribution Policy for any Fund in reliance on the order, the Board of such Fund will have adopted policies and procedures under rule 38a–1 under the Act that: (i) are reasonably designed to ensure that all notices required to be sent to the Fund's stockholders pursuant to section 19(a) of the Act, rule 19a–1 thereunder and condition 4 below (each a ''19(a) Notice'') include the disclosure required by rule 19a–1 under the Act and by condition 2(a) below, and that all other written communications by the Fund or its agents regarding distributions under the Distribution Policy include the disclosure required by condition 3(a) below; and (ii) require the Fund to keep records that demonstrate its compliance with all of the conditions of the order and that are necessary for such Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its 19(a) Notices.

Applicants' Legal Analysis

1. Section 19(b) of the Act generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b–1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) of the Act provides, in relevant part, that the Commission may exempt any person or transaction from any provision of the Act to the extent that 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.

3. Applicants state that one of the concerns leading to the enactment of section 19(b) and adoption of rule 19b–1 was that stockholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that distributions (or the confirmation of the reinvestment thereof) estimated to be sourced in part from capital gains or capital be accompanied by a separate statement showing the sources of the distribution (*e.g.,* estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital). Applicants state that similar information is included in the Funds' annual reports to stockholders and on the Internal Revenue Service Form 1099 DIV, which is sent to each common and preferred stockholder who received distributions during a particular year.

4. Applicants further state that each Fund will make the additional disclosures required by the conditions set forth below, and each Fund will adopt compliance policies and procedures in accordance with rule 38a–1 under the Act to ensure that all required 19(a) Notices and disclosures are sent to stockholders. Applicants state that the information required by section 19(a), rule 19a–1, the Distribution Policy, the policies and procedures under rule 38a–1 noted above, and the conditions listed below will help ensure that each Fund's stockholders are provided sufficient information to understand that their periodic distributions are not tied to a Fund's net investment income (which for this purpose is the Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Accordingly, applicants assert that continuing to subject the Funds to section 19(b) and rule 19b–1 would afford stockholders no extra protection.

5. Applicants note that section 19(b) and rule 19b–1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants submit that the ''selling the dividend'' concern should not apply to closed-end investment companies, such as the Funds.[2] According to applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a periodic distribution plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that the common stock of closed-end funds often trades in the marketplace at a discount to its NAV. Applicants believe that this discount may be reduced if the Funds are permitted to pay relatively frequent dividends on their common stock at a consistent rate, whether or not those dividends contain an element of long-term capital gains.

7. Applicants assert that the application of rule 19b–1 to a Distribution Policy actually could have an inappropriate influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the adoption of a periodic distribution plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b–1, and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants assert that by limiting the number of long-term capital gain dividends that a Fund may make with respect to any one year, rule 19b–1 may prevent the normal and efficient

[2] Applicants note that a number of the closed-end funds advised by NFA, including JRS, offer or intend to offer their shares by means of a shelf registration statement. Shares are or will be offered in this manner only when they are trading at a premium to NAV, and not on the basis of an upcoming capital gains dividend, thus minimizing the likelihood of improper fund share sales practices. Any such offering of shares of a Fund will be made in compliance with condition 6 below.

operation of a periodic distribution plan whenever that Fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the rule.

8. Applicants also assert that rule 19b–1 may force fixed regular periodic distributions under a periodic distribution plan to be funded with returns of capital [3] (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise would be available. To distribute all of a Fund's long-term capital gains within the limits in rule 19b–1, a Fund may be required to make total distributions in excess of the annual amount called for by its periodic distribution plan, or to retain and pay taxes on the excess amount. Applicants assert that the requested order would minimize these anomalous effects of rule 19b–1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

9. Applicants state that Revenue Ruling 89–81 under the Code requires that a fund that seeks to qualify as a regulated investment company under the Code and that has both common stock and preferred stock outstanding designate the types of income, *e.g.,* investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89–81, whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with Revenue Ruling 89–81.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred stock issued by a closed-end fund. Applicants assert that such distributions are either fixed or determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer, and Revenue Ruling 89–81 determines the proportion of such distributions that are comprised of long-term capital gains.

11. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred stock, which entitles a holder to no more than a specified periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation preference, dividend rate, credit quality, and frequency of payment. Applicants state that investors buy preferred stock for the purpose of receiving payments at the frequency bargained for, and any application of rule 19b–1 to preferred stock would be contrary to the expectation of investors.

12. Applicants request an order under section 6(c) of the Act granting an exemption from the provisions of section 19(b) of the Act and rule 19b–1 thereunder to permit each Fund to distribute periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as frequently as monthly in any one taxable year in respect of its common stock and as often as specified by, or determined in accordance with the terms of, any preferred stock issued by the Fund.

Applicants' Conditions

Applicants agree that, with respect to each Fund seeking to rely on the order, the order will be subject to the following conditions:

1. Compliance Review and Reporting

The Fund's chief compliance officer will: (a) report to the Fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly Board meeting, whether (i) the Fund and its Adviser have complied with the conditions of the order, and (ii) a material compliance matter (as defined in rule 38a–1(e)(2) under the Act) has occurred with respect to such conditions; and (b) review the adequacy of the policies and procedures adopted by the Board no less frequently than annually.

2. Disclosures to Fund Stockholders

(a) Each 19(a) Notice disseminated to the holders of the Fund's common stock, in addition to the information required by section19(a) and rule 19a–1:

(i) Will provide, in a tabular or graphical format:

(1) the amount of the distribution, on a per share of common stock basis, together with the amounts of such distribution amount, on a per share of common stock basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(2) the fiscal year-to-date cumulative amount of distributions, on a per share of common stock basis, together with the amounts of such cumulative amount, on a per share of common stock basis and as a percentage of such cumulative amount of distributions, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(3) the average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month ended immediately prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date; and

(4) the cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date. Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

(ii) Will include the following disclosure:

(1) ''You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the Applicants' Distribution Policy'';

(2) ''The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment

[3] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

performance and should not be confused with 'yield' or 'income'[4]''; and

(3) ''The amounts and sources of distributions reported in this 19(a) Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes.''

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the 19(a) Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

(b) On the inside front cover of each report to stockholders under rule 30e–1 under the Act, the Fund will:

(i) describe the terms of the Distribution Policy (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

(ii) include the disclosure required by condition 2(a)(ii)(1) above;

(iii) state, if applicable, that the Distribution Policy provides that the Board may amend or terminate the Distribution Policy at any time without prior notice to Fund stockholders; and

(iv) describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Distribution Policy and any reasonably foreseeable consequences of such termination.

(c) Each report provided to stockholders under rule 30e–1 under the Act and each prospectus filed with the Commission on Form N–2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

3. Disclosure to Stockholders, Prospective Stockholders and Third Parties

(a) The Fund will include the information contained in the relevant 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, in any written communication (other than a communication on Form 1099) about the Distribution Policy or distributions under the Distribution Policy by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund stockholder, prospective stockholder or third-party information provider;

(b) The Fund will issue, contemporaneously with the issuance of any 19(a) Notice, a press release containing the information in the 19(a) Notice and will file with the Commission the information contained in such 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, as an exhibit to its next filed Form N–CSR; and

(c) The Fund will post prominently a statement on its (or the Adviser's) Web site containing the information in each 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, and will maintain such information on such Web site for at least 24 months.

4. Delivery of 19(a) Notices to Beneficial Owners

If a broker, dealer, bank or other person (''financial intermediary'') holds common stock issued by the Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the 19(a) Notice to all beneficial owners of the Fund's stock held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the 19(a) Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the 19(a) Notice to each beneficial owner of the Fund's stock; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

5. Additional Board Determinations for Funds Whose Common Stock Trades at a Premium

If:

(a) The Fund's common stock has traded on the stock exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's shares of common stock as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

(b) The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

(i) At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board, including a majority of the Independent Trustees:

(1) will request and evaluate, and the Fund's Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Distribution Policy should be continued or continued after amendment;

(2) will determine whether continuation, or continuation after amendment, of the Distribution Policy is consistent with the Fund's investment objective(s) and policies and is in the best interests of the Fund and its stockholders, after considering the information in condition 5(b)(i)(1) above; including, without limitation:

(A) whether the Distribution Policy is accomplishing its purpose(s);

(B) the reasonably foreseeable material effects of the Distribution Policy on the Fund's long-term total return in relation to the market price and NAV of the Fund's common stock; and

(C) the Fund's current distribution rate, as described in condition 5(b) above, compared with the Fund's average annual taxable income or total return over the 2-year period, as described in condition 5(b), or such longer period as the Board deems appropriate; and

(3) based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Distribution Policy; and

(ii) The Board will record the information considered by it, including its consideration of the factors listed in condition 5(b)(i)(2) above, and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Distribution Policy in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

6. Public Offerings

The Fund will not make a public offering of the Fund's common stock other than:

[4] The disclosure in condition 2(a)(ii)(2) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

(a) a rights offering below NAV to holders of the Fund's common stock;

(b) an offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or

(c) an offering other than an offering described in conditions 6(a) and 6(b) above, provided that, with respect to such other offering:

(i) the Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution record date,[5] expressed as a percentage of NAV as of such date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date;[6] and

(ii) the transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its shares of common stock as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding shares of preferred stock as such Fund may issue.

7. Amendments to Rule 19b–1

The requested order will expire on the effective date of any amendment to rule 19b–1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[5] If the Fund has been in operation fewer than six months, the measured period will begin immediately following the Fund's first public offering.

[6] If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30884; 812–14060]

Cornerstone Advisors Inc. and The Advisors' Inner Circle Fund; Notice of Application

January 16, 2014.

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.

APPLICANTS: Cornerstone Advisors Inc. (the ''Adviser'') and The Advisors' Inner Circle Fund (the ''Trust'').

DATES: *Filing Dates:* The application was filed July 18, 2012, and amended on January 15, 2013, September 30, 2013, December 20, 2013 and January 13, 2014.

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 February 10, 2014, 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: Cornerstone Advisors, Inc., c/o SEI Corporation, One Freedom Valley Drive, Oaks, PA 19456.

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. The Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. The Trust is composed of multiple series of shares, each with its own distinct investment objectives, policies and restrictions.[1]

2. The Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser serves as the investment adviser to series of the Trust pursuant to an investment advisory agreement with the Trust (each an ''Investment Advisory Agreement'' and collectively, the ''Investment Advisory Agreements'').[2] Each Investment Advisory Agreement was approved or will be approved by the board of trustees of the Trust (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 Adviser (''Independent Trustees'') and by the shareholders of the relevant Subadvised Fund in the manner required by sections 15(a) and 15(c) of the Act and

[1] Applicants request relief with respect to all existing and future series of the Trust and any other existing or future registered open-end management investment company or series thereof that (a) is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser or its successors (included in the term ''Adviser''); (b) uses the multi-manager structure described in the application (''Manager of Managers Structure''); and (c) complies with the terms and conditions of the application (each a ''Subadvised Fund'' and collectively, the ''Subadvised Funds''). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Subadvised Fund contains the name of a Subadviser (as defined below), the name of the Adviser that serves as the primary adviser to the Subadvised Fund, or a trademark or trade name that is owned by the Adviser, will precede the name of the Subadviser.

[2] Each other Subadvised Fund will enter into an investment advisory agreement with its Adviser (included in the term ''Investment Advisory Agreement'').

rule 18f–2 under the Act.[3] Applicants are not seeking any exemption from the provisions of the Act with respect to the Investment Advisory Agreement.

3. Under the terms of the Investment Advisory Agreement, the Adviser, subject to the oversight of the Board, furnishes a continuous investment program for each Subadvised Fund and determines the investments to be purchased, held, sold or exchanged by each Subadvised Fund and the portion, if any, of the assets of the Subadvised Fund to be held uninvested. For its services to each Subadvised Fund, the Adviser receives an investment advisory fee from that Subadvised Fund as specified in the Investment Advisory Agreement calculated based on that Subadvised Fund's average daily net assets. The terms of the Investment Advisory Agreements also permit the Adviser, subject to the approval of the Board, including a majority of the Independent Trustees, and the shareholders of the applicable Subadvised Fund (if required by applicable law), to delegate portfolio management responsibilities of all or a portion of the assets of the Subadvised Fund to one or more subadvisers (''Subadvisers''). The Adviser evaluates, selects and recommends Subadvisers to manage the assets (or portion thereof) of Subadvised Funds, monitors and reviews the Subadvisers and their performance and their compliance with that Subadvised Fund's investment policies and restrictions. The Adviser has entered into subadvisory agreements (''Subadvisory Agreements'') with various Subadvisers to serve as Subadvisers to the Subadvised Funds.[4] Each Subadviser is, and each future Subadviser will be, an ''investment adviser,'' as defined in section 2(a)(20) of the Act, and is registered, or will register, as an investment adviser under the Advisers Act, or not subject to such registration. The Adviser may compensate each Subadviser out of the advisory fees paid to the Adviser under the Investment Advisory Agreement, or Subadvised Funds may compensate the Subadvisers directly.

4. Applicants request an order to permit the Adviser, subject to Board approval, to select Subadvisers to manage all or a portion of the assets of a Subadvised Fund pursuant to a Subadvisory Agreement and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an ''affiliated person,'' as defined in section 2(a)(3) of the Act, of the Trust or a Subadvised Fund or the Adviser, other than by reason of solely serving as a Subadviser to a Subadvised Fund or as an investment adviser or subadviser to any series of the Trust other than the series of the Trust advised by the Adviser (''Affiliated Subadviser'').

5. Applicants also request an order exempting each Subadvised Fund from certain disclosure provisions described below that may require the Subadvised Funds to disclose fees paid to each Subadviser by the Adviser or a Subadvised Fund. Applicants seek an order to permit each Subadvised Fund to disclose (as a dollar amount and a percentage of each Subadvised Fund's net assets) only: (a) the aggregate fees paid to the Adviser and any Affiliated Subadviser; and (b) the aggregate fees paid to Subadvisers other than Affiliated Subadvisers (collectively, the ''Aggregate Fee Disclosure''). A Subadvised Fund that employs an Affiliated Subadviser will provide separate disclosure of any fees paid to the Affiliated Subadviser.

6. The Funds will inform shareholders of the hiring of a new Subadviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) within 90 days after a new Subadviser is hired for any Subadvised Fund, that Subadvised Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;[5] and (b) the Subadvised 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 a registered 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

[3] The term ''Board'' also includes the board of trustees or directors of a future Subadvised Fund, if different.

[4] All existing Subadvisory Agreements comply with sections 15(a) and (c) of the Act and rule 18f–2 thereunder. The Adviser has entered into Subadvisory Agreements with the following Subadvisers: (i) Cornerstone Advisors Global Public Equity Fund—Parametric Portfolio Associates, LSV Asset Management, Harris Associates LP, Thornburg Investment Management, Marsico Capital Management, LLC, Turner Investments, L.P., Cramer Rosenthal McGlynn LLC, Fairpointe Capital LLC, Phocas Financial Corporation, Numeric Investors LLC, Allianz Global Investors, Acadian Asset Management LLC and Driehaus Capital Management LLC; (ii) Cornerstone Advisors Income Opportunities Fund—OFI SteelPath, Inc. and Strategic Income Management, LLC; (iii) Cornerstone Advisors Public Alternatives Fund—AQR Capital Management, LLC, AlphaSimplex Group, LLC, Turner Investments, L.P. and ClariVest Asset Management LLC; and (iv) Cornerstone Advisors Real Assets Fund—Kayne Anderson Capital Advisors and BlackRock Investment Management LLC.

[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 Subadviser; (b) inform 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 Subadvised Funds. A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 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.

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 provision 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 Adviser, subject to the review and approval of the Board, to select the Subadvisers who are best suited to achieve the Subadvised Fund's investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Subadviser is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary delays and expenses on the Subadvised Funds and may preclude the Subadvised Funds from acting promptly when the Board and the Adviser believe that a change would benefit a Fund and its shareholders. Applicants note that the Investment Advisory Agreements and any subadvisory agreement with an Affiliated Subadviser (if any) will continue to be 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 Subadvised Funds because it would improve the Adviser's ability to negotiate the fees paid to Subadvisers. Applicants state that the Adviser may be able to negotiate rates that are below a Subadviser's ''posted'' amounts if the Adviser is not required to disclose the Subadvisers' fees to the public. Applicants submit that the requested relief will encourage Subadvisers 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:[6]

1. Before a Subadvised Fund may rely on the order, the operation of the Subadvised Fund in the manner described in the application will be approved by a majority of the Subadvised Fund's outstanding voting securities as defined in the Act or, in the case of a Subadvised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before such Subadvised Fund's shares are offered to the public.

2. The prospectus for each Subadvised Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. In addition, each Subadvised Fund will hold itself out to the public as employing a Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. A Subadvised Fund will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the selection and nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, has been and will continue to be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

7. Whenever a Subadviser change is proposed for a Subadvised Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Subadvised Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

8. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

9. The Adviser will provide general management services to each Subadvised Fund, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets and, subject to review and approval of the Board, will: (i) set the Subadvised Fund's overall investment strategies; (ii) evaluate, select, and recommend Subadvisers to manage all or a portion of the Subadvised Fund's assets; (iii) allocate and, when appropriate, reallocate the Subadvised Fund's assets among Subadvisers; (iv) monitor and evaluate the Subadvisers' performance; and (v) implement procedures reasonably designed to ensure that Subadvisers comply with the Subadvised Fund's investment objective, policies and restrictions.

10. No Trustee or officer of the Trust or of a Subadvised Fund or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

11. Each Subadvised Fund will disclose in its registration statement the Aggregate Fee Disclosure.

12. 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.

13. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Subadvised Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

14. For Subadvised Funds that pay fees to a Subadviser directly from Fund assets, any changes to a Subadvisory Agreement that would result in an increase in the total management and advisory fees payable by a Subadvised Fund will be required to be approved by the shareholders of the Subadvised Fund.

[6] Applicants will comply with conditions 6, 8, 11, and 13 only if they rely on the relief that would allow them to provide Aggregate Fee Disclosure.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–01255 Filed 1–22–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30885; 812–14181]

American Pension Investors Trust, et al.; Notice of Application

January 16, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for exemptions from sections 12(d)(1)(A), (B), and (C) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 6(c) of the Act for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF THE APPLICATION: Applicants request an order that would (a) permit certain registered open-end management investment companies that operate as ''funds of funds'' to acquire shares of certain registered open-end management investment companies, registered closed-end management investment companies, ''business development companies,'' as defined by section 2(a)(48) of the Act, and registered unit investment trusts that are within or outside the same group of investment companies as the acquiring investment companies and (b) permit certain registered open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: American Pension Investors Trust (''Trust''') and Yorktown Management & Research Company, Inc. (''Adviser'').

DATES: *Filing Dates:* The application was filed on July 19, 2013 and amended on November 21, 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 February 10, 2014, and should be accompanied by proof of service on 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. Adviser and Trust, 2303 Yorktown Avenue, Lynchburg, VA 24501.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, (202) 551–6870, or Mary Kay Frech, 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 for an applicant using the ''Company'' name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is an open-end management company registered under the Act and organized as a Massachusetts business trust. The Trust has multiple series which pursue distinct investment objectives and strategies.[1]

2. The Adviser, a Delaware limited liability company, is a registered investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser to each of the Funds of Funds (as defined below).[2]

3. Applicants request relief to the extent necessary to permit: (a) A Fund that operates as a ''fund of funds'' (each, a ''Fund of Funds,'' and collectively, the ''Funds of Funds'') to acquire shares of registered open-end management investment companies (each an ''Unaffiliated Open-End Investment Company''), registered closed-end management investment companies, ''business development companies'' as defined by section 2(a)(48) of the Act (''business development companies'') (each registered closed-end management investment company and each business development company, an ''Unaffiliated Closed-End Investment Company'' and, together with the Unaffiliated Open-End Investment Companies, the ''Unaffiliated Investment Companies''), and registered unit investment trusts (''UITs'') (the ''Unaffiliated Trusts,'' and together with the Unaffiliated Investment Companies, the ''Unaffiliated Funds''), in each case, that are not part of the same ''group of investment companies'' as the Funds of Funds;[3] (b) the Unaffiliated Funds, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 (the ''1934 Act'') (''Broker'') to sell shares of such Unaffiliated Funds to the Funds of Funds; (c) the Funds of Funds to acquire shares of other registered investment companies, including open-end management investment companies and series thereof, closed-end management investment companies and UITs, as well as business development companies (if any), in the same group of investment companies as the Funds of Funds (collectively, the ''Affiliated Funds,'' and, together with the Unaffiliated Funds, the ''Underlying Funds'');[4] and (d) the Affiliated Funds, their principal underwriters and any Broker to sell shares of the Affiliated Funds to the

[1] Applicants request that the order apply to each existing and each future series of the Trust, and to each existing and future registered open-end management investment company or series thereof which is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser and which is part of the ''same group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as the Trust (each a ''Fund'' and collectively, ''Funds''). All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] All references to the term ''Adviser'' include successors-in-interest to the Adviser. A successor-in-interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[3] For purposes of the request for relief, the term ''group of investment companies'' means any two or more registered investment companies, including closed-end investment companies, that hold themselves out to investors as related companies for purposes of investment and investor services.

[4] Certain of the Underlying Funds may be registered under the Act as either UITs or open-end management investment companies and have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as exchange-traded funds (collectively, ''ETFs'' and each, an ''ETF''). In addition, certain of the Underlying Funds currently pursue, or may in the future pursue, their investment objectives through a master-feeder arrangement in reliance on section 12(d)(1)(E) of the Act. In accordance with condition 11, a Fund of Funds may not invest in an Underlying Fund that operates as a feeder fund unless the feeder fund is part of the same ''group of investment companies'' as its corresponding master fund or the Fund of Funds. If a Fund of Funds invests in an Affiliated Fund that operates as a feeder fund and the corresponding master fund is not within the same ''group of investment companies'' as the Fund of Funds and Affiliated Fund, the master fund would be an Unaffiliated Fund for purposes of the application and its conditions.

Funds of Funds.[5] Applicants also request an order under sections 6(c) and 17(b) of the Act to exempt applicants from section 17(a) to the extent necessary to permit Underlying Funds to sell their shares to Funds of Funds and redeem their shares from Funds of Funds.[6]

4. Applicants also request an exemption under section 6(c) from rule 12d1–2 under the Act to permit any existing or future Fund that relies on section 12(d)(1)(G) of the Act (''Same Group Investing Funds'') and that otherwise complies with rule 12d1–2 under the Act, to also invest, to the extent consistent with its investment objective(s), policies, strategies and limitations, in other financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any Broker from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company from acquiring any security issued by a registered closed-end investment company if such acquisition would result in the acquiring company, any other investment companies having the same investment adviser, and companies controlled by such investment companies, collectively, owning more than 10% of the outstanding voting stock of the registered closed-end investment company.

2. Section 12(d)(1)(J) 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 provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants request an exemption under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A), (B) and (C) to the extent necessary to permit: (i) The Funds of Funds to acquire shares of Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) and (C) of the Act; and (ii) the Underlying Funds, their principal underwriters and any Broker to sell shares of the Underlying Funds to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A), (B), and (C), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants submit that the proposed structure will not result in the exercise of undue influence by a Fund or its affiliated persons over the Underlying Funds. To limit the control a Fund of Funds or Fund of Funds Affiliate[7] may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Adviser and any person controlling, controlled by or under common control with the Adviser, and any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by the Adviser or any person controlling, controlled by or under common control with the Adviser (collectively, the ''Advisory Group'') from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any other investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds (''Subadviser'') and any person controlling, controlled by or under common control with the Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by or under common control with the Subadviser (collectively, the ''Subadvisory Group'').

5. With respect to closed-end underlying funds, applicants submit that one significant difference from open-end underlying funds is that, whereas open-end underlying funds may be unduly influenced by the threat of large-scale redemptions, closed-end underlying funds cannot be so influenced because they do not issue redeemable securities and, therefore, are not subject to large-scale redemptions. On the other hand, applicants state that closed-end underlying funds may be unduly influenced by a holder's ability to vote a large block of stock. To address this concern, applicants submit that, with respect to a Fund's investment in an Unaffiliated Closed-End Investment Company, (i) each member of the Advisory Group or Subadvisory Group that is an investment company or an issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act will vote its shares of the Unaffiliated Closed-End Investment Company in the manner prescribed by section 12(d)(1)(E) of the Act and (ii) each other member of the Advisory Group or Subadvisory Group will vote its shares of the Unaffiliated Closed-End Investment Company in the same proportion as the vote of all other holders of the same type of such Unaffiliated Closed-End Investment Company's shares. Applicants state that, in this way, an Unaffiliated Closed-End Investment Company will be protected from undue influence by a Fund of Funds through the voting of the Unaffiliated Closed-End Investment Company's shares.

6. Applicants propose other conditions to limit the potential for undue influence over the Unaffiliated Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling

[5] Applicants state that they do not believe that investments in business development companies present any particular considerations or concerns that may be different from those presented by investments in registered closed-end investment companies.

[6] Applicants note that a Fund of Funds will purchase and sell shares of an Underlying Fund that is a closed-end fund through secondary market transactions at market prices rather than through principal transactions with the closed-end fund. Accordingly, applicants are not requesting section 17(a) relief with respect to principal transactions with closed-end funds.

[7] A ''Fund of Funds Affiliate'' is the Adviser, any Subadviser, promoter or principal underwriter of a Fund of Funds, as well as any person controlling, controlled by or under common control with any of those entities. An ''Unaffiliated Fund Affiliate'' is an investment adviser(s), sponsor, promoter or principal underwriter of any Unaffiliated Fund or any person controlling, controlled by or under common control with any of those entities.

syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting'').[8]

7. To further ensure that an Unaffiliated Investment Company understands the implications of a Fund of Funds' investment under the requested exemptive relief, prior to its investment in the shares of an Unaffiliated Investment Company in excess of the limit of section 12(d)(1)(A)(i) of the Act, a Fund of Funds and the Unaffiliated Investment Company will execute an agreement stating, without limitation, that each of their boards of directors or trustees (each, a ''Board'') and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (the ''Participation Agreement''). Applicants note that an Unaffiliated Investment Company (including an ETF or an Unaffiliated Closed-End Investment Company) would also retain its right to reject any initial investment by a Fund of Funds in excess of the limits in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds. In addition, an Unaffiliated Investment Company (other than an ETF or an Unaffiliated Closed-End Investment Company whose shares are purchased by a Fund of Funds in the secondary market) will retain its right at all times to reject any investment by a Fund of Funds. Finally, subject solely to the giving of notice to a Fund of Funds and the passage of a reasonable notice period, an Unaffiliated Investment Company (including a closed-end fund) could terminate a Participation Agreement with the Fund of Funds.

8. Applicants state that they do not believe that the proposed arrangement will result in excessive layering of fees. The Board of each Fund of Funds, including a majority of the trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (the ''Independent Trustees''), will find that the advisory fees charged under a Fund of Funds' advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. In addition, the Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or an affiliated person of the Adviser by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

9. Applicants further state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in in rule 2830 of the Conduct Rules of the NASD (''NASD Conduct Rule 2830'').[9]

10. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except in certain circumstances identified in condition 11 below.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds may be deemed to be under the common control of the Adviser and, therefore, affiliated persons of one another. Applicants also state that the Funds of Funds and the Unaffiliated Funds may also be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Unaffiliated Fund's outstanding voting securities. Applicants state that the sale of shares by the Underlying Funds to the Funds of Funds and the purchase of those shares from the Funds of Funds by the Underlying Funds (through redemptions) could be deemed to violate section 17(a).[10]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company concerned; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act 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.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the transactions are reasonable and fair and do not involve overreaching. Applicants state that the terms upon which an Underlying Open-End Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Open-End Fund.[11] Applicants also state that the

[8] An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, trustee, advisory board member, investment adviser, subadviser or employee of the Fund of Funds, or a person of which any such officer, director, trustee, investment adviser, subadviser, member of an advisory board or employee is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to an Unaffiliated Fund is covered by section 10(f) of the Act.

[9] Any references to NASD Conduct Rule 2830 include any successor or replacement Financial Industry Regulatory Authority rule to NASD Conduct Rule 2830.

[10] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e) (1) of the Act. The Participation Agreement also will include this acknowledgement.

[11] Applicants note that a Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from sections 17(a)(1) and (2) to permit each Fund of Funds that is an affiliated person, or an affiliated person of an affiliated person, as defined in section 2(a)(3) of the Act, of an ETF to purchase or redeem shares from the ETF. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an ETF could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because an investment adviser to the ETF or an entity controlling, controlled by or under common control with the investment adviser to the ETF is also an investment adviser to the Fund of Funds. Applicants note that a Fund of Funds will purchase and sell shares of an Underlying Fund that is a closed-end fund (including a business development company) through secondary market transactions at

proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Open-End Fund, and with the general purposes of the Act.

C. Other Investments by Same Group Investing Funds

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) the acquiring company and acquired company are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act; (ii) the acquiring company holds only securities of acquired companies that are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the 1934 Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered UITs in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered UIT that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (a) securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (b) securities (other than securities issued by an investment company); and (c) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

3. Applicants state that the proposed arrangement would comply with rule 12d1–2 under the Act, but for the fact that the Same Group Investing Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Same Group Investing Funds to invest in Other Investments. Applicants assert that permitting Same Group Investing Funds to invest in Other Investments as described in the application would not raise any of the concerns that section 12(d)(1) of the Act was intended to address.

4. Consistent with its fiduciary obligations under the Act, the Board of each Same Group Investing Fund will review the advisory fees charged by the Same Group Investing Funds' investment adviser(s) to ensure that the fees are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Same Group Investing Funds may invest.

Applicants' Conditions

A. Investments by Funds of Funds in Underlying Funds

Applicants agree that the order granting the requested relief to permit Funds of Funds to invest in Underlying Funds shall be subject to the following conditions:

1. The members of an Advisory Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadvisory Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. With respect to a Fund's investment in an Unaffiliated Closed-End Investment Company, (i) each member of the Advisory Group or Subadvisory Group that is an investment company or an issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act will vote its shares of the Unaffiliated Closed-End Investment Company in the manner prescribed by section 12(d)(1)(E) of the Act and (ii) each other member of the Advisory Group or Subadvisory Group will vote its shares of the Unaffiliated Closed-End Investment Company in the same proportion as the vote of all other holders of the same type of such Unaffiliated Closed-End Investment Company's shares. If, as a result of a decrease in the outstanding voting securities of any Unaffiliated Fund, the Advisory Group or a Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of the Unaffiliated Fund, then the Advisory Group or the Subadvisory Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Subadvisory Group with respect to an Unaffiliated Fund for which the Subadviser or a person controlling, controlled by or under common control with the Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Investment Company) or as the sponsor (in the case of an Unaffiliated Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to ensure that its Adviser and any Subadviser(s) to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment

market prices rather than through principal transactions with the closed-end fund. Accordingly, applicants are not requesting section 17(a) relief with respect to principal transactions with closed-end funds (including business development companies).

Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Investment Company shall maintain and preserve permanently, in an easily accessible place, a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth the: (a) party from whom the securities were acquired, (b) identity of the underwriting syndicate's members, (c) terms of the purchase, and (d) information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b–1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Subadviser, or an affiliated person of the Subadviser, from an Unaffiliated Fund, other than any advisory fees paid to the Subadviser or its affiliated person by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act, in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) acquires such securities in compliance with section 12(d)(1)(E) of the Act and either is an Affiliated Fund or is in the same ''group of investment companies'' as its corresponding master fund; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) acquire securities of one or more investment companies for short-term cash management purposes or (ii) engage in inter-fund borrowing and lending transactions.

12. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

B. Other Investments by Same Group Investing Funds

Applicants agree that the order granting the requested relief to permit Same Group Investing Funds to invest in Other Investments shall be subject to the following condition:

1. Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Same Group Investing Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–01256 Filed 1–22–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71330; File No. SR–NYSE–2013–71]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending NYSE Rules 13, 70.25, 107C and 1000 To Adopt a New Order Type Called a Midpoint Passive Liquidity Order

January 16, 2014.

I. Introduction

On November 18, 2013, New York Stock Exchange LLC (''NYSE'' 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: (1) NYSE Rule 13 to adopt a new order type called a Midpoint Passive Liquidity (''MPL'') Order; (2) NYSE Rule 1000 to specify that the proposed MPL Orders may interact with Capital Commitment Schedule (''CCS'') interest; (3) NYSE Rule 70.25 to permit d-Quotes to be designated with a midpoint modifier in order to set the discretionary price to the midpoint of the protected best bid or best offer (''PBBO''); and (4) NYSE Rule 107C to incorporate the proposed MPL Order into the Retail Liquidity Program. The proposed rule change was published for comment in the **Federal Register** on December 4, 2013.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Proposed MPL Order

The Exchange proposes the MPL Order as an undisplayed limit order that would automatically execute at the mid-point of the protected best bid (''PBB'') and the protected best offer (''PBO''). An MPL Order could interact with any incoming order, including another MPL Order, and could execute at prices out to four decimal places.

The proposed rule specifies certain limitations on the usage and execution of an MPL Order. First, an MPL Order would not be eligible to trade if it would trade at a price below $1.00 or if the execution price would be out to five decimal places above $1.00. Second, an MPL Order could not be designated as Good Till Cancelled. Finally, an MPL Order would not execute if the market were locked or crossed. When a market that had been locked or crossed becomes no longer locked or crossed, the Exchange would execute all eligible MPL Orders and other hidden interest eligible to execute at the midpoint of the PBBO.

With regards to order allocation, MPL Orders would be allocated on a parity-by-agent basis, consistent with NYSE Rule 72. Moreover, an MPL Order's time priority would be based on its time of entry into Exchange systems and would not reset when an MPL Order's price shifted due to changes in the PBBO.

Under the proposal, an MPL Order could also include a Minimum Triggering Volume (''MTV''), in which case the MPL Order would not be eligible to trade unless the aggregated contra-side quantity of all interest marketable at the midpoint of the PBBO were equal to or greater than the MPL Order's MTV. There would be no guaranteed trade size based on the MTV. Exchange systems would enforce an MTV restriction even if the unexecuted portion of an MPL Order with an MTV were less than the MTV.

An MPL Order that included an MTV would be rejected if it also included a Self Trade Prevention (''STP'') Modifier. As proposed, STP Modifiers could be used with MPL Orders that do not include an MTV. An MPL Order with an STP Modifier, however, might be cancelled depending on the type of order on the contra-side. An MPL Order with an STP Modifier would not execute against another MPL Order or against a non-MPL Order with an STP Modifier with the same market participant identifier (''MPID'').

Further, under the proposal, users could designate an MPL Order with an add-liquidity-only (''ALO'') modifier (''MPL–ALO Order''). An MPL–ALO Order would not execute on arrival, even if marketable, but would remain non-displayed in the book until triggered to trade by arriving contra-side marketable interest. An incoming non-marketable MPL–ALO Order, however, could trigger a discretionary trade.[4] An MPL–ALO Order would only be eligible to trade against incoming contra-side interest and would not interact with contra-side interest resting in the book. A resting MPL–ALO Order would not be eligible to trade when arriving same-side interest triggered a trade with contra-side interest. An MPL–ALO Order would have to be at least one round lot.

An MPL Order would not be eligible for manual executions, including openings, re-openings, or closing transactions. As such, MPL Orders would not be available to be designated as Limit ''On-the-Open'' (''LOO'') or Limit ''At-the-Close'' (''LOC'') Orders. As fully undisplayed interest, MPL Orders would not be visible to the DMM on the Floor under any circumstances.

Additionally, MPL Orders would not be available to be entered for high-priced securities. High-priced securities are securities with a closing price—or, if the security did not trade, the closing bid price—on the Exchange of $10,000 or more on the previous trading day.[5] Such securities are not available for automatic execution. Because MPL Orders are not eligible for manual executions, MPL Orders would not be available for these high-priced securities.

B. MPL Order Interaction With CCS Interest

The CCS is a liquidity schedule setting forth various price points at which the DMM is willing to interact with incoming orders. CCS interest will either execute at the price at which the full size of the order can be satisfied (''completion price'') or at the next price that is one minimum price variation (''MPV'') higher (in the case of an order to sell) or lower (in the case of an order to buy). The Exchange has stated that it believes that CCS interest cannot be designated as an MPL Order because MPL Orders are priced at the midpoint of the PBBO and could be priced less than one MPV above or below the completion price.

While, under the proposal, CCS interest cannot be designated as an MPL Order, CCS interest would be eligible to interact with MPL Orders. Currently, CCS interest is eligible to trade inside the Exchange BBO at a price representing (1) the non-displayable reserve interest of Reserve Orders [6] or (2) the reserve interest of Floor broker agency interest files. The Exchange is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70956 (November 27, 2013), 78 FR 72968.

[4] Under the proposal, an MPL–ALO Order triggering a discretionary trade would be the ''liquidity provider,'' and the triggered discretionary order would be the ''liquidity taker.''

[5] *See* NYSE Rule 1000(a)(vi).

[6] A Reserve Order means a limit order entered into Exchange systems that may contain displayable and non displayable interest. *See* NYSE Rule 13.

proposing to expand this list by amending NYSE Rule 1000(f)(1)(B) to include MPL Orders.

C. Proposed MPL Order Interaction With d-Quotes

MPL Orders would not be available for d-Quotes [7] since the Exchange proposes to allow d-Quotes with a mid-point modifier as described below. MPL Orders would not be available for pegging interest since pegging interest is set to track the PBB or the PBO as the PBBO changes, while MPL Orders would always be priced at the midpoint of the PBBO.

The Exchange proposes to make a midpoint modifier available for d-Quotes that would have a discretionary range up to the midpoint of the PBBO.[8]

In order to accommodate the use of a midpoint modifier, the Exchange is proposing to amend Rule 70.25(b)(ii), which states that the minimum price range for a d-Quote is the minimum price variation set forth in Exchange Rule 62. Rule 62 sets the minimum price variation at $0.01 for stocks priced greater than $1.00. However, with the midpoint modifier, a d-Quote can have a minimum price variation of $0.005. Therefore, the Exchange is proposing to amend this restriction by excepting d-Quotes with a midpoint modifier.

D. Incorporation of MPL Orders Into Retail Liquidity Program

Retail Orders or Retail Price Improvement Interest, as defined in NYSE Rule 107C, could not be designated as MPL Orders. MPL Orders, however, could interact with incoming Retail Orders.

The Exchange proposed that MPL Orders be available to interact with Retail Orders within the Retail Liquidity Program (''Retail Program''), a pilot program.[9] The Exchange proposes to permit all Retail Orders to interact with, in addition to available contra-side RPIs, available contra-side MPL Orders. When determining the price to execute a Retail Order, Exchange systems would consider all eligible RPIs and MPL Orders. If the only interest were MPL Orders, the Retail Order would execute against one or more MPL Orders at the midpoint of the PBBO. If the only interest were RPIs, then the execution would occur against one or more RPIs at the price level that completes the incoming order's execution. If both RPIs and MPL Orders were present on the book, then Exchange systems would determine the price level at which the incoming Retail Order could be executed in full (''clean-up price''). If the clean-up price were equal to the midpoint of the PBBO, RPIs would receive priority over MPL Orders, and Retail Orders would execute against both RPIs and MPL Orders at the midpoint. If the clean-up price were worse than the midpoint of the PBBO, the Retail Order would execute first with the MPL Orders at the midpoint of the PBBO, and any remaining quantity of the Retail Order would execute with the RPIs at the clean-up price. If the clean-up price were better than the midpoint of the PBBO, then the Retail Order would execute against the RPIs at the clean-up price and would ignore the MPL Orders.

III. Discussion and Commission's Findings

After careful review, 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 Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange 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 and that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission finds that the proposed rule change is consistent with the requirements of the Act. The Commission believes that the proposed MPL Order is designed to enhance order execution opportunities on the Exchange by providing market participants with an additional order type to interact with other trading interests. The Commission also believes that the proposed MPL Orders is designed to allow for additional opportunities for investors to trade at the midpoint of the PBBO, which may provide price improvement to incoming orders. Additionally, the Commission believes that the proposed introduction of the MPL Order could provide market participants with better control over their execution costs and with a means to offer price improvement opportunities. The Commission notes that other exchanges offer similar functions as the MPL Order.[12]

The Commission believes that it is appropriate for the Exchange not to allow DMMs to enter MPL Orders through CCS, because CCS interest must observe the MPV in certain circumstances, but MPL Orders would be tied to the midpoint of the protected NBBO and could therefore have prices that do not observe the MPV. Further, the Commission believes that it is appropriate not to allow d-Quotes to enter MPL Orders, as d-Quotes would have a mid-point modifier that would provide a functionality similar to MPL Orders.[13] Finally, the Commission believes that allowing MPL Orders to interact with retail orders in the Retail Program is designed to expand the potential for price improvement to retail investors.

Therefore, the Commission finds that the proposed rule change is consistent with the requirements of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–2013–71) be, and it hereby is, approved.

[7] *See* NYSE Rule 70.25 (defining d-Quotes as discretionary instructions with respect to a Floor broker's agency interest file (e-Quotes)).

[8] The Exchange notes that the MPL Order and the midpoint modifier are distinct functionalities. An MPL Order would always be priced at the midpoint of the PBBO and would execute at that price. A d-Quote designated with a midpoint modifier would use its discretion to execute up to the midpoint but could execute at a less-aggressive price. As such, a d-Quote with a midpoint modifier would operate as a d-Quote that updated with changes in the PBBO to set the discretionary price range to the midpoint of the PBBO.

[9] Under the Retail Program, retail liquidity providers (''Providers'') are able to provide potential price improvement in the form of a non-displayed order that is priced better than the PBBO, called a Retail Price Improvement Order (''RPI''). Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPIs. Retail Orders may be designated as Type 1, Type 2, or Type 3. A Type 1 Retail Order interacts with available contra-side RPIs and does not interact with other available contra-side interest in Exchange systems or route to other markets. A Type 2 Retail Order interacts with available contra-side RPIs and any remaining portion of the Retail Order is executed as a Regulation NMS-compliant Immediate or Cancel Order pursuant to NYSE Rule 13. A Type 3 Retail Order interacts first with available contra-side RPIs and any remaining portion of the Retail Order is executed as an NYSE Immediate or Cancel Order pursuant to Rule 13.

[10] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] *See e.g.,* NYSE Arca Equities Rule 7.31(h)(5). *See also* EDGA Exchange, Inc. Rule 11.5(c)(7); BATS Exchange, Inc. Rule 11.9(c)(9); and NASDAQ Stock Market LLC Rule 4751(f)(4).

[13] The Commission notes that pegging interests would also conflict with the nature of MPL Order, since pegging interests are orders that are pegged to the PBB or PBO as the PBBO changes. *See* NYSE Rule 13.

[14] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–01251 Filed 1–22–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71327; File No. SR–BATS–2014–003]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Modify the BATS Options Opening Process

January 16, 2014.

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 January 6, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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. On January 16, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 20.3, entitled ''Trading Halts,'' Rule 20.4, entitled ''Resumption of Trading After a Halt,'' and Rule 21.7, entitled ''Market Opening Procedures'' in order to modify the manner in which the Exchange's equity options trading platform (''BATS Options'') opens trading at the beginning of the day and after trading halts.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, at the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to amend Exchange Rules 20.3, 20.4, and 21.7 in order to allow BATS Options to accept orders and quotes in all options series prior to the first transaction in the underlying security on the primary listing market and during a halt, as well as to establish a process for matching such orders immediately prior to the opening of trading in such options series.

Currently, BATS Options does not accept any orders or quotes while trading is not open in an options class. This includes both prior to the first transaction in the underlying security on the primary listing market and during a halt. BATS Options currently opens trading in options: (i) After the first transaction on the primary listing market after 9:30 a.m. Eastern Time in the securities underlying the options as reported on the first print disseminated pursuant to an effective national market system plan; or (ii) any time after 9:30 a.m. Eastern Time where the Exchange determines that the interests of a fair and orderly market are best served by opening trading in the options contracts. With respect to index options, trading opens at 9:30 a.m. Eastern Time. The Exchange may also delay the commencement of trading in any class of options in the interests of a fair and orderly market. Upon a halt, the Exchange currently cancels all orders and quotes and trading does not resume upon the determination by the Exchange that the conditions that led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading, as provided under Rule 20.4.

The Exchange is proposing to amend its Rules in order to accept orders and quotes before trading is open for a given options series. Specifically, the Exchange is proposing to begin accepting orders and quotes in all series at 8:00 a.m. Eastern Time and immediately upon a Regulatory Halt[4] and will continue to accept orders and quotes until such time as the Opening Process[5] is initiated. Such orders and quotes will be queued for participation in the Opening Process, as further described below, and will not be eligible for execution until the Opening Process occurs. The Exchange will not accept IOC or WAIT orders for queuing prior to the completion of the Opening Process. Limit orders queued during this time will be disseminated via the Options Price Reporting Authority as non-firm quotes and via BATS Multicast PITCH. Market orders queued during this time will not be disseminated. Where trading is halted pursuant to Rule 20.3, but it is not due to a Regulatory Halt, there will be no Order Entry Period and trading will be resumed upon the determination by the Exchange that the conditions which led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading.

The Exchange is also proposing to amend Rule 20.3(b) such that, upon a halt, all orders will be cancelled unless a User has entered instructions not to cancel its orders, at which point the System would queue such orders as part of the Order Entry Period.[6] The Exchange is also proposing to amend Rule 20.4 in order to reference Rule 21.7 as the process for which trading in an option that has been the subject of a halt shall be resumed.

As described above, the Exchange is proposing to accept orders and quotes prior to trading opening for a given series. Where there are no contracts in a particular series that would execute at any price at the time that the Exchange would determine the Opening Price,[7] the Exchange will open such options for trading without determining an Opening Price. Where there is a price at which at least one contract would execute, the Exchange proposes that within thirty seconds after the First Listing Market Transaction[8] or the Regulatory Halt

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange corrected a typographical error contained in its original submission related to its description of how the Exchange's Rule 20.6, governing Obvious Errors, currently operates.

[4] As defined in proposed Rule 21.7(a), Regulatory Halt means trading being halted in an option series due to the primary listing market for the applicable underlying security declaring a regulatory trading halt, suspension, or pause with respect to such security.

[5] As defined in proposed Rule 21.7(a).

[6] As defined in proposed Rule 21.7(a).

[7] As defined in proposed Rule 21.7(a)(1), Opening Price means the single price at which a particular option series will be opened.

[8] As defined in proposed Rule 21.7(a), First Listing Market Transaction means the first

Continued

being lifted, it will determine the Opening Price as follows: (i) The NBBO Midpoint;[9] (ii) where there is no NBBO Midpoint at a Valid Price (as defined below), the last Print[10] in the series; or (iii) where there is both no NBBO Midpoint and no Print at a Valid Price, the Previous Close.[11] Where the NBBO Midpoint would be at a sub-penny increment, the Exchange will instead use the next highest non sub-penny increment as the NBBO Midpoint. For example, where the NBBO is $3.00 × $3.03, the Exchange will use $3.02 as the NBBO Midpoint instead of $3.015.

A Print, NBBO Midpoint, and Previous Close will be at a Valid Price where: (i) There is no NBB and no NBO; (ii) there is either a NBB and no NBO or a NBO and no NBB and the price is equal to or greater than the NBB or equal to or less than the NBO; or (iii) there is both a NBB and NBO, the price is equal to or within the NBBO, and the price is less than the following Minimum Amount away from the NBB or NBO for the series:

NBB	Minimum amount
Below $2.00	$0.25
$2.00 to $5.00	0.40
Above $5.00 to $10.00	0.50
Above $10.00 to $20.00	0.80
Above $20.00 to $50.00	1.00
Above $50.00 to $100.00	1.50
Above $100.00	2.00

These thresholds are based on the standards from Rule 20.6 that define ''Obvious Errors'' and will prevent the cancellation of trades participating in the Opening Process due to an Obvious Error. Under Rule 20.6, an Obvious Error will be deemed to have occurred where: (i) A party notifies the Exchange of its belief that it participated in a transaction that was the result of an Obvious Error; and (ii) the execution price of a transaction is higher or lower than the ''Theoretical Price'' (i.e., the NBB with respect to a sell transaction and NBO with respect to a buy transaction) for the series by an amount equal to at least the amount shown in the chart above (as determined by the Theoretical Price instead of exclusively the NBB). Thus, where a party does not notify the Exchange of a transaction occurring as the result of an Obvious Error, the transaction will not be adjusted or busted.

As proposed, the Exchange believes that the thresholds will prevent Obvious Error transactions by ensuring that the Opening Price will always be within the Minimum Amount from either the NBB or NBO. For example, where the NBBO is $1.65 × $2.25, the Opening Price can be from $1.65–$1.90 or from $2.00–$2.25. The NBBO Midpoint would be $1.95, which does not fall within either of those windows, so the Exchange would not use the NBBO Midpoint as the Opening Price. Where the last Print is at $1.75, the Opening Price will be $1.75. Where orders are executed at the Opening Price, the transaction would not qualify as an Obvious Error transaction because it occurred only $0.10 away from the NBB. In effect, this means that where the spread between the NBBO is greater than twice the size of the Minimum Amount, then the NBBO Midpoint cannot be the Opening Price. The Exchange believes that this is the best method to prevent the determination of the Opening Price from being based on an overly wide NBBO. Such protection is necessary where the NBBO is very wide, for instance where the NBBO is $0.01 × $100.00, and thus either the NBB or the NBO is a price more reflective of the market than the NBBO Midpoint, especially when the Opening Price is based on the last sale. In such a situation the price at which the option was previously trading, whether closer to $0.01 or $100.00, is a more appropriate benchmark than to base the Opening Price on the $50.01 NBBO Midpoint. Based on the foregoing, the Exchange believes that creating a threshold that aligns with the standards from Rule 20.6 related to Obvious Error is the most logical threshold in order to prevent an Opening Price based on an overly wide NBBO and to prevent the cancellation of orders participating in the Opening Process as Obvious Errors.

Such thresholds are based on the NBB instead of the NBO so that the Minimum Amount will always be the smaller Minimum Amount where the NBB and NBO would result in different Minimum Amounts. Using the example from above, where the NBBO is $1.65 × $2.25, the Exchange would apply a Minimum Amount of $0.25, meaning that a Valid Price would be between $1.65 and $1.90 or between $2.00 and $2.25. If the Exchange were to use the NBO as the basis for determining a Minimum Amount, the Minimum Amount would be $0.40 and a Valid Price would be any price between $1.65 and $2.25, meaning that the Opening Price could be $1.95, which would provide both the selling party and buying party to an execution with a basis for notifying the Exchange of an Obvious Error transaction.

Where there is no NBBO Midpoint, no Print, and no Previous Close at a Valid Price, the Exchange proposes to have the discretion, depending on the circumstances, to extend the Order Entry Period or open the series for trading. Where the Exchange decides to extend the Order Entry Period, the Order Entry Period will be extended for a period of 30 seconds or less at which point the System will attempt to determine the Opening Price again. Where the Exchange decides to open the series for trading pursuant to this discretion and there is at least one price level at which at least one contract of a limit order could be executed, the Exchange will cancel all orders that are priced equal to or more aggressively than the midpoint of the most aggressively priced bid and the most aggressively priced offer. For example, where the Exchange receives bids of $10.04, $10.06, and $10.07 along with offers of $10.03 and $10.07, but there is no NBBO Midpoint, no Print, and no Previous Close and the Exchange intends to open trading in the series, the Exchange would calculate the midpoint of the most aggressive bid ($10.07) and the most aggressive offer ($10.03), which would be $10.05. The Exchange would then cancel any orders priced equal to or more aggressively than $10.05, which means that the $10.06 and $10.07 bids would be cancelled along with the $10.03 offer. The $10.04 bid and $10.07 offer would then become eligible for trading on BATS Options when the series opens for trading.

After determining an Opening Price that is also a Valid Price, orders and quotes that are priced equal to or more aggressively than the Opening Price will be matched based on price-time priority and in accordance with BATS Rule 21.8. All orders and quotes or portions thereof that are matched pursuant to the Opening Process will be executed at the Opening Price. Where a limit order or any portion thereof that is priced equal to or more aggressively than the Opening Price is not executed during the Opening Process, the unexecuted portion of that order will be cancelled. Similarly, all market orders that are not executed in the Opening Process will be cancelled. Finally, all orders and quotes that have not been executed or cancelled, including where no orders are matched at the Opening Price, shall

transaction on the primary listing market after 9:30 a.m. Eastern Time in the securities underlying the options as reported on the first print disseminated pursuant to an effective national market system plan.

[9] As defined in proposed Rule 21.7(a)(1)(A), the NBBO Midpoint means the midpoint of the National Best Bid and the National Best Offer.

[10] As defined in proposed Rule 21.7(a)(1)(B), Print means a regular way print disseminated pursuant to the OPRA Plan after 9:30 a.m. Eastern Time.

[11] As defined in proposed Rule 21.7(a)(1)(C), Previous Close means the last regular way transaction from the previous trading day as disseminated pursuant to the OPRA Plan.

become eligible for trading on BATS Options immediately following the completion of the Opening Process.

The Exchange is proposing to delete existing Rule 21.7(b), as further described below, to replace it with existing language regarding index options from Rule 21.1(a) and to add details about how index options will be reopened after a trading halt. Specifically, the Exchange is proposing to open index options in exactly the manner as they open under the current rule: the Exchange will begin accepting orders in index options when such options open for trading at 9:30 a.m. Eastern Time. Further, the Exchange is proposing to add rule text such that, where trading in index options is halted for any reason, the System shall open such options for trading upon the determination by the Exchange that the conditions which led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading, which is identical to the way that index options open after a halt under the current rule. Such language is very similar to existing language in current Rule 20.4 regarding the resumption of trading after a halt and is intended to make clear that trading in index options is not subject to the Opening Process described in Rule 21.7(a) after a trading halt.

The Exchange is proposing to amend Rule 21.7(c) in order to allow the Exchange to retain discretion in deviating from the standard Opening Process where it is necessary in the interests of a fair and orderly market. Currently, Rule 21.7(b) states that in the event the underlying security has not opened within a reasonable time after 9:30 a.m. Eastern Time, the Exchange shall make an inquiry to determine the cause of the delay, which is discussed further below. Rule 21.7(b) also permits the Exchange to open trading in options contracts even if the underlying security has yet to open for trading on the primary listing market for such security if the Exchange determines that the interests of a fair and orderly market are best served by opening trading in the options contracts. In addition, Rule 21.7(c) provides that the Exchange may delay the commencement of trading in any class of options in the interests of a fair and orderly market.

The Exchange is proposing to delete the language in both 21.7(b) and (c) related to moving up or delaying the opening in options contracts based on the interests of a fair and orderly market and, instead, provide that the Exchange may deviate from the standard manner of the Opening Process, including delaying the Opening Process in any option class, when it believes it is necessary in the interests of a fair and orderly market. As proposed, Rule 21.7(c) would allow the Exchange to open trading in options contracts prior to the First Listing Market Transaction and also delay the commencement of trading in any class of options, so long as it is in the interests of a fair and orderly market. Further, proposed Rule 21.7(c) would provide the Exchange with discretion to manage the Opening Process in the event of unanticipated circumstances occurring around 9:30 a.m. Eastern Time or a halt being lifted.

Further, the Exchange is proposing to delete the text from Rule 21.7(b) that states that in the event the underlying security has not opened within a reasonable time after 9:30 a.m. Eastern Time, the Exchange shall make an inquiry to determine the cause of the delay, because the Exchange believes that the language is somewhat unclear and would also be duplicative, as proposed. As written, Rule 21.7(b) appears to require the Exchange to make an inquiry to determine the cause of a delay in a day in which trading has not opened in an underlying security. However, the Exchange believes that, practically, the ''reasonable time'' standard permits the Exchange to not inquire into all delays. For instance, an underlying security with low trading volume may not have a First Listing Market Transaction for an entire trading day and the Exchange could determine that a reasonable time for the First Listing Market Transaction to occur in such security could be the entire trading day. Further, in the event that the Exchange would begin trading of options contracts for an underlying security for which the First Listing Market Transaction has not occurred, the Exchange would have to make an inquiry of some kind in order to determine that it is necessary in the interests of a fair and orderly market to open trading in options on such underlying security. As such, the Exchange believes that the requirement is without practical effect and the Exchange is proposing to delete the text from Rule 21.7(b).

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[12] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[13] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the Opening Process for options listed on the Exchange will help to ensure that BATS Options opens trading in options contracts in a fair and orderly manner. Specifically, the Exchange believes that allowing Users to enter orders for queuing will create a more orderly opening and facilitate the price formation process at the opening of trading because Users are able to enter orders and quotes in advance rather than having a flood of orders and quotes submitted to the Exchange during a small window of time. Further, the Exchange believes that disseminating the related market data prior to opening of trading in options contracts will also create a more orderly opening and facilitate the price formation process because Users will have access to a greater amount of information before their orders become executable.

The Exchange also believes that the proposal is appropriate and reasonable because it offers additional functionality for all Users to enter orders and quotes before 9:30 a.m. Eastern Time and during a Regulatory Halt. Further, the Exchange requires that a price be a Valid Price in order for executions in the Opening Process to occur, which, as described above, ensures that executions in the Opening Process will not meet the standards for Obvious Error.

Offering the Opening Process will also provide Market Makers and other Users with greater control and flexibility with respect to entering orders and quotes, allowing them to enter orders and quotes in all options at the same time, 8:00 a.m. Eastern Time, rather than only after trading has opened for a particular option. This simplifies the process for Market Makers and other Users by providing them certainty as to when orders and quotes can be submitted without having to monitor each options class individually, which removes impediments to a free and open market and benefits all Users of BATS Options. The Exchange also notes that several other options exchanges allow orders and quotes to be entered prior to 9:30 a.m. Eastern Time and during a Regulatory Halt including NASDAQ Options Market (''NOM''), NYSE Arca, Inc. (''NYSE Arca Options''), NYSE Amex Options, Inc. (''NYSE Amex Options''), BOX Options Exchange LLC

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

(''BOX''), and Chicago Board Options Exchange, Incorporated (''CBOE''), among others.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the act. To the contrary, the Exchange's inability to accept orders prior to 9:30 a.m. Eastern Time limits competition in that other exchanges are able to begin accepting orders and quotes before trading in options opens, while the Exchange cannot accept such orders and quotes. Thus, approval of the proposed rule change will promote competition because it will allow the Exchange to offer its Users the ability to enter orders and quotes prior to the opening of trading, functionality which is available at other exchanges, and thus compete with other exchanges for order flow that a User may not have directed to the Exchange if they were not able to enter orders and quotes prior to the open.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2014–003 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–BATS–2014–003. 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–BATS–2014–003, and should be submitted on or before February 13, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–01249 Filed 1–22–14; 8:45 am]

BILLING CODE 8011–01–P

[14] *See, e.g.,* NOM Chapter VI, Section 2(a); *see also* NYSE Arca Options Rule 6.64(b); NYSE Amex Options Rule 952NY(b); BOX Rule 7070(a); and CBOE Rule 6.2A(a)(i).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71332; File No. SR–NSX–2014–01]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend its Fee and Rebate Schedule With Respect to the Order Delivery Mode of Interaction With the Exchange

January 16, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or ''Act '')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 9, 2014, National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment 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 proposing to change its Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1 to: (i) Eliminate separate Pricing Options A and B of Section II. of the Fee Schedule and adopt a single pricing structure for all Exchange Equity Trading Permit (''ETP'') Holders using the Order Delivery mode of interaction[3] with the Exchange (an ''Order Delivery User'');[4] (ii) eliminate the Market Data Revenue rebate (''MDR'') and Order Delivery Notification Fee under Pricing Option A; (iii) within the proposed new unitary fee structure, establish a rebate based on average daily volume (''ADV'') of executed shares adding liquidity using Order Delivery Mode, with Order Delivery Users receiving a transaction rebate based on their ADV adding liquidity solely using Order Delivery Mode, or combined with ADV totals including trading volume by that same Order Delivery User through the Auto Ex mode of interaction with the Exchange;[5] and, (iv) amend Section IV.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 11.13 (Proprietary and Agency Orders; Modes of Order Interaction), paragraph (b)(2).

[4] A ''User'' is defined in Exchange Rule 1.5 as ''. . . any ETP Holder or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.9 (Access).

[5] *See* Exchange Rule 11.13(b)(1).

of the Fee Schedule (Regulatory Fee) to eliminate Quotation Update Fees applicable to Order Delivery Users only.

The text of the proposed rule change is available on the Exchange's Web site at *www.nsx.com,* at the Exchange's principal office, and at the Commission's public reference room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 is proposing amendments to Sections II. and IV. of the Fee Schedule with respect to certain fees and rebates applicable to Order Delivery Users. The changes are intended to further enhance the Exchange's competitive position by offering pricing that will incentivize current Order Delivery Users to increase their trading volumes while at the same time providing an economically attractive price structure designed to encourage additional electronic communications networks (''ECNs'') to become Order Delivery Users. In order to achieve these goals, the Exchange is proposing to eliminate the separate Pricing Options A and B currently contained in Section II. of the Fee Schedule and adopt a single fee and rebate structure that will apply to all Order Delivery Users, for executions in both securities priced at $1.00 and above and securities priced below $1.00.

Elimination of Order Delivery Notification and Quotation Update Fees

Under the proposed unitary structure, the Exchange will eliminate the Order Delivery Notification Fee of $0.35 under current Pricing Option A for each Order Delivery Notification, up to 1.5 million Order Delivery Notifications per month, delivered by the Exchange's Trading System (the ''System'')[6] to an Order Delivery User for potential execution against a posted displayed or undisplayed order in any security priced at $1.00 and above. As proposed, there will be no Order Delivery Notification fee assessed for any Order Delivery Notification transmitted by the Exchange to an Order Delivery User, without regard to the price of the security or any minimum number of Order Delivery Notifications per month.[7] The Exchange also proposes to eliminate the Quotation Update Fee for Order Delivery Users under Section IV. of the Fee Schedule and assess no fee for quotation updates by Order Delivery Users, regardless of the price of the security or the number of quotation updates in a calendar month.[8]

New Rebate Structure for Order Delivery Mode

In addition to the proposed elimination of the Order Delivery Notification Fee and Quotation Update Fee applicable in Order Delivery Mode, the Exchange is proposing to adopt a new rebate schedule for adding liquidity solely though Order Delivery Mode, or through use of Order Delivery mode in combination with Auto Ex Mode by the same Order Delivery User.[9] Specifically, the Exchange proposes to provide for rebates within certain ADV tiers for executions adding liquidity in securities priced at $1.00 and above by Order Delivery Users occurring solely through Order Delivery Mode. For Order Delivery Users that interact with the Exchange in Auto Ex Mode as well as Order Delivery Mode, the Exchange is proposing to adopt a separate rebate schedule with ADV tiers for executions adding liquidity in securities priced at $1.00 and above occurring both through Order Delivery Mode and Auto Ex Mode by the same Order Delivery User. If an Order Delivery User meets the ADV requirements in both modes of interaction, the Exchange will pay an enhanced rebate for the Order Delivery component. Under this proposed rebate plan, the Exchange will eliminate the MDR under current Pricing Option A. No rebates will be paid for executions in securities priced below $1.00. The proposed rebate structure will apply across all Tapes.[10]

For executions occurring solely through Order Delivery Mode, the Exchange proposes to adopt a three-tiered, volume based-rebate plan whereby an Order Delivery User will receive a rebate of $0.0005 per executed share for ADV adding liquidity in an amount equal to or exceeding 15 million shares per calendar month; an Order Delivery User will receive a rebate of $0.0013 per executed share for ADV adding liquidity in an amount equal to or exceeding 20 million shares per calendar month; and, for ADV adding liquidity in an amount equal to or exceeding 25 million shares per calendar month, an Order Delivery User will receive a rebate of $0.0017. The rebates at each ADV tier level will apply to the total executed volume by that Order Delivery User during the calendar month.[11]

For Order Delivery Users that also interact with the Exchange through Auto Ex Mode, the Exchange is proposing a two-tiered, volume based rebate structure that will provide a rebate to Order Delivery Users that meet or exceed certain ADV thresholds of added liquidity occurring through both forms of interaction with the System. The Exchange proposes to pay a rebate of $0.0005 per executed share for ADV adding liquidity in Order Delivery Mode in an amount equal to or greater than 300,000 shares up to 749,999 shares, plus ADV of 2 million shares or greater of added liquidity through Auto Ex Mode by the same Order Delivery User; the Exchange proposes to pay a rebate of $0.0010 per executed share for ADV adding liquidity in Order Delivery Mode in an amount equal to or exceeding 750,000 shares, plus ADV of 3 million shares or greater of added liquidity through Auto Ex Mode by the same Order Delivery User.

[6] See Exchange Rule 1.5, which defines the ''System'' as ''. . . the electronic securities communications and trading facility designated by the Board through which orders of Users are consolidated for ranking and execution.''

[7] Currently, an Order Delivery Notification Fee is not assessed for Order Delivery Notifications delivered by the System to an Order Delivery User for potential execution against a posted displayed or non-displayed order in any security priced below $1.00.

[8] Prior to these changes, the Exchange charged Order Delivery Users a Quotation Update Fee of $0.000467 per quotation update in securities priced at $1.00 and above, applied to the first 150 million quotation updates; a new Order Delivery User would pay a Quotation Update Fee of $0.00667 [sic] for quotation updates in securities priced at $1.00 and above, applied to the first 150 million quotation updates, during the first three months of using Order Delivery Mode.

[9] Currently, Order Delivery Users and their affiliated ETP Holders interact with the Exchange using both Order Delivery Mode and Auto Ex. Mode, using a separate market participant identifier or ''MPID'' for each mode of interaction. Pursuant to Exchange Rule 16.3, upon request of an ETP Holder, its activity may be aggregated with the activity of its affiliated ETP Holders for purposes of applying the fees and rebates referenced in the Fee Schedule.

[10] For January 2014, ADV for purposes of these proposed amendments will be calculated based on the number of trading days in the month during which the changes are in effect.

[11] Current Order Delivery User ADV adding liquidity meets or exceeds the Tier 1 amount of ADV equal to or greater than 15 million shares for purposes of the rebate for Order Delivery Mode.

The Exchange notes that these rebates will apply only to the ADV of added liquidity provided through Order Delivery Mode and will not affect the rebates available to the Order Delivery User under Section I. of the Fee Schedule (Automatic Execution Mode). In every case, the Order Delivery User will receive the applicable rebate provided under Section I. for transactions adding liquidity in Auto Ex Mode but will only be eligible for the tiered rebates for liquidity added through Order Delivery Mode if the ADV levels are satisfied for the applicable tier. The rebates at each ADV tier level will apply to the total executed volume by that Order Delivery User in both modes of interaction during the calendar month.

The Exchange believes that the proposed transaction rebates will incentivize current Order Deliver Users to increase their activity in Order Delivery Mode. The Exchange's proposal is also designed to offer incentives for new entrants into Order Delivery Mode by offering transaction rebates that for activity through both forms of interaction with the System, with smaller total ADV adding liquidity in Order Delivery Mode but requiring ADV adding liquidity in Auto Ex Mode of 2 million or 3 million shares.

With respect to all of the proposed changes to the Fee Schedule for Order Delivery Mode, the Exchange is seeking to adopt a fee and rebate structure that will both incentivize current Order Delivery Users to increase their participation in Order Delivery Mode by eliminating the fees and providing for transaction rebates for adding liquidity in ADV amounts equal to or greater than 15 million shares, with the highest rebate paid for ADV of added liquidity in an amount equal to or greater than 25 million shares. The Exchange submits that the proposed transaction rebates for adding liquidity in ADV amounts combining executions in Order Delivery Mode with Auto Ex Mode will operate to incentivize smaller ECNs to increase their interaction with the Exchange, thereby providing additional liquidity and additional competition for price discovery.

Pursuant to Exchange Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will provide a copy of the rule filing on the Exchange's Web site, *www.nsx.com.*

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[12] in general and, in particular, Section 6(b)(4) of the Act,[13] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange not permit unfair discrimination customers, issuers, brokers, or dealers, and 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 Exchange submits that, as set forth below, its proposal to eliminate separate Pricing Options A and B under the current Fee Schedule and adopt a unitary fee and rebate structure for Order Delivery Users meets the requirement of Section 6(b)(4) of the Act in that it provides for an equitable allocation of reasonable, dues, fees and other charges among Order Delivery Users and other persons using the facilities of the Exchange. The Exchange is seeking to provide for a structure that fulfills the dual goals of incentivizing current Order Delivery Users to increase their activity on the Exchange while at the same time promoting new entrants to become Order Delivery Users. All ETP Holders that are approved as Order Delivery Users will be subject to the same fee and rebate structure, thereby equitably allocating the fees and rebates among all Order Delivery Users. The rebates will be based on specific volume-based ADV tiers, with higher rebates paid for increased volume.

The Exchange believes that its proposal to eliminate the separate pricing options is consistent with Section 6(b)(5) of the Act in that, by seeking to increase activity in Order Delivery Mode by both current Order Delivery Users and prospective new entrants, the proposal will promote just and equitable principles of trade and operate to remove impediments to and perfect the mechanism of a free and open market and national market system.

Addressing the individual elements of the proposed changes to the Fee Schedule, the Exchange will eliminate the Order Delivery Notification Fee of $0.35 under current Section II., Pricing Option A, for each Order Delivery Notification, up to 1.5 million Order Delivery Notifications per month, delivered by the System to an Order Delivery User for potential execution against a posted displayed or undisplayed order in any security priced at $1.00 and above; the Exchange also proposes to eliminate the Quotation Update Fee for Order Delivery Users under Section IV of the Fee Schedule and assess no fee for quotation updates by Order Delivery Users, regardless of the price of the security or the number of quotation updates in a calendar month.

As proposed, Order Delivery Users will not pay any fees for Order Delivery Notifications or Quotation Updates in any security traded on the Exchange. The Exchange believes that the elimination of such fees is consistent with Section 6(b)(4) of the Act in that it reasonable as a component of the broader changes to the Fee Schedule proposed in this rule amendment, in which the fees and rebates applicable to Order Delivery Mode are being changed to simplify the structure and incentivize increased participation in Order Delivery Mode. The Exchange further believes that elimination of the Order Delivery Notification and Quotation Update Fees is consistent with the requirement of Section 6(b)(4) of the Act in that it will be equitably allocated among all Order Delivery Users, without regard to the price of the security or whether the Order Delivery User has met a numerical threshold to cap such fees, as required under the operative Fee Schedule prior to these changes. Given that these fees apply only to Exchange ETP Holders approved by the Exchange as Order Delivery Users, it is consistent with Section (6)(b)(4) to consider the equitable application of the proposed change within the context of this defined type of market participant.[15]

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78(f)(b)(4).

[14] 15 U.S.C. 78f(b)(5).

[15] The Exchange notes that in prior rule filings to amend the Fee Schedule, it stated that the Order Delivery Notification fee is intended to recover Order Delivery Mode's development and ongoing operational costs (*see* Exchange Act Release No. 68391 (December 10, 2012); 77 FR 74536 (December 14, 2012); SR–NSX–2012–25); and the revenue raised through the Quotation Update Fee is designated to support the Exchange's regulatory oversight (*see* Exchange Act Release No. 68215 (November 13, 2012); 77 FR 69522 (November 19, 2012); SR–NSX–2012–20). The Exchange represents that the elimination of these fees will not impact the Exchange's system development and operations or the Exchange's regulatory program as all of these functions will be funded by the Exchange through the general revenues of the Exchange. The Exchange intends to continue to allocate to the regulatory program the same amount of money that would be generated through the Quotation Update Fee.

Additionally, the Exchange submits that the elimination of the Order Delivery Notification and Quotation Update Fees is consistent with Section 6(b)(5) of the Act in that it is not unfairly discriminatory. These fees are specific to the Exchange's Order Delivery Mode and applicable to all Order Delivery Users; their elimination will affect only Order Delivery Users, but will apply equally to both current Order Delivery Users and to new entrants. The Exchange also notes that it previously filed with the Commission, for immediate effectiveness, changes to the Fee Schedule as of November 1, 2013 that eliminated the Order Delivery Notification Fee and Quotation Update Fee in securities priced under $1.00.[16] Under the current proposal, the elimination of these fees will now be extended to all securities traded on the Exchange.

The Exchange also proposes to eliminate the 50% MDR currently provided under Pricing Option A. This amendment is consistent with Section 6(b)(4) of the Act in that it is reasonable to eliminate this rebate for Order Delivery Mode in view of the removal of the Order Delivery Notification Fee and Quotation Update Fee, which will operate to reduce the costs for use of Order Delivery Mode. The Exchange believes that it is reasonable to provide for a volume-based rebate plan for Order Delivery Mode and eliminate the MDR. The Exchange also believes that this proposal is also consistent with Section 6(b)(4) of the Act in that it is equitably allocated among all Order Delivery Users. Further, the proposed change is consistent with Section 6(b)(5) of the Act in that it is not unfairly discriminatory among market participants in that every Order Delivery User will be subject to the same rebate plan. The Exchange notes that Order Delivery Users who also interact with the System through Auto Ex Mode will be continue to be eligible for the MDR provided in Section I. of the Fee Schedule; this will include Order Delivery Users that also interact with the System using Auto Ex Mode and meet the ADV thresholds for the MDR under Section I. of the Fee Schedule.

The Exchange further submits that the elements of its proposal that provide for a tiered rebate structure for ADV of added liquidity through Order Delivery Mode, either exclusively or through combined ADV totals of added liquidity by the same Order Delivery User through Order Delivery Mode and Auto Ex Mode, are consistent with Section 6(b)(4) of the Act in that they are reasonable and equitably allocated among market participants and other persons using the facilities of the Exchange. The Exchange believes that the proposed changes are reasonable, both individually and within the broader context of the amendments to the Fee Schedule for Order Delivery. The Exchange's proposal, as discussed above, includes the elimination of Order Delivery Notification Fees and Quotation Update Fees. Together with the proposal to remove these fees, the tiered, ADV-based rebate plan is designed to incentivize current Order Delivery Users to increase their activity on the Exchange, and to encourage new entrants to Order Delivery Mode. The Exchange's goal is to increase the number of Order Delivery Users, thereby increasing liquidity on the Exchange and, optimally, providing better execution opportunities for customers.

The Exchange believes that, given its proposal to remove the fees, the amendment providing for a lower rebate than the $0.0030 per share rebate for added liquidity under current Pricing Option A is reasonable and consistent with Section 6(b)(4) of the Act. It is also reasonable, and consistent with the approach of Section I. of the Fee Schedule, to establish volume tiers for adding liquidity that will provide additional economic incentives for using Order Delivery Mode. Finally, the Exchange believes that the proposed changes are consistent with Section 6(b)(4) of the Act in that they are equitably allocated among all Order Delivery Users who satisfy the ADV tiers to be eligible for the rebates to add liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change seeks to adopt a fee and rebate structure for Order Delivery Mode that is intended to enhance competition by incentivizing current Order Delivery Users to increase their participation and attract additional ECNs to become Order Delivery Users. The proposed changes will, the Exchange submits, operate to enhance rather than burden competition by aspiring to increase liquidity on the Exchange through reasonable and equitably allocated economic incentives.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[17] and subparagraph (f)(2) of Rule 19b–4.[18] 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.

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–NSX–2014–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NSX–2014–01.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the 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

[16] *See* Exchange Act Release No. 34–70890 (November 15, 2013); 78 FR 69900 (November 21, 2013); SR–NSX–2013–21.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4.

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–NSX–2014–01 and should be submitted on or before February 13, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–01253 Filed 1–22–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71329; File No. SR–NYSEMKT–2013–84]

Self-Regulatory Organizations; NYSE MKT LLC; Order Approving Proposed Rule Change Amending NYSE MKT Rules 13—Equities, 70.25—Equities, 107C—Equities and 1000—Equities To Adopt a New Order Type Called a Midpoint Passive Liquidity Order

January 16, 2014.

I. Introduction

On November 18, 2013, NYSE MKT LLC (''NYSE MKT'' 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: (1) NYSE MKT Rules 13—Equities to adopt a new order type called a Midpoint Passive Liquidity (''MPL'') Order; (2) NYSE MKT Rule 1000—Equities to specify that the proposed MPL Orders may interact with Capital Commitment Schedule (''CCS'') interest; (3) NYSE MKT Rule 70.25—Equities to permit d-Quotes to be designated with a midpoint modifier in order to set the discretionary price to the midpoint of the protected best bid or best offer (''PBBO''); and (4) NYSE MKT Rule 107C—Equities to incorporate the proposed MPL Order into the Retail Liquidity Program. The proposed rule change was published for comment in the **Federal Register** on December 4, 2013.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Proposed MPL Order

The Exchange proposes the MPL Order as an undisplayed limit order that would automatically execute at the mid-point of the protected best bid (''PBB'') and the protected best offer (''PBO''). An MPL Order could interact with any incoming order, including another MPL Order, and could execute at prices out to four decimal places.

The proposed rule specifies certain limitations on the usage and execution of an MPL Order. First, an MPL Order would not be eligible to trade if it would trade at a price below $1.00 or if the execution price would be out to five decimal places above $1.00. Second, an MPL Order could not be designated as Good Till Cancelled. Finally, an MPL Order would not execute if the market were locked or crossed. When a market that had been locked or crossed becomes no longer locked or crossed, the Exchange would execute all eligible MPL Orders and other hidden interest eligible to execute at the midpoint of the PBBO.

With regards to order allocation, MPL Orders would be allocated on a parity-by-agent basis, consistent with NYSE MKT Rule 72—Equities. Moreover, an MPL Order's time priority would be based on its time of entry into Exchange systems and would not reset when an MPL Order's price shifted due to changes in the PBBO.

Under the proposal, an MPL Order could also include a Minimum Triggering Volume (''MTV''), in which case the MPL Order would not be eligible to trade unless the aggregated contra-side quantity of all interest marketable at the midpoint of the PBBO were equal to or greater than the MPL Order's MTV. There would be no guaranteed trade size based on the MTV. Exchange systems would enforce an MTV restriction even if the unexecuted portion of an MPL Order with an MTV were less than the MTV.

An MPL Order that included an MTV would be rejected if it also included a Self Trade Prevention (''STP'') Modifier. As proposed, STP Modifiers could be used with MPL Orders that do not include an MTV. An MPL Order with an STP Modifier, however, might be cancelled depending on the type of order on the contra-side. An MPL Order with an STP Modifier would not execute against another MPL Order or against a non-MPL Order with an STP Modifier with the same market participant identifier (''MPID'').

Further, under the proposal, users could designate an MPL Order with an add-liquidity-only (''ALO'') modifier (''MPL–ALO Order''). An MPL–ALO Order would not execute on arrival, even if marketable, but would remain non-displayed in the book until triggered to trade by arriving contra-side marketable interest. An incoming non-marketable MPL–ALO Order, however, could trigger a discretionary trade.[4] An MPL–ALO Order would only be eligible to trade against incoming contra-side interest and would not interact with contra-side interest resting in the book. A resting MPL–ALO Order would not be eligible to trade when arriving same-side interest triggered a trade with contra-side interest. An MPL–ALO Order would have to be at least one round lot.

An MPL Order would not be eligible for manual executions, including openings, re-openings, or closing transactions. As such, MPL Orders would not be available to be designated as Limit ''On-the-Open'' (''LOO'') or Limit ''At-the-Close'' (''LOC'') Orders. As fully undisplayed interest, MPL Orders would not be visible to the DMM on the Floor under any circumstances.

B. MPL Order Interaction With CCS Interest

The CCS is a liquidity schedule setting forth various price points at which the DMM is willing to interact with incoming orders. CCS interest will either execute at the price at which the full size of the order can be satisfied (''completion price'') or at the next price that is one minimum price variation (''MPV'') higher (in the case of an order to sell) or lower (in the case of an order to buy). The Exchange has stated that it believes that CCS interest cannot be designated as an MPL Order because MPL Orders are priced at the midpoint of the PBBO and could be priced less than one MPV above or below the completion price.

While, under the proposal, CCS interest cannot be designated as an MPL

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[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70955 (November 27, 2013), 78 FR 72965.

[4] Under the proposal, an MPL–ALO Order triggering a discretionary trade would be the ''liquidity provider,'' and the triggered discretionary order would be the ''liquidity taker.''

Order, CCS interest would be eligible to interact with MPL Orders. Currently, CCS interest is eligible to trade inside the Exchange BBO at a price representing (1) the non-displayable reserve interest of Reserve Orders [5] or (2) the reserve interest of Floor broker agency interest files. The Exchange is proposing to expand this list by amending NYSE MKT Rule 1000(f)(1)(B)—Equities to include MPL Orders.

C. Proposed MPL Order Interaction With d-Quotes

MPL Orders would not be available for d-Quotes [6] since the Exchange proposes to allow d-Quotes with a mid-point modifier as described below. MPL Orders would not be available for pegging interest since pegging interest is set to track the PBB or the PBO as the PBBO changes, while MPL Orders would always be priced at the midpoint of the PBBO.

The Exchange proposes to make a midpoint modifier available for d-Quotes that would have a discretionary range up to the midpoint of the PBBO.[7]

In order to accommodate the use of a midpoint modifier, the Exchange is proposing to amend Rule 70.25(b)(ii)—Equities, which states that the minimum price range for a d-Quote is the minimum price variation set forth in Exchange Rule 62—Equities. Rule 62—Equities sets the minimum price variation at $0.01 for stocks priced greater than $1.00. However, with the midpoint modifier, a d-Quote can have a minimum price variation of $0.005. Therefore, the Exchange is proposing to amend this restriction by excepting d-Quotes with a midpoint modifier.

D. Incorporation of MPL Orders Into Retail Liquidity Program

Retail Orders or Retail Price Improvement Interest, as defined in NYSE MKT Rule 107C—Equities, could not be designated as MPL Orders. MPL Orders, however, could interact with incoming Retail Orders.

The Exchange proposed that MPL Orders be available to interact with Retail Orders within the Retail Liquidity Program (''Retail Program''), a pilot program.[8] The Exchange proposes to permit all Retail Orders to interact with, in addition to available contra-side RPIs, available contra-side MPL Orders. When determining the price to execute a Retail Order, Exchange systems would consider all eligible RPIs and MPL Orders. If the only interest were MPL Orders, the Retail Order would execute against one or more MPL Orders at the midpoint of the PBBO. If the only interest were RPIs, then the execution would occur against one or more RPIs at the price level that completes the incoming order's execution. If both RPIs and MPL Orders were present on the book, then Exchange systems would determine the price level at which the incoming Retail Order could be executed in full (''clean-up price''). If the clean-up price were equal to the midpoint of the PBBO, RPIs would receive priority over MPL Orders, and Retail Orders would execute against both RPIs and MPL Orders at the midpoint. If the clean-up price were worse than the midpoint of the PBBO, the Retail Order would execute first with the MPL Orders at the midpoint of the PBBO, and any remaining quantity of the Retail Order would execute with the RPIs at the clean-up price. If the clean-up price were better than the midpoint of the PBBO, then the Retail Order would execute against the RPIs at the clean-up price and would ignore the MPL Orders.

III. Discussion and Commission's Findings

After careful review, 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.[9] In particular, the Commission finds that the proposed rule change 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 remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission finds that the proposed rule change is consistent with the requirements of the Act. The Commission believes that the proposed MPL Order is designed to enhance order execution opportunities on the Exchange by providing market participants with an additional order type to interact with other trading interests. The Commission also believes that the proposed MPL Orders is designed to allow for additional opportunities for investors to trade at the midpoint of the PBBO, which may provide price improvement to incoming orders. Additionally, the Commission believes that the proposed introduction of the MPL Order could provide market participants with better control over their execution costs and with a means to offer price improvement opportunities. The Commission notes that other exchanges offer similar functions as the MPL Order.[11]

The Commission believes that it is appropriate for the Exchange not to allow DMMs to enter MPL Orders through CCS, because CCS interest must observe the MPV in certain circumstances, but MPL Orders would be tied to the midpoint of the protected NBBO and could therefore have prices that do not observe the MPV. Further, the Commission believes that it is appropriate not to allow d-Quotes to enter MPL Orders, as d-Quotes would have a mid-point modifier that would provide a functionality similar to MPL Orders.[12] Finally, the Commission

[5] A Reserve Order means a limit order entered into Exchange systems that may contain displayable and non displayable interest. *See* NYSE MKT Rule 13—Equities.

[6] *See* NYSE MKT Rule 70.25—Equities (defining d-Quotes as discretionary instructions with respect to a Floor broker's agency interest file (e-Quotes)).

[7] The Exchange notes that the MPL Order and the midpoint modifier are distinct functionalities. An MPL Order would always be priced at the midpoint of the PBBO and would execute at that price. A d-Quote designated with a midpoint modifier would use its discretion to execute up to the midpoint but could execute at a less-aggressive price. As such, a d-Quote with a midpoint modifier would operate as a d-Quote that updated with changes in the PBBO to set the discretionary price range to the midpoint of the PBBO.

[8] Under the Retail Program, retail liquidity providers (''Providers'') are able to provide potential price improvement in the form of a non-displayed order that is priced better than the PBBO, called a Retail Price Improvement Order (''RPI''). Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPIs. Retail Orders may be designated as Type 1, Type 2, or Type 3. A Type 1 Retail Order interacts with available contra-side RPIs and does not interact with other available contra-side interest in Exchange systems or route to other markets. A Type 2 Retail Order interacts with available contra-side RPIs and any remaining portion of the Retail Order is executed as a Regulation NMS-compliant Immediate or Cancel Order pursuant to NYSE MKT Rule 13—Equities. A Type 3 Retail Order interacts first with available contra-side RPIs and any remaining portion of the Retail Order is executed as an NYSE MKT Immediate or Cancel Order pursuant to Rule 13— Equities.

[9] In approving this proposed rule change, the Commission notes that it has 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 e.g.,* NYSE Arca Equities Rule 7.31(h)(5). *See also* EDGA Exchange, Inc. Rule 11.5(c)(7); BATS Exchange, Inc. Rule 11.9(c)(9); and NASDAQ Stock Market LLC Rule 4751(f)(4).

[12] The Commission notes that pegging interests would also conflict with the nature of MPL Order, since pegging interests are orders that are pegged to

Continued

believes that allowing MPL Orders to interact with retail orders in the Retail Program is designed to expand the potential for price improvement to retail investors.

Therefore, the Commission finds that the proposed rule change is consistent with the requirements of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSEMKT–2013–84) 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. 2014–01250 Filed 1–22–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71325; File No. SR–CME–2014–01]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Modifications to CME Rule 8G802.B.2

January 16, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2014, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by CME. CME filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(ii)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME is filing a proposed rule change that is limited to its business as a derivatives clearing organization. More specifically, the proposed rule change would make amendments to CME Rule 8G802.B.2 (''IRS Product Limited Recourse'') to clarify that a CME Bankruptcy Event is also a Termination Event for IRS.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CME 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

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission and currently offers clearing services for many different futures and swaps products. The purpose of this proposed rule change is to make amendments to CME IRS rules that will clarify and harmonize CME rules across its IRS and CDS offerings. This filing does not involve any proposed changes to CME CDS rules. Although these changes will be effective on filing, CME plans to operationalize the proposed changes on January 16, 2014.

Currently, CME's Chapter 8H rules, providing for limited recourse for CDS, provide that a CME Bankruptcy Event (as defined in the Rules) is also a CDS Termination Event (as defined in CME Rule 8H802.B.2). CME's Chapter 8G rules, providing for limited recourse for IRS, inadvertently do not similarly include a CME Bankruptcy Event as an IRS Termination Event (as defined in CME Rule 8H802.B.2). The intent under both rule chapters is for the limited recourse provisions to work similarly in the event of a CME Bankruptcy Event. In order to harmonize the provisions, CME is proposing a clarifying amendment to CME Rule 8G802.B.2.

The changes that are described in this filing are limited to CME's business as a derivatives clearing organization clearing products under the exclusive jurisdiction of the Commodity Futures Trading Commission (''CFTC'') and do not materially impact CME's security-based swap clearing business in any way. CME notes that it has already submitted the proposed rule change that is the subject of this filing to its primary regulator, the CFTC, in CME Submission 13–590.

CME believes the proposed rule change is consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act.[5] The proposed rule change clarifies that a CME Bankruptcy Event is also a Termination Event for purposes of CME's IRS clearing offering. The purpose of the proposed changes is to clarify the limited recourse nature of CME's clearing offering and to harmonize CME's IRS rules with its CDS rules; these purposes are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Exchange Act.[6]

Furthermore, the proposed changes are limited in their effect to swaps products offered under CME's authority to act as a derivatives clearing organization. These products are under the exclusive jurisdiction of the CFTC. As such, the proposed CME changes are limited to CME's activities as a derivatives clearing organization clearing swaps that are not security-based swaps or mixed swaps; CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

Because the proposed changes are limited in their effect to swaps products offered under CME's authority to act as a derivatives clearing organization, the proposed changes are properly classified as effecting a change in an existing service of CME that:

(a) primarily affects the clearing operations of CME with respect to products that are not securities, including futures that are not security futures, and swaps that are not security-based swaps or mixed swaps; and

(b) does not significantly affect any securities clearing operations of CME or

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the PBB or PBO as the PBBO changes. *See* NYSE MKT Rule 13—Equities.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

any rights or obligations of CME with respect to securities clearing or persons using such securities-clearing service.

As such, the changes are therefore consistent with the requirements of Section 17A of the Exchange Act [7] and are properly filed under Section 19(b)(3)(A) [8] and Rule 19b–4(f)(4)(ii) [9] thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The proposed rule change merely makes clarifying amendments for the purpose of harmonizing CME's IRS rules with its CDS rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) [10] of the Act and paragraph (f)(4)(ii) of Rule 19b–4 [11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. [12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–CME–2014–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC, 20549–1090.

All submissions should refer to File Number SR–CME–2014–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the 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 or 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 CME and on CME's web site at *http://www.cmegroup.com/market-regulation/rule-filings.html*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CME–2014–01 and should be submitted on or before February 13, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–01247 Filed 1–22–14; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(4)(ii).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(4)(ii).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71331; File No. SR–NYSEArca–2013–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, 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

January 16, 2014.

I. Introduction

On September 30, 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 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] On December 5, 2013, the Commission extended to January 20, 2014 the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.[4] The Commission received no comment letters regarding the proposed rule change. On January 15, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.[5] This order approves the proposed rule change.

II. Description of the Amended Proposal

The Exchange proposes to amend NYSE Arca Equities Rules (''Rule(s)'') 7.31, 7.32, 7.37, and 7.38 in order to update its rules related to the Exchange's order types and modifiers. The Exchange states that it is proposing these rule changes in order to provide additional specificity and transparency to NYSE Arca Equities ETP Holders

[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] *See* Securities Exchange Act Release No. 70995, 78 FR 62745 (December 11, 2013).

[5] In Amendment No. 1, the Exchange proposed to delete a portion of the text of proposed Supplementary Material .01 to Rule 7.31. This aspect of the proposal is described in more detail below. *See infra* note 11 and accompanying text.

regarding the operation of NYSE Arca Equities order types and modifiers, to better align its rules with currently available functionality, and to organize and define order types and modifiers in a more intuitive manner.[6]

Rule 7.31. The majority of the Exchange's proposed revisions to Rule 7.31 would provide greater detail as to the existing functionality of certain order types and modifiers, including the Market Order (Rule 7.31(a)), Time in Force Modifiers (Rule 7.31(c)), Inside Limit Order (Rule 7.31(d)), Discretionary Order (Rule 7.31(h)(2)), Passive Discretionary Order (Rule 7.31(h)(2)(A)), Discretion Limit Order (Rule 7.31(h)(2)(B)), Reserve Order (Rule 7.31(h)(3)), Passive Liquidity Order (Rule 7.31(h)(4)), Mid-Point Passive Liquidity Order (Rule 7.31(h)(5)), Q Orders (Rule 7.31(k)), Auction-Only Order (Rule 7.31(t)), NOW Order (Rule 7.31(v)), Primary Only Order (Rule 7.31(x)), Pegged Orders (Rule 7.31(cc)),[7] Proactive if Locked Modifier (Rule 7.31(hh)), Intermarket Sweep Order (Rule 7.31(jj)), Primary Sweep Order (Rule 7.31(kk), Post No Preference Blind Order (Rule 7.31(mm)), and Add Liquidity Only Order (Rule 7.31(nn)).[8]

The Exchange also proposes to delete from Rule 7.31 descriptions of order types and modifiers that are no longer available to Users on Exchange systems, as well as delete cross-references to such order types and modifiers in other rules. The following order types would be deleted: Directed Order (Rule 7.31(i)), Directed Fill (7.31(j)), Fill-or-Return (Rule 7.31(p)), Fill-or-Return Plus (Rule 7.31(r)), Cleanup Order (Rule 7.31(u)), Midpoint Directed Fill (Rule 7.31(z)), and Don't Arb Me Modifier (Rule 7.31(gg)).[9] Further, the Exchange proposes to describe certain functionalities as ''modifiers'' instead of ''orders,'' and to relocate certain order type and modifier descriptions within Rule 7.31.[10]

Supplementary Material to Rule 7.31. The Exchange proposes to add Supplementary Material .01 to Rule 7.31, which would provide that Users may combine the Exchange's order types and modifiers unless the terms of the proposed combination are inconsistent.[11] The Exchange also proposes to add Supplementary Material .02 to Rule 7.31, which would provide that if two order types are combined that include instructions for operation on arrival and for how the order operates while resting on the Exchange's book, the instructions governing functionality while incoming would be operative upon arrival. Functionality governing how the order operates while resting on the Exchange's book would govern any remaining balance of the order that is not executed upon arrival.[12]

Rule 7.32—Order Entry. The Exchange proposes to amend Rule 7.32 to specify that orders with a size greater than one million shares are rejected. Exchange systems currently do not accept orders with a size greater than one million shares.[13]

Rule 7.38—Odd and Mixed Lots. The Exchange proposes to amend Rule 7.38(a)(2) to clarify that specific language in the descriptions of individual order types override the general rule that mixed lot orders may be any order type supported by the Exchange.[14]

Technical Amendments. The Exchange proposes to make certain technical amendments to various provisions in Rules 7.31 and 7.37 so that common abbreviations for order types and modifiers will be inserted throughout Rules 7.31 and 7.37 where appropriate.[15]

III. Discussion and Commission Findings

After careful review, 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.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change would provide greater specificity, transparency, and clarity with respect to the use and potential use of order types and modifiers on the Exchange. According to the Exchange, these enhancements would remove impediments to and perfect the mechanism of a free and open market and national market system because, with greater clarity regarding what a specific order type or modifier does and its proper use, greater competitive forces can be brought to bear on, and help to foster the proper functioning of, the market. Further, the Exchange believes that these enhancements would protect investors and the public interest because increased transparency and specificity would enable investors and the public to understand the tools available to the agents handling their orders as well as those available to professional market participants who may be competing with their orders.

The Commission notes that the instant proposal does not add any new functionality but instead enhances and clarifies the descriptions of the order type and modifier functionality currently available on the Exchange. For example, among other things, the Exchange's proposed revisions would provide greater detail as to the operation of and interaction between certain order types and modifiers, the circumstances in which certain order types or order type and modifier combinations are rejected, order types and modifiers that are compatible or incompatible with each other, and when certain order types will route to away markets. The proposal also adds new supplementary material to Rule 7.31 that further clarifies when existing order types and modifiers can be combined, and how the Exchange handles combined order types that include instructions for how the order should operate on arrival as well as while resting on the Exchange's book. Further, the Exchange proposes to

[6] *See* Notice, 78 FR at 62745.

[7] The Exchange's proposed revisions to Rule 7.31(cc) entail, in part, specifically describing the two variations of Pegged Orders available to Users: Market Pegged and Primary Pegged Orders. *See* Notice, 78 FR at 62748; *see also* proposed Rule 7.31(cc).

[8] For a more detailed description of the specific proposed revisions for each order type and modifier, *see* Notice, 78 FR at 62746–49; *see also* proposed Rule 7.31.

[9] *See* Notice, 78 FR at 62746–48. In addition, the Exchange proposes to delete, as redundant, the subparagraphs under current Rule 7.31(e), which currently describes the IOC Modifier. *See id.* at 62746.

[10] *See id.* at 62746–48; *see also* proposed Rule 7.31. In addition to relocating the Market-on-Close Order and Limit-on-Close Order order type descriptions, the Exchange proposes to conform their descriptions to the descriptions of the Limit-on-Open and Market-on-Open order types. *See* Notice, 78 FR at 62748; *see also* proposed Rule 7.31

[11] *See* Notice, 78 FR at 62749; *see also* proposed Supplementary Material .01 to Rule 7.31.

[12] *See* Notice, 78 FR at 62749–50; *see also* proposed Supplementary Material .02 to Rule 7.31.

[13] *See* Notice, 78 FR at 62750; *see also* proposed Rule 7.32.

[14] *See* Notice, 78 FR at 62750; *see also* proposed Rule 7.38.

[15] *See* Notice, 78 FR at 62750.

[16] 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).

[17] 15 U.S.C. 78f(b)(5).

update its rules by deleting obsolete order type and modifier provisions and reorganizing certain order type and modifier rules in a more intuitive manner. The Commission believes that these proposed changes are reasonably designed to provide greater specificity, clarity and transparency with respect to the order type and modifier functionality available on the Exchange, and therefore should help to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Commission finds good cause to approve the filing, as amended by Amendment No. 1 to the proposed rule change, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposed revisions should further increase the Exchange's transparency with respect to the operation of its various order types and modifiers, and serve to enhance investors' understanding of the tools available with respect to the handling of their orders. Accelerated approval would allow the Exchange to update its rule text immediately, thus providing users with greater clarity with respect to the use and potential use of functionality offered by the Exchange. In addition, the initial proposal was open for comment for twenty-one days after publication and generated no comment. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act,[18] to approve the filing, as amended by Amendment No. 1 to the proposed rule change, on an accelerated basis.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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–2013–92 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–2013–92. 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–2013–92 and should be submitted on or before February 13, 2014.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NYSEArca–2013–92) be, and it hereby is, approved, as amended.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–01252 Filed 1–22–14; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78f(b)(5); 15 U.S.C. 78s(b).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71326; File No. SR–MSRB–2013–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Consisting of Proposed MSRB Rule G–47, on Time of Trade Disclosure Obligations, Proposed Revisions to MSRB Rule G–19, on Suitability of Recommendations and Transactions, Proposed MSRB Rules D–15 and G–48, on Sophisticated Municipal Market Professionals (''SMMPs''), and the Proposed Deletion of Interpretive Guidance

January 16, 2014.

I. Introduction

On September 17, 2013, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of new MSRB Rule G–47 (time of trade disclosures), new MSRB Rules D–15 and G–48 (SMMPs), and amendments to MSRB Rule G–19 (suitability). The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.[3] The Commission received two (2) comment letters in response to the proposed rule change.[4] On January 14, 2014, the MSRB responded to the comments.[5] The Commission is publishing this order (''Order'') to solicit comments from interested persons and to institute proceedings pursuant to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 70593 (October 1, 2013), 78 FR 62867 (October 22, 2013) (Notice of Filing of a Proposed Rule Change Consisting of Proposed MSRB Rule G–47, on Time of Trade Disclosure Obligations, Proposed Revisions to MSRB Rule G–19, on Suitability of Recommendations and Transactions, Proposed MSRB Rules D–15 and G–48, on Sophisticated Municipal Market Professionals, and the Proposed Deletion of Interpretive Guidance) (''Proposing Release''). The comment period closed on November 12, 2013.

[4] Letters from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute to Elizabeth M. Murphy, Secretary, SEC, dated November 1, 2013 (''ICI Letter'') and David L. Cohen, Managing Director/Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2013 (''SIFMA Letter'').

[5] *See* Letter from Michael L. Post, Deputy General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, SEC dated January 14, 2014 (''Response'').

Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7]

Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input from interested parties on the MSRB's proposed change in its treatment of past interpretive guidance, as discussed in its Response, and as described below.

II. Description of Proposal

As further described in the Proposing Release, the MSRB states that it has examined its interpretive guidance related to time of trade disclosures, suitability, and SMMPs and proposes to consolidate this guidance and codify it into several rules: a new time of trade disclosure rule (proposed Rule G–47), a revised suitability rule (Rule G–19), and two new SMMP rules (proposed Rules D–15 and G–48). Additionally, the proposed revisions to Rule G–19 are designed to harmonize the MSRB's suitability rule with the Financial Industry Regulatory Authority's (''FINRA'') suitability rule.[8]

In connection with the rule changes described above, the MSRB proposed the deletion of certain interpretive guidance affected by these rule changes from the MSRB's Rule Book. Additionally, in the Proposing Release, the MSRB indicated that it did not intend to preserve the relevant guidance, because doing so ''would not advance the MSRB's goal to streamline its rulebook.'' [9] In its Response, as discussed in Section III below, the MSRB articulates a different approach. Specifically, to address a commenter concern, the MSRB states that it will archive on its Web site the existing guidance that is to be deleted from the Rule Book in connection with the proposed rule change.[10] Moreover, the MSRB states that ''[t]o the extent that past interpretive guidance does not conflict with any MSRB rules or interpretations thereof, it remains potentially applicable, depending on the facts and circumstances of a particular case'' (together with the archiving on its Web site of the existing guidance that is to be deleted under the proposed rule change, this approach is referred to herein as ''the MSRB's proposed treatment of past interpretive guidance.'') The MSRB notes, however, that preserving the guidance at issue in the Rule Book itself would undermine the MSRB's goal to provide streamlined rule language.

III. Summary of Comments Received Regarding Proposed Deletion of Existing Interpretive Guidance and the MSRB's Response

One commenter asked that existing time of trade disclosure interpretive notices be archived and preserved, noting that ''there are nuances contained in these interpretive notices spanning over 30 years of guidance that brokers, dealers, and municipal securities dealers have long relied upon''.[11] The commenter further noted that the interpretive guidance should remain accessible for examination and enforcement purposes because it governs conduct until the effective date of the proposed rule change.

As noted above, the MSRB states that it will archive on its Web site the existing guidance that is to be deleted from the MSRB's Rule Book in connection with the proposed rule change. The MSRB further responds that to the extent that past interpretive guidance does not conflict with any MSRB rules or interpretations thereof, it remains potentially applicable, depending on the facts and circumstances of a particular case.

IV. Proceedings to Determine Whether to Approve or Disapprove SR–MSRB–2013–07 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.[12] Institution of such proceedings appears appropriate at this time to provide interested parties an opportunity to consider the MSRB's proposed treatment of past interpretive guidance, as set forth in the Response. As noted above, institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the MSRB's proposed treatment of past interpretive guidance as discussed in its Response, and provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[13] the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 15B(b)(2)(C) of the Act, among other things, 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.[14]

The Commission believes that the MSRB's Response, as well as the comment to which the MSRB was responding concerning the status of the existing MSRB guidance, raise issues about consistency with Section 15B(b)(2)(C) of the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.

V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the MSRB's proposed treatment of past interpretive guidance as well as any other comments they may have regarding the proposal or the Response. In particular, the Commission invites the written views of interested persons concerning whether

[6] 15 U.S.C. 78s(b)(2)(B).

[7] The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-Filings.aspx*, at the MSRB's principal office, and at the Commission's Public Reference Room.

[8] *See* FINRA Rule 2111.

[9] *See* Proposing Release at 21 (responding to a SIFMA comment regarding proposed Rule G–47). *See also* Proposing Release at 4, describing the MSRB's streamlining goals (''The structure of Proposed G–47 (rule language followed by supplementary material) is the same structure used by FINRA and other self-regulatory organizations (''SROs''). The MSRB intends generally to transition to this structure for all of its rules going forward in order to streamline the rules, harmonize the format with that of other SROs, and make the rules easier for dealers and municipal advisors to understand and follow.'')

[10] *See* Response at 2.

[11] *Id.*

[12] 15 U.S.C. 78s(b)(2). Section 19(b)(2)(B) of the Act provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to an additional 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or if the self-regulatory organization consents to the extension.

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 15 U.S.C. 78*o*–4(b)(2)(C).

the proposed rule change is inconsistent with Section 15B(b)(2)(C) or any other provision of the Exchange Act, or the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[15] Interested persons are invited to submit written data, views, and arguments by February 13, 2014 concerning regarding the MSRB's treatment of past interpretive guidance and whether the proposed rule change should be approved or disapproved. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 6, 2014. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2013–07 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–MSRB–2013–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principle office of MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

All submissions should refer to File Number SR–MSRB–2013–07 and should be submitted on or before February 13, 2014. If comments are received, any rebuttal comments should be submitted by March 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–01248 Filed 1–22–14; 8:45 am]

BILLING CODE 8011–01–P

[15] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[16] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71324; File No. SR–ISE–2014–01]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

January 16, 2014.

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 January 8, 2014, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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 the Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees to clarify that the ISE's Ethernet, Gateway, and EAM session fees provide connectivity to the Topaz Exchange, LLC in addition to the ISE. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Schedule of Fees to clarify that the ISE's Ethernet, Gateway, and Electronic Access Member (''EAM'') session fees provide connectivity to the ISE's sister exchange, the Topaz Exchange, LLC d/b/a ISE Gemini (''Topaz''), in addition to the ISE. On December 16, 2013 Topaz filed a rule change that established various non-transaction fees, including Ethernet, Gateway, and Financial Information eXchange (''FIX'') session fees that provide access to both Topaz and the ISE.[3] On January 2, 2014 Topaz filed another rule change to permit EAMs that connect to that exchange via an Application Programming Interface (''API'') to also connect to the ISE for a single fee.[4] The ISE now proposes to add similar clarifying text to its fee schedule to reflect the fact that these connectivity options provide connectivity to both the ISE and Topaz for a single fee.

[3] *See* Exchange Act Release No. 71149 (December 19, 2013), 78 FR 78447 (December 26, 2013) (SR–Topaz–2013–16).

[4] *See* SR–Topaz–2014–01 (citation pending publication by the Commission).

The Exchange charges an Ethernet fee for its four different Ethernet connection options, which is $500 per month for a 1 Gigabit (''Gb'') connection, $4,000 per month for a 10 Gb connection, $7,000 per month for a 10 Gb low latency connection, and $12,500 per month for a 40 Gb low latency connection. The Exchange also charges members a monthly gateway fee of $250 per gateway for a shared gateway or $2,000 per gateway pair for members that elect to use their own dedicated gateways as an alternative to using shared gateways. Finally, the Exchange charges EAMs that connect to the Exchange via API a session fee of $250 per month each for the first five sessions and $100 per month each additional session, and charges EAMs that connect to the Exchange via FIX a session fee of $250 per month each for the first two sessions and $50 per month for each additional session.[5] The ISE now proposes to clarify that each of these connectivity options provides connectivity to Topaz in addition to the ISE. Members and non-members that connect to both the ISE and Topaz through any of these connectivity options will not be required to pay a separate fee to Topaz for such connectivity. Market participants will pay the same fees regardless of whether they choose to connect to both exchanges or solely to the ISE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to clarify that its fees provide connectivity to both Topaz and the ISE. The Exchange notes that the fee schedule of its sister exchange, Topaz, already reflects that its fees provide access to both exchanges. The ISE now proposes to adopt similar language. Providing access to both the ISE and Topaz for a single fee will keep overall fees low for market participants that establish connectivity to both exchanges. With respect to session fees, the Exchange notes that only EAM sessions (both FIX and API) provide connectivity to Topaz in addition to the ISE. The Exchange does not believe that this is unfairly discriminatory as Topaz has opted for a different pricing structure for its Market Maker API session fees.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change is pro-competitive as it clarifies that members that connect to both Topaz and the ISE will be able to do so for a single fee. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[10] and subparagraph (f)(2) of Rule 19b–4 thereunder,[11] because it establishes a due, fee, or other charge imposed by Topaz.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–ISE–2014–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2014–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method.

The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2014–01, and should be submitted on or before February 13, 2014.

[5] The Exchange notes that Market Maker API session fees are separate for ISE and Topaz as Topaz has opted for a different pricing structure for its Market Maker API session fees. *See id.*

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] *See* supra note 5.

[9] 5 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–01246 Filed 1–22–14; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8608]

Culturally Significant Objects Imported for Exhibition Determinations: ''Masters of Fire: Copper Age Art in Israel'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Masters of Fire: Copper Age Art in Israel,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Institute for the Study of the Ancient World at New York University, New York, NY, from on or about February 12, 2014, until on or about June 8, 2014, the Legion of Honor, Fine Arts Museums of San Francisco, San Francisco, CA, from on or about June 28, 2014, until on or about January 4, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 16, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–01331 Filed 1–22–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8605]

Culturally Significant Objects Imported for Exhibition Determinations: ''Fame and Friendship: Pope, Roubiliac, and the Portrait Bust in Eighteenth-Century Britain''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Fame and Friendship: Pope, Roubiliac, and the Portrait Bust in Eighteenth-Century Britain,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Yale Center for British Art, New Haven, Connecticut, from on or about February 20, 2014, until on or about May 19, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 16, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–01325 Filed 1–22–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8606]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Passions of Jean-Baptiste Carpeaux'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''The Passions of Jean-Baptiste Carpeaux,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY, from on or about March 10, 2014, until on or about May 26, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 16, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–01316 Filed 1–22–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8604]

Culturally Significant Objects Imported for Exhibition Determinations: ''Degenerate Art: The Attack on Modern Art in Nazi Germany, 1937''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of

October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Degenerate Art: The Attack on Modern Art in Nazi Germany, 1937,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Neue Galerie, New York, New York, from on or about March 13, 2014, until on or about June 30, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 16, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–01315 Filed 1–22–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8603]

Meeting of the United States-Panama Environmental Affairs Council and Environmental Cooperation Commission and Request for Comments on Meeting Agendas and the Work Program for Environmental Cooperation

ACTION: Notice of meetings of the United States-Panama Environmental Affairs Council and Environmental Cooperation Commission, and request for comments.

SUMMARY: The Department of State and the Office of the United States Trade Representative (USTR) are providing notice that the United States and Panama intend to hold the first meeting of the Environmental Affairs Council (the ''Council'') and the first meeting of the Environmental Cooperation Commission (the ''Commission'') on January 29, 2014 in Panama City, Panama. The purpose of the Council meeting is to review implementation of Chapter 17 (Environment) of the United States-Panama Trade Promotion Agreement (TPA) and the purpose of the Commission meeting is to review implementation of the United States-Panama Environmental Cooperation Agreement (ECA) and approve a Work Program for implementing the ECA. The Department of State and USTR invite interested organizations and members of the public to attend the public session of the meetings and comment on any items that should be included on the meeting agendas. The Department of State also invites suggestions for items to be included in the Work Program.

During the Council meeting, the United States and Panama (collectively the ''Parties'') will discuss their respective implementation of and progress under Chapter 17. During the Commission meeting, the Parties will provide an overview of environmental cooperation, and present and approve the inaugural 2014–2017 Environmental Cooperation Work Program.

DATES: The public session of the Council and Commission meetings will be held on January 29, 2014, from 3:00–5:30 p.m. We request comments and suggestions in writing no later than January 22, 2014.

ADDRESSES: The public session of the Council and Commission meetings will be held at the Holiday Inn Clayton, Panama City, Panama. Please submit written comments and suggestions to both:

(1) Lauren C. Stowe, Office of Environmental Quality and Transboundary Issues, U.S. Department of State, by electronic mail at *StoweLC@state.gov* with the subject line ''U.S.-Panama EAC/ECC Meeting.''; and

(2) Sarah Stewart, Office of Environment and Natural Resources, Office of the United States Trade Representative, by electronic mail at *Sarah_Stewart@ustr.eop.gov* with the subject line ''U.S.-Panama EAC/ECC Meeting.''

You can view and comment on this notice by going to: *http://www.regulations.gov/#!home* and searching on docket number: DOS–2014–0001

FOR FURTHER INFORMATION CONTACT: Lauren C. Stowe, Telephone (202) 647–4833 or Sarah Stewart, Telephone (202) 395–3858.

SUPPLEMENTARY INFORMATION: The United States-Panama TPA entered into force on October 31, 2012. Article 17.6 of the TPA establishes an Environmental Affairs Council to oversee the implementation of, and review progress under, Chapter 17. The United States-Panama ECA entered into force on December 5, 2013. Article III of the ECA establishes an Environmental Cooperation Commission and makes the Commission responsible for developing a Work Program. Article 17.6 of the TPA and Article V of the ECA require that meetings of the Council and Commission respectively include a public session, unless the Parties otherwise agree.

The Department of State is requesting suggestions for cooperative environmental activities to consider for inclusion in the first Environmental Cooperation Work Program. For additional information, please visit: *http://www.state.gov/e/oes/eqt/trade/index.htm*

Disclaimer: This Public Notice is a request for comments and suggestions, and is not a request for applications. No granting of money is directly associated with this request for suggestions for the Work Program. There is no expectation of resources or funding associated with any comments or suggestions for the Work Program.

If you would like to attend the public session or provide comments, please notify Lauren Stowe at the email address listed above under the heading **ADDRESSES**. Please include your full name and identify any organization or group you represent. As you consider preparing comments, we encourage you to refer to:

- Chapter 17 of the TPA,
- The Final Environmental Review of the TPA, and
- The ECA.

These documents are available at: *http://www.ustr.gov/trade-agreements/free-trade-agreements/panama-tpa* and *http://www.state.gov/e/oes/eqt/trade/c51527.htm.*

Dated: January 14, 2014.

Deborah Klepp,

Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2014–01313 Filed 1–22–14; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 8607]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Judgments and Other Cross-Border Insolvency Issues

The Office of the Assistant Legal Adviser for Private International Law, Department of State, gives notice of a public meeting to discuss future work related to the recognition and enforcement of insolvency-derived judgments, along with other cross-border insolvency issues under consideration in the United Nations Commission on International Trade Law (UNCITRAL). The public meeting will take place on Wednesday, February 12, 2014 from 9 a.m. until 12 p.m. EDT. This is not a meeting of the full Advisory Committee.

At its December 2013 session, UNCITRAL's Working Group V (Insolvency) determined that, among its possible areas of future work, the recognition and enforcement of insolvency-derived judgments should be the top priority. The decision of the United Kingdom Supreme Court in *Rubin v. Eurofinance SA* highlighted the need for work on this topic, as the UNCITRAL Model Law on Cross-Border Insolvency does not provide an explicit solution for cross-border harmonization, leading to significant uncertainty. The Working Group intends, at an appropriate time, to request a mandate from the UNCITRAL Commission to work on this topic, most likely by developing a supplement to the Model Law.

Working Group V is also continuing its work on enterprise group insolvency issues. It plans to develop a set of model legislative provisions that would facilitate the cross-border insolvency of enterprise group members, addressing topics such as provision of access to foreign courts for foreign representatives and creditors of insolvency proceedings involving enterprise group members, provision of standing for group members to participate in the insolvency proceedings of other members, the use of synthetic proceedings, joint appointment of insolvency representatives for group members, and appropriate forms of relief. The Working Group also plans to continue discussing the responsibilities of corporate directors in the vicinity of insolvency, examining how such responsibilities should be applied in the context of enterprise groups. Finally, the Working Group also plans to discuss the insolvency of micro, small, and medium enterprises (MSMEs); it will evaluate the guidance currently provided by the Legislative Guide on Insolvency and determine whether further work is merited (and whether any such work should take the form of legislative guidance or model legislative provisions).

The purpose of the public meeting is to obtain the views of concerned stakeholders on all four of the above topics: (1) The recognition and enforcement of insolvency-derived judgments (i.e., what approach should be taken by model legislative provisions), (2) facilitating the cross-border insolvency of enterprise groups (i.e., what approach should be taken by model legislative provisions), (3) responsibilities of corporate directors in enterprise groups in the vicinity of insolvency (i.e., what approach should UNCITRAL take), and (4) MSME insolvency issues (i.e., whether further work is needed, and what form any such work should take). Those who cannot attend but wish to comment are welcome to do so by email to Tim Schnabel at *SchnabelTR@state.gov.*

Time and Place: The meeting will take place from 9:00 a.m. until 12:00 p.m. in Room 4835, Harry S Truman Building, 2201 C Street NW., Washington, DC 20520. Participants should plan to arrive at the C Street entrance by 8:30 a.m. for visitor screening. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Access to the building is strictly controlled. For pre-clearance purposes, those planning to attend should email *pil@state.gov* providing full name, address, date of birth, citizenship, driver's license or passport number, and email address. This information will greatly facilitate entry into the building. A member of the public needing reasonable accommodation should email *pil@state.gov* not later than February 5, 2014. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please email *pil@state.gov* to obtain the call-in number and other information.

Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities.

The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

Dated: January 17, 2014.

Timothy R. Schnabel,

Attorney-Adviser, Office of Private International Law, Office of Legal Adviser, Department of State.

[FR Doc. 2014–01327 Filed 1–22–14; 8:45 am]

BILLING CODE 7410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement for Transportation Improvements on I–95 in New London County, Connecticut

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to Rescind a Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that, effective immediately, we are rescinding the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for proposed transportation improvements along the I–95 Corridor in New London County, CT. The NOI was published in the **Federal Register** (FR) on August 22, 2007 (FR Vol. 72, No. 162, p. 47119; FR Doc 07–4127).

FOR FURTHER INFORMATION CONTACT: Eloise Powell, Team Leader for Planning, Environment, and Research, FHWA Connecticut Division, 628–2 Hebron Avenue, Suite 303, Glastonbury, CT 06033, Telephone: (860) 494–7566, Email: *eloise.powell@dot.gov.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Connecticut Department of Transportation (CTDOT), issued a NOI on August 22, 2007, to prepare an EIS for proposed transportation improvements along the I–95 corridor in New London County, CT, between Interchange Exits 70 and 84, for a distance of approximately 12.3 miles. The purposes of the proposed improvements were to improve safety and provide increased capacity to meet future traffic demands. Due to the re-prioritization of major transportation projects in Connecticut and funding constraints, the CTDOT is no longer pursuing this project. Therefore, the NOI for this project is rescinded.

Studies are being done to determine specific safety and capacity improvements along the I–95 corridor, and any future transportation improvements will progress under a separate environmental review process, in accordance with all applicable laws and regulations.

Dated: January 16, 2014.

Amy Jackson-Grove,

FHWA Connecticut Division Administrator, Glastonbury, Connecticut.

[FR Doc. 2014–01268 Filed 1–22–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent to Prepare an Environmental Impact Statement for Transportation Improvements Along the Route 9 Corridor in Middlesex County, Connecticut

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to Rescind a Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that, effective immediately, we are rescinding the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for proposed transportation improvements along the Route 9 Corridor located in the City of Middletown in Middlesex County, CT. The NOI was published in the **Federal Register** (FR) on August 9, 2002 (FR Vol. 67, No. 154, p. 51924; FR Doc 02–20170).

FOR FURTHER INFORMATION CONTACT: Eloise Powell, Team Leader for Planning, Environment, and Research, FHWA Connecticut Division, 628–2 Hebron Avenue, Suite 303, Glastonbury, CT 06033, Telephone: (860) 494–7566, Email: *eloise.powell@dot.gov.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Connecticut Department of Transportation (CTDOT), issued a NOI on August 9, 2002, to prepare an EIS for proposed transportation improvements along the Route 9 corridor, in the City of Middletown. The proposed improvements to be evaluated were located between the Washington Street (Route 66) intersection and the Arrigoni Bridge over the Mattabesset River for a distance of approximately 6,000 feet. The purpose of the proposed improvements was to provide additional capacity for existing and future traffic volumes. Due to the environmental constraints in the project area (particularly the location of NRHP-eligible or NRHP-listed buildings in Middletown), as well as the re-prioritization of major transportation projects in Connecticut, the CTDOT is no longer pursuing this project. Rather, studies are being done to determine specific safety and capacity improvements in the Route 9 corridor. Any future transportation improvements in the Route 9 corridor will progress under a separate environmental review process, in accordance with all applicable laws and regulations. Therefore, the NOI for this project is rescinded.

Dated: January 16, 2014.

Amy Jackson-Grove,

FHWA Connecticut Division Administrator, Glastonbury, Connecticut.

[FR Doc. 2014–01267 Filed 1–22–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0436]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From the International Window Film Association

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA requests public comment on an application for exemption from the International Window Film Association (IWFA) to allow the use of certain glazing in the windows that does not meet the light transmission requirements specified in the Federal Motor Carrier Safety Regulations (FMCSR). Section 393.60(d) of the FMCSRs currently permits windshields and to the immediate right and left of the driver windows to be tinted, as long as the light transmission is not restricted to less than 70 percent of normal. IWFA contends that since a reduction of light entering the truck cab interior will decrease not only available visible light but also scattered light, the exemption can significantly improve driver comfort and reduce eye strain while allowing films to be used that can also reduce the heat load of the interior environment, thus making the driver more comfortable as well as lowering energy use for cooling.

DATES: Comments must be received on or before February 24, 2014.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2013–0436 by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit *http://www.regulations.gov.*

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Routhier, Vehicle and Roadside

Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–1225; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

Background

IWFA Application for Exemption

IWFA applied for an exemption from 49 CFR 393.60(d) to allow the use glazing in the windows to the immediate right and left of the driver that does not meet the light transmission requirements specified in the FMCSRs. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.60(d) of the FMCSRs permits coloring or tinting of windshields and the windows to the immediate right and left of the driver, as long as the ''parallel luminous transmittance through the colored or tinted glazing is not less than 70 percent of the light at normal incidence in those portions of the windshield or windows which are marked as having a parallel luminous transmittance of not less than 70 percent.'' The transmittance restriction does not apply to other windows on the commercial motor vehicle.

In its application, IWFA states:

> Many commercial operators, however, have been unable to obtain the approved film products in a timely and local basis; this has generated a significant volume of inquiries to federal, state, and association offices. We are therefore requesting a favorable consideration for the use of a market-standard 50%-type of film with a 7% measurement tolerance (to accommodate variances in glass, glass condition, film manufacturing variation, and meter differences.) This would allow the standard 50%-type film to be used on CMVs for the windows to the immediate right and left of the driver. This film is the same minimum visibility requirement used in the majority of states for automobiles and is essentially ''clear'' to the extent that, in most cases, it is difficult to determine if a vehicle even has had film applied. Since a reduction of light entering the truck cab interior will decrease not only available visible light but also scattered light (sometimes called ''interference haze'' by optical researchers), it can significantly improve driver comfort and reduce eye strain while also allowing films to be used which can also reduce the heat load of the interior environment, thus making the driver more comfortable as well as lowering energy use for cooling.

In support of its application, IWFA also provided an excerpt from an article titled ''Safety Benefits and Costs of Tinted Glazing'' published in 1988 by Harold Wakeley of the IIT Research Institute of Chicago.

In addition, IWFA stated:

> This level of application would retain the industry's commitment to the enforcement community and also provide the commercial fleet operator with the expanded benefits of a larger number of film products which can provide energy and emissions improvements. It should be noted that while there may be no additional improvement in UV protection from that received by the current standard of 70 percent, the added benefit of fuel savings (and therefore greenhouse gas reductions) as well as reduced glare (haze) and enhanced driver comfort are greatly expanded by the benefits associated with the use of the requested level of film on CMVs.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on IWFA's application for an exemption from 49 CFR 393.60(d). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: January 10, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–01301 Filed 1–22–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2013–0190]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 25 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective January 23, 2014. The exemptions expire on January 25, 2016.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the

West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On October 30, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from 25 individuals and requested comments from the public (78 FR 65034). The public comment period closed on November 29, 2013, and no comments were received.

FMCSA has evaluated the eligibility of the 25 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 25 applicants have had ITDM over a range of 1 to 26 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the October 29, 2013, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA received no comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 25 exemption applications, FMCSA exempts Phyllis J. Cameron (IN), Jarrid S. Childress (KY), James M. Costello (IN), Gary L. Crawford (OH), Roger D. Droog (IA), Clair H. Gilmore (WA), Reubem L. Hunter, Jr. (VA), Michael A. Kollos (MN), Daniel R. Lindahl (WI), Kenneth G. Mahan, Jr. (AL), Jason L. Martin (PA), James F. McSweeney (NH), Eric W. Miller (IN), Thomas E. Orms (AL), Michael D. Pederson (MN), Williams J. Rodgers (PA), Mark A. Rosenau (MN), George M. Sapirstein (NJ), Daniel B. Shaw (FL), Christopher A. Sosa (MD), John C. Thomas (IN), Richard Wasko (FL), Douglas E. Wilhoit (PA), Richard A. Wilk (OH), and Thomas A. Young (TX) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the 1/exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: January 15, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–01227 Filed 1–22–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–10578; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2009–0303; FMCSA–2011–0102]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 7 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective February 9, 2014. Comments must be received on or before February 24, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2001–10578; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2009–0303; FMCSA–2011–0102], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 7 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 7 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

James S. Ayers (GA)
Vernon J. Dohrn (MN)
Brian L. Keszler (CO)
Dennis L. Maxcy (NY)
Cameron S. McMillen (NM)
Rashawn L. Morris (VA)
Dean B. Ponte (MA)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 7 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 53826; 66 FR 66966; 68 FR 69434; 70 FR 57353; 70 FR 71884; 70 FR 72689; 71 FR 4632; 71 FR 6825; 73 FR 6246; 74 FR 60022; 75 FR 1450; 75 FR 4623; 76 FR 29022; 76 FR 44082; 77 FR 3554; 77 FR 543). Each of these 7 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an

adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by February 24, 2014.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 7 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–2001–10578; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2009–0303; FMCSA–2011–0102 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, to submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2001–10578; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2009–0303; FMCSA–2011–0102 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: January 10, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–01314 Filed 1–22–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

State Small Business Credit Initiative; Notice of Availability of Revised Policy Guidelines and National Standards

AGENCY: State Small Business Credit Initiative (SSBCI), Department of the Treasury.

ACTION: Notice of Document Availability.

SUMMARY: This Notice announces the availability of revised *SSBCI Policy Guidelines* and *SSBCI National Standards for Compliance and Oversight.*

DATES: *Effective Date:* January 23, 2014.

ADDRESSES: Copies of the document are available at the SSBCI Web site at *www.treasury.gov/ssbci.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Deputy Director, SSBCI, Department of the Treasury, 655 15th Street NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: SSBCI was created under the Small Business Jobs Act of 2010 (Pub. L. 111–240) (the ''Act'') to help establish and strengthen state programs that support lending to small businesses. Under SSBCI, all states, territories, the District of Columbia, and eligible municipalities (collectively, ''Participating States'') could apply for and receive an allocation of SSBCI funds to design and implement programs to expand access to capital to small businesses. Treasury published the *SSBCI Policy Guidelines* (''*Policy Guidelines*'') and *SSBCI National Standards for Compliance and Oversight* (''*National Standards*''), which are applicable to all Participating States as they implement their SSBCI programs. The *Policy Guidelines* articulate program rules and the *National Standards* provide Participating States with a recommended framework for identifying, monitoring, and managing SSBCI compliance and oversight risks. Since the documents were initially published, Treasury has clarified certain program rules and is now issuing revised guidelines and standards to reflect the clarifications. Specifically, the revisions to the *Policy Guidelines* clarify: (1) The $20 million restriction on credit extended by other credit support programs articulated in the Act; (2) SSBCI's private capital-at-risk requirements; (3) how to calculate private leverage when a community development financial institution re-lends SSBCI funds; (4) the private leverage example provided for venture capital programs; and (4) the restriction on enrolling an SBA-guaranteed loan in an SSBCI program. The revisions to the *National Standards* clarify (1) the restriction on enrolling an SBA-guaranteed loan in an SSBCI program and (2) lender and investor assurance and certification requirements. The *Policy Guidelines* and *National Standards* are available on Treasury's Web site at *www.treasury.gov/ssbci.*

Dated: January 15, 2014.

Clifton G. Kellogg,

Director, State Small Business Credit Initiative.

[FR Doc. 2014–01269 Filed 1–22–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the name of one individual whose property and interests in property has been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the individual identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on January 8, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On January 8, 2014, the Director of OFAC designated the following individual whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individual

1. ARECHIGA GAMBOA, Jose Rodrigo (a.k.a. ''CHINO ANTRAX''), Calle Clavel 1487, Colonia Margarita, Culiacan, Sinaloa, Mexico; DOB 15 Jun 1980; POB Culiacan, Sinaloa, Mexico; Passport 040061677 (Mexico); Driver's License No. ARGARD80061 (Mexico); C.U.R.P. AEGR800615HSLRMD01 (Mexico) (individual) [SDNTK].

Dated: January 8, 2014.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2014–01270 Filed 1–22–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2848, 2848(SP).

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2848, 2848(SP) Power of Attorney and Declaration of Representative.

DATES: Written comments should be received on or before March 24, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Larence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke at Internal Revenue Service, room 6511, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Power of Attorney and Declaration of Representative; Poder Legal y Declaracion del Representante.

OMB Number: 1545–0150.

Form Number: 2848; 2848(SP)

Abstract: Form 2848 or Form 2848(SP) is issued to authorize someone to act for the taxpayer in tax matters. It grants all powers that the taxpayer has except signing a return and cashing refund checks. The information on the form is used to identify representatives and to ensure that confidential information is not divulged to unauthorized persons.

Current Actions: There are no changes being made to the form at this time, however, changes to the burden estimates previously approved will be submitted to properly reflect the current estimates.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and farms.

The burden estimate is as follows:

	Number of responses	Time per response	Total hours
Form 2848 (paper)	358,333	1.66	594,833
Form 2848 (on line)	100,000	1.61	161,000

	Number of responses	Time per response	Total hours
Form 2848 (SP)	80,000	2.26	180,800
	538,333	936,633	

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 2014.

Yvette Lawrence,

Supervisory Tax Analyst.

[FR Doc. 2014–01194 Filed 1–22–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Special rules for certain medical uses of chemicals that deplete the ozone layer.

DATES: Written comments should be received on or before March 24, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Kerry Dennis, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Exports of Chemicals That Deplete the Ozone Layer; Special Rules for Certain Medical Uses of Chemicals That Deplete the Ozone Layer.

OMB Number: 1545–1361.

Regulation Project Number: TD 8662.

Abstract: This regulation provides reporting and recordkeeping rules relating to taxes imposed on exports of ozone-depleting chemicals (ODCs), taxes imposed on ODCs used as medical sterilants or propellants in metered-dose inhalers, and floor stocks taxes on ODCs. The rules affect persons who manufacture, import, export, sell, or use ODCs.

Current Actions: There is no change to this existing regulation.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1305.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Reporting Burden Hours: 201.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 16, 2014.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2014–01192 Filed 1–22–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of amendment to an existing System of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), notice is hereby given that the Department of Veterans Affairs (VA) proposes to modify its existing system of records ''Loan Guaranty Home, Condominium and Manufactured Home Loan Applicants Records, Specially Adapted Housing Applicant Records and Vendee

Loan Applicant Records—VA (55VA26).''

DATES: Comments on the proposed modifications to the routine uses must be received no later than 30 days after date of publication in the **Federal Register**, on or before February 24, 2014. If no public comment is received during the period allowed for comments, the routine use will become effective February 24, 2014.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Erica Lewis, Loan Specialist, Loan Guaranty Service, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 632–8823. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department is proposing to amend its System of Records entitled ''Loan Guaranty Home, Condominium and Manufactured Home Loan Applicants Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records—VA (55VA26),'' by adding a new policy and practice for storing of records in the System to permit VA to maintain VA-guaranteed, insured, direct, and vendee loan records in individual folders on paper documents, automated storage media, and as electronically scanned documents.

VA has determined that it may destroy original paper documents/records after the information has been converted to an electronic medium and verified as a necessary and proper means of storage, and that the specific storage proposed for electronically scanned documents is appropriate.

A copy of the revised system notice has been sent to the House of Representatives Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (59 FR 37906, 3791618, July 25, 1994.)

The proposed storage will be added to the system of records entitled ''Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA (55VA26)'' as published at 40 FR 38095, August 26, 1975, and amended at 48 FR 49961, October 28, 1983; 51 FR 24781, July 8, 1986; 51 FR 28289, August 6, 1986; 52 FR 721, January 8, 1987; 53 FR 49818, December 9, 1988; 56 FR 2064, January 18, 1991; 56 FR 15666, April 17, 1991; 58 FR 50629, September 28, 1993; 62 FR 35545, July 1, 1997, and 67 FR 72721, December 6, 2002.

Approved: December 18, 2013.

Jose D. Riojas,

Chief of Staff, Department of Veterans Affairs.

Notice of Amendment to System of Records

The system of records identified as ''Loan Guaranty Home, Condominium and Manufactured Home Loan Applicants Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records—VA (55VA26),'' published at 40 FR 38095, August 26, 1975, and amended at 48 FR 49961, October 28, 1983; 51 FR 24781, July 8, 1986; 51 FR 28289, August 6, 1986; 52 FR 721, January 8, 1987; 53 FR 49818, December 9, 1988; 56 FR 2064, January 18, 1991; 56 FR 15666, April 17, 1991; 58 FR 50629, September 28, 1993; 62 FR 35545, July 1, 1997 and 67 FR 72721 December 6, 2002, is revised to add a new storage as follows:

55VA26

SYSTEM NAME:

Loan Guaranty Home, Condominium and Manufactured Home Loan Applicants Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records—VA (55VA26).

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIVEING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

VA-guaranteed, insured, direct and vendee loan records are maintained in individual folders on paper documents, on automated storage media (i.e, microfilm, microfiche, magnetic tape and magnetic disks), and on electronically scanned documents.

[FR Doc. 2014–01286 Filed 1–22–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Thursday,

No. 15 January 23, 2014

Part II

Securities and Exchange Commission

17 CFR Parts 230, 232, 239, et al.

Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 240 and 260

[Release Nos. 33–9497; 34–71120; 39–2493; File No. S7–11–13]

RIN 3235–AL39

Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: We are proposing rule amendments to Regulation A to implement Section 401 of the Jumpstart Our Business Startups Act. Section 401 of the JOBS Act added Section 3(b)(2) to the Securities Act, which directs the Commission to adopt rules exempting offerings of up to $50 million of securities annually from the registration requirements of the Securities Act. The proposed rules include issuer eligibility requirements, content and filing requirements for offering statements and ongoing reporting requirements for issuers.

DATES: Comments should be received by March 24, 2014.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment forms (*http://www.sec.gov/rules/proposed.shtml)*;
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–11–13 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–11–13. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Zachary O. Fallon, Special Counsel; Shehzad K. Niazi, Attorney-Advisor; or Karen C. Wiedemann, Attorney Fellow; Office of Small Business Policy, Division of Corporation Finance, at (202) 551–3460, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We propose to amend Rules 251 through 263 [1] under Regulation A.[2]

We also propose to revise Form 1–A,[3] rescind Form 2–A,[4] and create four new forms, Form 1–K (annual updates), Form 1–SA (semiannual updates), Form 1–U (current reporting), and Form 1–Z (exit report).

We further propose to revise Rule 4a–1 [5] under the Trust Indenture Act [6] to increase the dollar ceiling of the exemption from the requirement to issue securities pursuant to an indenture, and to amend Rule 15c2–11 [7] of the Securities Exchange Act of 1934 (the ''Exchange Act'') [8] to permit an issuer's ongoing reports filed under Regulation A to satisfy a broker-dealer's obligations to review and maintain certain information about an issuer's quoted securities. In addition, we propose a technical amendment to Exchange Act Rule 15c2–11 to amend subsection (d)(2)(i) of the rule to update the outdated reference to the ''Schedule H of the By-Laws of the National Association of Securities Dealers, Inc.'' which is now known as the ''Financial Industry Regulatory Authority, Inc.'' and to reflect the correct rule reference.

As a result of the proposed revisions to Regulation A, conforming and technical amendments would be made to Rule 157(a),[9] in order to reflect amendments to Section 3(b) of the Securities Act, and Rule 505(b)(2)(iii),[10] in order to reflect the proposed changes to Rule 262 of Regulation A. Additionally, Item 101(a) [11] of Regulation S–T [12] would be revised to reflect the mandatory electronic filing of all issuer initial filing and ongoing reporting requirements under proposed Regulation A. The portion of Item 101(c)(6) [13] of Regulation S–T dealing with paper filings related to a Regulation A offering, and Item 101(b)(8) [14] of Regulation S–T dealing with the optional electronic filing of Form F–X by Canadian issuers, would therefore be rescinded.

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[1] 17 CFR 230.251 through 230.263.
[2] 17 CFR 230.251 through 230.263.
[3] 17 CFR 239.90.
[4] 17 CFR 239.91.
[5] 17 CFR 260.4a–1.
[6] 15 U.S.C. 77aaa *et seq.*
[7] 17 CFR 240.15c2–11.
[8] 15 U.S.C. 78a *et seq.*
[9] 17 CFR 230.157(a).
[10] 17 CFR 230.505(b)(2)(iii).
[11] 17 CFR 232.101(a).
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I. Introduction and Background

A. JOBS Act Section 401

This rulemaking would implement a statutory directive under the Jumpstart Our Business Startups Act (the ''JOBS Act'') [15] to create a new exemption from registration under the Securities Act of 1933 (the ''Securities Act'') for small offerings. Section 401 of the JOBS Act amended Section 3(b) of the Securities Act by designating existing Section 3(b), the Commission's exemptive authority for offerings of up to $5 million, as Section 3(b)(1), and creating a new Section 3(b)(2). New Section 3(b)(2) directs the Commission to adopt rules adding a class of securities exempt from the registration requirements of the Securities Act for offerings of up to $50 million of securities within a twelve-month period. Issuers conducting offerings in reliance on Section 3(b)(2) would be required to follow terms and conditions established by the Commission, and, where applicable, to make ongoing disclosure.

Congress enacted Section 3(b)(2) against a background of public commentary suggesting that Regulation A, an exemption for small issues originally adopted by the Commission in 1936 under the authority of Section 3(b) of the Securities Act,[16] should be expanded and updated to make it more useful to small companies.[17] Section 3(b)(2) requires us to engage in rulemaking that is meant to increase the use of Regulation A, thereby helping to make capital available to small companies.[18]

To implement Section 401 of the JOBS Act, as mandated by Section 3(b)(2), we have endeavored to craft a workable revision of Regulation A that would both promote small company capital formation and provide for meaningful investor protection. We propose to amend Regulation A to create two tiers of offerings: Tier 1, for offerings of up to $5 million in a twelve-month period, and Tier 2, for offerings of up to $50 million in a twelve-month period. Both Tiers would be subject to basic requirements as to issuer eligibility, disclosure, and other matters, drawn from the current provisions of Regulation A and updated in some areas to align Regulation A with current practice for registered offerings. In addition to these basic requirements, Tier 2 offerings would be subject to additional requirements, including the provision of audited financial statements, ongoing reporting obligations, and certain limitations on sales.

B. Current Regulation A

Currently, Regulation A permits unregistered public offerings of up to $5 million of securities in any twelve-month period by non-reporting U.S. and Canadian companies, including no more than $1.5 million of securities offered by securityholders of the company.[19] The exemption requires that an offering statement on Form 1–A be filed with the Commission.[20] Filings are made on paper,[21] rather than electronically, and are subject to staff review. The offering statement must be ''qualified,'' [22] which, in the absence of a delaying notation, would occur without Commission action on the 20th calendar day after filing.[23] The core of the offering statement is the offering circular, a disclosure document much like an abbreviated version of the prospectus in a registered offering.[24] The offering circular, which must be delivered to prospective purchasers,[25] can be in a

[15] Public Law 112–106, 126 Stat. 306.

[16] SEC Release No. 33–632 (Jan. 21, 1936). Prior to codification as such, Regulation A was a collection of individual rules issued by the Federal Trade Commission and the Commission during the period of 1933–1936. Each such rule exempted particular classes of securities from registration under the Securities Act. Regulation A's initial annual offering limit was raised from $100,000 to $300,000 in 1945, $500,000 in 1970, $1.5 million in 1978, and to its current level of $5 million in 1992.

[17] H.R. Rep. No. 112–206 (2011), at 3–4. *See also* Remarks and prepared statements of William Hambrecht, CEO of WR Hambrecht + Co., (''A confluence of . . . reasons . . . has made Regulation A a poor alternative for small growth-oriented companies seeking to raise development capital and also explains why the offering mechanism has virtually disappeared from the capital raising landscape.''), and Michael Lempres, Asst. General Counsel, SVB Financial Group, (''Regulation A has not proved to be a useful capital raising vehicle for small issuers. . . . An average of eight filings a year, with a maximum amount of $5 million each, proves the irrelevance of Regulation A as it stands today. It simply is not a viable vehicle for raising funds and is providing benefit to neither companies nor investors.'') before the H. Comm. on Fin. Serv. for the 111th Congress, Serial No. 111–168 (December 8, 2010), *available at: http://archives.financialservices.house.gov/Hearings/hearingDetails.aspx?NewsID=1381*; Remarks and prepared statement of David Weild, Sr. Advisor, Grant Thorton, (''[A]n increase to the Regulation A [offering] ceiling will provide a less costly and more effective alternative for smaller, entrepreneurial companies that want to access the public capital markets. It may also enable smaller, growth-oriented companies to access the public market at an earlier stage in their growth cycle.'') before the H. Comm. on Fin. Serv., Subcommittee on Capital Markets and Gov't Sponsored Entities for the 112th Congress, Serial No. 112–19 (March 16, 2011), *available at: http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=231755*; Remarks and prepared statements of Professor John C. Coffee, Columbia Law School (''[I]n 2010 only seven offerings went effective under Regulation A (which is based on Section 3(b)). Most issuers saw Section 3(b) as unattractive (in comparison to a private placement under Regulation D) both because of Section 3(b)'s low ceiling (*i.e.,* $5 million) and the need to file an offering document that is reviewed by the SEC.''), before the U.S. Senate Comm. on Banking, Housing and Urban Affairs (December 1, 2011), *available at: http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=a96c1bc1-b064-4b01-a8ad-11e86438c7e5*; U.S. Government Accountability Office (GAO), *Factors that May Affect Trends in Regulation A Offerings* (July 2012) (*available at: http://www.gao.gov/assets/600/592113.pdf*).

[18] H.R. Rep. No. 112–206, at 3 (2011) (''The low number of Regulation A filings—each for the maximum amount of $5 million—demonstrates that a revision to Regulation A is necessary. To increase the use of Regulation A offerings and help make capital available to small companies, Representative Schweikert introduced H.R. 1070, which increases the offering threshold to $50 million.'').

[19] 17 CFR 230.251(a), (b). Under Rule 251(b), affiliates resales are prohibited unless the issuer has had net income from continuing operations in at least one of its last two fiscal years.

[20] 17 CFR 230.251(d), 17 CFR 230.252.

[21] 17 CFR 232.101(c)(6).

[22] 17 CFR 230.251(g). *See also* 17 CFR 200.30–1(b)(2) (delegated authority to authorize the qualification of offering statements under Regulation A to the Director of the Division of Corporation Finance).

[23] The qualification process under Regulation A is similar to the process of a registration statement being declared effective under the Securities Act. As with registration, the staff review process for an offering circular generally takes more than the 20 calendar days provided by rule, even taking into account that pre-qualification amendments to an offering statement restart the 20 calendar-day period. Issuers include a delaying notation on Form 1–A to ensure that both the issuer and staff reviewing the offering statement have completed the review process before an offering statement is qualified.

[24] 17 CFR 230.253.

[25] 17 CFR 230.251(d).

question-and-answer format or a more traditional narrative disclosure format.[26]

Regulation A permits issuers to communicate with potential investors, or ''test the waters'' for potential interest in the offering, before filing the offering statement.[27] Any solicitation material used to test the waters must be submitted to the Commission not later than the time of first use and must contain a required legend or disclaimer.[28]

Regulation A offering circulars are required to contain issuer financial statements,[29] but the financial statements are not required to be audited unless the issuer otherwise has audited financial statements available.[30] Qualification of a Regulation A offering statement does not trigger reporting obligations under the Exchange Act. A Regulation A offering is a public offering, with no prohibition on general solicitation and general advertising. Securities sold under Regulation A are not ''restricted securities'' under the Securities Act and, therefore, are not subject to the limitations on resale that apply to securities sold in private offerings.[31]

Because Regulation A offerings are exempt from the registration requirements of the Securities Act, issuers and other offering participants are not subject to the liability provisions of Section 11 of the Securities Act. Instead, other anti-fraud and civil liability provisions of the securities laws, including Sections 12(a)(2) and 17 of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act Rule 10b–5, apply to the offer and sale of securities in reliance upon Regulation A.[32] Securities offerings conducted pursuant to Regulation A are subject to state securities law registration and qualification requirements, unless an exemption is available under state law.

C. Use of Regulation A

In recent years, Regulation A offerings have been rare in comparison to offerings conducted in reliance on other Securities Act exemptions or on a registered basis. From 2009 through 2012, there were 19 qualified Regulation A offerings for a total offering amount of approximately $73 million.[33] During the same period, there were approximately 27,500 offerings of up to $5 million (*i.e.,* at or below the cap on Regulation A offering size), for a total offering amount of approximately $25 billion, claiming a Regulation D exemption, and 373 offerings of up to $5 million, for a total offering amount of approximately $840 million, conducted on a registered basis. In 2012 alone, there were eight qualified Regulation A offerings for a total offering amount of approximately $34.5 million, compared to approximately 7,700 Regulation D offerings of up to $5 million for a total offering amount of approximately $7 billion, and 52 registered offerings of up to $5 million for a total offering amount of approximately $132 million.[34]

Section 402 of the JOBS Act required the Comptroller General to conduct a study on the impact of state ''Blue Sky'' laws on offerings conducted under Regulation A, and to report its findings to Congress. The resulting U.S. Government Accountability Office (''GAO'') report to Congress indicates that various factors may have influenced the use of Regulation A, including the type of investors businesses seek to attract, the process of filing the offering statement with the Commission, state securities law compliance, and the cost-effectiveness of Regulation A relative to other exemptions.[35]

D. The Section 3(b)(2) Exemption

Section 401 of the JOBS Act imposes a number of requirements for the rules the Commission must adopt under Section 3(b)(2), and also provides for the exercise of Commission discretion in setting additional terms and conditions for the exemption.

The mandatory provisions, in addition to the $50 million annual offering limit, include:

- Features based on the current provisions of Regulation A:
- the securities may be offered and sold publicly;
- the securities are not ''restricted securities'' within the meaning of federal securities laws and regulations;
- the civil liability provisions of Section 12(a)(2) of the Securities Act would apply to offers and sales of the securities; and
- issuers may solicit interest in the offering before filing an offering statement;
- A new requirement for issuers to file audited financial statements with the Commission annually;[36] and
- A limitation on the types of securities eligible for exemption under Section 3(b)(2) to equity securities, debt securities, and debt securities convertible into or exchangeable for equity interests, including any guarantees of such securities.

The Commission, in its discretion, may determine to include other terms, conditions, or requirements, including:

- electronic filing of offering materials, the form and content of which would be prescribed by the Commission, including audited financial statements, issuer business description, issuer financial condition, issuer corporate governance principles, use of investor funds, and other appropriate matters;
- ''bad actor'' disqualification provisions (which, if included, must be substantially similar to the regulations adopted under Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'')); [37] and
- periodic disclosures regarding the issuer, its business operations, financial condition, corporate governance principles, use of investor funds, and other appropriate matters.[38]

Section 401 of the JOBS Act also requires the Commission to review the $50 million offering limit not later than two years after enactment of the JOBS Act and every two years thereafter and, if the Commission decides not to increase the amount, requires that it report its reasoning to Congress.

[26] Form 1–A, Part II (Offering Circular), 17 CFR 239.90.

[27] 17 CFR 230.254.

[28] 17 CFR 230.254(b)(2). Testing the waters solicitation materials must state: (i) That no money is being solicited or will be accepted, if sent in response; (ii) that no sales will be made or commitment to purchase accepted until delivery of an offering circular that includes complete information about the issuer and the offering; (iii) that an indication of interest by a prospective purchaser is non-binding; and (iv) the identity of the chief executive officer of the issuer and a brief description of the issuer's business and products.

[29] 17 CFR 230.253(a).

[30] Form 1–A, Part F/S, 17 CFR 239.90. Market participants have indicated that the laws of some states may require audited financial statements for offerings conducted under Regulation A.

[31] *See, e.g.,* 17 CFR 230.502(d); *see also* Rule 144 (17 CFR 230.144).

[32] *See* SEC Rel. No. 33–6924 (March 20, 1992) [57 FR 9768], at fn. 57 (discussing the anti-fraud and civil liability provisions applicable to Regulation A).

[33] One qualified offering involved a dividend reinvestment plan by an issuer that did not include an offering amount.

[34] The figures cited above are derived from information contained in the Commission's EDGAR database and the S&P Capital IQ database. *See also* Section IV. below for a discussion on the usage of current methods of raising capital of up to $50 million.

[35] *Factors that May Affect Trends in Regulation A Offerings,* GAO–12–839 (July 2012) (*available at: http://www.gao.gov/assets/600/592113.pdf*). The GAO report concludes that it is unclear whether increasing the Regulation A offering ceiling from $5 million to $50 million will improve the utility of the exemption.

[36] JOBS Act Section 401(a)(2).

[37] Public Law 111–203, § 926, 124 Stat. 1376, 1851 (July 21, 2010). Among other things, Section 926 required the issuance of disqualifying rules substantially similar to the ''bad actor'' disqualification provisions of Rule 262 of existing Regulation A.

[38] JOBS Act Section 401(a)(2).

II. Proposed Amendments to Regulation A

A. Overview

Title IV of the JOBS Act amended Section 3(b) of the Securities Act to add Section 3(b)(2), which, subject to various terms and conditions, directs the Commission to enact rules that add a class of securities exempt from the registration provisions of the Securities Act. Prior to the amendment, Section 3(b) contained the statutory authority relied upon to establish current Regulation A. Although the JOBS Act amended Section 3(b) to designate this existing authority as Section 3(b)(1) and add new Section 3(b)(2), it did not amend the existing statutory authority of Regulation A or direct the Commission to amend specific rules adopted thereunder.[39] We propose to implement this JOBS Act mandate by expanding Regulation A into two tiers: Tier 1, for offerings of up to $5 million; and Tier 2, for offerings of up to $50 million.[40] The proposals for offerings under Tier 1 and Tier 2 build on current Regulation A, and preserve, with some modifications, existing provisions regarding issuer eligibility, offering circular contents, testing the waters, and ''bad actor'' disqualification. We also propose to modernize the Regulation A filing process for all offerings and align practice in certain areas with prevailing practice for registered offerings, to create additional flexibility and streamline compliance for Regulation A issuers. Issuers in Tier 2 offerings would be required to include audited financial statements in their offering documents and to file annual, semiannual and current reports with the Commission, and purchasers in Tier 2 offerings would be subject to certain limitations on their investment. The differences between Tier 1 and Tier 2 offerings are described more fully below.

In developing the current proposals, we considered the statutory language of JOBS Act Section 401, the legislative history, the current Regulation A exemption, comment letters received to date on Title IV of the JOBS Act[41] and recent recommendations of the Commission's Government-Business Forum on Small Business Capital Formation,[42] the Advisory Committee on Small and Emerging Companies,[43] and the Equity Capital Formation Task Force.[44]

Following are the key provisions of the proposed amendments to Regulation A:

Scope of the exemption:

- Tier 1: annual offering limit of $5 million, including no more than $1.5 million on behalf of selling securityholders.
- Tier 2: annual offering limit of $50 million, including no more than $15 million on behalf of selling securityholders.
- Update the restrictions on issuer eligibility to exclude from Regulation A issuers that are or have been subject to any order of the Commission pursuant to Section 12(j) of the Exchange Act entered within five years before the filing of the offering statement.
- Update the restrictions on issuer eligibility to exclude from Regulation A issuers that have not filed with the Commission the ongoing reports required by the proposed rules during the two years immediately preceding the filing of an offering statement.
- Limit the amount of securities an investor can purchase in a Tier 2 offering to no more than 10% of the greater of annual income and net worth.
- Exclude asset-backed securities, as defined in Regulation AB, from the list of eligible securities.
- Update the safe harbor from integration and provide additional guidance on the potential integration of offerings conducted concurrently with, or close in time after, a Regulation A offering.

Solicitation materials:

- Permit issuers to ''test the waters'' or solicit interest in a potential offering with the general public either before or after the filing of the offering statement, so long as any solicitation materials used after publicly filing the offering statement are preceded or accompanied by a preliminary offering circular or contain a notice informing potential investors where and how the most current preliminary offering circular can be obtained. This requirement could be satisfied by providing the uniform resource locator (''URL'') where the preliminary offering circular or the offering statement may be obtained on EDGAR.

Qualification, communications, and offering process:

- Require issuers and intermediaries in the prequalification period to deliver a preliminary offering circular to prospective purchasers at least 48 hours in advance of sale.
- Modernize the qualification, communications, and offering process in Regulation A to reflect analogous provisions of the Securities Act registration process:[45]
- Permit issuers and intermediaries to satisfy their delivery requirements as to the final offering circular under an ''access equals delivery'' model when the final offering circular is filed and available on EDGAR;
- Require issuers that sell to prospective purchasers in reliance on the delivery of a preliminary offering circular to, not later than two business days after completion of the sale, provide the purchasers with a copy of the final offering circular or a notice that the sale occurred pursuant to a qualified offering statement that includes the URL where the final offering circular or to the offering statement of which such final offering circular is part may be obtained and contact information sufficient to notify a purchaser where a request for a final offering circular can be sent and received in response; and
- Permit issuers to file offering circular supplements after qualification of the offering statement in certain circumstances in lieu of post-qualification amendments, including to provide the types of information that may be excluded from a prospectus under Rule 430A.
- Permit continuous or delayed offerings under the proposed rules, but require issuers in continuous or delayed Tier 2 offerings to be current in their annual and semiannual reporting obligations.
- Permit issuers to qualify additional securities in reliance on Regulation A by filing a post-qualification amendment to a qualified offering statement.

Offering statement:

[39] *Cf.* Title II of the JOBS Act, Public Law 112–106, § 201 (directing the Commission to amend Rule 506 of Regulation D, 17 CFR 230.506).

[40] An issuer of $5 million or less of securities could elect to proceed under either Tier 1 or Tier 2.

[41] To facilitate public input on JOBS Act rulemaking before the issuance of rule proposals, the Commission has invited members of the public to make their views known on various JOBS Act initiatives in advance of any rulemaking by submitting comment letters to the Commission's Web site at *http://www.sec.gov/spotlight/jobsactcomments.shtml.* Comment letters received to date on Title IV of the JOBS Act are *available at: http://www.sec.gov/comments/jobs-title-iv/jobs-title-iv.shtml.*

[42] Prior recommendations of the Commission's Government-Business Forum on Small Business Capital Formation (''Small Business Forum'') are *available at: http://www.sec.gov/info/smallbus/sbforum.shtml.*

[43] Prior recommendations of the Advisory Committee on Small and Emerging Companies (''Advisory Committee'') are *available at: http://www.sec.gov/info/smallbus/acsec.shtml.*

[44] Equity Capital Task Force, *From the On-Ramp to the Freeway: Refueling Job Creation and Growth by Reconnecting Investors with Small-Cap Companies,* presentation to the U.S. Dep't. of Treasury (November 11, 2013), *available at: http://www.equitycapitalformationtaskforce.com/* (''ECTF Report'').

[45] *See* Securities Offering Reform, SEC Rel. No. 33–8591 (July 19, 2005) [70 FR 44722].

• Require issuers to electronically file offering statements with the Commission.

• Permit the non-public submission of offering statements and amendments for review by Commission staff before filing such documents with the Commission, so long as all such documents are publicly filed not later than 21 calendar days before qualification.

• Eliminate the Model A (Question-and-Answer) disclosure format under Part II (Offering Circular) of Form 1–A.

• Update and clarify the Model B (Narrative) disclosure format under Part II of Form 1–A (renaming it as Offering Circular), while continuing to permit the use of Part I of Form S–1 narrative disclosure as an alternative.

• Allow an offering statement to be qualified only by order of the Commission rather than, in the absence of a delaying notation on the offering statement, without Commission action on the 20th calendar day after filing.

• Require issuers in a Tier 2 offering to include audited financial statements in their offering circulars.

• Require all issuers to file balance sheets for the two most recently completed fiscal year ends (or for such shorter time that they have been in existence).

• Permit issuers to provide financial statements in Form 1–A that are dated not more than nine months before the date of non-public submission or filing, and require issuers to include financial statements in Form 1–A that are dated not more than nine months before qualification, with the most recent annual or interim balance sheet not older than nine months. If interim financial statements are required, they must cover a period of at least six months.

Ongoing reporting:

• Require issuers that conduct a Tier 1 offering to electronically file a Form 1–Z exit report with the Commission not later than 30 calendar days after termination or completion of a qualified Regulation A offering to provide information about sales in such offering and to update certain issuer information.

• Require issuers that conduct a Tier 2 offering to electronically file with the Commission annual and semiannual reports, as well as current event updates.

• Require issuers that conduct a Tier 2 offering to, where applicable, provide special financial reports to provide information to investors in between the time the financial statements are included in Form 1–A and the issuer's first periodic report due after qualification of the offering statement.

• Permit the ongoing reports filed by an issuer conducting a Tier 2 offering to be used to satisfy a broker-dealer's obligations under Exchange Act Rule 15c2–11.

• Provide that issuers conducting Tier 2 offerings would exit the Regulation A ongoing reporting regime when they become subject to the ongoing reporting requirements of Section 13 of the Exchange Act, and may exit the Regulation A reporting regime at any time by filing a Form 1–Z exit report after completing reporting for the fiscal year in which the offering statement was qualified, so long as the securities of each class to which the offering statement relates are held of record by fewer than 300 persons and offers or sales made in reliance on a qualified Regulation A offering statement are not ongoing.

• Require issuers that conduct a Tier 2 offering to include in their first annual report after termination or completion of a qualified Regulation A offering, or in their Form 1–Z exit report, information about sales in the terminated or completed offering and to update certain issuer information.

• Eliminate the requirement that issuers file a Form 2–A with the Commission to report sales and the termination of sales made under Regulation A every six months after qualification and within 30 calendar days after the termination, completion, or final sale of securities in the offering.

''Bad actor'' disqualification provisions:

• Substantially conform the ''bad actor'' disqualification provisions of Rule 262 to new Rule 506(d) and add a new disclosure requirement similar to Rule 506(e).

Application of state securities laws:

• In light of the total package of investor protections proposed to be included in the implementing rules for Regulation A, provide for the preemption of state securities law registration and qualification requirements for securities offered or sold to ''qualified purchasers,'' defined to be all offerees of securities in a Regulation A offering and all purchasers in a Tier 2 offering.

B. Scope of Exemption

1. Eligible Issuers

Section 401 of the JOBS Act does not include any express issuer eligibility requirements.[46] Currently, Regulation A is limited to companies organized in and with their principal place of business inside the United States or Canada. It is unavailable to:

• companies subject to the ongoing reporting requirements of Section 13 or 15(d) of the Exchange Act (''reporting companies'');

• companies registered or required to be registered under the Investment Company Act of 1940 (''investment companies'');[47]

• development stage companies that have no specific business plan or purpose or have indicated their business plan is to engage in a merger or acquisition with an unidentified company or companies (''blank check companies'');[48] and

• issuers of fractional undivided interests in oil or gas rights, or similar interests in other mineral rights.[49]

Several commenters have suggested that the expanded exemption should continue to be unavailable to blank check companies,[50] two of which also suggested that the exemption should be unavailable to special purpose acquisition companies (''SPACs'').[51] Two commenters suggested that business development companies (''BDCs'') should be permitted to rely on

[46] Section 3(b)(2)(G)(ii) specifies that if the Commission chooses to enact so-called ''bad actor'' disqualification provisions, such provisions must be substantially similar to the regulations adopted in accordance with Section 926 of the Dodd-Frank Act. Proposed ''bad actor'' disqualification provisions are discussed below in Section II.F.

[47] 15 U.S.C. 80a–1 *et seq.* (''Investment Company Act''). The proposed rules would clarify the current exclusion of business development companies from Regulation A. *See* SEC Rel. No. 33–6924, at fn. 65 (noting that companies registered or required to be registered under the Investment Company Act of 1940, including business development companies, are prohibited from using Regulation A).

[48] Rule 251(a)(3); *see also* SEC Rel. No. 33–6949 [57 FR 36442] (July 30, 1992), at fn. 50 (clarifying that blank check companies regardless of whether they are issuing penny stock are precluded from relying on Regulation A).

[49] Regulation B formerly provided exemptive relief for such issuers. Regulation B was rendered obsolete in light of other exemptions, such as those afforded issuers under Section 4(a)(2) of the Securities Act and Regulation D, and was rescinded in May 1996. *See* SEC Release No. 33–7300 [61 FR 30398] (May 31, 1996).

[50] Letter from Catherine T. Dixon, Chair, Federal Regulation of Securities Committee, American Bar Association, Sept. 7, 2012 (''ABA Letter''); Letter from William R. Hambrecht, Chairman and CEO, WR Hambrecht + Co., Jan. 4, 2013 (''WR Hambrecht + Co. Letter''); Letter from A. Heath Abshure, President, North American Securities Administrators Association (''NASAA''), April 10, 2013 (''NASAA Letter 2''); *see also* Letter from Robert R. Kaplan, Jr. and Mark A. Cleaves, Kaplan Voekler Cunningham & Frank PLC (''Kaplan Voekler''), May 14, 2013 (Kaplan Voekler Letter 2'').

[51] NASAA Letter 2; WR Hambrecht + Co. Letter; *see also* Kaplan Voekler Letter 2 (noting that there are important distinctions between SPACs, blank check companies, and shell companies). A SPAC is a type of blank check company created specifically to pool funds in order to finance a merger or acquisition opportunity within a set timeframe.

the exemption,[52] and also suggested that shell companies should no longer be permitted to rely on Regulation A.[53] One commenter expressed concern over allowing BDCs, as well as real estate investment trusts (''REITs''), to rely on the exemption without additional entity-specific disclosure requirements,[54] while another suggested that REITs should be allowed to rely on the exemption without additional disclosure obligations.[55] One commenter suggested that the Commission permit reporting companies, and foreign private issuers [56] that expressly consent to Exchange Act Section 10(b) liability, to rely on the exemption.[57] One commenter proposed limiting the availability of the exemption to non-reporting companies, and to operating companies, while continuing to make the exemption unavailable to pooled investment funds.[58]

We propose to add two new categories of ineligible issuers to, but to otherwise maintain, Regulation A's existing issuer eligibility requirements. As proposed, the exemption would continue to be available to companies organized in, and with their principal place of business inside, the United States or Canada. Under the proposal, the exemption would continue to be unavailable to Exchange Act reporting companies, investment companies, blank check companies, certain issuers disqualified from participation in such offerings under the ''bad actor'' provisions of Rule 262, as proposed to be amended,[59] and to issuers of fractional undivided interests in oil or gas rights, or similar interests in other mineral rights.[60]

Additionally, we propose to make the exemption unavailable to issuers that have not filed with the Commission the ongoing reports required by the proposed rules during the two years immediately preceding the filing of a new offering statement (or for such shorter period that the issuer was required to file such reports).[61] We recently proposed a similar eligibility requirement for issuers in our proposed rules for securities-based crowdfunding transactions pursuant to Section 4(a)(6) of the Securities Act.[62] We believe that our rules for ongoing reporting in Regulation A, as proposed to be amended, would benefit investors by enabling them to consider updated information about the issuer, make informed investment decisions, facilitate the development of an efficient secondary market in such securities, and would enhance our ability to analyze and monitor the Regulation A market. We therefore believe fulfilling an obligation to file ongoing reports pursuant to proposed Regulation A is an important investor protection that should be a factor in determining issuer eligibility.

We further propose to exclude from the category of eligible issuers under Regulation A issuers that are or have been subject to an order by the Commission denying, suspending, or revoking the registration of a class of securities pursuant to Section 12(j) of the Exchange Act that was entered within five years before the filing of the offering statement. Under Section 12(j) of the Exchange Act, an issuer's securities registered under the Exchange Act may be subject to a denial, suspension, or revocation of registration pursuant to an order by the Commission if, after notice and opportunity for a hearing, the Commission finds that the issuer of such securities has failed to comply with any of the provisions of, or the rules and regulations enacted under, the Exchange Act. We do not believe that issuers that, after notice and opportunity for a hearing, are or have been subject to such orders by the Commission within a five-year period immediately preceding the filing of the offering statement should benefit from the provisions of Regulation A, as proposed to be amended. We would therefore exclude such issuers from the category of eligible issuers.

We solicit comment on the proposed issuer eligibility requirements, the suggestions made in the advance comments to date, and on the issues discussed below.

Request for Comment

1. As proposed, in addition to the two newly proposed issuer eligibility requirements, should we otherwise maintain the existing categories of Regulation A issuer eligibility requirements? Why or why not? If not, which categories of issuer eligibility requirements should we alter, and why? Please explain.

2. As proposed, should we add an additional issuer eligibility requirement to exclude issuers that have not filed with the Commission the ongoing reports required by the proposed rules during the two years immediately preceding the filing of a new offering statement (or for such shorter period that the issuer was required to file such reports)? If so, should we only require issuers to be current in their Regulation A ongoing reporting at the time of the filing of a new offering statement in order to be eligible? Alternatively, should we consider a time period other than two years? Why or why not?

3. As proposed, should we add an additional issuer eligibility requirement to exclude issuers that are or have been subject to an order by the Commission denying, suspending, or revoking the registration of a class of securities pursuant to Section 12(j) of the Exchange Act that was entered within five years before the filing of the offering

[52] ABA Letter (suggesting that permitting BDCs to rely on Regulation A would be consistent with the policy goals behind enactment of Section 3(b)(2) of the Securities Act, and Commission staff guidance on the JOBS Act and the treatment of BDCs as emerging growth companies under Title I of the JOBS Act); WR Hambrecht + Co. Letter (suggesting that permitting BDCs to rely on Regulation A would be consistent with the policy goals behind enactment of Section 3(b)(2) of the Securities Act). A BDC is a closed-end company that, among other things, is operated for the purpose of making investments in certain types of securities, and makes available to issuers of such securities significant managerial assistance. *See* Section 2(a)(48) of the Investment Company Act.

[53] ABA Letter; WR Hambrecht + Co. Letter. A shell company is a company that has, or at any time previously has had, no or nominal operations, and either no or nominal assets, assets consisting solely of cash or cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets. 17 CFR 230.405; *see also* 17 CFR 144(i)(1)(i).

[54] NASAA Letter 2 (citing the unique ''nature and timing of [such companies'] capital formation and investment strategies, fee structures, and liquidity, necessitate disclosure fitting for these specific entities.''). We solicit comment on potential BDC- and REIT-specific disclosure in Section II.C.3.b. below.

[55] Kaplan Voekler Letter 2. A REIT is a company that owns and generally operates income-producing real estate or real estate-related assets. *See* Sections 856 through 859 of Internal Revenue Code, 26 U.S.C. 856–859; *see also* general discussion of REIT characteristics in SEC Rel. No. IC–29778 (Aug. 31, 2011) [76 FR 55300], at 55302. Among other things, a REIT must have the bulk of its assets and income connected to real estate investment and must distribute at least 90 percent of its taxable income to shareholders annually in the form of dividends.

[56] Under Rule 405 (17 CFR § 230.405), a foreign private issuer is any foreign issuer—other than a foreign government—except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter:

(i) More than 50 percent of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and

(ii) Any of the following:

(A) The majority of the executive officers or directors are United States citizens or residents;

(B) More than 50 percent of the assets of the issuer are located in the United States; or

(C) The business of the issuer is administered principally in the United States.

[57] ABA Letter.

[58] WR Hambrecht + Co. Letter.

[59] *See* discussion in Section II.G. below.

[60] *See* proposed Rules 251(b) and 262.

[61] *See* Section II.E.1. below for a discussion on proposed ongoing reporting requirements applicable to Tier 1 and Tier 2 offerings.

[62] *See* SEC Rel. No. 33–9470 (Oct. 23, 2013), at 36 [78 FR 66427] (proposed rules for Regulation Crowdfunding under Title III of the JOBS Act) *and* proposed Rule 100(b)(5) of Regulation Crowdfunding.

statement? Why or why not? If not, please explain. Alternatively, should we alter the proposed five-year period during which an issuer could not have been subject to an order by the Commission pursuant to Section 12(j) to cover a longer or shorter period of time? Why or why not? If so, please explain.

a. U.S. Nexus Other Than Organization and Domicile

We are seeking comment on whether we should expand availability of the Regulation A exemption to issuers that may not satisfy domicile-based requirements, particularly those that have a substantial United States nexus, such as certain foreign companies with domestic operations, or domestic subsidiaries of foreign multinational companies.[63]

As its name suggests, one goal of the JOBS Act was the creation of jobs within the United States.[64] Expansion of issuer eligibility to include foreign issuers with a substantial U.S. nexus may serve to better implement the JOBS Act goal of domestic job creation. According to statistics from the U.S. Department of Commerce's Bureau of Economic Analysis (''BEA''), many American jobs are created not only by U.S. companies, but by the U.S. affiliates of foreign multinational companies.[65] According to the report, total U.S. employment by majority-owned U.S. affiliates of foreign multinational companies rose in 2011 at nearly twice the rate of employment in the U.S. private-industry sector as a whole.[66] As the BEA data suggest, domestic job creation is not necessarily dependent on company domicile or principal place of business.[67]

Currently, Regulation A is limited to companies organized, and with their principal place of business, in the United States or Canada.[68] The Commission could make the Regulation A exemption available to all non-U.S. issuers, rather than only Canadian issuers. Additionally, we could subject issuers to conditions intended to ensure that the capital raised in the offering is put to work in the United States. For example, we could add a requirement that a minimum percentage of the offering proceeds be used in the United States, in connection with the issuer's domestic operations.[69] Such a requirement could, however, be difficult to administer because of challenges in delineating domestic versus foreign operations and in tracing use of proceeds.

Alternatively, issuer eligibility under Regulation A could be extended to ''domestic issuers,'' defined as any issuer that is not a foreign government or a ''foreign private issuer.''[70] Domestic issuers would, in general, have a demonstrated presence in the United States, which could increase the likelihood that proceeds from the offering are used within the United States.[71] We could limit issuer eligibility further by adding a condition that most of the offering proceeds be used in connection with the issuer's U.S. domestic operations.

Request for Comment

4. Should issuer eligibility to rely on Regulation A continue to require an issuer to be organized under the laws of the United States or Canada with a principal place of business in the United States or Canada? Or should Regulation A be limited to issuers organized and with a principal place of business in the United States, thereby excluding Canadian issuers? Should Regulation A be made available to ''domestic issuers'' as described above, or to all issuers, including foreign private issuers? Is there a reason to treat Canadian issuers differently from other foreign issuers? What would the impact be on issuers, investors, and other market participants if the issuer eligibility criteria were broadened? Please explain.

5. If we modify or eliminate current requirements regarding domicile and principal place of business, should we limit availability of the exemption in some other way that reflects a U.S. nexus? If so, how should we define, or in what ways should we limit the availability of the exemption to issuers that demonstrate, a U.S. nexus? Are there criteria we could use that would be easy to administer? If so, what criteria?

6. If we extend issuer eligibility to include foreign private issuers, should we require express consent from such issuers to Exchange Act Section 10(b) liability?[72] Should we consider requiring additional or alternative conditions for the eligibility of such issuers? Why or why not? Should we make other changes in Regulation A to accommodate such issuers? For example, as proposed with respect to Canadian issuers,[73] should we permit all non-U.S. issuers to prepare their financial statements using International Financial Reporting Standards (IFRS) as issued by the International Accounting

[63] A domestic subsidiary of a foreign multinational company (*i.e.,* one organized in the United States or Canada) would be eligible to rely on Regulation A if its principal place of business were located in the United States or Canada.

[64] *See, e.g.,* H.R. Rep. No. 112–206, at 4 (2012) (''Small companies are critical to economic growth in the United States. Amending Regulation A to make it viable for small companies to access capital will permit greater investment in these companies, resulting in economic growth and jobs. By reducing the regulatory burden and expense of raising capital from the investing public, [Title IV of the JOBS Act] will boost the flow of capital to small businesses and fuel America's most vigorous job-creation machine.'').

[65] *See* Anderson, Thomas, U.S. Dep't of Commerce, Bureau of Econ. Analysis, *Summary Estimates for Multinational Companies: Employment, Sales, and Capital Expenditures for 2011* (Apr. 18, 2013) (''BEA Release 13–16''), at Table 3, *available at: http://www.bea.gov/newsreleases/international/mnc/2013/_pdf/mnc2011.pdf.* The BEA's advance summary estimates for 2011 show total employment of approximately 22.9 million workers by U.S. parents of multinational companies (some of which are themselves foreign-owned), accounting for approximately one-fifth of total U.S. private sector employment, and total employment of approximately 5.6 million workers by majority-owned U.S. affiliates of foreign multinational companies, accounting for approximately five percent of total U.S. private sector employment. *Id.* at 1–2. As some U.S. parents of multinational companies are themselves foreign-owned, there is some overlap between the employment figures of U.S. parents of multinational companies and U.S. affiliates of foreign multinational companies. For more information on multinational companies, *see http://www.bea.gov/iTable/index_MNC.cfm.*

[66] *BEA Release 13–16,* at 2.

[67] *See id.; see also* Matthew J. Slaughter, *American Companies and Global Supply Networks: Driving U.S. Economic Growth and Jobs by Connecting with the World,* Business Roundtable et al. (January 2013), at 9, *available at: http://businessroundtable.org/uploads/studies-reports/downloads/BRT-SlaughterPaper-singles-Dec21.pdf* (noting that both U.S.-headquartered multinational companies and foreign-headquartered multinational companies that operate in the U.S. create tens of millions of well-paying jobs domestically).

[68] The Commission originally proposed the elimination of Canadian issuers from the Regulation A exemptive scheme in 1992 on the grounds that such issuers rarely used the exemption. *See* SEC Rel. No. 33–6924, at 19. In response to public comment, however, this proposal was not adopted. SEC Rel. No. 33–6949, at 36443. No Canadian issuers have qualified an offering in reliance on Regulation A since 2002.

[69] *Cf.* Rule 147. 17 CFR 230.147. Rule 147 is a safe harbor from registration under Section 3(a)(11) of the Securities Act. Section 3(a)(11) is more commonly known as the intrastate exemption, and requires, among other things, that issuers conducting an intrastate offering use at least 80% of the net proceeds of the offering in connection with their business operations in the relevant state.

[70] In Regulation S (17 CFR 230.901 *et seq.*), a ''domestic issuer'' is defined as any issuer other than a ''foreign government'' or ''foreign private issuer.'' 17 CFR 230.902(e). A ''foreign government'' means the government of any foreign country or of any political subdivision of a foreign country. *See* 17 CFR 230.405. *See* fn. 56. above for the definition of a ''foreign private issuer.''

[71] The Commission previously used the term ''domestic issuers'' in the proposed amendments to Regulation A in 1992 to refer to entities organized and with a principal place of business in the United States. *See* SEC Rel. No. 33–6924, at 19, 156.

[72] In 2010, the U.S. Supreme Court held that Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), covers only transactions in securities listed on domestic exchanges, and securities purchased or sold domestically. *Morrison* v. *National Australia Bank Ltd.,* 130 S. Ct. 2869 (2010). *But see,* Section 929P(b) of the Dodd-Frank Act, Public Law 111–203, § 929P(b).

[73] *See* discussion in Section II.C.3.b(2). below.

Standards Board (IASB), rather than U.S. Generally Accepted Accounting Principles (U.S. GAAP)?

b. Additional and Alternative Types of Issuers

As noted above, we propose not to amend Regulation A's existing prohibitions on use of the exemption by investment companies registered or required to be registered under the Investment Company Act, including BDCs; blank check companies and SPACs; and issuers of fractional undivided interests in oil or gas rights, or similar interests in other mineral rights. As proposed, shell companies that do not meet the definition of ''blank check company'' would continue to be able to rely on the exemption.[74] We seek comment on whether to permit BDCs, blank check companies and SPACs, and oil, gas and mineral interest rights issuers to rely on Regulation A, as well as on the potential exclusion of shell companies.

BDCs. BDCs are a type of closed-end company operated for the purpose of making investments in small, developing, or financially troubled companies. Typically, BDCs are subject to the registration and reporting requirements of the Securities Act and Exchange Act. The Investment Company Act requires BDCs to have at least 70% of their investment portfolio in eligible portfolio companies and certain other assets at the time they make any new investment.[75] Rules 2a–46 and 55a–1 of the Investment Company Act define eligible portfolio companies to include all private companies and companies whose securities are listed on a national securities exchange but have an aggregate market value of less than $250 million, or that met such requirements at the time of the BDC's initial investment in such company.[76] Currently, BDCs are able to rely on Regulation E[77] for offerings of up to $5 million in any twelve-month period. Extension of Regulation A issuer eligibility to BDCs could assist small companies with capital formation by indirectly providing such companies—otherwise qualifying as eligible portfolio companies—with greater access to investment capital. As noted above, however, one commenter expressed concern about the potential extension of Regulation A to BDCs absent disclosure requirements that are more appropriately tailored for these issuers.[78]

Blank Check Companies and SPACs. By its terms, the definition of blank check companies under the federal securities laws can include early stage and startup companies with no specific business plans.[79] Extension of Regulation A issuer eligibility to include companies with characteristics that are similar to blank check companies could therefore be consistent with Title IV's goal of increasing the capital formation options for smaller companies.[80] As noted above, however, some commenters have expressed concern about, and recommended against, permitting blank check companies and SPACs to use Regulation A.[81] As currently proposed, blank check companies and SPACs would not be permitted to rely on the exemption. We seek comment on whether the Commission should revisit this exclusion, and, if so, on what basis.

Shell Companies. A shell company is a company that has, or at any time previously has had, no or nominal operations, and either no or nominal assets, assets consisting solely of cash or cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets.[82] Shell companies are not expressly excluded from Regulation A, although any shell company that met the definition of a blank check company would be excluded on that basis. As noted above, some commenters have suggested that the Commission consider an express exclusion for shell companies.[83] At their earliest stages of development, however, many small early stage and startup companies have limited operations and few, if any, assets. We anticipate that some Regulation A issuers would be startups where it may be uncertain as to whether they fall within the shell company definition.[84] We believe, however, that Regulation A, as proposed to be amended, is intended to provide smaller companies, including early stage companies, the opportunity to raise capital from the general public in a manner that is consistent with the proposed rules. In our view, excluding such companies from proposed Regulation A would be contrary not only to the provisions of current Regulation A, but also to Title IV of the JOBS Act.[85] We do not therefore propose to exclude shell companies from reliance on Regulation A. For the same reasons we are soliciting comment on potential blank check companies' access to, or exclusion from, the exemptive scheme; however, we also seek comment on whether shell companies should be prohibited from relying on Regulation A.

Operating Companies. We are also seeking comment on whether we should take a different approach with respect to issuer eligibility requirements and, instead of prohibiting blank check company access to the exemption (as is currently proposed and consistent with current Regulation A), to limit availability of the exemption to companies satisfying a new definition of ''operating company.''[86] The Commission previously proposed to limit Regulation A to operating companies in 1992.[87] Though not adopted at that time, the Commission proposed to make the exemption available only ''to raise funds to put into the operations of an actual business and not simply for investment.'' The proposal would have specifically excluded ''those enterprises with the principal business of investing or reinvesting funds in securities, properties, commodities, business

[74] A shell company that is a development stage company with no specific business plan or purpose would not be an eligible issuer under the exclusion for blank check companies.

[75] *See* Section 2(a)(48) of the Investment Company Act.

[76] 17 CFR 270.2a–46; 17 CFR 270.55a–1.

[77] 17 CFR 230.601 *et seq.*

[78] NASAA Letter 2; *see also* fn. 54 above.

[79] A blank check company is a development stage company that has no specific business plan or purpose or has indicated its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity. *See* 17 CFR 230.419.

[80] *See* fn. 85 below. The Commission recently acknowledged, in proposing rules for securities-based crowdfunding transactions under Section 4(a)(6) of the Securities Act, the challenges associated with distinguishing between early stage companies that can provide information sufficient to support such transactions and those whose business plan is so indeterminate that they may not be able to provide adequate information. *See* SEC Rel. No. 33–9470, at 37.

[81] *See* fn. 89 below; *see also* fn. 51 above for the definition of a SPAC.

[82] 17 CFR 230.405; *see also* 17 CFR 144(i)(1)(i).

[83] ABA Letter; WR Hambrecht + Co. Letter (suggesting that shell company access to Regulation A is inconsistent with the JOBS Act because such companies do not promote job creation).

[84] *But see* SEC Rel. No. 33–8869 (December 6, 2007) at fn. 172 (''Rule 144(i)(1)(i) is not intended to capture a 'startup company,' or, in other words, a company with a limited operating history, in the definition of a reporting or non-reporting shell company, as we believe that such a company does not meet the condition of having 'no or nominal operations.' '').

[85] H.R. Rep. No. 112–206, at 4 (2012) (''Small companies are critical to economic growth in the United States. Amending Regulation A to make it viable for small companies to access capital will permit greater investment in these companies, resulting in economic growth and jobs. By reducing the regulatory burden and expense of raising capital from the investing public, [Title IV of the JOBS Act] will boost the flow of capital to small businesses and fuel America's most vigorous job-creation machine.'').

[86] An operating company definition would not alter our current proposal to continue to prohibit reporting company and investment company reliance on Regulation A.

[87] *See* SEC Rel. No. 33–6924, at 20–21.

opportunities or similar media of speculative opportunity.'' [88] Along the same lines, we seek comment on whether we should exclude certain non-operating companies from Regulation A. We could, for example, limit availability of the exemption to operating companies, defined to include issuers that have generated total revenue in excess of a certain amount (*e.g.,* $1,000,000) over a certain period of time (*e.g.,* its prior two fiscal years) through the provision of goods or services, or based on similar or different criteria intended to facilitate access to the proposed rules by small companies. Adopting an operating company definition could more effectively eliminate the types of blank check companies, SPACs, and shell companies that are not otherwise the intended beneficiaries of Regulation A from eligibility, an issue we discuss above, request comment on below, and about which several commenters have expressed concern.[89]

Issuers of Interests in Mineral Rights. Issuers of fractional undivided interests in oil or gas rights, or similar interests in other mineral rights, have historically been prohibited from relying on Regulation A. Instead, such issuers were permitted to conduct offerings in reliance on Regulation B.[90] Regulation B was rescinded in 1996, however, as it was deemed no longer necessary in light of other exemptions available to these types of issuers, such as Section 4(a)(2) of the Securities Act and Regulation D.[91] In light of the elimination of Regulation B and the current ability of such issuers to conduct offerings under, *e.g.,* Rule 506 of Regulation D, we seek comment on whether such issuers should continue to be ineligible to rely on Regulation A, or should now be permitted to conduct offerings under Regulation A.

Request for Comment

7. Should we amend Regulation A to make BDCs eligible to rely on it? Why or why not? Would it raise particular concerns about investor protection? If so, please explain.

8. Would extension of Regulation A issuer eligibility to BDCs be inconsistent with the exemption's current prohibition on use by reporting companies? If so, should we limit the extension of Regulation A issuer eligibility to only non-Exchange Act reporting BDCs? If not, should we permit BDC ongoing reporting under the Exchange Act to satisfy their reporting obligations under Regulation A? [92] If Regulation A eligibility were extended to BDCs, should other rules be amended to require additional disclosure about such issuers? If so, what specific additional disclosure should we require about BDCs?

9. Should we extend Regulation A issuer eligibility to include blank check companies? Or would such an extension be inconsistent with the intent of Title IV of the JOBS Act, or the Commission's investor protection mandate? Why or why not?

10. If all or some segment of blank check companies are permitted to rely on Regulation A, should we specifically exclude SPACs from being able to rely on the exemption? Why or why not?

11. Should we amend Regulation A to make shell companies ineligible to rely on it? Or would the exclusion of shell companies from Regulation A be too broad, such that many small companies or startups would become ineligible to rely on the exemption?

12. Should we limit access to Regulation A to issuers that qualify as ''operating companies''? If so, should we use the operating company definition described above, or some modified version? Please include a discussion of the effects on issuer access to the exemption that would result from using such a definition as a condition to issuer eligibility.

13. Should we reconsider the continued prohibition on use of the Regulation A exemptive scheme by issuers of fractional undivided interest in oil or gas rights, or similar interests in other mineral rights? If so, please explain. Are there risks associated with this type of issuer that merit maintaining Regulation A's current prohibition on use by such issuers?

14. Are there other limitations on issuer eligibility that we should consider? Alternatively, are there other types of issuers that could benefit from Regulation A, as proposed to be amended? Please provide data, if available, on the impact of imposing fewer, more, or different limitations on issuer eligibility than we have proposed.

c. Potential Limits on Issuer Size

Regulation A currently limits the size of offerings that can be conducted under the exemption, but not the size of issuers eligible to rely on the exemption. We do not currently propose any issuer size-based limitations and to date we have not received any public comment on this issue. While we appreciate that limitations on offering size may, to some extent, create a practical limitation on the ability of larger issuers to rely on Regulation A, we are soliciting comment on potentially limiting access to Regulation A on the basis of issuer size.

We could, for example, look to the standards for ''smaller reporting companies'' and limit availability of the exemption to issuers with less than $75 million in public float, or, if unable to calculate the public float, less than $50 million in annual revenue.[93] Alternatively, consistent with a recent recommendation by the Commission's Advisory Committee on Small and Emerging Companies (''Advisory Committee'') as to the appropriate size limits for ''smaller reporting companies,'' [94] we could limit access to Regulation A to companies with a public float of up to $250 million, or, if unable to calculate the public float, less than $100 million in annual revenue.[95] Limiting access to the exemption on the basis of issuer size might more effectively target the segment of the market that Congress sought to assist by

[88] *Id.* The adopting release noted that partnerships or certain other entities organized primarily for investment purposes had historically been eligible to use Regulation A, and that after consideration of public comment it was appropriate to continue to make the exemption available to such issuers. See SEC Rel. No. 33–6949, at 36443.

[89] ABA Letter (''The purpose and goal of Section 3(b)(2) should . . . be to expand the capital raising opportunities available to operating companies. We are concerned about the possibility of abuse should non-operating companies be able to rely on the exemption. The Commission's proposed rules should . . . provide that Section 3(b)(2) will not be available for use by issuers that are blank check companies or shell companies and should define ''eligible issuer'' for purposes of Section 3(b)(2) to exclude specifically these types of issuers.''); WR Hambrecht + Co. Letter (suggesting limiting Regulation A issuers to operating companies, and prohibiting reliance on the exemption by blank check companies, SPACs, and shell companies); NASAA Letter 2 (indicating that offerings by blank check companies and SPACs are generally prohibited as fraudulent offerings under state securities laws).

[90] Regulation B was an exemption from registration under the Securities Act relating to fractional undivided interests in oil or gas. *See* 17 CFR 230.300–230.346 (1995).

[91] *See* SEC Release No. 33–7300 (May 31, 1996) [61 FR 30397].

[92] *See* Section II.E. below for a discussion of an issuer's ongoing reporting obligations under proposed Regulation A.

[93] *See* 17 CFR 229.10(f).

[94] *See* SEC Rel. No. 33–9258 (Sept. 12, 2011) [76 FR 57769] (the Advisory Committee was formed to provide the Commission with advice on its rules, regulations, and policies as they relate to, among other things, capital raising by emerging privately-held small businesses and publicly traded companies with less than $250 million in public float), *available at: http://www.sec.gov/rules/other/2011/33-9258.pdf.*

[95] *Recommendations Regarding Disclosure and Other Requirements for Smaller Public Companies,* Securities and Exchange Commission, Advisory Committee on Small and Emerging Companies (February 1, 2013), at 2–3 (the Advisory Committee recommendation was made in the context of potentially revising the definition of a smaller reporting company), *available at: http://www.sec.gov/info/smallbus/acsec/acsec-recommendation-032113-smaller-public-co-ltr.pdf.*

enacting Title IV of the JOBS Act. We solicit comment below on whether the reference to ''public float'' would be an appropriate metric for the non-reporting companies using Regulation A.

Request for Comment

15. Should we limit availability of the Regulation A exemption to smaller issuers? Or does the $50 million annual offering limit effectively limit availability of the exemption to smaller issuers such that the Commission need not consider issuer size-based limitations? Why or why not? Should we use issuer size-based limitations to determine the imposition of certain requirements of proposed Regulation A such as the on-going disclosure requirements?

16. If we include size-based issuer eligibility requirements, is a test based on the smaller reporting company public float and revenue thresholds appropriate for potential Regulation A issuers? Should we look to the higher thresholds recommended by the Advisory Committee, or other size thresholds? Alternatively, are there better metrics on which to determine issuer size-based eligibility (*e.g.,* an assets test)? Would the concept of public float have any applicability to non-reporting companies, or to repeat Regulation A issuers, which could develop a trading market for their securities?

d. Reporting Companies

We do not propose to make Regulation A available to companies that are subject to the reporting requirements of Section 13 of the Exchange Act.[96] Before the amendments to Regulation A adopted in 1992, reporting companies were permitted to conduct offerings in reliance on Regulation A, provided they were current in their public reporting.[97] In 1992, however, the Commission determined that it was no longer necessary to permit reporting companies to rely on the exemption in light of the small business integrated registration and reporting system adopted at that time.[98] Simplified registration and reporting forms under Regulation S–B were presumed to meet the capital raising needs of reporting small business issuers.[99] As a result, reporting companies were excluded from the Regulation A exemptive scheme.[100] While the forms and form of the disclosure rules that apply to smaller issuers has changed since that time, their content is substantially the same as in 1992.[101]

The two public comments we have received to date on this issue take opposing positions on whether Regulation A should be available to reporting companies. One commenter suggested that reporting companies should be allowed to rely on the exemption because it would permit issuers to conduct a public offering of unrestricted securities that is less burdensome, quicker and less expensive than a public offering subject to full Securities Act registration (*e.g.,* by permitting issuers to incorporate by reference Exchange Act reports into an abbreviated offering statement).[102] This commenter suggested that reporting company access could be limited on the basis of the issuer's size.[103] The other commenter suggested that reporting companies should not be permitted to rely on Regulation A, but companies should be permitted to become a reporting company by means of a Regulation A offering.[104]

Given the availability of scaled disclosure requirements for Securities Act registration and Exchange Act reporting by smaller reporting companies, we continue to believe that reporting companies would not necessarily benefit from access to Regulation A, as proposed to be amended. We therefore do not propose to permit reporting companies to rely on the proposed rules. We are soliciting comment, however, on whether reporting companies should be permitted to rely on Regulation A.

Request for Comment

17. Should we amend issuer eligibility requirements to permit reporting companies to rely on the Regulation A exemption? Why or why not? Would reporting companies find Regulation A a useful means of raising capital? How would such a change affect issuers, investors, financial intermediaries, and other market participants?

18. If reporting companies were permitted to rely on Regulation A, should we impose limitations on their use of the exemption? For example, should reporting companies be eligible to use Regulation A only for a limited period of time, *e.g.,* a three-year period after they begin Exchange Act reporting? Or should we limit reporting company access to the exemptive scheme on the basis of issuer size?

19. If reporting companies are permitted to rely on Regulation A, should the availability of the exemption be conditioned on being current with Exchange Act reporting requirements,[105] which would be consistent with ongoing use of Regulation A?[106] Additionally, if reporting companies are permitted to rely on the exemption, should such companies be permitted to satisfy their disclosure requirements under Regulation A through incorporation by reference to their previous or ongoing reports filed under the Exchange Act? Or, as proposed with respect to issuers of Regulation A securities that register such securities under the Exchange Act, if reporting companies are permitted to rely on Regulation A, should the Regulation A reporting obligation for such issuers be suspended altogether for the duration of any obligation to file ongoing reports under the Exchange Act?[107]

2. Eligible Securities

Section 3(b)(3) of the Securities Act limits the availability of any exemption enacted under Section 3(b)(2) to ''equity securities, debt securities, and debt securities convertible or exchangeable into equity interests, including any guarantees of such securities.''[108] On the basis of the statutory language, it is unclear which types of securities were meant to be excluded, although there is some evidence that suggests the exemption is meant for ordinary—and not exotic—securities.[109] We solicit

[96] As discussed in Section II.E.3. below, however, we solicit comment on whether we should permit Regulation A issuers to register under the Exchange Act by means of a simplified process under certain circumstances.

[97] 17 CFR 230.252(f) (1992).

[98] SEC Rel. No. 33–6949, at 36443.

[99] ''Small business issuers'' were defined as companies with annual revenues of less than $25 million whose voting stock does not have a public float of $25 million or more. *Id.,* at 36446.

[100] SEC Rel. No. 33–6924 (March 20, 1992) [57 FR 9768], at 9771.

[101] In 2007, the Commission rescinded Regulation S–B (enacted in tandem with the 1992 amendments to Regulation A, *see* SEC Rel. No. 33–6949), eliminated the SB forms and the definition of ''small business issuer,'' and adopted the current smaller reporting company regime. *See* SEC Rel. No. 33–8876 (Dec. 19, 2007) [73 FR 934].

[102] ABA Letter.

[103] *Id.* (suggesting reporting company access to the exemptive scheme should be limited to issuers with less than $1 billion in revenue).

[104] WR Hambrecht + Co. Letter.

[105] As noted above, before the 1992 amendments to Regulation A, reporting companies were permitted to conduct offerings in reliance on Regulation A, provided they were current in their Exchange Act reporting obligations. *See* former Rule 252(f), 17 CFR 230.252(f) (1991).

[106] *See* discussion on proposed issuer eligibility requirements in Section II.B.1. above; *see also* proposed Rule 251(b)(7).

[107] *See* discussion in Section II.E. below.

[108] 15 U.S.C. 77c(b)(3).

[109] *Small Company Capital Formation Act of 2011: Markup of H.R. 1070 before the H. Comm. on Fin. Serv. for the 112th Congress,* 157 Cong. Rec. 89, (daily ed. June 21, 2011), *available at: http://*

Continued

comment on the types of securities that should be excluded, if any, consistent with the statutory mandate.

We propose to limit the types of securities eligible for sale under both Tier 1 and Tier 2 of Regulation A to the specifically enumerated list of securities in Section 3(b)(3), with the exception of asset-backed securities. Asset-backed securities are subject to the provisions of Regulation AB, an appropriately-tailored regulatory regime enacted to cover such securities that was not in effect when Regulation A was last updated in 1992.[110] We do not believe that Title IV of the JOBS Act was enacted to facilitate the issuance of asset-backed securities, nor do we believe that Regulation A's disclosure requirements are suitable for offerings of such securities. We therefore propose to exclude asset-backed securities from the list of eligible securities under Regulation A.

Request for Comment

20. As proposed, should we exclude asset-backed securities from the list of eligible securities under Regulation A? Why or why not? If asset-backed securities were eligible to be sold under Regulation A, what changes would be required to Form 1–A and the other proposed Regulation A forms to accommodate these issuers?

21. Should any additional types of securities be specifically excluded from offerings conducted in reliance on Regulation A? If so, what types of securities, and why? Should the rules provide more specificity as to the types of securities that are included or excluded from Regulation A offerings? What effects could excluding specified types of securities from Regulation A offerings have on issuers, investors, and other market participants?

3. Offering Limitations and Secondary Sales

Regulation A currently permits offerings of up to $5 million of securities in any twelve-month period, including up to $1.5 million of securities offered by selling securityholders.[111] Section 3(b)(2)(A) provides that the aggregate offering amount of all securities offered and sold within the prior twelve-months in reliance on Section 3(b)(2) shall not exceed $50 million. As noted above, we propose to amend Regulation A to create two tiers of requirements: Tier 1, for offerings of up to $5 million of securities in a twelve-month period; and Tier 2, for offerings of up to $50 million of securities in a twelve-month period.[112] Proposed Tier 1 would reflect the same offering size limitations that currently apply under Regulation A. Proposed Tier 2 would reflect the Section 3(b)(2) offering size limitation.[113] We believe issuers raising smaller amounts of capital may benefit from a tiered system that affords two options for capital formation based on differing disclosure and other requirements.

We believe sales by selling securityholders to be an important part of the exemptive scheme and therefore propose to preserve in Tier 1 Regulation A's current limitation of no more than $1.5 million of securities offered by selling securityholders, and permit Tier 2 offerings to include up to $15 million of securities offered by selling securityholders. Sales by selling securityholders have been permissible under Regulation A in one form or another since 1940.[114] Initially, sales by an issuer and sales by a ''controlling stockholder'' were treated as separate categories of exempt transactions; the offering amount of each respective category was not aggregated for purposes of determining the maximum offering amount available under the exemption.[115] Later, Regulation A contained a single offering ceiling for all sales of an issuer's securities during a twelve-month period, while each category of seller had a different permissible maximum selling amount.[116] In 1972, the Commission returned to the concept of separate categories of seller transactions, each of which contained an independent offering ceiling.[117] For example, at that time, Rule 254(a) required issuer and affiliate sales in any twelve-month period to be aggregated against the then-current $500,000 offering ceiling with any one affiliate being limited to $100,000 in offers in any twelve-month period.[118] Sales by non-affiliates were excluded from the $500,000 offering ceiling, and any one such seller was permitted to offer up to $100,000, but, in the aggregate with other such non-issuer/affiliate sellers in an amount of no more than $300,000 in any twelve-month period.[119] In 1992, the Commission returned to a single offering ceiling for all sales of an issuer's securities in a twelve-month period, and limited all secondary sales to its current $1.5 million limit (representing 30% of the maximum offering limit permitted in a primary offering), aggregated with issuer sales during the same period for a total of up to $5 million.[120]

Two commenters recommended permitting secondary sales by selling securityholders in the expanded exemptive scheme.[121] One such commenter suggested that removing the limitation on the amount of securities available for resale by selling securityholders would decrease the cost of capital for smaller issuers and encourage greater investment in companies by increasing a potential investors liquidity options.[122] The other suggested adopting a limitation similar to the current Regulation A provision in order to encourage investment in companies and improve the liquidity options of investors.[123] Both commenters suggested removing current restrictions on affiliate resales in Rule 251(b),[124] which prohibits such sales when the issuer has not had net income from continuing operations in at least one of its last two fiscal years.

Another commenter, however, urged the Commission to prohibit selling securityholders, such as venture capital and private equity firms, from relying on the expanded exemption.[125] In this commenter's view, superior negotiating power at the time of such parties' initial investment and greater access to information about the issuer should disqualify such parties from the

financialservices.house.gov/calendar/eventsingle.aspx?EventID=247453.

[110] Regulation AB, 17 CFR 229.1100 *et seq.,* was enacted in 2005. *See* SEC Rel. No. 33–8518 (Dec. 22, 2004). Asset-backed securities are defined in Rule 1101(c)(1) to generally mean a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial asset, either fixed or revolving, that by their terms convert into cash within a finite time period.

[111] Rule 251(b), 17 CFR 230.251(b).

[112] If the offering included securities that were convertible, exercisable or exchangeable for other securities, the offer and sale of the underlying securities would also be required to be qualified and the aggregate offering price would include the aggregate conversion, exercise, or exchange price of such securities, regardless of when they become convertible, exercisable or exchangeable. This differs from the approach taken in registered offerings that involve similar securities, but we believe would simplify compliance.

[113] Offerings of up to $5 million could be conducted under either Tier 1 or Tier 2.

[114] SEC Rel. No. 33–2410 (December 3, 1940) [5 FR 4749].

[115] *Id.*

[116] *See, e.g.,* Rule 254(a), 17 CFR 230.254(a) (1956), cited in SEC Rel. No. 33–3663 (July 31, 1956) [21 FR 5739], at 5741. Additionally, at this time, secondary sales by certain newly organized or unproven entities were prohibited. *Id.,* at 5739.

[117] *See* SEC Rel. No. 33–5225 (Jan 10, 1972) [37 FR 599].

[118] *Id.*

[119] *Id.*

[120] *See* SEC Rel. No. 33–6949, at 36443; *see also* Rule 251(b).

[121] ABA Letter; WR Hambrecht + Co. Letter.

[122] ABA Letter.

[123] WR Hambrecht + Co. Letter.

[124] 17 CFR 230.251(b).

[125] NASAA Letter 2.

exemption because, while maintaining such advantages, they may seek to offload their investment on the general public (and, sometimes against the wishes of the issuer itself).[126] This commenter further argued that selling securityholder offerings do not provide capital to the issuer or contribute to job creation.[127] Alternatively, the commenter suggested that if selling securityholders are permitted to rely on the exemption, the Commission should require approval of a majority of the issuer's independent directors as a pre-condition to any sales.[128]

Selling securityholder access to Regulation A has been a historically important feature of the exemptive scheme. We believe it would continue to be an important part of Regulation A, as proposed to be amended. Allowing selling securityholders access to avenues for liquidity should encourage investment in companies seeking to raise capital.[129] Thus, we believe that allowing selling securityholders to sell securities under Regulation A would facilitate capital formation and be consistent with Title IV of the JOBS Act.

We do not propose to amend Regulation A to eliminate the ability of selling securityholders to conduct secondary offerings.[130] Consistent with the existing provisions of Regulation A, we propose to permit sales by selling securityholders up to 30% of the maximum amount permitted under the applicable offering limitation ($1.5 million in any twelve-month period for Tier 1 and $15 million in any twelve-month period for Tier 2). Sales by selling securityholders under either Tier would be aggregated with sales of Regulation A securities by the issuer and other selling securityholders for purposes of calculating the maximum permissible amount of securities that may be sold during any twelve-month period.

In addition, we propose to eliminate the last sentence of Rule 251(b), which prohibits affiliate resales unless the issuer has had net income from continuing operations in at least one of its last two fiscal years. This provision was originally adopted in Regulation A in 1956 to prohibit secondary sales of securities of certain new companies and companies without net income in at least one of their last two fiscal years[131] in order ''to correct . . . the threat of the 'bail-out' by the promoters and insiders of their securities holdings.'' [132] When the Commission amended Regulation A in 1992, it maintained these restrictions in modified form, by limiting them to affiliate resales where the issuer had no net income from continuing operations in at least one of its last two fiscal years.[133]

While one commenter has expressed concern that affiliates of an issuer could use an informational advantage to sell securities in unsuccessful ventures at the expense of the investing public,[134] we are not persuaded that the absence of net income is necessarily a meaningful indicator of enhanced risk that this could occur. Further, the Commission's current disclosure review and qualification processes and enforcement programs are significantly more sophisticated and robust than they were in the 1950s. In addition, today's proposed rules for Regulation A include revised ''bad actor'' disqualification provisions and additional issuer eligibility requirements aimed at limiting the market participants that have access to the exemption.[135]

We also do not believe that a focus on issuers that have not had net income from continuing operations in at least one of its last two fiscal years would be appropriately tailored for startup and early stage companies that may devote large portions of their resources to startup expenses and research and development.[136] In this market, net income from continuing operations may not be a material data point in the evaluation of an investment opportunity.[137] In addition, as mentioned above, some commenters have argued that limiting the liquidity options of selling securityholders, including sales by affiliates of the issuer, may discourage investment in the issuer in the first instance and increase the issuer's cost of capital.[138]

On balance, we believe that investor protections provided by Regulation A, as proposed to be amended, support the elimination of the current restriction on affiliate resales, particularly in light of the potential benefits of permitting secondary sales. We therefore do not propose to carry this provision forward in amended Regulation A.

Request for Comment

22. Should we consider different annual offering thresholds for selling securityholder sales than the proposed $1.5 million limitation for Tier 1 offerings and $15 million limitation for Tier 2 offerings? Why or why not? If so, should sales in reliance on Regulation A by selling securityholders be permitted up to the annual offering ceiling for each respective Tier, or limited at a different threshold? Should we limit sales by selling securityholders to a percentage of the total amount offered in conjunction with a primary offering of Regulation A securities over a given period of time, or to Regulation A offerings where primary securities are offered? Alternatively, should we prohibit all sales by selling securityholders in Regulation A? Why or why not?

23. Should the rules treat sales by non-affiliate selling securityholders as a separate category of exempt transaction, as was once the case under Regulation A, and not aggregate such sales with issuer sales for purposes of determining the maximum offering amount available under the exemption? If so, should non-affiliate resales be permitted up to the applicable annual offering ceiling, or limited at a different threshold?

24. If selling securityholders are permitted to rely on Regulation A, should we impose eligibility requirements or other limitations on those securityholders? For example, should we require selling securityholders to have owned the securities offered for resale under Regulation A for a specified period of time before resale? If so, why and what should the relevant holding period be (*e.g.* six months or twelve months before initial submission or filing of the offering statement)? If the rules impose a holding period before securities can be offered for resale under Regulation A, should the holding period only apply to affiliates? Or to all selling securityholders?

25. Does the existing Rule 251(b) requirement that an issuer have net income from continuing operations in each of its last two fiscal years, in order for an affiliate to be able to conduct a secondary sale in reliance on Regulation A, have continuing validity, and should we therefore retain this provision? Why or why not? Please explain.

4. Investment Limitation

Regulation A does not currently limit the amount of securities an investor can purchase in a qualified Regulation A offering. We recognize, however, that with the increased annual offering

[126] *Id.*

[127] *Id.*

[128] *Id.*

[129] *See* discussion in Section IV.B.2.c. below.

[130] *See* proposed Rule 251(a).

[131] *See* SEC Rel. No. 33–3663, at 5739.

[132] SEC Ann. Rep. 29 (1956).

[133] *See* SEC Rel. No. 33–6924, at fn. 59; *see also* Rule 251(b).

[134] NASAA Letter 2.

[135] *See* discussions in Section II.G. (Bad Actor Disqualification) below, and Section II.B.1. (Eligible Issuers) above.

[136] *See* ABA Letter; WR Hambrecht + Co. Letter.

[137] *See* ECTF Report.

[138] *See* ABA Letter; WR Hambrecht + Co. Letter.

limitation provided in Section 3(b)(2) comes a risk of commensurately increased investor losses. To address that risk, Title IV of the JOBS Act mandates certain investor protections[139] and suggests that the Commission consider others as part of its Section 3(b)(2) rulemaking.[140] Additionally, we believe that Congress recognized in Section 3(b)(2) that certain other investor protections—not directly contemplated by Title IV of the JOBS Act—may be necessary in the revised regulation. To that end, Section 3(b)(2)(G) indicates that the Commission may include in the expanded exemption ''such other terms, conditions, or requirements . . . necessary in the public interest and for the protection of investors . . . .''

Consistent with Section 3(b)(2)(G) and the Commission's investor protection mandate, in addition to the disclosure, reporting and other requirements of Regulation A, we propose to limit the amount of securities investors can purchase in a Tier 2 offering to no more than 10% of the greater of their annual income and their net worth.[141] For this purpose, annual income and net worth would be calculated for individual purchasers as provided in the accredited investor definition under Rule 501 of Regulation D.[142]

We believe that this proposed new requirement could usefully augment the other requirements for Tier 2 offerings. Limiting the amount of securities that a potential investor could invest in a Tier 2 offering to 10% of the greater of the investor's annual income and net worth would help to mitigate any concern that an investor may not be able to absorb the potential loss of the investment.[143] The additional investor protection afforded by such a loss limitation is similar to the provisions for our recently proposed rules for securities-based crowdfunding transactions under Section 4(a)(6) of the Securities Act.[144] We believe that an investment limitation for Tier 2 offerings, coupled with the additional investor protection requirements discussed above and more fully below, could protect investors in Tier 2 offerings in a similar way as the proposed rules for securities-based crowdfunding transactions.

Under the proposal, issuers would be required to make investors aware of the investment limitations,[145] but would otherwise be able to rely on an investor's representation of compliance with the proposed investment limitation unless the issuer knew, at the time of sale, that any such representation was untrue. We are mindful of the privacy issues and practical difficulties associated with verifying individual income and net worth, and do not therefore propose to require investors to disclose personal information to issuers in order to verify compliance with the investment limitation.[146] We are, however, soliciting comment below on whether verification of the income and net worth limit should be required.

Request for Comment

26. As proposed, should we impose investment limitations on investors in Tier 2 offerings? Or does Regulation A, as proposed to be amended, have sufficient investor protections for Tier 2 offerings, such that an investment limitation for investors is not necessary? Why or why not?

27. Are the proposed investment limitations appropriate in the context of a Tier 2 offering? Why or why not? What impact would the proposed investment limitation restriction have on issuers and investors? Should the proposed limitations on investment not apply to accredited investors? Are there other investment limitation criteria we should consider? For example, should we impose a limitation based on a percentage of total investment assets in addition to, or instead of, annual income or net worth?

28. Alternatively, should the investment limitation be higher or lower than the 10% proposed? If so, what percentage and why would that percentage be appropriate? Would the proposed investment limitation be appropriate for investors that are entities rather than natural persons? Should we establish a minimum annual investment amount, similar to $2,000 annual investment that would be permitted under our proposed crowdfunding rules, that all investors could make in Regulation A offerings irrespective of their income and net worth? Why or why not?

29. Should the proposed investment limitation apply on a per offering basis, as proposed? Or should the limitation apply on an aggregated basis, across all investments in Regulation A securities? Why or why not? If the limitation were to apply on an aggregated basis, how should the limitation apply? Should we limit the provision so that only Regulation A offerings close in time (for example, within a twelve-month period), or otherwise related, would be aggregated in the 10% calculation?

30. Should we permit issuers, as proposed, to rely on an investor's representation of compliance with the 10% investment limitation, unless the issuer has knowledge that any such representation was untrue? Why or why not? If not, what level of inquiry or verification should issuers have to perform in order to ensure compliance with the requirement? Should the issuer and its intermediaries be required to have a reasonable belief that the investor certification can be relied upon (*e.g.,* should they be required to conduct further investigation if they have reason to believe that the certification is untrue)? Why or why not? If we permit issuers to rely on an investor's representation regarding compliance with the 10% investment limitation, as proposed, should we require the representation to be made in a particular form, such as an investor questionnaire? Should we require the issuer to provide disclosure or educational materials in connection with the representation?

[139] *See* Section 3(b)(2)(D) (expressly providing for Section 12(a)(2) liability for any person offering or selling Section 3(b)(2) securities); Section 3(b)(2)(F) (requiring issuers to file audited financial statements with the Commission annually).

[140] *See* Section 3(b)(2)(G) (inviting the Commission to consider, among other things, requiring audited financial statements in the offering statement and implementing bad actor disqualification provisions); Section 3(b)(4) (inviting the Commission to consider implementing ongoing reporting requirements).

[141] If securities that are convertible, exercisable or exchangeable for other securities are being purchased by an investor, the proposed investment limitation would include the aggregate conversion, exercise, or exchange price of such securities, in addition to the purchase price. This treatment corresponds to the treatment of such securities for purposes of calculating the offering cap.

[142] 17 CFR 230.501.

[143] An underwriter in a firm commitment underwritten Regulation A offering, or participating broker-dealer that is involved in stabilization activities with respect to an offering of Regulation A securities would not be considered an investor that is subject to the proposed investment limitations.

[144] *See* Section 4(a)(6)(ii) of the Securities Act, 15 U.S.C. 77d(a)(6)(ii), and SEC Rel. No. 33–9470. In Section 4(a)(6), Congress outlined a new exemption for securities-based crowdfunding transactions intended to take advantage of the internet and social media to facilitate capital-raising by the general public, or crowd. In that provision, Congress established limitations on the amount of securities an investor could acquire through this type of offering, as well as a variety of other investor protections, including disclosure requirements and the use of regulated intermediaries. *See, generally,* the requirements for issuers and intermediaries set forth in Title III of the JOBS Act, Public Law 112–106, 126 Stat. 306, §§ 301–305.

[145] *See* cover page of the offering circular of proposed Form 1–A.

[146] Investors may, for example, be reluctant to provide issuers with their Internal Revenue Service (IRS) Form W–2 (Wage and Tax Statement) in order to verify compliance with the proposed annual income investment limitation or to disclose documents, such as bank or investment account statements, that would verify net worth. Relatedly, issuers may have difficulty ascertaining the veracity or comprehensiveness of any documentation provided to them by investors. *Cf.* SEC Rel. No. 33–9415 (July 10, 2013) [78 FR 4471], at II.B (discussing verification of accredited investor status for private offerings under Rule 506(c) of Regulation D).

5. Integration

Existing Rule 251(c) of Regulation A governs the integration of Regulation A offerings with other offerings.[147] This provision provides that offerings under Regulation A are not to be integrated with any of the following:

- prior offers or sales of securities; or
- subsequent offers and sales of securities that are:
- registered under the Securities Act, except as provided in Rule 254(d);[148]
- made in reliance on Rule 701 under the Securities Act;
- made pursuant to an employee benefit plan;
- made in reliance on Regulation S; or
- made more than six months after completion of the Regulation A offering.

We believe Regulation A's existing integration safe harbors provide issuers, particularly smaller issuers whose capital needs often change, with valuable certainty as to the contours of a given offering and its eligibility for an exemption from Securities Act registration. To date, the public comment we received on integration suggested we maintain Regulation A's existing integration provisions.[149] We propose, subject to certain exceptions discussed below, to generally preserve the existing Regulation A integration safe harbors.[150] We also propose to provide additional guidance on the potential integration of offerings conducted concurrently with, or close in time after, a Regulation A offering.

The safe harbor from integration provided by existing Rule 251(c) expressly provides that any offer or sale made in reliance on Regulation A will not be subject to integration with any other offer or sale made either before the commencement of, or more than six months after, the completion of the Regulation A offering.[151] In other words, for transactions that fall within the provisions of existing Rule 251(c), issuers do not have to conduct an independent integration analysis under the provisions of, for example, another rule-based exemption in order to determine whether, under the terms of that rule, the two offerings would be treated as one for purposes of qualifying for an exemption. This bright-line rule assists issuers in analyzing certain transactions, but does not address the issue of potential offers or sales that occur concurrently with, or close in time after, a Regulation A offering.

Currently, the note to Rule 251(c) indicates that, if the provisions of the safe harbor are unavailable, offers and sales may still not be integrated with the Regulation A offering depending on the particular facts and circumstances, so there is no presumption that offerings outside the integration safe harbors should be integrated.[152] Additionally, we believe that an offering made in reliance on Regulation A should not be integrated with another exempt offering made by the issuer, provided that each offering complies with the requirements of the exemption that is being relied upon for the particular offering.[153] For example, an issuer conducting a concurrent exempt offering for which general solicitation is not permitted would need to be satisfied that purchasers in that offering were not solicited by means of the offering made in reliance on Regulation A, including without limitation any ''testing the waters'' communications.[154] Alternatively, an issuer conducting a concurrent exempt offering for which general solicitation is permitted could not include in any such general solicitation an advertisement of the terms of an offering made in reliance on Regulation A that would not be permitted under Regulation A. An issuer conducting, for example, a concurrent Rule 506(c) offering could not include in its Rule 506(c) general solicitation materials an advertisement of a concurrent Regulation A offering, unless that advertisement also included the necessary legends for, and otherwise complied with, Regulation A.[155]

In addition to this approach to integration, we propose to add to the list of safe harbor provisions subsequent offers or sales of securities made pursuant to the proposed rules for securities-based crowdfunding transactions under Title III of the JOBS Act. Given the unique capital formation method available to issuers and investors in the proposed rules for securities-based crowdfunding transactions and the small dollar amounts involved, we do not propose to integrate offers or sales of such securities that occur subsequent to the commencement of any offers or sales of securities made in reliance on Regulation A.[156]

We further propose to amend Rule 254(d) to provide that where an issuer decides to register an offering after soliciting interest in a contemplated, but abandoned, Regulation A offering, any offers made pursuant to Regulation A would not be subject to integration with the registered offering, unless the issuer engaged in solicitations of interest in reliance on Regulation A to persons other than qualified institutional buyers (''QIBs'') and institutional accredited investors permitted by Section 5(d)[157] of the Securities Act.[158] An issuer (and any underwriter, broker, dealer, or agent used by the issuer in connection with the proposed offering) soliciting interest in a Regulation A offering to persons other than QIBs and institutional accredited investors must wait at least 30 calendar days between the last such solicitation of interest in the Regulation A offering and the filing of the registration statement with the Commission.[159] We believe these updated provisions are necessary, given the broad permissible target audience of Regulation A solicitations, the proposed expanded use of solicitation materials in Regulation A discussed more fully in Section II.D. below, and the addition of

[147] 17 CFR 230.251(c). The integration doctrine seeks to prevent an issuer from improperly avoiding registration by artificially dividing a single offering into multiple offerings such that Securities Act exemptions would apply to multiple offerings that would not be available for the combined offering.

[148] Rule 254(d) provides a safe harbor for an issuer that has a bona fide change of intention and decides to register an offering under the Securities Act after soliciting interest in a Regulation A offering, but without having filed the related offering statement. To take advantage of the safe harbor, such issuers must wait at least 30 calendar days from the date of the last solicitation of interest before filing a registration statement for the offering with the Commission. 17 CFR 230.254(d). Under existing Regulation A, issuers are not allowed to solicit interest in an offering after filing the offering statement with the Commission. *See* discussion in Section II.D. below.

[149] ABA Letter.

[150] Existing Rule 254(d) of Regulation A would become proposed Rule 255(e).

[151] *Contra* Rule 502(a) of Regulation D, 17 CFR 230.502(a), which states that offers and sales made more than six months before the start, or after the completion, of a Regulation D offering will not be considered part of that Regulation D offering.

[152] The note cites to the guidance provided in SEC Rel. No. 33–4552 (Nov. 6, 1962) [27 FR 11316], which states the Commission's traditional five-factor test for integration.

[153] We recently proposed a similar approach to integration in the context of offerings under the proposed provisions for securities-based crowdfunding transactions pursuant to Title III of the JOBS Act. *See* SEC Rel. No. 33–9470, text accompanying fn. 33–34.

[154] For a concurrent offering under Rule 506(b), an issuer would have to conclude that purchasers in the Rule 506(b) offering were not solicited by means of a Regulation A general solicitation. For example, the issuer may have had a preexisting substantive relationship with such purchasers. Otherwise, the solicitation conducted in connection with the Regulation A offering may preclude reliance on Rule 506(b). *See also* SEC Rel. No. 33–8828 (Aug. 3, 2007) [72 FR 45116].

[155] *See* discussion in Section II.D. below.

[156] *See* SEC Rel. No. 33–9470. An issuer contemplating a securities-based crowdfunding transaction pursuant to Section 4(a)(6) subsequent to any offers or sales conducted in reliance on Regulation A, as proposed to be amended, should look to the proposed rules for securities-based crowdfunding transactions to ensure compliance with the advertising provisions of that proposed exemption.

[157] 15 U.S.C. 77e(d).

[158] *See* proposed Rule 255(e).

[159] *Id.*

similar provisions for registered offerings under Section 5(d).

Request for Comment

31. As proposed, should we adopt an integration safe harbor in Regulation A that largely follows the existing provisions of Rule 251(c), while adding the exemption provided by the proposed JOBS Act crowdfunding rules into the list of safe harbors for subsequent offers or sales? Why or why not? Should we alter or add additional provisions to the list of safe harbors for subsequent offers or sales? If so, please provide supporting analysis for your suggestions. For example, should we reduce the six-month period in Rule 251(c)(2)(v)?

32. Should we amend the provisions of Rule 254(d), as proposed,[160] to take into account the expanded use of solicitation materials in Regulation A, the ability of emerging growth companies to solicit interest from certain types of investors under Title I of the JOBS Act, and the potential effect that an abandoned Regulation A offering, in which an issuer solicited interest from potential investors, may have on that issuer's ability to immediately thereafter register the offering under the Securities Act? Why or why not? Are there any alternative approaches for the interaction of these two provisions in the context of an abandoned Regulation A offering followed immediately thereafter by a registered offering? If so, please explain.

6. Treatment Under Section 12(g)

Exchange Act Section 12(g) requires, among other things, that an issuer with total assets exceeding $10,000,000 and a class of equity securities held of record by either 2,000 persons, or 500 persons who are not accredited investors, register such class of securities with the Commission.[161] Unlike Title III of the JOBS Act, which includes a provision regarding the treatment under Section 12(g) of securities issued in securities-based crowdfunding transactions pursuant to Section 4(a)(6) of the Securities Act, Title IV does not include a provision regarding how Regulation A issuers should be treated under Section 12(g).

Section 12(g) was originally enacted by Congress as a way to ensure that investors in over-the-counter securities about which there was little or no information, but which had a significant shareholder base, were provided with ongoing information about their investment.[162] As discussed more fully below, Regulation A, as proposed to be amended, would require issuers that conducted Tier 2 offerings to provide ongoing information to their investors, albeit somewhat less than is required of an Exchange Act reporting company. If securities issued under Regulation A were to be excluded for purposes of determining record holders under Section 12(g), a company may never become subject to mandatory Exchange Act reporting as a result of selling securities under Regulation A, regardless of how many shareholders it has or whether such shareholders were accredited investors. Alternatively, if Regulation A issuers that conducted Tier 2 offerings were current in their ongoing reporting were exempt from registration under Section 12(g), or their obligations to register were suspended, issuers would have the ability to remain in the Regulation A reporting regime on a long-term basis, irrespective of growth in their shareholder base.

One commenter suggested we provide a conditional exemption from mandatory Exchange Act reporting under Section 12(g) for emerging growth companies that have conducted a Regulation A offering and comply with its ongoing reporting requirements; otherwise, emerging growth companies that may cross the Section 12(g) asset and record holder thresholds following a Regulation A offering would be disincentivized from relying on the exemption.[163] In the commenter's view, the exemption from Section 12(g) could be temporary and lapse once the issuer obtains a non-affiliate market capitalization of $250 million.[164]

We believe, however, that the Section 12(g) record holder threshold continues to provide an important baseline, above which issuers should be subject to the more expansive disclosure and compliance obligations of the Exchange Act. We are not proposing to exempt Regulation A securities from the requirements of Section 12(g) or to provide that issuers that are current in their Regulation A ongoing reporting under Tier 2 would be exempt from Section 12(g) or have their obligations to register under Section 12(g) suspended. We do, however, solicit comment as to whether a Section 12(g) exemption or suspension should be provided.

Request for Comment

33. Should Regulation A securities be exempt from Section 12(g), either conditionally or otherwise? Would an exemption from Section 12(g) encourage Regulation A issuers to continue ongoing reporting under the proposed rules for Tier 2 offerings, where such issuers might otherwise cease reporting?[165]

34. Does Section 12(g) continue to serve as a valuable proxy for market interest in the equity securities of an issuer issued pursuant to Regulation A, such that an issuer that crosses its asset and record holder thresholds should become subject to mandatory Exchange Act reporting? Why or why not?

7. Liability Under Section 12(a)(2)

The liability provisions of Section 12(a)(2) of the Securities Act apply to any public offering of securities by use of an oral communication or prospectus that includes a material misleading statement or material misstatement of fact.[166] Section 3(b)(2)(D) of the Securities Act provides that ''[t]he civil liability provision in section 12(a)(2) [of the Securities Act] shall apply to any person offering or selling [Regulation A] securities.'' Therefore, consistent with current Regulation A,[167] sellers of Regulation A securities would have liability under Section 12(a)(2) to investors for any offer or sale by means of an offering circular or an oral communication that includes a material misleading statement or material misstatement of fact.[168]

C. Offering Statement

Section 3(b)(2)(G)(i) gives the Commission discretion to require an offering statement in such form and with such content as it determines necessary in the public interest and for the protection of investors. The provision permits electronic filing of offering statements, and provides a non-exhaustive list of potential content that may be required in the offering statement, including audited financial statements, a description of the issuer's business operations, financial condition, corporate governance principles, use of

[160] *See* proposed Rule 255(e).

[161] 15 U.S.C. 78*l*(g).

[162] *See, generally, Report of the Special Study of Securities Markets of the Securities and Exchange Commission,* House Document No. 95, House Committee on Interstate and Foreign Commerce, 88th Cong., 1st Sess. (1963), at 60–62.

[163] Letter from Michael L. Zuppone, Paul Hastings LLP, Nov. 26, 2013 (''Paul Hastings Letter'').

[164] The commenter suggested $250 million of non-affiliate market capitalization to accord with the threshold the Commission set for defining the mandate of its Advisory Committee on Small and Emerging Companies. *See* fn. 94 above.

[165] *See* discussion in Section IV.B.2.f. below.

[166] 15 U.S.C. 77*l*(a)(2).

[167] *See* SEC Rel. No. 33–6924, at fn. 57.

[168] Regulation A prohibits sales until the Form 1–A has been qualified. *See* Rule 251(d)(2), 17 CFR 230.251(d)(2); *cf.* Securities Offering Reform, SEC Rel. No. 33–8591, at 173 *et seq.* (discussing Section 12(a)(2) liability in the context of information conveyed at the time of sale).

investor funds, and other appropriate matters.

1. Electronic Filing; Delivery Requirements

Currently, Regulation A offering statements are filed with the Commission in paper form.[169] The paper filing process does not align with the Commission's electronic filing requirements for issuers in registered offerings [170] or notices in connection with offerings under Regulation D.[171] The Commission has required electronic filing of registration statements since 1996,[172] and of Form D filings since 2009.[173] Requiring offering statements to be filed electronically rather than on paper may reduce potential logistical problems and delays that can occur with the receipt, processing and dissemination of paper filings by the Commission for issuers seeking to raise capital under Regulation A. Electronic filing would facilitate a more efficient review process for such filings by Commission staff by allowing the offering and related materials, once submitted or filed, to be rapidly processed and disseminated internally. In addition, paper submissions—while publicly available in a technical sense—are not widely or immediately accessible. Electronic filing of offering statements could facilitate investor and market access to the information contained in offering statements in a more efficient way than paper filings do.

In Section 3(b)(2)(G)(i), Congress gave the Commission discretion to require issuers to file their offering statements electronically. Commenters are generally supportive of electronic filing.[174] Consistent with these comments and the language of Section 3(b)(2)(G)(i), we propose to require Regulation A offering statements to be filed with the Commission electronically on the EDGAR system.[175]

As proposed, amended Form 1–A would consist of three parts:

- an eXtensible Markup Language (XML) based fillable form, which would capture key information about the issuer and its offering using an easy to fill out online form, similar to Form D,[176] with drop-down menus, indicator boxes or buttons, and text boxes, while also assisting issuers in determining their ability to rely on the exemption. The XML-based fillable form would enable the convenient provision of information to the Commission, and support the assembly and transmission of such information to EDGAR, without requiring the issuer to purchase or maintain additional software or technology; [177]
- a text file attachment containing the body of the disclosure document and financial statements, formatted in HyperText Markup Language (HTML) or American Standard Code for Information Interchange (ASCII) to be compatible with the EDGAR filing system; [178] and
- text file attachments, containing the exhibits index and the exhibits to the offering statement, formatted in HTML or ASCII to be compatible with the EDGAR filing system.[179]

We further propose to require all other documents required to be submitted or filed with the Commission in conjunction with a Regulation A offering, such as ongoing reports, to be submitted or filed electronically on EDGAR.[180]

We believe this proposed approach to electronic filing would be both practical and useful for issuers of Regulation A securities, investors in such securities, other market participants, and the Commission staff who work with issuers throughout the qualification process. Issuers would maintain better control over their filing process, reduce the printing costs associated with filing seven copies of the offering statement and any amendments with the Commission, obtain immediate confirmation of acceptance of an offering statement, and ultimately save time in the qualification process. Investors would gain real-time access to the information contained in Regulation A filings.[181] The efficiency of the Regulation A market should improve with the increased accessibility of information about Regulation A issuers and offerings. Additionally, as with registered offerings, EDGAR would allow the Commission to store, process, and disseminate filings in a more efficient manner, which may, in turn, improve the efficiency of the staff review and qualification processes.

As proposed, electronic filing would also facilitate the capture of important financial and other information about Regulation A issuers and offerings that would enable the Commission and market participants to monitor and analyze any market that develops in Regulation A securities, including, for example, issuer size, issuer location, key financial metrics, summary information about securities offered and offering amounts, the jurisdictions in which offerings take place, and expenses associated with the offering.[182]

We appreciate, however, that requiring EDGAR filing would impose costs on issuers that currently are not required to enter the EDGAR filing system or format their disclosure documents in ways that the EDGAR system can accept. For that reason, we are soliciting comment on whether electronic filing should be mandated for Regulation A offerings.

If electronic filing on EDGAR is required, one commenter suggested that the Commission propose for Regulation A offering circulars an analog to the ''access equals delivery'' model for prospectuses under Securities Act Rule 172.[183] Currently, Regulation A prohibits sales pursuant to a qualified offering statement unless a preliminary offering circular or final offering circular is furnished to an investor at least 48

[169] 17 CFR 232.101(c)(6). There are no filing fees associated with filing a Form 1–A with the Commission. *See* Section 6(b) of the Securities Act, 15 U.S.C. 77f(b) (permitting the recovery of costs of services to the government only with respect to registered offerings).

[170] Offerings registered under the Securities Act are required to be filed electronically on the Commission's Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) system. *See* Rule 101(a)(1)(i) of Regulation S–T (17 CFR 232.101(a)(1)(i)).

[171] Issuers relying on Regulation D are required to electronically file a notice of sales on Form D with the Commission. *See* Rule 101(a)(1)(xiii) of Regulation S–T (17 CFR 232.101(a)(1)(xiii)); *see also* Rule 503 of Regulation D (17 CFR 230.503). Form D is also required for offerings under Section 4(a)(5) of the Securities Act.

[172] *See* SEC Rel. No. 33–6977 (Feb. 23, 1993) [58 FR 14628]. Foreign private issuers have been required to file their registration statements electronically since 2002. SEC Rel. No. 33–8099 (May 16, 2002).

[173] *See* SEC Rel. No. 33–8891 (Feb. 6, 2008) [73 FR 10592].

[174] ABA Letter; WR Hambrecht + Co.; Kaplan Voekler Letter 2; *see also* Letter from George W. Beard, Managing Member, Beacon Investment Partners LLC (DE), Oct. 5, 2012 (''Beacon Investment Letter''). *See also* Final Report of the 30th Annual SEC Government-Business Forum on Small Business Capital Formation, Recommendation 16, at 31 (Nov. 17, 2011) (*available at: http://www.sec.gov/info/smallbus/gbfor30.pdf*).

[175] In conjunction with this proposed change, the portion of Item 101(c)(6) of Regulation S–T (17 CFR 232.101(c)(6)) dealing with filings related to Regulation A offerings would be rescinded.

[176] 17 CFR 239.500.

[177] Part I (Notification) of Form 1–A. As discussed more fully in Section II.C.3.a. below, the cover page and Part I of current Form 1–A would be converted into, and form the basis of, the XML-based fillable form.

[178] Part II (Offering Circular) of Form 1–A. *See* discussion in Section II.C.3.b. below.

[179] Part III (Exhibits) of Form 1–A. *See* discussion in Section II.C.3.c. below.

[180] *See* discussion regarding proposed ongoing reporting requirements at Section II.E. below. Consistent with current Regulation A, there would be no filing fees associated with Regulation A, as proposed to be amended.

[181] Investors would not, however, have immediate access to non-public submissions of draft offering statements. *See* discussion in Section II.C.2. below.

[182] The specific disclosure requirements included in the XML-based fillable form are discussed more fully in Section II.C.3.a. below.

[183] Kaplan Voekler Letter 2.

hours before the mailing of the confirmation of sale, and the final offering circular is delivered to the investor with the confirmation of sales (unless delivered at any earlier time).[184] By comparison, under Rule 172, a final prospectus in a registered offering is deemed to precede or accompany a security for sale for purposes of Section 5(b)(2) of the Securities Act as long as the final prospectus meeting the requirements of Section 10(a) of the Securities Act is filed with the Commission on EDGAR.[185] Additionally, Rule 172(a), which provides an exemption from Section 5(b)(1) of the Securities Act, permits issuers to send written confirmations and notices of allocations after effectiveness of a registration statement without being accompanied or preceded by a final prospectus, so long as the registration statement is effective and the final prospectus is filed with the Commission.[186]

We are proposing an access equals delivery model for Regulation A final offering circulars. The expanded use of the Internet and continuing technological developments suggest that we should consider alternative methods of final offering circular delivery for Regulation A, particularly given that the regulation has not been substantively updated since 1992. Where, upon qualification of an offering statement, sales of Regulation A securities occur on the basis of offers made using a preliminary offering circular, issuers and intermediaries could presume that investors have access to the Internet, and would be permitted to satisfy their delivery requirements for the final offering circular if it is filed and available on EDGAR.[187] We further propose to require issuers to include a notice in any preliminary offering circular they use that would inform potential investors that the issuer may satisfy its delivery obligations for the final offering circular electronically. As with registered offerings, we propose to permit dealers, during the aftermarket delivery period, to be deemed to satisfy their final offering circular delivery requirements if it is filed and available on EDGAR.[188]

Further, consistent with prior Commission releases on the use of electronic media for delivery purposes, ''electronic-only'' offerings of Regulation A securities would not be prohibited under the proposed rules for Regulation A.[189] In such offerings, however, an issuer and its participating intermediaries would have to obtain the consent of investors to the electronic delivery of:

- the preliminary offering circular and other information, but not the final offering circular, in instances where, upon qualification, the issuer plans to sell Regulation A securities based on offers made using a preliminary offering circular; and
- all documents and information, including the final offering circular, when the issuer sells Regulation A securities based on offers conducted during the post-qualification period using a final offering circular.

We further propose to maintain the existing requirements of Rule 251(d)(2)(ii), which requires dealers to deliver a copy of the current offering circular to purchasers for sales that take place within 90 calendar days after qualification,[190] but to otherwise update and amend Rule 251(d)(2)(i), which currently requires that a preliminary or final offering circular be furnished to prospective purchasers at least 48 hours before the mailing of the confirmation of sale. When originally adopted in 1973, Regulation A's offering circular delivery requirements aligned with the prospectus delivery requirements for registered offerings.[191] In the intervening time, prospectus delivery requirements have changed,[192] with no corresponding updates to Regulation A. Notably, the Commission formalized its 48-hour preliminary prospectus delivery requirement in 1982 by amending Exchange Act Rule 15c2–8 to require only broker-dealers participating in a registered offering of securities by a non-reporting issuer to deliver a preliminary (and not final) prospectus at least 48 hours in advance of the mailing of the confirmation of sale.[193]

We believe the delivery of the preliminary offering circular to potential investors before they make an investment decision remains an important investor protection that should be preserved in Regulation A, particularly in light of the proposed expanded use of ''testing the waters'' solicitation materials to include the period of time after non-public submission or filing of the offering statement discussed further in Section II.D. below.[194] We also recognize the need to update and amend Regulation A's offering circular delivery requirements to accord with the requirements of broker-dealers in the context of registered offerings. We therefore propose to amend Rule 251(d)(2)(i) to require issuers and participating broker-dealers to deliver only a preliminary offering circular to prospective purchasers[195] at least 48

[184] Rule 251(d)(2).

[185] 17 CFR 230.172(b); *see also* Securities Offering Reform, SEC Rel. No. 33–8591, at 245 (discussing Rule 172). This provision also applies where the issuer will make a good faith and reasonable effort to file the final prospectus with the Commission as part of the registration statement within the required Rule 424 time period. 17 CFR 230.172(c)(3). Currently, there is no analog in Regulation A to filings permitted in the registered context under Rule 424, although one commenter has suggested we consider one. *See* Kaplan Voekler Letter 2; *see also* discussion in Section II.C.3. below and text accompanying fn. 235.

[186] 17 CFR 230.172(a); *see also* Securities Offering Reform, SEC Rel. No. 33–8591, at 251 (discussing Rule 172(a)).

[187] *Cf.* Securities Offering Reform, SEC Rel. No. 33–8591, at 244.

[188] *See* proposed Rule 251(d)(2)(ii) for the dealer aftermarket delivery requirements.

[189] An electronic-only offering is an offering in which investors are permitted to participate only if they agree to accept the electronic delivery of all documents and other information in connection with the offering. *See* SEC Rel. No. 34–37182 (May 9, 1996) [61 FR 24644] (Use of Electronic Media by Broker-Dealers, Transfer Agents and Investment Advisers for Delivery of Information) and SEC Rel. No. 34–42728 (Apr. 28, 2000) [65 FR 25843] (Use of Electronic Media).

[190] *See* proposed Rule 251(d)(2)(ii). As proposed, this provision clarifies the date on which dealer delivery obligations commence in the context of continuous or delayed offerings pursuant to proposed Rule 251(d)(3).

[191] *See* SEC Rel. No. 33–5277 (July 26, 1972) (noting that there should be no distinction in the delivery requirements of Regulation A offerings and registered offerings, and therefore proposing (and eventually adopting) rules requiring delivery of the offering circular 48 hours in advance of mailing of a confirmation of sale.); SEC Rel. No. 33–6075 (June 1, 1979) [44 FR 33362], at 33363–64 (permitting for the first time the use of a preliminary offering circular in Regulation A offerings, and imposing the same delivery requirements for such preliminary offering circulars as were then in effect for registered offerings).

[192] *See* SEC Rel. No. 33–6383 (March 3, 1982) [47 FR 11380] (Integrated Disclosure Release, which, among other things, added Exchange Act Rule 15c2–8, 17 CFR 240.15c2–8, which requires broker-dealers participating in a registered offering of securities of a non-reporting issuer to deliver a copy of the preliminary prospectus to any prospective purchaser at least 48 hours before the mailing of the confirmation of sale.); *see also* Securities Offering Reform, SEC Rel. No. 33–8591, at 173 *et seq.* and 241 *et seq.* (discussing information conveyed at time of sale for purposes of Section 12(a)(2) liability and prospectus delivery requirement reforms).

[193] SEC Rel. No. 33–6383, at 11400. The advance delivery requirements do not, however, apply in the context of registered offerings by issuers subject to a reporting obligation under Section 13 or 15(d) of the Exchange Act. Before the addition of Rule 15c2–8(b), the Commission required assurances that the managing underwriter had taken reasonable steps to send investors a preliminary prospectus at least 48 hours in advance of mailing confirmations of sale before accelerating effectiveness of a registration statement. *See* SEC Rel. No. 33–4968 (May 1, 1969) [34 FR 7235]. *Cf.* 17 CFR 230.460 (Distribution of Preliminary Prospectus in Registered Offerings).

[194] *Cf.* Securities Offering Reform, SEC Rel. No. 33–8591, at 245 (noting that access equals delivery is not appropriate for preliminary prospectus delivery obligations in IPOs because it is important for potential investors to be sent the preliminary prospectus).

[195] Prospective purchasers would include any person that has indicated an interest in purchasing the Regulation A securities before qualification,

hours in advance of sale when a preliminary offering circular is used during the prequalification period to offer such securities to potential investors.[196] Unlike Exchange Act Rule 15c2–8, this delivery requirement would apply to both issuers and participating broker-dealers.[197] We believe this is an important investor protection that should apply to issuers in advance of sale, and is consistent with current Regulation A.[198] Consistent with current Rule 251(d)(1)(iii), we propose to continue to require a final offering circular to accompany or precede any written communications that constitute an offer in the post-qualification period.[199]

In addition to the revised delivery requirements discussed above, we propose to add a provision analogous to Rule 173.[200] Currently, Regulation A requires the delivery of a final offering circular to the purchaser with the confirmation of sale, unless it has been delivered already.[201] The proposed provision would allow issuers and participating broker-dealers that satisfy the 48-hour requirement by furnishing a preliminary offering circular to, not later than two business days after completion of the sale, provide the purchaser with a copy of the final offering circular or a notice stating that the sale occurred pursuant to a qualified offering statement. As proposed, the notice must include the URL[202] where the final offering circular, or the offering statement of which such final offering circular is part, may be obtained on EDGAR and contact information sufficient to notify a purchaser where a request for a final offering circular can be sent and received in response.

We propose to allow an issuer to withdraw an offering statement, with the Commission's consent, if none of the securities that are the subject of such offering statement have been sold and such offering statement is not the subject of a Commission order temporarily suspending a Regulation A exemption.[203] Under the proposed rules, the Commission also would be able to declare an offering statement abandoned if the offering statement has been on file with the Commission for nine months without amendment and has not become qualified.[204] These withdrawal and abandonment procedures are similar to the ones that apply to reporting companies.

Request for Comment

35. Should the rules require the electronic filing of Regulation A offering and related documents on EDGAR, as proposed? Why or why not? Please address expected costs of electronic filings and benefits to both issuers and investors of having these documents available in electronic format. Alternatively, for Tier 1 offerings, what would be the benefits, if any, of maintaining Regulation A's current paper filing system for offering statements and related documents? Should we maintain paper filing for issuers conducting Tier 1 Regulation A offerings? Why or why not?

36. As proposed, should we require issuers to file the body of the disclosure document, financial statements, and text file attachments, containing the exhibits index and the exhibits to the offering statement, electronically in a HTML or ASCII format that is compatible with the EDGAR filing system? Or should we permit the filing of offering and related materials in Portable Document Format (PDF) or in some other format that is readily accessible to smaller issuers to constitute an official filing with the Commission under Regulation S–T?[205]

37. Should we adopt, as proposed, an access equals delivery model for final offering circular delivery requirements, in which case investors would be presumed to have access to the Internet, and issuers and intermediaries could satisfy their delivery requirements if the final offering circular were filed with the Commission on EDGAR?[206] Or should we maintain our existing requirement that issuers deliver to purchasers a final offering circular with the mailing of the confirmation of sale to such purchasers (if not delivered previously)? Why or why not?

38. Should we update, as proposed, the delivery requirements in Rule 251(d)(2)(i) to maintain advance delivery requirements of preliminary offering circulars, while eliminating the requirement that issuers and broker-dealers participating in the distribution of Regulation A securities pursuant to an offering statement deliver a final offering circular to investors at least 48 hours before sale? Why or why not? Would updating this provision, as proposed, be inconsistent with the rationale behind similar updates to prospectus delivery requirements for registered offerings? Why or why not?

39. While not currently proposed, should we adopt a provision similar to Exchange Act Rule 15c2–8(b), which would only require the advance delivery of a preliminary offering circular in the context of offerings by issuers not already subject to an ongoing reporting obligation under Regulation A? Similarly, should we adopt an analog to Rule 174(b),[207] which applies to registered offerings, so that a dealer would not have an aftermarket delivery obligation to purchasers of Regulation A securities to the extent the issuer of such securities is subject to an ongoing reporting obligation under Regulation A immediately before the time of filing the offering statement? Or, in such circumstances, should we only require dealer aftermarket delivery for a 25 calendar-day period? Why or why not?

40. In conjunction with the proposed access equals delivery model for final offering circular delivery requirements, should we adopt, as proposed, a provision analogous to Rule 173? If so, should compliance with that requirement be made a condition of Regulation A? Why or why not? Does the rationale behind Rule 173 apply to Regulation A offerings?[208]

including, but not limited to, those investors that respond to an issuer's solicitation materials. *See* proposed Rule 251(d)(2)(i).

[196] In accordance with time of sale provisions discussed in Securities Offering Reform, *see* SEC Rel. No. 33–8591, at p. 173 *et seq.,* we propose to base the 48-hour period in advance of ''sale'' rather than the ''mailing of the confirmation of sale.'' *See also* Section II.D. below for a discussion of the delivery requirements for solicitation materials used after publicly filing the offering statement.

[197] *Cf.* Exchange Act Rule 3a4–1, 17 CFR 240.3a4–1 (Associated persons of an issuer deemed not to be brokers). Issuers would be able to rely on reasonable assurances of delivery from participating broker-dealers to satisfy their delivery obligations.

[198] *Cf.* 17 CFR 230.460 (Distribution of Preliminary Prospectus in Registered Offerings). Additionally, with continued improvements in information and communication technologies, we believe direct public offerings (*i.e.,* offerings conducted by an issuer without the involvement of an underwriter) may become a more attractive option for certain issuers. For that reason, it is important that the advance preliminary offering circular delivery requirements for participating broker-dealers apply equally to issuers.

[199] *See* proposed Rule 251(d)(1)(iii). Consistent with Rule 172(a) in the context of registered offerings, issuers and intermediaries sending written confirmations and notices of allocation in the post-qualification period would be allowed to rely on the EDGAR filing of the final offering circular to satisfy any delivery requirements under Rule 251(d)(1)(iii). For a discussion of Rule 172(a), *see* Securities Offering Reform, SEC Rel. No. 33–8591, at 251.

[200] 17 CFR 230.173.

[201] 17 CFR 230.251(d)(2)(i)(C).

[202] In the case of an electronic-only offering, the notice must include an active hyperlink to the final offering circular or to the offering statement of which such final offering circular is part.

[203] *See* proposed Rule 259(a).

[204] *See* proposed Rule 259(b).

[205] *See* 17 CFR 232.104 (Unofficial PDF copies included in an electronic submission).

[206] Kaplan Voekler Letter 2.

[207] 17 CFR 230.174(b).

[208] *See* Securities Offering Reform, SEC Rel. No. 33–8591, at p. 173 *et seq.*

2. Non-Public Submission of Draft Offering Statements

Unlike Title I of the JOBS Act,[209] Title IV does not provide for confidential submissions of offering statements under Regulation A. Commenters, however, supported providing issuers with the option of confidential submission of offering statements under Regulation A.[210] We propose to allow the non-public submission of draft offering statements by issuers of Regulation A securities. We note, however, that such submissions would not be subject to the statutorily-mandated confidentiality of draft IPO registration statements confidentially submitted by ''emerging growth companies'' [211] under Title I of the JOBS Act.[212]

Under Regulation A's proposed non-public submission of draft offering statement provisions, issuers whose securities have not been previously sold pursuant to a qualified offering statement under Regulation A or an effective registration statement under the Securities Act would be permitted to submit to the Commission a draft offering statement for non-public review. As with the confidential submission of draft registration statements, all non-public submissions of draft offering statements would be submitted via EDGAR. The initial non-public submission, all non-public amendments thereto, and correspondence with Commission staff regarding such submissions would be required to be publicly filed as exhibits to the offering statement not less than 21 calendar days before qualification of the offering statement.[213] Unlike emerging growth companies, which must publicly file any confidential submissions not later than 21 calendar days before a road show, the timing requirements for filing by issuers seeking qualification under Regulation A would not depend on whether or not the issuer conducts a road show.[214]

Request for Comment

41. As proposed, should the rules permit the non-public submission of draft offering statements under Regulation A? Would there be any adverse impact on public investors of permitting the non-public submission of offering statements?

42. Is the proposed requirement of public filing at least 21 calendar days before qualification appropriate? Should public filing be required sooner or later than proposed?

43. Should the availability of non-public submission of Regulation A offering statements be limited, as proposed, to issuers whose securities have not been previously sold pursuant to a qualified offering statement under Regulation A or an effective registration statement under the Securities Act, in a manner similar to the limitation under Title I of the JOBS Act on the use of confidential submissions to issuers that have not previously sold common equity securities pursuant to an effective registration statement? Or should issuers be permitted to use the non-public submission provisions more than once?

44. As proposed, should issuers that non-publicly submit an offering statement under Regulation A be required to request confidential treatment under the cover of the Commission's Rule 83? Or should we adopt a new rule relating to confidential treatment of draft offering statements in Regulation A?

3. Form and Content

Section 3(b)(2)(G)(i) of the Securities Act [215] identifies certain requirements that the Commission may include, among others, in the requirements for offerings relying on the exemption. The requirements largely follow the existing offering statement requirements of Form 1–A.[216] For example, financial statements,[217] a description of the issuer's business operations,[218] financial condition,[219] and use of investor funds [220] are all currently required disclosures in Form 1–A. Additionally, Form 1–A requires issuers to disclose, among other things, their contact information, the price or method for calculating the price of the securities being offered, information about the issuer's property, results of operations, directors, officers, significant employees and certain beneficial owners, material agreements and contracts, past securities sales, material factors that make an investment in the issuer speculative or risky, dilution, the plan of distribution for the offering, executive and director compensation, and conflicts of interest and related party transactions. As with Regulation A generally, however, Form 1–A has not been substantively revised by the Commission since 1992.

Currently, Form 1–A consists of three parts: Part I (Notification), Part II (Offering Circular), and Part III (Exhibits). Part I of Form 1–A calls for certain basic information about the issuer and proposed offering that is necessary to determine the availability of the exemption.[221] For example, the existence of any ''bad actor'' disqualifications under Rule 262 and the presence of proposed affiliate sales in the absence of issuer net income from operations in at least one of the last two fiscal years,[222] both of which may affect availability of the exemption, are required to be disclosed in Part I. Part I is filed with the Commission and publicly available, but is not required to be provided to investors.[223]

Part II of the offering statement consists of an offering circular—similar to the prospectus in a registration statement—which serves as the primary disclosure document to investors of the material facts about the issuer, its

[209] Title I of the JOBS Act permits emerging growth companies to confidentially submit draft registration statements to the Commission for nonpublic review, provided the initial confidential submission and all amendments thereto are publicly filed not later than 21 calendar days before the issuer conducts its roadshow. *See* Section 106(a) of Title I, which added subsections 5(d) and 6(e) to the Securities Act.

[210] Letter from Jonathan C. Guest, McCarter & English, LLP, July 10, 2012 (''McCarter & English Letter''); ABA Letter; WR Hambrecht + Co. Letter.

[211] Under Section 2(a)(19) of the Securities Act, an ''emerging growth company'' is defined as, among other things, an issuer that had total annual gross revenues of less than $1 billion during its most recently completed fiscal year. 15 U.S.C. 77b(a)(19).

[212] Under Section 6(e)(2) of the Securities Act, confidential submissions of draft registration statements by emerging growth companies are protected from compelled disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552). There is no similar provision under Section 3(b) of the Securities Act. Issuers requesting confidential treatment of draft offering statement submissions under Regulation A could submit such documents under cover of the Commission's Rule 83. *See* 17 CFR 200.83.

[213] The timing is consistent with the guidance provided to emerging growth companies under Title I of the JOBS Act, where such issuers do not ''test the waters'' under Section 5(d) or otherwise conduct a traditional road show. *See* JOBS Act Frequently Asked Questions on Confidential Submission Process for Emerging Growth Companies, Question 9 (April 10, 2012), *available at: http://www.sec.gov/divisions/corpfin/guidance/cfjumpstartfaq.htm.*

[214] Regulation A's proposed testing the waters provisions would encompass a variety of activities, including activities that could constitute a traditional road show. *See* Section II.D. below for a discussion on the timing and requirements for the use of testing the waters solicitation materials under Rule 254 as proposed to be amended.

[215] *See* JOBS Act Section 401(a)(2).

[216] The primary exception is the suggestion that issuers be required to submit audited financial statements. Currently, the financial statements required under Regulation A are required to be audited only if the issuer has them available.

[217] *See* Form 1–A, Part II, Part F/S.

[218] *Id., e.g.,* Part II, *e.g.,* Model B, Item 6. (Description of Business).

[219] *Id., e.g.,* Part F/S.

[220] *Id., e.g.,* Item 5. (Use of Proceeds to Issuer).

[221] *See* SEC Rel. No. 33–6275 (Jan. 9, 1981) [46 FR 2637], at 2638.

[222] *See* Rule 251(b).

[223] *See* Rule 251(d)(2); *see also* SEC Rel. No. 33–6275, at 2639.

securities, and the offering. Issuers organized as corporations are given the option of following any one of three disclosure formats in Part II:

- Model A (Question-and-Answer Format); [224]
- Model B, a somewhat scaled version of Form S–1 that largely follows the Commission's disclosure standards in effect for registration statements when Model B was adopted in 1981; [225] and
- Part I of Form S–1.[226]

Issuers organized in non-corporate form, such as limited partnerships and limited liability companies, have the option of using either Model B or Part I of Form S–1. Part F/S of the offering circular—containing financial statements and notes—is required disclosure for all issuers. Part III requires an exhibits index and a description of exhibits required to be filed as part of the offering statement.

Commenters generally supported maintaining Regulation A's existing Form 1–A, with modifications and updates to implement the provisions of the JOBS Act.[227] While some commenters supported simplifying the form or paring it down to focus on matters of greatest significance,[228] one commenter supported a more expansive disclosure regime.[229] This commenter suggested that the Commission coordinate with the States to create a single disclosure document that would address disclosure from both a federal and state securities law perspective. In the opinion of this commenter, a single form with heightened disclosure is better than a less-comprehensive federal form that would thereafter require additional disclosure items (and review) by state securities regulators.[230] According to this commenter, the need for robust disclosure is magnified by the increase in the annual offering amount and by an issuer's ability to solicit indications of interest before filing the offering statement, engage in general solicitation, and sell to investors regardless of investor qualifications.[231]

Separately, one commenter suggested that the Commission implement an offering statement scaled on the basis of offering size.[232] Another commenter suggested that the Commission consider requiring the scaled disclosure requirements available to smaller reporting companies in Form 1–A, while also: (i) Focusing disclosure on matters of the greatest significance, (ii) limiting risk factors to those deemed important, (iii) requiring disclosure of valuation assessments (for all offerings made at a fixed price) and internal projections used to set budgets as well as a discussion of management's expectations of future performance, (iv) encouraging the use and filing of research reports, and (v) if Section 3(b)(2) securities are permitted to list on a national securities exchange simultaneously with qualification of the offering statement, incorporating some Form 10 [233] disclosure requirements into Form 1–A.[234]

One commenter suggested that the Commission update its rules regarding revisions to the offering statement during the post-qualification period in light of anticipated continuous, best efforts offerings.[235] The commenter suggested that the current rule, which requires any updated or revised offering circular to be filed as an amendment to the offering statement and requalified in accordance with Rule 252,[236] places an unnecessary burden on issuers. This commenter suggested that the Commission adopt rules analogous to those for registered offerings where most information meeting the undertaking requirements of Item 512 of Regulation S–K [237] requires a post-effective registration statement, and other updates to the prospectus in such registration statement may be filed pursuant to Rule 424.[238]

We propose to maintain Form 1–A's existing three-part structure—Part I (Notification), Part II (Offering Circular), and Part III (Exhibits)—while making various revisions and updates to the Form.

a. Part I (Notification)

Part I of Form 1–A serves as a notice of certain basic information about the issuer and its proposed offering, which also helps to confirm the availability of the exemption.[239] We propose to continue to require the disclosure of this information in modified and updated form. The current paper version of Part I of Form 1–A would be converted into an online XML-based fillable form with indicator boxes or buttons and text boxes and filed online with the Commission.[240] The information would be publicly available on EDGAR, as an online data cover sheet, but not otherwise required to be distributed to investors.[241] The fillable form would enable issuers to provide information in a convenient medium—without the requirement for specialty software—that would capture relevant data about the issuer and its offering in a structured format to facilitate analysis of the Regulation A market and Regulation A issuers by the Commission, other regulators, third-party data providers, and market participants. As noted above, the XML-based fillable form would enable the convenient provision of information to the Commission, and support the assembly and transmission of such information to EDGAR. Facilitating the capture of important

[224] Model A is based on the North American Securities Administrators Association's (NASAA) Form U–7, also known as the Small Company Offering Registration (SCOR) form, adopted April 28, 1989. *See http://www.nasaa.org/industry-resources/corporation-finance/scor-overview/scor-forms/.*

[225] *See* SEC Rel. No. 33–6275 [46 FR 2637], at 2639–40; SEC Rel. No. 33–6924 [57 FR 9768], at 9771.

[226] 17 CFR 239.11. Issuers choosing Part I of Form S–1 must, however, follow the financial statement requirements of Form 1–A, Part F/S.

[227] ABA Letter; WR Hambrecht + Co.; NASAA Letter 2.

[228] Letter from Thomas D. O'Rourke, President, Alpine Ventures, Sept. 26, 2012 (''Alpine Ventures Letter''); Letter from Rutheford B. Campbell, Jr., William L. Matthews Professor of Law, University of Kentucky, Nov. 13, 2012 (''Campbell Letter''); *see also* Letter from Richard Lacey, Small Business Owner, April 23, 2012 (''Lacey Letter'') (suggesting the form should be simple); Letter from William Klehm, Fallbrook Technologies, September 23, 2013 (''Fallbrook Letter'') (suggesting, among other things, that Regulation A should be simple and user-friendly); Letter from Og Oggilby, Bank Clerk, Jan. 22, 2013 (''Oggilby Letter'') (suggesting relaxed regulations on the sale of securities of small companies). *But see* Letter from David R. Burton, General Counsel, National Small Business Association (''NSBA''), June 12, 2012 (''NSBA Letter'') (suggesting the Commission not modify or update Regulation A other than by raising the annual offering limitation to $50 million).

[229] Letter from Jack Herstein, President, NASAA, July 3, 2012 (''NASAA Letter 1'') (suggesting that heightened disclosure is better than a less-comprehensive federal form that would thereafter require additional disclosure items (and review) by state securities regulators); NASAA Letter 2.

[230] NASAA Letter 1.

[231] NASAA Letter 2.

[232] Campbell Letter (suggesting scaled disclosure in three tiers for offerings of: $0–up to $1 million; over $1 million–up to $5 million; over $5 million–up to $50 million).

[233] 17 CFR 249.210.

[234] WR Hambrecht + Co. Letter; *see also* Letter from Karl M. Sjogern, April 25, 2013 (''Sjogern Letter'') (suggesting any issuer of equity securities should be required to disclose the valuation it has given itself given the terms of the offering, and to discuss the factors it considered when setting its valuation).

[235] Kaplan Voekler Letter 2. *See* related requests for comment in Section II.C.4. below.

[236] *See* Rule 253(e)(3).

[237] 17 CFR 229.512.

[238] 17 CFR 230.424.

[239] SEC Rel. No. 33–6275 [46 FR 2637], at 2638.

[240] As proposed, the cover page to current Form 1–A would be eliminated as a standalone requirement, while portions of the information required on the cover page would be combined with Item 1 of Part I of Form 1–A in the XML fillable form.

[241] The Commission would disseminate the information in a format that provides normal text for reading and XML-tagged data for analysis. With the exception of the items that focus issuers on eligibility to use Regulation A, much of the information called for in the XML-based fillable form is also required to be disclosed to investors in Part II of Form 1–A.

financial and other information about Regulation A issuers and offerings in the proposed XML-based fillable form would enable the Commission and market participants to monitor any developing market in Regulation A securities and the types of issuers relying on the exemption.

The information collected in Part I would continue to focus issuers on eligibility to use Regulation A, and would allow Commission staff reviewing the filings to more easily make a determination about the conditions to the availability of the exemption. If adopted, this could conserve issuer time and resources and enhance the efficiency of review by Commission staff. If, after compiling the information elicited by Part I, an issuer determined that it was ineligible to rely on Regulation A, it could choose to register its offering or, if available, conduct an exempt offering in reliance on a different exemption from registration.

The proposed notification in Part I of Form 1–A would require disclosure in response to the following items:

- Item 1. Issuer Information
- Item 2. Issuer Eligibility
- Item 3. Application of Rule 262 (''bad actor'' disqualification and disclosure)
- Item 4. Summary Information Regarding the Offering and other Current or Proposed Offerings
- Item 5. Jurisdictions in Which Securities are to be Offered
- Item 6. Unregistered Securities Issued or Sold Within One Year

As proposed, Item 1 (Issuer Information), Item 2 (Issuer Eligibility), Item 3 (Application of Rule 262 (''bad actor'' disqualification and disclosure)), Item 4 (Summary Information Regarding the Offering and other Current or Proposed Offerings), and Item 6 (Unregistered Securities Issued or Sold Within One Year) would represent substantive changes to Part I.

- Item 1 (Issuer Information) would require information about the issuer's identity, industry, number of employees, financial statements and capital structure, as well as contact information.[242]
- Item 2 (Issuer Eligibility) would require the issuer to certify that it meets various proposed issuer eligibility criteria.
- Item 3 (Application of Rule 262 (''bad actor'' disqualification and disclosure)) would require the issuer to certify that no disqualifying events have occurred and to indicate whether related disclosure is included in the offering circular (*i.e.,* events that would have been disqualifying but occurred before the effective date of the amendments to Regulation A).[243]
- Item 4 (Summary Information Regarding the Offering and other Current or Proposed Offerings) would include indicator boxes or buttons and text boxes eliciting information about the offering (including whether the issuer was conducting a Tier 1 or Tier 2 offering, amount and type of securities offered, proposed sales by selling securityholders and affiliates, type of offering, estimated aggregate offering price of any concurrent offerings pursuant to Regulation A, anticipated fees in connection with the offering, and the names of auditors, legal counsel, underwriters, and certain others providing services in connection with the offering).
- Item 5 (Jurisdictions in Which Securities are to be Offered) would include data collection about the jurisdiction in which the securities are to be offered.
- Item 6 (Unregistered Securities Issued or Sold Within One Year), which largely restates existing Item 5 to Part I, would eliminate the requirement to provide the names and identities of the persons to whom unregistered securities were issued.

We propose to eliminate Item 1 (Significant Parties) of current Part I, which requires disclosure of the names, business address, and residential address of all the persons covered by current Rule 262. Instead, we propose to only require narrative disclosure in Part II of Form 1–A, as proposed, when the issuer has determined that a relevant party has a disclosable ''bad actor'' event.[244] We propose to eliminate Item 3 of current Part I because we propose to eliminate the current restrictions on affiliate resales under Rule 251(b).[245] Information regarding the amount of proposed secondary sales and the existence of affiliate sales in the offering, however, would continue to be disclosed in Item 4, as proposed. Item 6 (Other Present or Proposed Offerings) and Item 9 (Use of a Solicitation of Interest Document) of current Part I would be incorporated into proposed Item 4 (Summary Information Regarding the Offering and Other Current or Proposed Offerings). We also propose to eliminate Item 7 (Marketing Arrangements) and Item 8 (Relationship with Issuer of Experts Named in Offering Statement) of current Part I, as disclosure of this information is required in Part II (Offering Circular).

b. Part II (Offering Circular)

(1) Narrative Disclosure

As noted above, Part II (Offering Circular) in existing Form 1–A provides issuers with three options for their narrative disclosure: Model A, Model B, and Part I of Form S–1.[246] The use of these three options has not been revisited, nor have the Model A and Model B formats been substantively revised by the Commission, since their introduction in 1992.[247] In the context of a broader effort to update Regulation A and make it more useful for market participants, we believe that the form and content of the Regulation A Offering Circular is in need of reconsideration. In this regard, we propose to eliminate Model A as a disclosure option, to update and retain Model B as a disclosure option (renaming it ''Offering Circular''), and to continue to permit issuers to rely on Part I of Form S–1 to satisfy the disclosure obligations of Part II of Form 1–A.

Model A. Model A was first introduced as an option for corporate issuers' Regulation A offering statements in 1992. The basis for the form was the Small Company Offering Registration, or SCOR, form developed by NASAA, in coordination with state securities administrators and the securities bar, working through the ABA's State Regulation of Securities Committee.[248] Model A was intended to

[242] As proposed, some of the information in Item 1, such as the name of the issuer, jurisdiction of incorporation, contact information, primary Standard Industrial Classification Code Number, and I.R.S. Employer Identification Number is currently required to be included on the cover page of Form 1–A. We propose to eliminate the cover page of Form 1–A and to move the relevant information from the cover page into Item 1 of Part I.

[243] *See* discussion of proposed Rule 262(a)(3) and (a)(5) in Section II.G. below.

[244] *See* discussion in Section II.G. below.

[245] The primary purpose of current Item 3 (Affiliate Sales) in Part I of Form 1–A is to ensure compliance with certain restrictions on affiliate resales under Rule 251(b). *See* discussion in Section II.B.3. above.

[246] Non-corporate issuers are not permitted to use Model A.

[247] Before the 1992 amendments to Regulation A, Model B was the only format permissible in Regulation A. *See* SEC Rel. No. 33–6275 [46 FR 2637]. Model A and Part I of Form S–1 were added as additional issuer options at that time. Model B has not been substantively revised or revisited since it was introduced by the Commission in 1981. *See* SEC Rel. No. 33–6924 [57 FR 9768], at 9771.

[248] NASAA's Form U–7 (Small Company Offering Registration) was first approved for use in connection with certain securities offerings by NASAA in 1989. *See* NASAA's Web site on SCOR Forms, *available at: http://www.nasaa.org/industry-resources/corporation-finance/scor-overview/scor-forms/.* It was later revised by NASAA in 1999. The revised version has not been approved for use in connection with Regulation A by the Commission. In its comment letter, NASAA suggested that the Commission consider allowing revised Form U–7 to

provide corporate issuers with a ''balanced approach to the capital raising process, providing a registration form that small businesses can easily use at a reduced cost while still maintaining investor protection.'' [249] In practice, however, Model A has been used much less frequently than Model B, and offerings using Model A have generally taken significantly longer to qualify than those using Model B or Part I of Form S–1.[250] Commission staff who review Regulation A filings indicate that Model A's question-and-answer disclosure format often results in disclosure that lacks uniformity and is hard to follow. While the question-and-answer approach taken in Model A may help focus corporate issuers on crucial disclosure issues, we are not convinced that the disclosure format results in clear and understandable disclosure being provided to investors. We therefore propose to eliminate Model A from the narrative disclosure options in Part II of Form 1–A.

Model B. Model B disclosure was first introduced by the Commission in 1981, and was the only available disclosure format at that time.[251] It was preserved as a disclosure option in the 1992 amendments to Regulation A.[252] It has not been substantively updated or revised since 1981.

Model B was originally the product of a Commission review of the disclosure practices of Regulation A issuers under Model B's predecessor, Schedule I.[253] The Commission found that Regulation A's then-existing disclosure guidance and rules did not provide sufficiently detailed directions for the types of offerings that were being conducted under Regulation A.[254] As a result, issuers and their counsel often looked to the existing disclosure guides for the preparation of registration statements [255] for guidance on disclosure under Regulation A.[256] Such disclosure, however, lacked uniformity, and caused delays in the Commission staff review and comment process.[257] Model B was a codification by the Commission of the disclosure standards that, in practice, were being applied to Regulation A offerings at that time.[258] As enacted, Model B was not intended to increase the disclosure obligations of issuers. Rather, in addition to removing uncertainty as to the content of required disclosures, Model B's more comprehensive and uniform set of disclosure standards was intended to reduce an issuer's total time spent preparing and amending the offering circular, and the Commission staff's time spent reviewing and commenting on it. The result was offering statement disclosure that closely followed the disclosure requirements then in effect for registration statements, but scaled for smaller issuers.[259]

Form S–1. The 1992 amendments to Regulation A also permitted issuers to draft offering circular disclosure based on the narrative disclosure requirements for registered offerings found in the then-newly created Form SB–1.[260] When Form SB–1 was rescinded as part of the simplification and modernization of requirements for small businesses, including the adoption of the smaller reporting company concept, Form 1–A was revised to permit issuers to follow the narrative disclosure provisions of Part I of Form S–1.[261] Thus, issuers are currently able to provide narrative disclosure under Part I of Form S–1 based on the disclosure requirements for smaller reporting companies (if applicable) or for larger companies that do not fall within the definition of a smaller reporting company.[262]

Form S–1 and the narrative disclosure requirements of Regulation S–K have been revised numerous times since the introduction of Model B disclosure in 1981 to reflect evolving disclosure requirements and standards. Model B disclosure, however, has remained essentially unchanged, as a version of Part I of Form S–1 circa 1981, scaled for smaller issuers. Thus, while eliciting disclosure of largely the same information, Model B and Part I of Form S–1 contain different item numbers and language.

Proposed Offering Circular. We propose to retain Model B (which, in light of the proposed elimination of Model A, will be renamed ''Offering Circular'') as a disclosure option under Part II of Form 1–A, updated as detailed below in accordance with Title IV of the JOBS Act and to reflect developments in disclosure requirements for registered offerings since 1981. Updates to the Offering Circular would also incorporate the disclosure guidelines in the Securities Act Industry Guides and guidance on the disclosure requirements applicable to limited partnerships and limited liability companies.[263] Additionally, we propose to continue to permit issuers to comply with Part II of Form 1–A by providing the narrative disclosure required in Part I of Form S–1.

We solicit comment as to whether it would be more appropriate to eliminate Model B disclosure altogether, and, in its place, to require issuers to follow the disclosure and form requirements of Part I of Form S–1, while maintaining Model B-specific disclosures where noted. As with the proposed updates to Model B, to the extent the Commission chose to require disclosure that tracks Part I of Form S–1, it would not increase the disclosure obligations of issuers except where noted below.

We are aware that eliminating Model A and updating Model B may raise concerns about an increase in the disclosure required for a Regulation A offering. Our proposal would create new requirements for audited financial statements (consistent with the JOBS Act requirement of the annual filing of audited financial statements) and for a section containing management's discussion and analysis (MD&A) of the issuer's liquidity, capital resources, and results of operations.[264] Consistent with

be used in connection with the Section 3(b)(2) exemption. *See* NASAA Letter 2.

[249] SEC Rel. No. 33–6924, at 23–24.

[250] From 2002 through 2012, approximately 21% of qualified Regulation A offerings have used Model A, 66% have used Model B and 13% have used Form S–1. During the same period, the average time required for an offering to qualify was 301 days for offerings using Model A, 220 days for offerings using Model B and 167 days for offerings using Form S–1. One reason that Model A is used less frequently may be that it was not updated to correspond to the version of the SCOR form adopted by NASAA in 1999, so an issuer may not be able to use the same disclosure document in connection with Regulation A that it can use for state securities regulation disclosure.

[251] *See* SEC Rel. No. 33–6275.

[252] *See* SEC Rel. No. 33–6949, at 36444.

[253] SEC Rel. No. 33–6275, at 2638.

[254] *Id.*

[255] *See, e.g.,* SEC Rel. No. 33–4936 (Dec. 9, 1968) [33 FR 18617] (Guides for Preparation and Filing of Registration Statements).

[256] SEC Rel. No. 33–6275, at 2638.

[257] *Id.*

[258] *Id.*

[259] As an example of the variances between Form 1–A and registered offering disclosure, Item 10 of Part II of Form 1–A called for disclosure of record ownership of voting securities by management and certain securityholders, whereas Form S–18, a simplified registration form available to certain corporate issuers going public for the first time before 1992, called for broader disclosure of beneficial ownership of such securities. *See* SEC Rel. No. 33–6275, at 2640. This distinction between Form 1–A and registered offering disclosure (on Form S–1) remains today.

[260] Form SB–1 replaced Form S–18. *See* SEC Rel. No. 33–6949, at 36442.

[261] *See* SEC Rel. No. 33–8876, at 166.

[262] An issuer that qualifies as a smaller reporting company on the basis of public float or revenue (*see, e.g.,* Exchange Act Rule 12b–2, 17 CFR 240.12b–2) may follow the narrative disclosure requirements in Part I of Form S–1 that apply to such companies.

[263] *See* Item 7(c)–(d) to Part II of proposed Form 1–A; *see also* SEC Rel. No. 33–6900 (June 17, 1991) [56 FR 28979] (setting forth the Commission's view on the disclosure requirements for limited partnerships).

[264] While not currently an express disclosure requirement in Model B, some disclosure requirements similar to MD&A are included in Form 1–A. Disclosure similar to the MD&A required in registered offerings would provide potential investors with meaningful information upon which

Continued

the requirements of current Form 1–A, issuers that have not generated revenue from operations during each of the three fiscal years immediately before the filing of the offering statement would be required to describe their plan of operations for the twelve months following qualification of the offering statement.[265] Otherwise, it is not intended to substantially alter current Model B disclosure requirements.

As proposed, Offering Circular disclosure in Part II of Form 1–A would cover:

- Basic information about the issuer and the offering, including identification of any underwriters and disclosure of any underwriting discounts and commissions (Item 1: Cover Page of Offering Circular);
- Material risks in connection with the offering (Item 3: Summary and Risk Factors);
- Material disparities between the public offering price and the effective cash costs for shares acquired by insiders during the past year (Item 4: Dilution);
- Plan of distribution for the offering, including the disclosure required by Item 7 (Marketing Arrangements) of Part I of current Form 1–A and disclosure regarding selling securityholders (Item 5: Plan of Distribution and Selling Securityholders);
- Use of proceeds (Item 6: Use of Proceeds to Issuer);
- Business operations of the issuer for the prior three fiscal years (or, if in existence for less than three years, since inception) (Item 7: Description of Business);
- Material physical properties (Item 8: Description of Property);
- Discussion and analysis of the issuer's liquidity and capital resources and results of operations through the eyes of management covering the two most recently completed fiscal years; and, for issuers that have not received revenue from operations during each of the three fiscal years immediately before the filing of the offering statement, the plan of operations for the twelve months following qualification of the offering statement, including a statement about whether the issuer anticipates that it will be necessary to raise additional funds within the next six months (Item 9: Management's Discussion and Analysis of Financial Condition and Results of Operations);
- Identification of directors, executive officers and significant employees with a discussion of any family relationships within that group, business experience during the past five years, and involvement in certain legal proceedings during the past five years (Item 10: Directors, Executive Officers and Significant Employees);
- Executive compensation data for the most recent fiscal year for the three highest paid officers or directors (Item 11: Compensation of Directors and Officers);
- Beneficial ownership of voting securities by executive officers, directors, and 10% owners (Item 12: Security Ownership of Management and Certain Securityholders);
- Transactions with related persons, promoters and certain control persons (Item 13: Interest of Management and Others in Certain Transactions);
- The material terms of the securities being offered (Item 14: Securities Being Offered);
- Two years of financial statements, which for Tier 2 offerings would be required to be audited. Tier 1 offerings would be required to provide audited financial statements to the extent the issuer had prepared them for other purposes;[266] and
- Any events that would have triggered disqualification of the offering under Rule 262 if the issuer could not rely on the provisions in proposed Rule 262(b)(1).[267]

The proposed content of the Offering Circular would update the disclosure requirements in some respects to more closely align Regulation A disclosure with the smaller reporting company disclosure requirements for registered offerings, while certain scaled elements exclusive to Model B would be retained.[268] The changes would result in more detailed instructions on issuer disclosure in the MD&A section of the Offering Circular, as well as a description of the issuer's business for a period of three years (as opposed to current Model B's five-year requirement), with the added disclosure of any legal proceedings material to the issuer's business or financial condition. These changes would make Offering Circular disclosure more akin to what is required of smaller reporting companies in a prospectus, but more limited in certain respects. Additionally, as with registered offerings by smaller reporting companies, issuers would be required to disclose beneficial ownership of their voting securities, as opposed to record ownership of voting and non-voting securities. Lastly, as to transactions with related persons, promoters and certain control persons, issuers would no longer be required to disclose such transactions in excess of $50,000 in the prior two years (or similar transactions currently contemplated), but rather to follow the requirements for smaller reporting company disclosure of transactions during the prior two fiscal years that exceed the lesser of $120,000 or 1% of the average total assets at year end for the last two completed fiscal years.[269]

With the exception of the requirements for disclosure of beneficial ownership, material legal proceedings, and related party transactions for certain issuers,[270] these proposed updates should not result in an overall increase in an issuer's disclosure obligations. For example, as mentioned above, issuers would be required to provide fewer years of business description and certain issuers would have a higher threshold for reporting transactions with related persons than current Model B.[271] Further, issuers would be permitted to provide more streamlined disclosure of dilutive transactions with insiders by no longer being required to present a dilution table based on the net tangible book value per share of the issuer's securities.[272] Additionally, while issuers would be provided with more detailed instructions on MD&A

to make an investment decision. The proposed MD&A disclosure requirements would provide issuers with comprehensive guidance as to the specific requirements of such disclosure. The primary differences between the MD&A we propose to require in Form 1–A and the MD&A required under Item 303 of Regulation S–K, 17 CFR 229.303, are discussed below.

[265] *See* Item 6(3)(i) of Model B of Part II of Form 1–A.

[266] Financial statement requirements are discussed more fully in Section II.C.3.b(2). below.

[267] *See* discussion of disqualification provisions in Section II.G. below. We propose to require this ''bad actor'' disclosure even if the issuer elects to follow the Part I of Form S–1 disclosure format.

[268] We are not proposing, however, to include in the Offering Circular all disclosures required of smaller reporting companies under Regulation S–K. For example, we do not propose to include in the Offering Circular disclosure required of certain issuers by the Dodd-Frank Act regarding conflict minerals, payments made by resource extraction issuers, *see* SEC Rel. No. 34–67717 (Aug. 22, 2012) [77 FR 56365], pay ratio, pay for performance, hedging, or clawbacks. We also do not propose to require Regulation A issuers to provide disclosure regarding the market price of and dividends on common equity and related stockholder matters under Item 201 of Regulation S–K, 17 CFR 229.201, changes in and disagreements with accountants under Item 304 of Regulation S–K, 17 CFR 229.304, corporate governance matters under Item 407 of Regulation S–K, 17 CFR 229.407, and the determination of offering price under Item 505 of Regulation S–K, 17 CFR 229.505.

[269] *See* 17 CFR 229.404(d)(1).

[270] As proposed, issuers that have $5 million (or less) in average total assets at year end for the last two completed fiscal years would be required to disclose related party transactions at a lower threshold (*i.e.,* 1% or more) than under the requirements of current Model B, which requires the disclosure of transactions in excess of $50,000 in the prior two years.

[271] *See id.*

[272] *See* Item 4 (Dilution) to the Offering Circular in Part II of Form 1–A.

disclosure, similar disclosure is already called for under current requirements.[273] The proposed MD&A disclosure would clarify existing requirements and save issuers time by providing more express guidance regarding the type of information and analysis that should be included. We believe the clearer requirements should also lead to improved MD&A disclosure, which would provide investors with better visibility into management's perspective on the issuer's financial condition and operations. Investors would also receive the benefit of disclosure that is more consistent across issuers in both registered offerings and Regulation A offerings.

Issuers providing disclosure in the Offering Circular would retain most of the scaled disclosure provisions currently found in Model B. We propose to continue to permit Regulation A issuers to:

- provide simplified executive compensation data for the three highest paid officers and directors in tabular form for the most recent fiscal year;[274]
- disclose 10% beneficial owners of voting securities;[275] and
- follow fewer specific disclosure requirements for the description of business section.[276]

Additionally, the Offering Circular would, in comparison to Model B of Form 1–A, contain more express MD&A disclosure requirements and guidance.[277] These requirements would not, however, be as extensive as those contained in Item 303 of Regulation S–K.[278] For example, the Offering Circular would include detailed guidance and requirements similar to Item 303 with respect to liquidity, capital resources, and results of operations, including the most significant trend information,[279] but would not require disclosure (in the normal course) of off-balance sheet arrangements or contractual obligations.[280] As with the treatment of smaller reporting companies under Item 303(d), Regulation A issuers would only be required to disclose information about the issuer's results of operations for the two most recently completed fiscal years. Further, consistent with existing Form 1–A, issuers that have not generated revenue from operations during each of the three fiscal years immediately before the filing of the offering statement would have to describe their plan of operations for the twelve months following qualification of the offering statement, including a statement about whether, in the issuer's opinion, it will be necessary to raise additional funds within the next six months to implement the plan of operations.[281]

Consistent with the treatment of issuers in registered offerings, we further propose to permit issuers to incorporate by reference into Part II of the Form 1–A certain items previously submitted or filed on EDGAR. Incorporation by reference would be limited to documents publicly submitted or filed under Regulation A, such as Form 1–A and Form 1–K, and their exhibits. In order to be permitted to incorporate by reference, issuers would have to be subject to the ongoing reporting obligations for Tier 2 offerings.[282] Issuers would be required to describe the information incorporated by reference, which would be required to be accompanied by a separate hyperlink to the relevant document on EDGAR, which need not remain active after the filing of the related offering statement.

(2) Financial Statements

Part F/S of Form 1–A currently requires issuers in Regulation A offerings to provide the following financial statements prepared in accordance with U.S. GAAP:

- a balance sheet as of a date within 90 days before filing the offering statement (or as of an earlier date, not more than six months before filing, if the Commission approves upon a showing of good cause) but, for filings made more than 90 days after the end of the issuer's most recent fiscal year, the balance sheet must be dated as of the end of the fiscal year;
- statements of income, cash flows, and stockholders' equity for each of the two fiscal years preceding the date of the most recent balance sheet, and for any interim period between the end of the most recent fiscal year and the date of the most recent balance sheet;
- financial statements of significant acquired businesses; and
- pro forma information relating to significant business combinations.

As noted above, the financial statements are not required to be audited unless the issuer has already obtained an audit of its financial statements for another purpose. If the issuer has audited financial statements, the qualifications and reports of the auditor must meet the requirements of Article 2 of Regulation S–X[283] and the audit must be conducted in accordance with U.S. Generally Accepted Auditing Standards (GAAS) or the standards of the Public Company Oversight Board (PCAOB), but auditors are not required to be registered with the PCAOB.[284]

We have not received extensive comment on the potential financial statement requirements for issuers under Title IV of the JOBS Act. One commenter suggested audited financial statements should be required for all offerings.[285] Another commenter urged the Commission to prohibit the use of financial projections unless they are reviewed, and filed along with the issuance of an unqualified opinion, by a licensed certified public accountant.[286] Another commenter suggested—while discussing offering statements generally—that the Commission should consider scaling financial statement requirements on the basis of offering size.[287]

We propose to generally maintain the existing financial statement requirements of current Part F/S for Tier 1 offerings, while requiring issuers in Tier 2 offerings to file audited financial

[273] MD&A disclosure is specifically required by Model A. Model B calls for similar information in Item 6, which requires disclosure of the characteristics of the issuer's operations or industry that may have a material impact upon the issuer's future financial performance. Item 6 also requires disclosure of the issuer's plan of operations and short-term liquidity if the issuer has not received revenue from operations during each of the three fiscal years immediately prior to filing the offering statement.

[274] *Cf.* Item 402(l)–(r) of Regulation S–K, 17 CFR 229.402(l)–(r), which requires more extensive disclosure and tabular information for the two most recent fiscal years.

[275] *Cf.* Item 403 of Regulation S–K, 17 CFR 229.403, which requires disclosure of beneficial owners of more than 5% of voting securities.

[276] Compare the requirements of Item 6 of Model B, Part II of Form 1–A with the more prescriptive requirements of Item 11 of Form S–1 and Item 101 of Regulation S–K, 17 CFR 229.101.

[277] The requirements for financial statements in Part F/S of Part II of Form 1–A are discussed in Section II.C.3.b(2). below.

[278] 17 CFR 229.303 (Management's discussion and analysis of financial condition and results of operations in the context of registered offerings).

[279] 17 CFR 303(a)(1)–(3). *Cf.* Form 20–F, at Item 5.

[280] During the course of the qualification process, Commission staff reviewing the offering statement may request the disclosure of such information, where the disclosure of such information would be material to an understanding of the issuer's financial condition.

[281] *See* Form 1–A, Model B, at Item 6 (Description of Business).

[282] Issuers following the Offering Circular disclosure model would be permitted to incorporate by reference Items 2 through 14, whereas issuers following the narrative disclosure in Part I of Form S–1 would be permitted to incorporate by reference Items 3 through 11 of Part I of Form S–1. *See* General Instruction III to proposed Form 1–A. As with Model B, the item numbers in the Offering Circular model of proposed Part II of Form 1–A and Part I of Form S–1 do not align.

[283] 17 CFR 210.1 *et seq.*

[284] *See* Form 1–A, Part F/S.

[285] WR Hambrecht + Co. Letter.

[286] NASAA Letter 2.

[287] Campbell Letter.

statements in Part F/S.[288] Specifically, we propose to require all issuers to file balance sheets as of the two most recently completed fiscal year ends (or for such shorter time that they have been in existence), instead of the current requirement to file a balance sheet as of only the most recently completed fiscal year end. In light of the requirement in Part F/S for issuers to provide statements of income, cash flows, and stockholders' equity for each of the two fiscal years preceding the date of the most recent balance sheet, we believe issuers would already have the additional balance sheet or be in a position to easily generate the additional balance sheet at minimal additional cost, and that comparison between the two balance sheets would provide valuable additional information. Financial statements for U.S.-domiciled issuers would be required to be prepared in accordance with U.S. GAAP, as is currently the case. We propose, however, to permit Canadian issuers to prepare financial statements in accordance with either U.S. GAAP or International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB).[289]

In general, issuers conducting Tier 1 offerings must follow the requirements for the form and content of their financial statements set out in Part F/S, rather than following the requirements in Regulation S–X. However, in certain less common circumstances, such as for an acquired business or subsidiary guarantors, Part F/S directs issuers conducting Tier 1 offerings to comply with certain portions of Regulation S–X, which provides guidance on the financial statements required in such transactions.[290]

For all Tier 2 offerings, however, issuers would be required to follow the financial statement requirements of Article 8 of Regulation S–X, as if the issuer conducting a Tier 2 offering were a smaller reporting company, unless otherwise noted in Part F/S. This requirement would include any financial information with respect to acquired businesses required by Rule 8–04 and 8–05 of Regulation S–X.[291]

As with current Regulation A, financial statements in a Tier 1 offering would not be required to be audited. However, we also propose to maintain Regulation A's existing requirement that, if an issuer conducting a Tier 1 offering has already obtained an audit of its financial statements for other purposes, and that audit was performed in accordance with U.S. generally accepted auditing standards or the auditing standards of the PCAOB, and the auditor was independent pursuant to Rule 2–01 of Regulation S–X, then those audited financial statements must be filed. The auditor may, but need not be, registered with the PCAOB.

Issuers conducting Tier 2 offerings would, by contrast, be required to have their financial statements audited. As with Tier 1 offerings, the auditor of financial statements being filed as part of a Tier 2 offering must be independent under Rule 2–01 of Regulation S–X and must comply with the other requirements of Article 2 of Regulation S–X, but need not be PCAOB-registered.[292] Issuers conducting Tier 2 offerings would, however, be required to provide financial statements that are audited in accordance with the standards of the PCAOB. In addition to auditing standards, PCAOB standards include requirements on auditor ethics, independence and quality control that, in comparison to the auditing standards of U.S. GAAS, could improve the quality of the audit and the financial statements provided to investors in potentially larger Tier 2 offerings.

Additionally, we propose to update the Form 1–A financial statement requirements to be consistent with the proposed timetable for ongoing reporting.[293] Under Regulation A, as currently in effect, issuers are required to prepare a balance sheet as of a date not more than 90 days before filing the offering statement, or not more than six months before filing if the Commission approves upon a showing of good cause.[294] If the financial statements are filed more than 90 days after the end of the issuer's most recently completed fiscal year, the financial statements must include that fiscal year.[295] In practice, however, Commission staff reviewing Form 1–A filings routinely affords issuers the six-month accommodation, subject to the requirement that financial statements must otherwise be dated as of the end of the most recently completed fiscal year if filed more than 90 days after the end of such fiscal year.

We propose to extend the permissible age of financial statements in Form 1–A to nine months, in order to permit the provision of financial statements that are updated on a timetable consistent with our proposed requirement for semiannual interim reporting.[296] We also propose to add a new limitation on the age of financial statements at qualification, under which an offering statement could not be qualified if the date of the balance sheet included under Part F/S were more than nine months before the date of qualification.[297] For filings made more than three months after the end of the issuer's most recent fiscal year, the balance sheet would be required to be dated as of the end of the most recent fiscal year.[298] For filings made more than nine months after the end of the issuer's most recent fiscal year, the balance sheet would be required to be dated no earlier than as of six months after the end of the most recent fiscal year.[299] If interim financial statements are required, they would be required to cover a period of at least six months.[300] Requiring issuers to file

[288] *See* paragraph (c) of Part F/S of Form 1–A. An issuer offering up to $5 million that elects to conduct a Tier 2 offering would be required, in addition to filing audited financial statements in the offering statement, to provide ongoing reports to the Commission on the proposed annual and semiannual basis, with interim current event updates, *see* Section II.E.1. below, and only be permitted to terminate their ongoing reporting obligation by satisfying the requirements for filing a Form 1–Z described in Section II.E.4. below.

[289] If the financial statements comply with IFRS as issued by the IASB, such compliance must be unreservedly and explicitly stated in the notes to the financial statements and the auditor's report must include an opinion on whether the financial statements comply with IFRS as issued by the IASB. *See* General Rule (a)(2) to Part F/S of proposed Form 1–A. *Cf.* Item 17(c) of Form 20–F.

[290] We propose to update the requirements for financial statements of businesses acquired or to be acquired in Part F/S to refer to the requirements of Rule 8–04 of Regulation S–X. We also propose to provide specific references to the relevant provisions of Regulation S–X regarding the requirements for financial statements of guarantors and the issuers of guaranteed securities (Rule 3–10 of Regulation S–X), financial statements of affiliates whose securities collateralize an issuance of securities (Rule 3–16 of Regulation S–X), and financial statements provided in connection with oil and gas producing activities (Rule 4–10 of Regulation S–X). The financial statements provided in these circumstances would only be required to be audited to the extent the issuer had already obtained an audit of its financial statements for other purposes.

[291] Issuers would, however, follow paragraph (a)(3) of Part F/S of Form 1–A with respect to the age of the financial statements and the periods to be presented.

[292] *See* Part F/S of Form 1–A (referencing Article 2 of Regulation S–X, 17 CFR 210.2–01 *et seq.*).

[293] Our proposals for ongoing reporting are discussed in Section II.E. below.

[294] *See* Form 1–A, Part F/S.

[295] *Id.*

[296] This age of financial statements requirement is also consistent with the treatment of foreign private issuers in the context of registered offerings. *See* Division of Corporation Finance's Financial Reporting Manual, at 6620, *available at: http://www.sec.gov/divisions/corpfin/cffinancialreportingmanual.pdf#topic6*.

[297] Currently, Form 1–A does not expressly limit the age of financial statements at qualification. In practice, however, Commission staff requires issuers to update financial statements before qualification to the extent such financial statements no longer satisfy Form 1–A's requirements for the age of financial statements at the time of filing.

[298] *See* paragraph (a)(3)(i) to Part F/S of proposed Form 1–A.

[299] *Id.*

[300] *See* paragraph (a)(3)(iv) to Part F/S of proposed Form 1–A.

interim financial statements no older than nine months and covering a minimum of six months would have the beneficial effect of eliminating what could otherwise be a requirement for certain issuers to provide quarterly interim financial statements during the qualification process and would be consistent with the timing of our proposed ongoing reporting requirements.[301] We propose to generally maintain the timing requirement of existing Form 1–A concerning the date after which an issuer must provide financial statements dated as of the most recently completed fiscal year, but to change the interval from 90 calendar days to three months, which we believe would simplify compliance.

We solicit comment below on whether issuers conducting Tier 2 offerings should be required to provide their financial statements to the Commission and on their corporate Web sites in interactive data format using the eXtensible Business Reporting Language (XBRL).[302] We have not received any public comment on this issue to date and do not propose any such requirement. If the Commission were to adopt any such requirement, as with registered offerings, the interactive data would have to be provided as an exhibit to the offering statement filed with the Commission. On the same basis and subject to the same qualifications, interactive data would be required for all periodic and current reporting, as well as for the annual audited financial statements. Filers would be required to prepare their interactive data using the list of tags the Commission specifies and submit them with any supporting files the EDGAR Filer Manual prescribes.[303] Interactive data would be required for the complete set of their financial statements, which includes the face financial statements and all footnotes.[304] Filers would be required to tag every financial statement line item and ''detail tag'' the footnotes by tagging each amount.

c. Part III (Exhibits)

We have not received any comments about the exhibits that should be filed with the offering statement.[305] We propose to continue to permit issuers to incorporate by reference certain information in documents filed under Regulation A that is already available on EDGAR, but, in addition to the requirement to describe the information incorporated by reference, issuers would be required to include a hyperlink to such exhibit on EDGAR.[306] As proposed, such issuers would also have to be subject to the ongoing reporting obligations for Tier 2 offerings. To the extent post-qualification amendments to offering statements must include audited financial statements, the consent of the certifying accountant to the use of such accountant's certificate in connection with the amended financial statements must be included.[307] Additionally, and consistent with the requirements of existing Regulation A, any solicitation materials used by the issuer would have to be included as an exhibit to the offering statement at the time of non-public submission or filing.

d. Signature Requirements

Under current Regulation A, an issuer must file seven copies of the offering statement with the Commission, at least one of which must be manually signed.[308] In light of the proposed electronic filing requirements for Regulation A offering materials discussed above,[309] however, issuers would no longer be required to file a manually signed copy of the Form 1–A with the Commission.[310] Similar to the requirement for issuers in the context of registered offerings, issuers would instead be required to manually sign a copy of the offering statement before or at the time of filing that would have to be retained by the issuer for a period of five years.[311] Issuers would be required to produce the manually signed copy to the Commission, upon request.[312]

Additionally, if the issuer filing a Form 1–A under current Regulation A is a Canadian issuer, its authorized representative in the United States is required to sign the offering statement.[313] This requirement corresponds to a similar requirement under Section 6 of the Securities Act for filings of registration statements by foreign issuers.[314] We propose to eliminate this requirement under Regulation A. Offerings qualified under Regulation A are not subject to the liability provisions of Section 11 of the Securities Act, and having a signatory in the United States does not provide purchasers with significant additional protections. In addition, we propose to maintain the requirement that Canadian issuers file a Form F–X [315] to provide an express consent to service of process in connection with offerings qualified under Form 1–A. This treatment is similar to requirements for Canadian companies making filings under the multijurisdictional disclosure system.[316]

Request for Comment

45. Should we continue to require a Part I (Notification) to be filed as part of the offering statement on Form 1–A? If so, should we require additional (or less) information in Part I than is currently required or proposed? If so, provide justifications for such disclosure.

46. As proposed, what would be the costs and benefits associated with requiring an issuer, as part of the electronic filing process, to enter key information about itself and its securities on a formatted cover sheet to accompany the EDGAR-formatted text file attachment?

47. Some market participants have urged us to simplify the disclosure requirements associated with Regulation A in order to facilitate more cost-effective capital formation by small companies.[317] Most commenters,

[301] *See* discussion in Section II.E.1.b. below (Semiannual Reports on Form 1–SA).

[302] Data becomes interactive when it is labeled or ''tagged'' using a computer markup language such as XBRL that software can process for analysis. For a discussion of current financial statement interactive data requirements, *see* SEC Rel. No. 33–9002 (Jan. 30, 2009) [74 FR 6776]. Financial statements for issuers seeking to qualify Tier 1 offerings may be treated differently because audited financial statements may not be required in the offering statements of such issuers.

[303] The EDGAR Filer Manual is *available at: http://www.sec.gov/info/edgar/edmanuals.htm.*

[304] 17 CFR 210.12–01 *et seq.*

[305] Part III (Exhibits) of Form 1–A currently requires issuers to file the following exhibits with the offering statement: Underwriting agreement; Charter and by-laws; Instrument defining the rights of securityholders; Subscription agreement; Voting trust agreement; Material contracts; Material foreign patents; Plan of acquisition, reorganization, arrangement, liquidation, or succession; Escrow agreements; Consents; Opinion re legality; Sales material; ''Test the water'' material; Appointment for agent for service of process; and any additional exhibits the issuer may wish to file.

[306] *See* General Instruction III to proposed Form 1–A and discussion in Section II.C.3.b(1). above regarding incorporation by reference in Part II of Form 1–A. The hyperlink must be active at the time of filing, but need not remain active after filing.

[307] This is consistent with current practice under Regulation A, but would be made an express requirement under the proposed rules. *See* proposed Rule 252(h)(1)(ii).

[308] *See* Rule 252(e).

[309] *See* discussion in Section II.C.1. above.

[310] This proposed requirement would also apply to any Form 1–A non-publicly submitted to the Commission.

[311] *See* Instruction 2 to Signatures in Form 1–A; *cf.* Rule 402(e), 17 CFR 230.402(e).

[312] *Id.*

[313] *See* Rule 252(f) and Instruction 1 to Signatures of Form 1–A.

[314] 15 U.S.C. 77f(a).

[315] 17 CFR 239.42.

[316] *See* SEC Rel. No. 33–6902 (June 21, 1991) [56 FR 30036] (adopting the multijurisdictional disclosure system).

[317] Alpine Ventures Letter; Campbell Letter; Lacey Letter; Oggilby Letter.

however, have not made specific suggestions. Are there particular disclosure requirements associated with Regulation A that are most in need of simplification? Are there currently required disclosures that could be modified? Alternatively, are there any disclosure standards, not currently required or proposed in Regulation A, that should be included as disclosure requirements in the new Form 1–A? If so, which disclosure could be reduced or eliminated, or should be included?

48. As proposed, should we continue to maintain certain disclosure requirements in the proposed Offering Circular, while updating others to be more in line with the disclosure required of smaller reporting companies? If not, why not? Please provide suggestions as to what disclosure should be preserved in the Offering Circular or updated to accord with the smaller reporting company requirements in the context of registered offerings.

49. Should we provide for scaled narrative disclosure in Form 1–A based on the size of the issuer or size of the offering? Why or why not? If so, on what size-based attributes of an issuer or the offering should we base any such scaled disclosure requirements and what types of scaled disclosure would be applicable to each resulting category?

50. Should we update and provide more specific guidance as to the MD&A section required to be included in the Offering Circular, as proposed? Is there any additional guidance we should provide?

51. As proposed, and consistent with the requirements of smaller reporting companies under Item 303 of Regulation S–K, should we permit Regulation A issuers to provide only two years of information about their results of operations? Why or why not? Are there any other specific provisions from Item 303 of Regulation S–K that would (or would not) be appropriate for the types of issuers likely to rely on Regulation A? If so, please explain why any such provision should (or should not) apply.

52. Should we continue to require, as proposed, the disclosure of an issuer's plan of operations for the twelve months following qualification of the offering statement? Why or why not? Alternatively, is this disclosure requirement appropriate for the types of issuers likely to rely on Regulation A? If not, why not?

53. Should we consider adding a disclosure requirement in Part II of Form 1–A that would require issuers to disclose the value of the issuer prior to the contemplated Regulation A offering (*i.e.,* pre-money value)? If so, are there any practical limitations on the ability of issuers with complicated capital structures to provide investors with an accurate figure or basis for such a calculation? Should we also consider requiring disclosure of how the price to the public of the securities being offered was determined?

54. Would it be an efficiency to issuers if we were to eliminate the proposed Offering Circular disclosure format, and instead have Form 1–A refer issuers item-by-item to Form S–1 requirements, while preserving—where noted in Form 1–A itself—Model B-specific scaling? Alternatively, should we continue to allow issuers to use Part I of Form S–1 as a separate disclosure option in Part II of Form 1–A? Why or why not?

55. Should we make changes to the exhibit requirements of Part III of Form 1–A in addition to those proposed? For example, should we change the standard for filing material contracts by specifically excluding certain types of contracts?

56. As proposed, should we permit issuers that are current in their Tier 2 reporting obligations to incorporate by reference certain information in documents filed under Regulation A into Part II of the offering statement, while also requiring issuers to include a hyperlink to such information on EDGAR? Why or why not? If so, should we also permit successor entities to incorporate by reference to the extent their predecessors were eligible? Why or why not? If we permit the incorporation by reference of information already available on EDGAR, should we exclude shell companies or any other types of entities from being able to rely on any such accommodation? [318] Why or why not? Should issuers be permitted to incorporate by reference to Exchange Act reports and documents filed in connection with registered offerings?

57. Should we alter the proposed period of time in which an issuer must have been current in their ongoing reporting in order to be able to incorporate by reference certain information into Part II of Form 1–A that is already available on EDGAR? If so, what period of time should apply to any requirement that an issuer be current in filing its ongoing reports?

58. Instead of the proposed general requirement that issuers must file audited financial statements for Tier 2 offerings, should the rules require audited financial statements at a different threshold (*e.g.,* for all offerings—whether under Tier 1 or Tier 2—in excess of the $500,000 requirement for audited financial statements set forth under the Commission's proposed crowdfunding exemption pursuant to Section 4(a)(6) of the Securities Act, or for all Regulation A offerings)? Are there other characteristics of an offering, other than the aggregate offering amount, that should trigger the audited financial statement requirement, such as public float or asset size of the issuer? If so, which other characteristics?

59. For Tier 2 offerings, should the financial statement updating requirement be changed from the proposed requirements in Part F/S of Form 1–A that would permit issuers to file financial statements based on a balance sheet dated within nine months of non-public submission or filing, but must otherwise be dated as of the end of the most recently completed fiscal year, if non-publicly submitted or filed three months after the end of such fiscal year? Or should Part F/S of Form 1–A require updating for Tier 2 offerings on a schedule similar to what would be required in a registered offering by a smaller reporting company? Why or why not?

60. As proposed, should we require issuers to file balance sheets for the two most recently completed fiscal years, instead of the current requirement to file a balance sheet for only the most recently completed fiscal year? Why or why not?

61. As proposed, should we permit Canadian issuers to prepare their financial statements using IFRS as issued by the IASB, rather than U.S. GAAP? If so, as noted above in Section II.B.1.a., to the extent we extend issuer eligibility to include foreign private issuers, should we permit all foreign private issuers to prepare their financial statements using IFRS as issued by the IASB, rather than U.S. GAAP?

62. As proposed, in Tier 1 offerings should we only refer to Regulation S–X when describing the auditor independence and compliance requirements of Article 2 and the financial statement requirements relating to guarantors and issuers of guaranteed securities, affiliates whose securities collateralize an issuance, or issuers engaged in oil and gas producing activities? Should we clarify the financial statement requirements in other specific situations? Instead of referring to Regulation S–X, should we develop new standards appropriate for Tier 1 offerings?

63. As proposed, should we permit issuers that do not qualify as a smaller

[318] Shell companies (other than business combination shell companies) are currently unable to incorporate by reference prior Exchange Act reports in Form S–1. *See* General Instruction VII.D. to Form S–1.

reporting company to only provide two years of audited financial statements for Tier 2 offerings? Or should we require such issuers to file three years of financial statements? Why or why not?

64. As proposed, should we require that, when audited financial statements are required to be filed in Part F/S for Tier 2 offerings, those audits be conducted in accordance with PCAOB standards? Alternatively, as with existing Regulation A, should we require the financial statements audit to be performed in accordance with U.S. GAAS or the PCAOB standards? Should we require auditors to be PCAOB-registered? Why or why not?

65. Would there be a cost difference to issuers of requiring audits in Tier 2 offerings to be conducted in accordance PCAOB standards, as proposed, compared to U.S. GAAS? Would there be a benefit to investors?

66. Would there be a cost difference to issuers if, in addition to requiring auditors to conduct the audits in Tier 2 offerings in accordance with PCAOB standards, as proposed, we also required auditors to be PCAOB-registered? Would there be a benefit to investors?

67. Should we require interactive data tagging of financial statements included in Regulation A offering statements? If so, should we require interactive data for all Regulation A offerings, or only Tier 2 offerings? What effect would the cost of compliance with any interactive data tagging requirements have on the issuers likely to rely on Regulation A? If we require interactive data tagging, should we implement a phase-in period for such tagging and detailed footnote and schedule tagging?

68. As noted above in Section II.B.1.b. discussing issuer eligibility, in order to address concerns regarding the use of Regulation A by REITs (and on the potential use by BDCs) absent additional REIT- (or BDC-) specific disclosures, should we require additional disclosure by REITs (and BDCs, if ultimately permitted to rely on the exemption)? Why or why not? If so, please make specific recommendations as to the form and content of any such additional disclosure.

69. As proposed, should we continue to permit issuers to incorporate by reference certain information into Part III (Exhibits) of the offering statement that was previously filed on EDGAR, while also requiring issuers to be subject to a Tier 2 reporting obligation? Or, as with current Regulation A, should we permit issuers to incorporate by reference in Part III of Form 1–A certain information irrespective of their obligation to file ongoing reports under Tier 2 of Regulation A? Why or why not?

70. As proposed, should we require issuers to retain manually signed copies of the offering statement for a period of five years? Or should we consider an alternative retention period? Alternatively, should we eliminate the requirement altogether in favor of alternative signature methods (*e.g.,* electronic signatures)? Why or why not?

71. As proposed, should we eliminate the requirement that Form 1–A be signed by an authorized representative in the United States when the filer is a Canadian issuer? Should we, as proposed, require Canadian issuers to file a Form F–X to provide an express consent to service of process in connection with offerings qualified under Form 1–A? Why or why not? If so, should Form F–X be required to be filed by Canadian issuers in connection with other filings under Regulation A, including proposed new Form 1–K, Form 1–SA, Form 1–U, or Form 1–Z? [319] Why or why not?

4. Continuous or Delayed Offerings and Offering Circular Supplements

Rule 251(d)(3) currently allows for continuous or delayed offerings under Regulation A if permitted by Rule 415.[320] By reference to the undertakings of Item 512(a) of Regulation S–K,[321] Rule 415 does not necessarily require every change in the information contained in a prospectus to a registration statement in a continuous offering to be reflected in a post-effective amendment.[322] On the other hand, Regulation A requires every revised or updated offering circular in a continuous offering to be filed as an amendment to the offering statement to which it relates and requalified in a process analogous to the Commission staff review, comment and qualification process for initial offering statements.[323] The requalification process can be costly and time consuming for smaller issuers conducting continuous offerings of securities pursuant to Regulation A.[324] As discussed more fully below, we propose to clarify in the proposed rules for Regulation A the scope of permissible continuous or delayed offerings and the related concept of offering circular supplements.

Rule 415 attempts to promote efficiency and cost savings in the securities markets by allowing for the registration of certain traditional and other shelf offerings.[325] When Rule 415 was adopted, the Commission recognized that certain traditional shelf offerings have been allowed by administrative practice for many years despite the absence of such a rule.[326] Since Rule 415 only addresses registered offerings, however, the precise scope of continuous or delayed offerings under Regulation A has been unclear. We believe that proposed Regulation A should continue to allow for certain traditional shelf offerings to promote flexibility, efficiency, and to reduce unnecessary offerings costs.[327] However, we propose to condition the ability to sell securities in a continuous or delayed offering on being current with ongoing reporting requirements at the time of sale. We believe this additional condition will not impose incremental costs on issuers, which are in any case required to update their offering statement and to file such ongoing reports, and will insure parity of information in secondary markets.

To provide clarity regarding the application of Rule 415 concepts to Regulation A offerings, we propose to add a provision to Regulation A similar to Rule 415, but with limitations we believe would be appropriate in the context of Regulation A. The provision would establish time limits similar to those in Rule 415 and make conforming changes as necessary.[328]

[319] The proposed rules for ongoing reporting, and related forms, are discussed in Section II.E.1. below.

[320] 17 CFR 230.415.

[321] 17 CFR 230.415(a)(3).

[322] *See* 17 CFR 229.512(a)(1) (requiring issuers to file a post-effective amendment for purposes of an update under Section 10(a)(3) of the Securities Act, to reflect any facts or events arising after effectiveness that, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement, or to include, subject to certain exceptions, any material information with respect to the plan of distribution not previously disclosed (or material changes to information previously disclosed) in the registration statement).

[323] *See* Rule 253(e); Rule 252(h)(1).

[324] *See* Kaplan Voekler Letter 2.

[325] *See* SEC Rel. No. 33–6499 [48 FR 52889] (Nov. 23, 1983) (noting the efficiency and cost savings issuers experienced during the eighteen month trial period for a previous temporary version of the rule).

[326] Certain ''traditional shelf offerings'' have been allowed since at least 1968 by the Commission's guides for the preparation and filing of registration statements, such as Guide 4, and related administrative practice. *See id.; see also* SEC Rel. No. 33–4936 [33 FR 18617] (Dec. 9, 1968) (adopting Guide 4 and other Commission guides).

[327] *See* SEC Rel. No. 33–6499, at IV.A. (''[T]he procedural flexibility afforded by the Rule enables a registrant to time its offering to avail itself of the most advantageous market conditions . . . registrants are able to obtain lower interest rates on debt and lower dividend rates on preferred stock, thereby benefiting their existing shareholders. The flexibility provided by [Rule 415] also permits variation in the structure and terms of securities on short notice, enabling registrants to match securities with the current demands of the marketplace.'').

[328] Proposed Rule 251(d)(3).

The proposed rule would provide for continuous or delayed offerings for the following types of offerings:

- securities offered or sold by or on behalf of a person other than the issuer or its subsidiary;
- securities offered and sold pursuant to a dividend or interest reinvestment plan or an employee benefit plan of the issuer;
- securities issued upon the exercise of outstanding options, warrants, or rights;
- securities issued upon conversion of other outstanding securities;
- securities pledged as collateral; or
- securities the offering of which commences within two calendar days after the qualification date, will be made on a continuous basis, may continue for a period in excess of 30 days from the date of initial qualification, and will be offered in an amount that, at the time the offering statement is qualified, is reasonably expected to be offered and sold within two years from the initial qualification date.[329]

The Rule 415 offerings we have not proposed to incorporate into Regulation A are those that would not have been available under existing Regulation A, such as those requiring securities to be registered on Form S–3 or Form F–3 or those conducted by issuers ineligible to use Regulation A,[330] as well as certain offerings that we do not currently believe would be appropriate to include in the Regulation A framework. For example, transactions typically done on Form S–4, such as acquisition shelf business combination transactions, would be excluded under the proposed rules. Further, we propose to prohibit all ''at the market'' offerings under Regulation A.[331] While it is possible that a market in Regulation A securities may develop that is capable of supporting primary and secondary at the market offerings, rather than permit such offerings at the outset, we believe that any Regulation A market that develops on the basis of the proposed rules should be monitored in the short term to determine whether the exemption would be an appropriate method for such offerings going forward. Further, an offering sold at fluctuating market prices may not be appropriate within the context of an exemption that is contingent upon not exceeding a maximum offering size. We do, however, seek comment as to whether the provision should permit primary and/or secondary offerings conducted in reliance on Regulation A to be sold at market prices.

Under the proposed rules, changes in the information contained in the offering statement would no longer necessarily trigger an obligation to amend.[332] Offering circulars for continuous Regulation A offerings would continue to be required to be updated, and the offering statements to which they relate requalified, annually to include updated financial statements, and otherwise as necessary to reflect facts or events arising after qualification which, in the aggregate, represent a fundamental change in the information set forth in the offering statement.[333] In addition to post-qualification amendments to the offering statement that must be qualified, however, we also propose to allow issuers to use offering circular supplements in certain situations.[334] Further, we propose to permit issuers in continuous offerings to qualify additional securities in reliance on Regulation A by a post-qualification amendment.[335]

The proposed rules would build on Regulation A to create a regime similar to what is permissible for registered offerings, and would draw from and adapt the language in Rule 424, Item 512 of Regulation S–K, and Rule 430A [336] to do so. Although filing a post-qualification amendment and a review by the Commission staff remains appropriate in some circumstances, we recognize that additional flexibility could be provided in other circumstances. Under the proposed rules, we borrow from the experience in registered offerings under Rule 415 to permit offering circular supplements for continuous or delayed offerings where the offering statement is not required to be amended by Regulation A and there is no fundamental change in the offering statement's disclosure. We also propose to allow the use of offering circular supplements for final pricing information, where the offering statement is qualified on the basis of a bona fide price range estimate.[337] Additionally, offering circulars would be permitted to omit information with respect to the underwriting syndicate analogous to the provisions for registered offerings under Rule 430A.[338] The volume of securities (the number of equity securities or aggregate principal amount of debt securities) to be offered would not, however, be allowed to be omitted.[339] As proposed, an offering circular supplement could also be used to indicate a decrease in the volume of, or to change the price range of, the securities offered in reliance on a qualified offering statement under Regulation A, provided that, in the aggregate, such changes represent no more than a 20% change from the maximum aggregate offering price calculable using the information in the qualified offering statement.[340] In such circumstances, offering circular supplements would not be available where the maximum aggregate offering price resulting from any changes in the price of the securities would exceed the offering amount limitation set forth in proposed Rule 251(a) or if the increase in aggregate offering price would result in a Tier 1 offering becoming a Tier 2 offering. Allowing for the use of offering circular supplements in the situations outlined above would not alter the legal determination as to whether such information must be provided to investors, but would align Regulation A with prevailing market and Commission staff practices.[341]

We further propose provisions similar to Rule 424 that would require issuers omitting certain information from an offering statement at the time of qualification, in reliance on proposed Rule 253(b), to file such information as an offering circular supplement no later than two business days following the earlier of the date of determination of such pricing information or the date of first use of the offering circular after qualification.[342] Further, these proposed provisions would require offering circulars that contain substantive

[329] *Id.*

[330] Rule 415(a)(1)(xi) discusses investment companies and BDCs.

[331] *See* proposed Rule 251(d)(3)(ii).

[332] *See* proposed Rule 252(h)(1).

[333] Proposed Rule 252(h)(2). *See also* discussion in Section II.E.1. below.

[334] One commenter suggested that such supplements be permitted. *See* Kaplan Voekler Letter 2.

[335] *See* note to proposed Rule 253(b).

[336] 17 CFR 230.430A.

[337] *See* proposed Rule 252(h). Relatedly, the Commission noted in the 1992 amendments to Regulation A that pricing information under Rule 430A did not necessarily need to be included in the final offering circular. *See* SEC Rel. No. 33–6949, at fn. 58. As proposed, the bona fide price range estimate could not exceed $2 for offerings where the upper end of the range is $10 or less and 20% if the upper end of the price range is over $10. *See* proposed Rule 253(b)(2).

[338] *See* proposed Rule 253(b) (also permitting the omission of underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices and other items dependent upon the offering price, delivery dates, and terms of the securities dependent upon the offering date, so long as certain conditions are met); *Cf.* Rule 430A, 17 CFR 430A.

[339] *See* proposed Rule 253(b)(4).

[340] *See* note to proposed Rule 253(b); *Cf.* Instruction to paragraph (a) in Rule 430A(a), 17 CFR 230.430A(a).

[341] *Cf.* SEC Rel. No. 33–6714 [52 FR 21252] (June 5, 1987) (noting that the adoption of Rule 430A and the related changes to the procedures set forth in Rule 424 were ''intended to simplify and reduce filing obligations without reducing investor protection.'').

[342] *See* proposed Rule 253(g).

changes (other than information omitted in reliance on proposed Rule 253(b)) in information previously provided in the last offering circular to be filed within five business days after the date such offering circular is first used after qualification.[343] Offering circular supplements that are not filed within the required time frames provided by the proposed rules would be required to be filed as soon as practicable after the discovery of the failure to file.[344] We are soliciting comment on the scope of changes that should require a post-qualification amendment instead of an offering circular supplement.

Request for Comment

72. Should Regulation A continue to permit traditional shelf offerings, as proposed? Are there types of transactions not currently covered by Rule 415 that should be included in the rules relating to continuous offerings under Regulation A? If so, provide justification for including those transactions in Regulation A.

73. Should we use the time limits for continuous offerings found in Rule 415 for similar Regulation A offerings or should we lengthen or shorten such requirements? If so, please suggest new time limits and explain why they are preferable to the proposed time limits.

74. As proposed, should we permit continuous offerings that would be offered in an amount that, at the time the offering statement is qualified, the issuer reasonably expects to offer and sell within two years from the initial qualification date? Or should we limit this time period to one year from the initial qualification date?

75. We propose to no longer require issuers to amend an offering statement every time any information contained in the offering statement is changed, as is currently required in Rule 252(h), and instead require amendments to the offering statement to be filed and requalified annually to include updated financial statements, and otherwise as necessary to reflect facts or events arising after qualification which, in the aggregate, represent a fundamental change in the information set forth in the offering statement. Are there other types of changes in information or disclosure that should require a post-qualification amendment that must be qualified, rather than an offering circular supplement? Should we use a standard different from the ''fundamental change'' standard proposed, which is based on Item 512(a) of Regulation S–K? Please provide justifications for your suggested approach.

76. As proposed, should we permit issuers to qualify additional securities in reliance on Regulation A by filing a post-qualification amendment to a qualified offering statement? Why or why not?

77. As proposed, should we adopt provisions similar to Rule 430A that would permit issuers to omit certain information with respect to, among other things, the underwriting syndicate and related information analogous to the provisions for registered offerings under Rule 430A? Why or why not? Additionally, as proposed, should we permit decreases to the volume of, or deviations from the price range of, the securities offered in reliance on Regulation A within the described limits?

78. As proposed, should we include in Regulation A provisions similar to Rule 424, which would require issuers relying on proposed Rule 253(b) to omit certain information from an offering statement at the time of qualification to file such information as an offering circular supplement no later than two business days following the earlier of the date of determination of such pricing information or the date of first use of the offering circular after qualification? Why or why not? Additionally, as proposed, should we require offering circulars that contain substantive changes (other than information omitted in reliance on proposed Rule 253(b)) in information previously provided in the last offering circular to be filed within five business days after the date such offering circular is first used after qualification? Why or why not?

79. Should we consider additional or alternative amendments to the proposed provisions for continuous offerings and offering circular supplements? Why or why not? If so, please explain.

80. As proposed, Regulation A is not specifically designed for business combination transactions. While such transactions, outside the context of acquisition shelf business combination transactions, are not prohibited, would Part II of proposed Form 1–A provide for appropriate disclosure of business combination transactions? Why or why not? If so, what additional narrative or financial disclosure provisions, if any, should apply to issuers with respect to such transactions?

81. As proposed, should the rules preclude primary and secondary at the market offerings? Or should the rules only preclude primary at the market offerings? Why or why not? If the rules should not prohibit at the market offerings how should the offering size be calculated for purpose of determining whether the offering exceeds the proposed applicable annual offering amount limitations? Please explain.

5. Qualification

Under Regulation A, an offering statement is generally only qualified by order of the Commission in a manner similar to a registration statement being declared effective.[345] In such instances, the issuer includes a delaying notation on the cover of the Form 1–A that states the offering statements shall only be qualified by order of the Commission.[346] In order to remove a delaying notation, an issuer must file an amendment to the offering statement indicating that the offering statement will become qualified on the 20th calendar day after filing.[347] An offering statement that does not include a delaying notation will be qualified without Commission action on the 20th calendar day after filing.[348]

We propose to alter the qualification process of existing Regulation A. As proposed, an offering statement could only be qualified by order of the Commission, and the process associated with the delaying notation would be eliminated. This not only conforms to the general practice of issuers under both Regulation A and registered offerings, but eliminates the risk that an issuer may exclude a delaying notation either in error or in an effort to become qualified automatically without review and comment by the Commission staff. Given our proposed electronic filing processes,[349] scaled disclosure requirements for Tier 1 and Tier 2 offerings,[350] and the preemption of state securities law registration and qualification requirements for Tier 2 offerings,[351] we believe it is appropriate to ensure that the Commission staff has a chance to review and comment on the offering statement before it becomes effective. We do, however, solicit comment on whether we should retain provisions for the automatic effectiveness of an offering statement in a manner similar to the current rules, in order to provide issuers with some flexibility and control over the timing of the qualification process.

Request for Comment

82. Should we amend the qualification process, as proposed, so that an offering statement can only

[343] *See* proposed Rule 253(g)(2).

[344] *See* proposed Rule 253(g)(4).

[345] *See* Rule 252(g)(2).

[346] *Id.*

[347] *See* Rule 252(g)(3).

[348] *See* Rule 252(g)(1).

[349] *See* discussion in Section II.C.1. above.

[350] *See* discussion in Section II.C.3. above.

[351] *See* discussion in Section II.H. below.

become qualified by order of the Commission? Or should we preserve the existing qualification provisions of Regulation A, which permit offering statements to become qualified without an order of the Commission on the 20th calendar day after filing? Why or why not? What effect, if any, would this have on issuers and their ability to control the timing of the qualification process?

D. Solicitation of Interest (''Testing the Waters'')

Under Securities Act Section 3(b)(2)(E), issuers are to be permitted to test the waters for interest in an offering before filing an offering statement on such terms and conditions as the Commission prescribes. Testing the waters is currently permitted under Rule 254 of Regulation A, which requires, among other things, that issuers submit all solicitation material to the Commission no later than the time of first use. Issuers are further required to file all solicitation materials used in reliance on Rule 254 as an exhibit under Part III of Form 1–A, and are prohibited from making sales under Regulation A until 20 calendar days after the last publication or delivery of such materials. Under Rule 254(b)(3), issuers must cease using test the waters solicitation materials after the initial filing of the offering statement.

Testing the waters under Rule 254 of Regulation A is different from testing the waters for a registered offering by an emerging growth company under Section 5(d) of the Securities Act. Under Section 5(d), testing the waters is limited to communications with QIBs and institutional accredited investors. Under current Rule 254, however, there is no limitation on the type of investors that may be solicited, as the provision is meant to assist smaller issuers in evaluating potential interest in a public offering before incurring costs associated with preparing mandated disclosure documents.[352] New Securities Act Section 3(b)(2)(E) also does not limit the type of investors that may be solicited, but instead specifies that we can prescribe terms and conditions. We do not believe it is appropriate to adopt provisions in proposed Regulation A that are more restrictive than currently exist in Rule 254 and therefore do not propose to alter the permissible target audience of testing the waters materials.

While one commenter suggested that the Commission permit the use of solicitation materials before the filing of an offering statement,[353] another commenter simply suggested that all such solicitation materials be made readily available.[354] Another commenter suggested that, in addition to the existing requirements of Rule 254(b)(2), the Commission limit the use of testing the waters materials before the filing of an offering statement to solicitations conducted by registered broker-dealers or solicitations in firm commitment underwritings.[355]

Testing the waters was first proposed and approved for use in Regulation A in 1992, to address the risk that small companies faced when expending funds to prepare for an offering of securities without knowing whether there would be any interest in the offering.[356] We do not believe, however, that the existing provisions of Rule 254 have proven as useful as originally intended. We are concerned that the amount of time that typically elapses between initial filing of the Form 1–A and qualification (which, on average, from 2002 through 2012 was approximately 241 days) may limit the possible benefits of testing the waters in advance of initial filing. In addition, we understand that testing the waters activities may not be permissible under many state securities laws.

To address the potential impact of the review period, we propose to permit issuers to use testing the waters solicitation materials both before and after the offering statement is filed, subject to issuer compliance with the rules on filing and disclaimers.[357] In our view, to do otherwise would unnecessarily limit the intended benefits to issuers of testing the waters. As with existing Regulation A, investor protections with respect to such solicitation materials would remain in place, as these materials remain subject to the antifraud and other civil liability provisions of the federal securities laws.[358] In addition, under the proposal, testing the waters materials used by an issuer or its intermediaries after publicly filing an offering statement would be required to include a current preliminary offering circular or contain a notice informing potential investors where and how the most current preliminary offering circular can be obtained. This requirement could be satisfied by providing the URL where the preliminary offering circular or the offering statement may be obtained on EDGAR.

Since we propose to require issuers to publicly file their offering statements not later than 21 calendar days before qualification, this timing requirement would ensure that, at a minimum, any solicitation made in the 21 calendar days before the earliest date of potential sales of securities would be conducted using the most recent version of preliminary offering circular.[359] While the proposed expansion on use of solicitation materials after filing would potentially result in investors receiving more sales literature in marketed offerings, in such circumstances, potential investors would also be afforded more time with the preliminary offering circular before making an investment decision.[360] Issuers and intermediaries that use testing the waters materials after publicly filing the offering statement would be required to update and redistribute—through any electronic or print media or television or radio broadcast distribution channels previously relied upon by the issuer or its intermediaries to market the offering during this period—such material to the extent that either the material itself or the preliminary offering circular attached thereafter becomes inadequate or inaccurate in any material respect.[361]

[352] SEC Rel. No. 33–6924, at 10–11 (discussing the capital needs of smaller companies, and, in comparison to ''limited [private] offerings to more sophisticated professional investors,'' the need to facilitate greater ''access to the public market[s] for startup and developing companies, and . . . lower[] the costs for small businesses that undertake to have their securities traded in the public market.'').

[353] McCarter & English Letter.

[354] Beacon Investment Letter.

[355] NASAA Letter 2.

[356] SEC Rel. No. 33–6924, at 12.

[357] This timing is similar to the ''testing the waters'' permitted for emerging growth companies under new Section 5(d) of the Securities Act, added by the JOBS Act, which can also be conducted both before and after filing of a registration statement. Under Section 5(d), no legending or disclaimers are required, but testing the waters is limited to potential investors that are ''qualified institutional buyers'' or institutional ''accredited investors.''

[358] The Commission's antifraud liability provisions in Section 17 of the Securities Act, 15 U.S.C. 77q, apply to any person who commits fraud in connection with the offer or sale of securities. Section 3(b)(2)(D) of the Securities Act, 15 U.S.C. 77c(b)(2)(D), states that the civil liability provisions of Section 12(a)(2) apply to any person offering or selling securities under Regulation A. *See also* SEC Rel. No. 33–6924, at fn. 48.

[359] *See* discussion of non-public submissions of offering statements in Section II.C.2. above, which proposes to require an issuer to file its offering statement with the Commission not later than 21 calendar days before qualification.

[360] *Cf.* The Regulation of Securities Offerings, SEC Rel. No. 33–7606A, at 78 (Nov. 17, 1998) [63 FR 67174] (discussing the importance of providing a preliminary prospectus in conjunction with the distribution of sales materials).

[361] Issuers would not, however, be required to update and redistribute solicitation materials to the extent that: i) any such changes occur only with respect to the preliminary offering circular, ii) no similar changes are required in the solicitation materials previously relied upon, and iii) such materials included (when originally distributed) a URL where the preliminary offering circular or the offering statement filed on the issuer's EDGAR filing page and that URL continues to link to the most recent version of the preliminary offering circular.

Additionally, whether or not an issuer or its intermediaries tests the waters, as provided for by proposed Regulation A, such parties would remain obligated in the pre-qualification period to deliver a copy of the preliminary offering circular to prospective purchasers at least 48 hours in advance of sale under proposed Rule 251(d)(2)(i).[362]

We further propose to amend the Rule 254 requirements for submission or filing of solicitation material, so that such material would be submitted or filed as an exhibit when the offering statement is either submitted for non-public review or filed (and updated for substantive changes in such material after the initial non-public submission or filing) but would no longer be required to be submitted at or before the time of first use. This approach is generally consistent with the Commission staff's treatment of solicitation materials used by emerging growth companies under Title I of the JOBS Act, with two exceptions:

- solicitation materials used in Regulation A offerings would be required to be filed; [363] and
- solicitation materials used by Regulation A issuers that file an offering statement with the Commission would be publicly available as a matter of course.[364]

We believe this approach would be consistent with the 1992 amendments to Regulation A that first allowed issuers to test the waters, and would make the use of solicitation materials more beneficial for issuers and investors, reduce the filing requirements for issuers, and entirely eliminate the filing requirement for issuers that, after testing the waters, decide not to proceed with an offering. Additionally, from an investor protection standpoint, it is important to note that sales under Regulation A may occur only under a qualified offering statement that reflects staff review and comment, including, where appropriate, disclosure addressing potentially incomplete or misleading statements made in test the waters solicitation material. For this reason, in addition to the statutory language of Section 3(b)(2)(E), which indicates that ''issuer[s] may solicit interest in the offering,'' we do not believe it is necessary, as one commenter suggested, to limit the availability of this provision to solicitations carried out by registered broker-dealers or by underwriters in firm commitment underwritings.[365]

Currently, Rule 254(b)(2) requires all soliciting materials to bear a legend or disclaimer indicating: (i) That no money or other consideration is being solicited, and if sent, will not be accepted; (ii) that no sales will be made or commitments to purchase accepted until a complete offering circular is delivered; (iii) that a prospective purchaser's indication of interest is non-binding; and (iv) the identity of the issuer's chief executive officer and a brief description of the issuer's business and products.[366] We propose to amend Rule 254(b)(2)(ii) to more closely follow similar provisions in the context of registered offerings.[367] The amended language would recognize that, similar to the framework for registered offerings, sales made pursuant to Regulation A would be contingent upon the qualification of the offering statement, not the delivery of a final offering circular. Additionally, to provide greater flexibility when using solicitation materials, we propose to eliminate the requirement in Rule 254(b)(2)(iv) to identify the issuer's chief executive officer, business, and products.

Further, as noted above, we do not propose to limit testing the waters to QIBs and institutional accredited investors (as is currently the case with testing the waters under Title I of the JOBS Act), as we do not believe it is appropriate to adopt provisions in proposed Regulation A that are more restrictive than currently exist in the regulation.

Request for Comment

83. As proposed, should we differentiate between the requirements for the use of testing the waters materials before the issuer publicly files an offering statement and after filing (when it is proposed that a preliminary offering circular would have to be provided)? Why or why not? Is the proposed time period during which a preliminary offering circular would be required to be provided together with testing the waters materials appropriate, or should it be longer or shorter? Is the 48-hour period for the delivery of a preliminary offering circular under proposed Rule 251(d)(2)(i) sufficient to address any concerns about the use of solicitation materials at or near the time of qualification? [368] Should we distinguish between the use of testing the waters materials after an offering statement is non-publicly submitted versus publicly filed?

84. Should we amend Rule 254, as proposed, so that solicitation material would no longer be required to be submitted to the Commission at or before the time of first use? If not, in the absence of a confidential treatment request under Commission Rule 83 (17 CFR 200.83), should solicitation material be made publicly available immediately after submission on EDGAR? Or, as proposed, should we only require solicitation materials to be publicly available when included as an exhibit to an offering statement that is filed with the Commission not later than 21 calendar days before the offering statement is qualified?

85. Is the legend or disclaimer required to be included in the solicitation materials under proposed Rule 254 appropriately tailored for the likely recipients of such materials in Regulation A offerings? Why or why not? Should solicitation materials used by the issuer and its intermediaries before the initial public filing of the offering statement be required to include specific information about the issuer or the offering similar to current rules? If so, what information should be required?

86. While not currently proposed, should we limit the use of testing the waters materials to communications with QIBs and institutional accredited investors in order to be consistent with the treatment of emerging growth companies under Title I of the JOBS Act? Would QIBs or institutional accredited investors be the likely target audience for issuers testing the waters in reliance on Regulation A? Why or why not? As proposed, should issuers and intermediaries that use testing the waters materials after publicly filing an offering statement be required to update and redistribute—through any electronic or print media or television or

[362] Proposed Rule 251(d)(2)(i) is discussed in Section II.C.1. above.

[363] In practice, however, Commission staff reviewing filings by emerging growth companies regularly requests and receives such material as part of the review process to ensure consistency between the information contained in the solicitation materials and the registration statement. *See* 17 CFR 230.418 (Supplemental Information).

[364] Where an issuer non-publicly submits an offering statement under Regulation A that is later abandoned before filing, and where that issuer properly submitted the offering statement pursuant to a confidential treatment request pursuant to Commission Rule 83 (17 CFR 200.83), the offering statement and solicitation materials may, under certain circumstances, qualify for an exemption from production pursuant to the FOIA. *See http://www.sec.gov/foia/conftreat.htm* for more information. Such materials, however, will be publicly available on EDGAR if, and when, an offering statement is eventually filed with the Commission.

[365] *See* NASAA Letter 2 (suggests limiting the use of solicitation materials to solicitations made by broker-dealers, or in the context of firm commitment underwritten offerings).

[366] 17 CFR 230.254(b)(2).

[367] *See* Rule 134(d), 17 CFR 230.134(d), (required disclaimer for solicitations of interest in registered offerings).

[368] *See* discussion of delivery requirements in Section II.C.1. above.

radio broadcast distribution channels previously relied upon by the issuer or its intermediaries to market the offering during this period—such material if either the material itself or the preliminary offering circular attached thereafter becomes inadequate or inaccurate in any material respect?[369] Why or why not? Would this requirement unduly limit the utility, and potentially raise the costs, of testing the waters after publicly filing an offering statement, or would it help to ensure that issuers and intermediaries that solicit interest in a potential offering during this period of time do so in a measured and judicious manner? Please explain.

87. Should we make the submission or filing of solicitation materials a condition to the Regulation A exemption, such that an issuer that fails to submit such materials as part of an offering statement submitted for non-public review, or to file such materials as part of a filed offering statement, loses its ability to rely on the exemption? If so, should we provide for a cure period for inadvertent failures to submit or file solicitation materials as an exhibit to an offering statement?

E. Ongoing Reporting

Currently, Regulation A requires issuers to file a Form 2–A with the Commission every six months after qualification to report sales under Regulation A, with a final filing due within 30 calendar days after the termination, completion, or final sale of securities in the offering.[370] Section 3(b)(2) requires issuers to provide annual audited financial information on an ongoing basis, and expressly provides that the Commission may consider whether additional ongoing reporting should be required. Specifically, Section 3(b)(4) grants the Commission authority to require issuers ''to make available to investors and file with the Commission periodic disclosures regarding the issuer, its business operations, its financial condition, its corporate governance principles, its use of investor funds, and other appropriate matters, and also provide for the suspension and termination of such requirement.''

Most commenters agree that the Commission should require some form of ongoing reporting in revised Regulation A, but differ on the degree and frequency of such reporting.[371] In general, the comments received acknowledge that the Commission's task in determining the appropriate level of ongoing reporting requires balancing the risks of imposing issuer disclosure requirements that are too prescriptive[372] or onerous[373] with the risks of providing too little information to either support,[374] or adequately protect investors in,[375] the secondary market. Some commenters suggested that the Commission require ongoing reporting only to the extent necessary to support an active secondary market, such as by requiring quarterly and material event reporting,[376] or semiannual performance updates.[377] Alternatively, one commenter suggested that the Commission only require annual filings under a two-year pilot program to determine whether such reports, without more, provide sufficient information to the market.[378] One commenter suggested that ongoing reporting requirements under Regulation A should be similar to, but less onerous than, Exchange Act reporting.[379] This commenter suggested that the rules require periodic reports that follow the disclosure requirements applicable to smaller reporting companies, or those of Exchange Act Rule 15c2–11. In its view, though, current reporting in a fashion similar to Form 8–K under the Exchange Act might be too burdensome for smaller issuers, while the OTC Markets' proprietary Alternative Reporting System might be more appropriate. The commenter also suggested that, if required, current reporting should be limited to material agreements, financial obligations, unregistered sales of securities, changes in accountants, changes in and the compensation of directors and officers, and charter amendments. Another commenter suggested periodic reporting that is less prescriptive than Exchange Act reporting, and using Form 1–A disclosure requirements as a base.[380] Several commenters suggested that—to the extent the Commission permits Regulation A offerings to be simultaneously listed, or approved for listing, on a national securities exchange—it should permit Exchange Act reporting to satisfy Title IV's ongoing reporting requirements.[381] Another commenter suggested that any ongoing reporting requirements eventually adopted should be meaningful enough to provide investors with current information about issuers and to permit better informed investment decisions.[382]

The sole advance comment received on how and when to permit terminating ongoing reports suggested that the Commission permit automatic termination (or suspension) of ongoing reporting obligations in a fashion similar to that permitted under Section 15(d) of the Exchange Act.[383] That is, the Commission should allow ongoing reporting to be suspended as to any fiscal year, other than the fiscal year in which the offering was qualified, if at the beginning of such fiscal year the securities of the class sold in the offering are held of record by fewer than 300 persons.

We are mindful that an ongoing reporting regime that is suitable for one type of entity and its investor base may prove too onerous for another entity or provide its investors with more or more frequent information than they necessarily need or seek, resulting in undue costs to the issuer. In the discussion and proposals that follow, we have endeavored to address the potential added costs and benefits associated with the provision of ongoing information about issuers of Regulation A securities to investors in such securities and any market that develops as a result.

1. Continuing Disclosure Obligations

As noted above, Regulation A currently requires issuers to file a Form 2–A with the Commission to report sales and the termination of sales made under Regulation A every six months after qualification and within 30 calendar days after the termination, completion, or final sale of securities in

[369] *But see* fn. 361 above for an exception to the general requirements for updates and redistribution.

[370] *See* 17 CFR 230.257; *see also* 17 CFR 239.91 (Form 2–A).

[371] *See, e.g.,* Letter from Mike Liles, Jr., Attorney, Karr Tuttle Campbell, April 12, 2012 (''Karr Tuttle Letter''); Letter from Kurt N. Schacht, CFA, Managing Director, Standards and Financial Market Integrity, and Linda L. Rittenhouse, Director, Capital Markets Policy, CFA Institute, Aug. 16, 2012 (''CFA Institute Letter''); Fallbrook Letter. *But see* Letter from Robert R. Kaplan, Jr., Esq., Kaplan Voekler, May 10, 2012 (''Kaplan Voekler Letter 1'') (suggesting that, in light of the relative costs to issuers in smaller dollar amount offerings, the Commission not require ongoing reports for Regulation A offerings of up to $5 million in securities annually); NSBA Letter (suggesting the only change the Commission should make in Regulation A is raising the dollar limitations from $5 million to $50 million); *see also* ECTF Report (suggesting ongoing periodic reporting that is reasonable in scope and balances investor protection concerns with regulatory and compliance costs).

[372] ABA Letter.

[373] McCarter & English Letter.

[374] Kaplan Voekler Letter 1.

[375] NASAA Letter 1; NASAA Letter 2.

[376] Kaplan Voekler Letter 1.

[377] CFA Institute Letter.

[378] Fallbrook Letter.

[379] McCarter & English Letter.

[380] ABA Letter.

[381] ABA Letter; WR Hambrecht + Co. Letter.

[382] NASAA Letter 1; NASAA Letter 2.

[383] ABA Letter.

the offering.[384] The summary information about the issuer and its offering required to be disclosed in the Form 2–A is intended to provide the Commission with valuable data about Regulation A offerings and the effectiveness of Regulation A as a capital formation tool for smaller issuers. Currently, however, issuers of securities under Regulation A often neglect to file the form, thereby limiting the amount and utility of the data received.[385] We propose to rescind Form 2–A, but to continue to require Regulation A issuers to file the information generally disclosed in Form 2–A with the Commission electronically on EDGAR.[386] We believe that summary information and data about an issuer and its Regulation A offering, however, is most valuable when obtained after the offering is completed or terminated. We therefore propose to require issuers to disclose such information only after the termination or completion of the offering. Issuers conducting Tier 1 offerings would be required to provide this information on Part I of proposed new Form 1–Z not later 30 calendar days after termination or completion of the offering,[387] while issuers conducting Tier 2 offerings would be required to provide this information on either Part I of Form 1–Z at the time of filing an exit report or proposed new Form 1–K as part of their annual report.

As proposed, issuers in Tier 2 offerings would be subject to a Regulation A ongoing reporting regime that would, in addition to filing summary information on a recently completed offering and annual reports on proposed new Form 1–K, require issuers to file semiannual updates on proposed new Form 1–SA, current event reporting on proposed new Form 1–U, and to provide notice to the Commission of the suspension of their ongoing reporting obligations on Part II of proposed new Form 1–Z. All of these reports would be filed electronically on EDGAR.

We are concerned that uniform ongoing reporting requirements for all issuers of Regulation A securities could disproportionately affect issuers in smaller offerings.[388] For that reason, we do not propose to require any ongoing reporting for issuers conducting Tier 1 offerings, other than the summary information discussed above, which is already required under the existing rules.[389] Section 3(b)(2)(F) requires issuers to file audited financial statements with the Commission annually, which does not apply to current Regulation A.[390] While Section 3(b)(2) directs the Commission to ''add a class of securities exempted pursuant to this section,'' it does not also direct the Commission to supplant the provisions associated with the existing class of securities exempted under Section 3(b)(1) and Regulation A. We therefore propose to preserve this aspect of current Regulation A for Tier 1 offerings. As proposed, however, issuers in smaller offerings would have the option to conduct a Tier 2 offering and subject themselves to the more expansive ongoing reporting regime and otherwise comply with the proposed Tier 2 requirements.[391]

We believe the proposed approach to ongoing reporting should support a regular flow of information about issuers conducting Tier 2 offerings, which would benefit investors and foster the development of a market in such securities, without imposing unnecessary costs on issuers that elect to conduct a Tier 1 offering. We believe our proposal strikes an appropriate balance between the investor protections associated with the provision of ongoing information about an existing or contemplated investment to potential investors and our goal of facilitating capital formation for smaller companies by not requiring too heavy a reporting obligation.

The following are the proposed ongoing reporting requirements for Tier 2 offerings:

a. Annual Reports on Form 1–K

Proposed new Form 1–K would be comprised of two parts: Part I (Notification) and Part II (Information to be included in the report).

(1) Part I (Notification)

As with Part I of Form 1–A,[392] Part I of Form 1–K would be an online XML-based fillable form that would include certain basic information about the issuer, prepopulated on the basis of information previously disclosed in Part I of Form 1–A, which can be updated by the issuer at the time of filing. Additionally, if, at the time of filing the Form 1–K, an issuer has terminated or completed a qualified Regulation A offering, we propose to require the issuer to provide certain updated summary information about itself and the offering in Part I, including, *e.g.,* the date the offering was qualified and commenced, the number of securities qualified, the number of securities sold in the offering, the price of the securities, any fees associated with the offering, and the net proceeds to the issuer. As discussed above, this information is generally already required to be disclosed under current Regulation A on Form 2–A, which we propose to eliminate.

The portion of the fillable form relating to a completed Regulation A offering would appear when the issuer indicates in Part I that the offering has terminated or been completed. Issuers would only be required to fill out the XML-based portion of Part I that relates to the summary information on a terminated or completed offering once. Alternatively, an issuer that elects to terminate its ongoing reporting obligation under Regulation A after terminating or completing an offering, in a fiscal year other than the fiscal year in which the offering statement was qualified, but before reporting the required summary information on Form 1–K,[393] could satisfy its obligation to file the summary offering information in Part I of Form 1–K by filing a Form 1–

[384] *See* 17 CFR 230.257; *see also* 17 CFR 239.91 (Form 2–A).

[385] Currently, the filing of the Form 2–A is not a condition to an issuer's ability to rely on Regulation A. *See* Rule 257, 17 CFR 230.257. As proposed, the filing of the information required under current Form 2–A would not be a condition to an issuer's ability to rely on Regulation A for the current offering, but would affect the issuer's ability to conduct a follow-on Regulation A offering in the future. *See* the discussion in Section II.B.1. above regarding proposed issuer eligibility requirements.

[386] We do not propose to continue to require issuers to disclose the use of proceeds currently disclosed in Form 2–A, as issuers must disclose this information in Part II of Form 1–A and any changes in the use of proceeds after qualification not previously disclosed would require issuers to determine whether a post-qualification amendment or offering circular supplement is necessary. *See* discussion of continuous or delayed offerings and offering circular supplements in Section II.C.4. above.

[387] Proposed new Form 1–Z (exit report) is discussed in Section II.E.4. below.

[388] *See also* Kaplan Voekler Letter 1 (recommending that, in light of the relative costs to issuers in smaller dollar amount offerings, the Commission not require ongoing reports for Regulation A offerings of up to $5 million in securities annually).

[389] *See* proposed Rule 257(a).

[390] As noted in Section I.A. above, current Regulation A was issued under Section 3(b)(1) of the Securities Act.

[391] An issuer offering up to $5 million in a Tier 2 offering would, in addition to providing ongoing reports to the Commission on the proposed annual and semiannual basis, with interim current event updates, be required to file audited financial statements in the offering statement, *see* Section II.C.3.b(2). above, and may be required to file a Form 1–Z to terminate its ongoing reporting obligations as described in Section II.E.4. below.

[392] *See* discussion in Section II.C.3.a. above.

[393] An issuer that has completed a Regulation A offering under Tier 2 in a fiscal year other than the fiscal year in which the offering was qualified could, however, continue filing the ongoing reports required in Tier 2 offerings in order to, for example, continually provide updated information to its shareholder or to broker-dealers for purposes of proposed Exchange Act Rule 15c2–11. *See* discussion in Section II.E.2. below.

Z (exit report) that includes such information.[394]

The summary information disclosed would facilitate analysis of Regulation A offerings by the Commission, other regulators, third-party data providers, and market participants, while facilitating the capture of important summary information about an offering that would enable the Commission to monitor the use and effectiveness of Regulation A as a capital formation tool.[395] The fillable form would enable issuers to provide the required information in a convenient medium and only capture relevant data about the recently terminated or completed Regulation A offering. The required disclosure would be publicly available on EDGAR. As with proposed requirements for Part I of Form 1–A, Part I of Form 1–K would not require the issuer to obtain specialty software.

(2) Part II (Information To Be Included in the Report)

As with Part II of Form 1–A, Part II of Form 1–K would be submitted electronically by the issuer as a text file attachment containing the body of the disclosure document and financial statements, formatted in HTML or ASCII to be compatible with the EDGAR filing system. Part II would contain information about the issuer and its business based on the financial statement and narrative disclosure requirements of Form 1–A. Form 1–K would further permit issuers to incorporate by reference certain information previously filed on EDGAR, but require issuers to include a hyperlink to such material on EDGAR.[396] Form 1–K would cover:

- Business operations of the issuer for the prior three fiscal years (or, if in existence for less than three years, since inception);
- Transactions with related persons, promoters, and certain control persons;
- Beneficial ownership of voting securities by executive officers, directors, and 10% owners;
- Identities of directors, executive officers, and significant employees, with a description of their business experience and involvement in certain legal proceedings;
- Executive compensation data for the most recent fiscal year for the three highest paid officers or directors;
- MD&A of the issuer's liquidity, capital resources, and results of operations covering the two most recently completed fiscal years;[397] and
- Two years of audited financial statements.

We anticipate that issuers would generally be able to use the offering materials as a basis to prepare their ongoing disclosure.

We propose that Form 1–K includes financial statements prepared on the same basis, and subject to the same requirements as to audit standards and auditor independence, as the financial statements required in the Regulation A offering circular for Tier 2 offerings.[398] Form 1–K would be required to be filed within 120 calendar days after the issuer's fiscal year end. A manually-signed copy of the Form 1–K would have to be executed by the issuer and related signatories before or at the time of filing and retained by the issuer for a period of five years.[399] Issuers would be required to produce the manually signed copy to the Commission, upon request.[400] Any amendments to the form would have to comply with the requirements of the applicable items and be filed under cover of Form 1–K/A.[401]

b. Semiannual Reports on Form 1–SA

We are proposing semiannual interim reporting for Regulation A issuers. We believe this would strike an appropriate balance between the need to provide information to the market and the cost of compliance for smaller issuers. Issuers would be required to provide semiannual updates on proposed Form 1–SA that, much like Form 10–Q, would consist primarily of financial statements and MD&A.[402] Unlike Form 10–Q, however, Form 1–SA would not, among other things, require disclosure about quantitative and qualitative market risk, controls and procedures, updates to risk factors, or defaults on senior securities, as we believe such disclosure is not applicable to, or appropriately-tailored for, issuers in the context of an ongoing report under Regulation A.[403] In addition, Form 1–SA would require disclosure of updates otherwise reportable on Form 1–U. Financial statements included in semiannual reports would not be required to be audited or reviewed by independent auditors. Form 1–SA would permit issuers to incorporate by reference certain information previously filed on EDGAR, but require issuers to include a hyperlink to such material on EDGAR.[404]

We propose to require that Form 1–SA be filed within 90 calendar days after the end of the issuer's second fiscal quarter. A manually-signed copy of the Form 1–SA would have to be executed by the issuer and related signatories before or at the time of filing and retained by the issuer for a period of five years.[405] Issuers would be required to produce the manually signed copy to the Commission, upon request.[406] Any amendments to the form would have to comply with the requirements of the applicable items and be filed under cover of Form 1–SA/A.[407]

c. Current Reports on Form 1–U

In addition to the annual report on Form 1–K and semiannual report on Form 1–SA, we further propose to require issuers to submit current reports on Form 1–U. Issuers would be required to submit such reports in the following events:

- Fundamental changes in the nature of business;[408]
- Bankruptcy or receivership;
- Material modification to the rights of securityholders;
- Changes in the issuer's certifying accountant;
- Non-reliance on previous financial statements or a related audit report or completed interim review;
- Changes in control of the issuer;
- Departure of the principal executive officer, principal financial officer, or principal accounting officer; and
- Unregistered sales of 5% or more of outstanding equity securities.

[394] For a discussion of the requirements for terminating an ongoing reporting obligation under Regulation A and proposed new Form 1–Z, *see* Section II.E.4. below.

[395] *See also* discussion in Section II.E.4.a. below.

[396] The hyperlink to EDGAR need only be active at the time of filing of the Form 1–K.

[397] As proposed, Form 1–K would not include the additional MD&A disclosure required in Form 1–A for issuers that have not received revenue from operations during each of the three fiscal years immediately before the filing of the offering statement. *See* discussion in Section II.C.3.b(1). above.

[398] *See* Section II.C.3.b(2). above.

[399] *See* General Instruction C. to proposed Form 1–K.

[400] *Id.*

[401] *See* proposed Rule 257(c) (also requiring the signature on behalf of an authorized representative of the issuer and the inclusion of any specified certifications).

[402] *See* Part I (Financial Information) of Form 10–Q, 17 CFR 249.308a.

[403] *See* Item 3 and Item 4 of Part I of Form 10–Q.

[404] The hyperlink to EDGAR need only be active at the time of filing of the Form 1–SA.

[405] *See* General Instruction C. to proposed Form 1–SA.

[406] *Id.*

[407] *See* proposed Rule 257(c).

[408] A fundamental change in the nature of an issuer's business would include major and substantial changes in the issuer's business or plan of operations or changes reasonably expected to result in such changes, such as significant acquisitions or dispositions, or the entry into, or termination of, a material definitive agreement that has or will result in major and substantial changes to the nature of an issuer's business or plan of operations.

As proposed, the requirement that issuers file a Form 1–U in the event they experience, or would reasonably expect to experience, a fundamental change in the nature of their business would incorporate aspects of each of Item 1.01, 1.02 and 2.01 of Form 8–K under the Exchange Act and change the threshold for reporting from a materiality to a fundamental change standard.[409] Under the proposal, Form 1–U would be required to be filed within four business days after the occurrence of any such event, and, where applicable, permit issuers to incorporate by reference certain information previously filed on EDGAR, but require issuers to include a hyperlink to such material on EDGAR.[410] A manually-signed copy of the Form 1–U would have to be executed by the issuer and related signatories before or at the time of filing and retained by the issuer for a period of five years.[411] Issuers would be required to produce the manually signed copy to the Commission, upon request.[412] Any amendments to the Form 1–U would have to comply with the requirements of the applicable items, and be filed under cover of Form 1–U/A.[413]

d. Special Financial Reports on Form 1–K and Form 1–SA

While not currently a requirement of Regulation A, we propose to require issuers conducting Tier 2 offerings to provide special financial reports analogous to those required under Exchange Act Rule 15d–2.[414] The special financial report would require audited financial statements for the issuer's last completed fiscal year to be filed not later than 120 calendar days after qualification of the offering statement if the offering statement did not include such financial statements. The special financial report would require semiannual financial statements for the first six months of the issuer's fiscal year, which may be unaudited, to be filed 90 calendar days after qualification of the offering statement if the offering statement did not include such financial statements and the offering statement was qualified in the second half of the issuer's current fiscal year. The special financial report would be filed under cover of Form 1–K if it included audited year-end financial statements and under cover of Form 1–SA if it included semiannual financial statements for the first six months of the issuer's fiscal year. The financial statement and auditing requirements would follow the requirements of those forms. Similarly to the special financial report under Exchange Act Rule 15d–2, the issuer would indicate on the front page of the applicable form that only financial statements are included. This report would serve to close lengthy gaps in financial reporting between the financial statements included in Form 1–A and the issuer's first periodic report due after qualification of the offering statement.

e. Reporting by Successor Issuers

Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of an issuer that is not subject to the reporting requirements of Regulation A, as proposed to be amended, are issued to the holders of any class of securities of an issuer that is subject to ongoing reporting under Tier 2, we propose to require the issuer succeeding to that class of securities to continue filing reports required for Tier 2 offerings on the same basis as would have been required of the original issuer. The successor issuer may, however, suspend or terminate its reporting obligations on the same basis as the original issuer under proposed Rule 257(d).[415]

Request for Comment

88. Would the proposed requirement that issuers conducting Tier 2 offerings file annual, semiannual, and current reports provide a meaningful benefit for investors by helping to foster a transparent market for securities issued under Regulation A? Should this requirement apply to all issuers of securities under Regulation A, regardless of whether the issuer is conducting a Tier 1 or Tier 2 offering? Alternatively, should we not impose ongoing reporting requirements beyond the statutory mandate of annual audited financial statements? Or should we require only annual reporting of the type of information required by proposed Form 1–K, without interim periodic reporting or current updates? Should we require only annual reporting and current updates? If we require interim periodic reporting, should it be quarterly instead of the proposed semiannual reporting requirement? Should quarterly or semiannual financial statements be required to be reviewed by an independent auditor?

89. While not currently proposed, should we exempt issuers conducting Tier 1 offerings from the requirement to report certain summary information about the issuer and the offering after termination or completion of the offering? Alternatively, should issuers conducting Tier 1 offerings be required to report on a more frequent basis than currently proposed? Why or why not?

90. If we exempt some issuers from ongoing reporting, should we do so on the basis of criteria other than offering size, such as issuer size or whether the issuer has taken steps to foster a secondary market for their securities? Why or why not?

91. Should the rules require issuers that conduct a Tier 2 offering to file their annual report on new Form 1–K within 120 calendar days of the fiscal year end, and their semiannual report on new Form 1–SA with 90 calendar days of the end of the second fiscal quarter, as proposed? Or should we require such issuers to file reports on a different timetable? For example, should the timetable be the same as for non-accelerated filers under the Exchange Act, who are required to file annual reports within 90 calendar days of the fiscal year end and interim periodic reports within 45 calendar days of the end of a fiscal quarter? What effect, if any, would altering the proposed filing deadlines for annual and semiannual reporting have on the costs to issuers of preparing such reports? Please provide supporting data, if possible.

92. As proposed, does the new Form 1–K provide for the disclosure of adequate information about the issuer on an annual basis? Similarly, does the new Form 1–SA provide for the disclosure of adequate information about the issuer on a semiannual basis? Or should the form(s) require more (or less) disclosure? If so, what additional disclosure should the form(s) require, or what items of proposed disclosure should not be required? Please explain.

93. Should we require current updates, as proposed on new Form 1–U? If not, please explain why. If we require current reporting, should we include more, fewer, or different triggering events for current reporting than are currently proposed? Should the requirement to provide current reporting apply to all Regulation A issuers? Is there an appropriate segment of Regulation A issuers, other than as proposed, for which current reporting

[409] *See* Form 8–K, Item 1.01 (Entry into a Material Definitive Agreement), Item 1.02 (Termination of a Material Definitive Agreement), and Item 2.01 (Completion of Acquisition or Disposition of Assets), 17 CFR 249.308.

[410] The hyperlink to EDGAR need only be active at the time of filing of the Form 1–U.

[411] *See* General Instruction C to proposed Form 1–U.

[412] *Id.*

[413] *See* proposed Rule 257(c).

[414] 17 CFR 240.15d–2.

[415] *See* Section II.E.4. below for a discussion of the suspension or termination of disclosure obligations.

would be the most useful or should otherwise be required?

94. Does the proposed requirement that issuers disclose material transactions that would result in, or would reasonably be expected to result in, fundamental changes to the issuer's business or corporate events on new Form 1–U provide enough guidance to issuers? If not, should we provide more guidance as to what constitutes a material transaction or corporate event? If so, please provide suggestions.

95. As proposed, should we permit issuers to incorporate by reference certain information into the Form 1–K, Form 1–SA and Form 1–U that was previously filed on EDGAR under Regulation A, while also requiring issuers to include a hyperlink to such exhibit on EDGAR? Why or why not? Should we permit issuers to incorporate by reference information from other documents, such as Exchange Act reports or Securities Act registration statements?

96. As proposed, should we require special financial reporting similar to that which is required for a registered offering under Exchange Act Rule 15d-2? As proposed, should the rules require audited financial statements for the issuer's last completed fiscal year to be filed 120 calendar days after qualification of the offering statement if the offering statement did not include such financial statements or, alternatively, require semiannual financial statements for the first six months of the issuer's fiscal year to be filed 90 calendar days after qualification of the offering statement if the offering statement did not include such financial statements and the issuer's first required periodic report would be a Form 1–SA? Why or why not?

97. As proposed, should issuers that succeed to a class of securities, in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, that are currently subject to a Tier 2 ongoing reporting obligation, as proposed to be amended, be required to continue filing reports on the same basis as would have been required of the original issuer? Why or why not? Please explain.

98. Would the proposed ongoing reporting requirements and termination provisions of Regulation A induce companies to migrate to the Regulation A capital raising and reporting regime, such that we may see a decline in smaller reporting companies subject to full Exchange Act reporting?[416] If so, what effect would any population shift of issuers in the registered and reporting regime under the Securities Act and Exchange Act migrating to the Regulation A exemptive scheme have on investor protection?

2. Exchange Act Rule 15c2–11 and Other Implications of Ongoing Reporting Under Regulation A

Exchange Act Rule 15c2–11 governs broker-dealers' publication of quotations for securities in a quotation medium other than a national securities exchange.[417] The Commission adopted Rule 15c2–11 in 1971 to prevent fraudulent and manipulative trading schemes that had arisen in connection with the distribution and trading of certain unregistered securities.[418] The rule prohibits broker-dealers from publishing quotations (or submitting quotations for publication) in a ''quotation medium'' for covered over-the-counter securities without first reviewing basic information about the issuer, subject to certain exceptions.[419] A broker-dealer also must have a reasonable basis for believing that the issuer information is accurate in all material respects and that it was obtained from a reliable source.

A broker-dealer can, however, satisfy its obligations under Rule 15c2–11 if it has reviewed and maintained in its records certain specified information. The particular information that is required by the rule varies depending on the nature of the issuer, including, among other things:

- For an issuer that has filed a registration statement under the Securities Act, a copy of the prospectus;
- for an issuer that has filed an offering statement under the Securities Act pursuant to Regulation A, a copy of the offering circular; or
- for an issuer subject to ongoing reporting under Sections 13 or 15(d) of the Exchange Act, the issuer's most recent annual report and any quarterly or current reports filed thereafter.[420]

We believe that the proposed ongoing reports for Tier 2 offerings under Regulation A, which would update the narrative and financial statement disclosures previously provided in Form 1–A on an annual and semi-annual basis, with additional provisions for current reporting, should also satisfy a broker-dealer's obligations under Rule 15c2–11 to review and maintain records of basic information about an issuer and its securities. We propose to amend Rule 15c2–11 to permit an issuer's ongoing reports filed in a Tier 2 offering under Regulation A to satisfy a broker-dealer's obligations to review specified information about an issuer and its security before publishing a quotation for a security (or submitting a quotation for publication) in a quotation medium.[421] The single comment we have received to date on the interaction of Rule 15c2–11 and Regulation A also advocated this approach.[422]

We are also soliciting comment on other potential effects that Tier 2 ongoing reporting under Regulation A could have under other provisions of the federal securities laws. For example, it may be appropriate for timely ongoing Regulation A reporting under Tier 2 to constitute ''adequate current public information'' for purposes of paragraph (c) of Rule 144.[423] Currently, most non-reporting issuers can satisfy the Rule 144 current public information requirement if there is publicly available the information specified in paragraphs (a)(5)(i) to (a)(5)(xiv) and (a)(5)(xvi) of Rule 15c2–11.[424] This information consists of:

- The exact name of the issuer and any predecessor;
- The address of its principal executive offices;
- The state of incorporation, if it is a corporation;
- The exact title and class of the security;
- The par or stated value of the security;
- The number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year;
- The name and address of the transfer agent;

[416] *See* discussion of proposed termination of ongoing reporting requirements under Regulation A in Section II.E.4. below.

[417] 17 CFR 240.15c2–11.

[418] SEC Rel. No. 34–9310 (Sept. 13, 1971) [36 FR 18641]. *See* 17 CFR 240.15c2–11(e)(1) (defining quotation medium as any ''interdealer quotation system'' or any publication or electronic communications network or other device which is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell).

[419] *See* SEC Rel. No. 34–29094 (April 17, 1991) [56 FR 19148].

[420] A broker-dealer can also satisfy its review requirements under Rule 15c2–11 by reviewing certain information published pursuant to a Rule 12g3–2(b) exemption for foreign issuers that claim the registration exemption or information specified in paragraph (a)(5) of the Rule for non-reporting issuers.

[421] In addition, we are proposing a technical amendment to Rule 15c2–11 to amend subsection (d)(2)(i) of the rule to update the outdated reference to the ''Schedule H of the By-Laws of the National Association of Securities Dealers, Inc.'' which is now known as the ''Financial Industry Regulatory Authority, Inc.'' and to reflect the correct rule reference.

[422] McCarter & English Letter.

[423] 17 CFR 230.144(c).

[424] 17 CFR 230.144(c)(2). Issuers that are insurance companies are subject to different requirements.

- The nature of the issuer's business;
- The nature of products or services offered;
- The nature and extent of the issuer's facilities;
- The name of the chief executive officer and members of the board of directors;
- The issuer's most recent balance sheet and profit and loss and retained earnings statements;
- Similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence;
- Whether the broker or dealer initiating or resuming quotation or any associated person is affiliated, directly or indirectly with the issuer; and
- Whether the quotation is being submitted or published directly or indirectly on behalf of the issuer, or any director, officer or any person, directly or indirectly the beneficial owner of more than 10 percent of the outstanding units or shares of any equity security of the issuer, and, if so, the name of such person, and the basis for any exemption under the federal securities laws for any sales of such securities on behalf of such person.[425]

With the exception of the last two items, all of this information would be included in our proposed ongoing Regulation A reporting for Tier 2 offerings.

We are also soliciting comment on whether ongoing Regulation A reporting for Tier 2 offerings should satisfy the information requirements of paragraph (d)(4) of Rule 144A.[426] Under that provision, holders of Rule 144A securities must have the right to obtain from the issuer, upon request, a very brief statement of the nature of the issuer's business and the products and services it offers, the issuer's most recent balance sheet and profit and loss and retained earnings statements, and similar financial statements for each of the two preceding fiscal years, which information must be ''reasonably current.'' [427]

Request for Comment

99. In a Tier 2 offering, should the review of an issuer's most recent annual report and any semiannual or current reports filed under Regulation A, as contemplated in this proposal, satisfy a broker-dealer's obligation to review company information in order to quote a security in the over-the-counter market pursuant to Exchange Act Rule 15c2–11? Why or why not? Should the annual or other forms require additional information in order for a broker-dealer to be able to rely on such information for purposes of quotations under Rule 15c2–11?

100. Should ongoing Regulation A reports in Tier 2 offerings be deemed to provide ''adequate current public information'' about the issuer for purposes of paragraph (c) of Rule 144? Why or why not? What impact would broadening Rule 144 in this way have on affiliate resales of securities of Regulation A issuers? What impact would broadening Rule 144 in this way have on investors?

101. Should ongoing Regulation A reports in Tier 2 offerings satisfy the informational requirements of paragraph (d)(4) of Rule 144A? Why or why not? Are investors or Regulation A issuers likely to benefit?

3. Exchange Act Registration of Regulation A Securities

Under Section 15(d) of the Exchange Act, an issuer that has had a Securities Act registration statement declared effective must comply with the periodic reporting requirements of the Exchange Act.[428] Qualification of a Regulation A offering statement does not have the same effect. An issuer of Regulation A securities would not take on Exchange Act reporting obligations unless it separately registered a class of securities under Section 12 of the Exchange Act, or conducted a registered public offering.

An issuer registering a class of securities under Section 12 of the Exchange Act must file either a Form 10 [429] or Form 8–A [430] with the Commission. Form 10 is the general form an issuer must use for Exchange Act registration, while Form 8–A is a short-form registration statement. An issuer must use a Form 10 if, at the time it files its registration statement, it is not already subject to a Section 13 or Section 15(d) reporting obligation. An issuer may use Form 8–A if it is already subject to the provisions of either Section 13 or Section 15(d). Additionally, when an issuer that is not already subject to the provisions of either Section 13 or 15(d) plans to list its securities on a national securities exchange contemporaneously with the effectiveness of a Securities Act registration statement, the Commission staff will not object if that issuer files a Form 8–A in lieu of a Form 10, in order for the issuer to avoid having to restate the contents of its Securities Act registration statement in its Exchange Act registration statement.[431]

Issuers conducting offerings under Regulation A that seek to list the securities on a national securities exchange or otherwise enter the Exchange Act registration system would be required to file Form 10 in order to do so. We solicit comment, however, on whether we should provide a simplified means for Regulation A issuers to register a class of securities under the Exchange Act by, for example, permitting such issuers to file a Form 8–A rather than a Form 10 in conjunction with, or following, the qualification of a Regulation A offering statement on Form 1–A, as some commenters have suggested.[432] The 2010 Government-Business Forum on Small Business Capital Raising made a similar recommendation.[433] Proponents of this approach argue that it would facilitate IPOs and encourage Exchange Act registration and the listing of securities on national securities exchanges, which would provide benefits to both issuers and investors.[434]

We also invite comment on ways to facilitate secondary market trading in the securities of Regulation A issuers, such as by encouraging the development of ''venture exchanges'' or other trading venues that are focused on attracting such issuers. The Commission's Advisory Committee on Small and Emerging Companies, for example, has recommended the establishment of separate U.S. equity markets for small and emerging companies, which it believes could encourage initial public offerings of the securities of these companies.[435] One commenter similarly

[425] 17 CFR 240.15c2–11(a)(5).

[426] 17 CFR 230.144A(d)(4).

[427] *Id.*

[428] While issuers with a Section 15(d) reporting obligation are required to file the same periodic reports as issuers that have registered a class of securities under Section 12, Section 15(d) reporting issuers are not subject to additional Exchange Act obligations (*e.g.,* proxy rules, short-swing profit rules, and beneficial ownership reporting) that apply to Exchange Act registrants.

[429] 17 CFR 249.210. Foreign private issuers must file a Form 20–F, 17 CFR 249.220f, or, where available, a Form 8–A.

[430] 17 CFR 249.208a.

[431] *See* SEC Rel. No. 34–38850 (Sept. 2, 1997) [62 FR 39755], at 39757 (''[A]n issuer registering an initial public offering will be permitted to use Form 8–A even though it will not be subject to reporting until after the effectiveness of that Securities Act registration statement.'').

[432] ABA Letter; WR Hambrecht + Co. Letter.

[433] *See* Final Report of the 29th Annual SEC Government-Business Forum on Small Business Capital Formation, Recommendation 5, at 18 (Nov. 18, 2010) (suggesting that issuers be permitted to file reports under Section 13 of the Exchange Act for a one-year period following a Regulation A offering, and thereafter file a Form 8–A to register the securities under Section 12 of the Exchange Act) (*available at: http://www.sec.gov/info/smallbus/gbfor29.pdf*).

[434] ABA Letter; WR Hambrecht + Co. Letter.

[435] *Recommendation Regarding Separate U.S. Equity Market for Securities of Small and Emerging*

Continued

expressed support for the creation of an equity market venture exchange populated with small and emerging growth companies.[436] In recent years, the Commission has approved more flexible listing standards for an exchange designed for smaller issuers,[437] and some alternative trading systems today trade small company stocks.[438] We solicit comment on how these or similar market models might be used by Regulation A issuers, and how they can be made more viable for facilitating secondary markets for small issuers.

Request for Comment

102. While not currently proposed, should we permit issuers to register under the Exchange Act classes of securities that are qualified under Regulation A by allowing them to file a Form 8–A rather than a Form 10? Why or why not? Would providing a short form registration encourage more Regulation A issuers to list their securities on national securities exchanges? Conversely, would permitting eligible issuers to use their Regulation A offering statement in conjunction with a Form 8–A reduce the likelihood that such issuers would use the Securities Act registration process, including the ''IPO on-ramp'' provisions of Title I of the JOBS Act? Would it serve the intended purpose of Regulation A to make such an accommodation?

103. The disclosure and financial statement requirements of Regulation A, currently and as proposed to be amended, require fewer items of disclosure or less detailed information than Securities Act registrants are required to provide. Would it cause confusion in the market or otherwise create risks for investors if issuers could transition from Regulation A disclosure in Form 1–A to Exchange Act registration without filing Form 10 or providing all the information otherwise called for by Form 10 or Form S–1? Alternatively, while not currently proposed, should simplified Exchange Act registration be available only for issuers that prepare an offering circular based on Part I of Form S–1?

104. What effect, if any, would the ongoing reporting obligations of Section 13 of the Exchange Act have on an issuer considering the potential use of Form 8–A in conjunction with a Regulation A offering as the means by which to become an Exchange Act reporting issuer? Would ongoing reporting under Section 13 of the Exchange Act be an attractive alternative for Regulation A issuers? Or some subset of Regulation A issuers? Please explain.

105. While not currently proposed, should we make Form 8–A available in connection with issuers that are subject to ongoing reporting requirements under Regulation A? Why or why not? Do the proposed ongoing reporting requirements in Regulation A, in addition to the requirement to meet the listing standards of, and be certified by, a national securities exchange provide an adequate justification for the extension of the Form 8–A accommodation to issuers subject to such an obligation?[439] Or should we provide a different means of simplified Exchange Act registration for issuers subject to an ongoing reporting obligation under Regulation A? Please explain.

106. Would encouraging the development of ''venture exchanges'' or other trading venues that are focused on attracting such issuers facilitate secondary market trading in the securities of Regulation A issuers? If so, how? How could the Commission adjust the regulatory regime to provide for a more viable secondary market for small issuers, with sufficient participation by liquidity providers, that maintains investor protections and fair and orderly markets?

4. Exit Report on Form 1–Z

a. Summary Information on Terminated or Completed Offerings

As discussed in Section II.E.1. above, we propose to rescind Form 2–A, but to continue to require Regulation A issuers to file the information generally disclosed in Form 2–A with the Commission electronically on EDGAR. Consistent with the related portion of proposed new Form 1–K,[440] the Form 2–A information would be converted into an online XML-based fillable form with indicator boxes or buttons and text boxes and filed electronically with the Commission as Part I of proposed new Form 1–Z (exit report). Issuers conducting Tier 1 offerings would be required to provide this information on Form 1–Z not later 30 calendar days after termination or completion of the offering, while issuers conducting Tier 2 offerings would be required to provide this information on Form 1–Z at the time of filing the exit report, if not previously provided on Form 1–K as part of their annual report.[441] The summary offering information disclosed on Form 1–Z would be publicly available on EDGAR, but not otherwise required to be distributed to investors.

The XML-based fillable form would enable issuers to provide information in a convenient medium and capture relevant data about the recently terminated or completed Regulation A offering. As with the related portions of Form 1–K discussed above, the fillable form would be available online and not require issuers to obtain specialty software. The summary information disclosed would, however, facilitate analysis of Regulation A offerings by the Commission, other regulators, third-party data providers, and market participants. Additionally, facilitating the capture of important summary information about an offering would enable the Commission to monitor the use and effectiveness of Regulation A as a capital formation tool.

As noted above in the related proposals for Form 1-K, the summary information collected in Form 1–Z would include the date the offering was qualified and commenced, the number of securities qualified, the number of securities sold in the offering, the price of the securities, any fees associated with the offering, and the net proceeds to the issuer.

b. Termination or Suspension of Tier 2 Disclosure Obligations

In light of the proposed ongoing reporting obligations for Tier 2 offerings, we are proposing to permit issuers that conduct a Tier 2 offering to terminate or suspend their ongoing reporting obligations on a basis similar to the provisions that allow issuers to suspend their ongoing reporting obligations under Section 13 and Section 15(d) of the Exchange Act.[442] We acknowledge that, similar to the Exchange Act reporting context, there may be circumstances when an issuer would like to exit the reporting system. We received a comment letter that suggested we adopt a provision similar to Section 15(d) of the Securities Act that would permit an issuer to automatically

Companies, Securities and Exchange Commission, Advisory Committee on Small and Emerging Companies (February 1, 2013), *available at: http://www.sec.gov/info/smallbus/acsec/acsec-recommendation-032113-emerg-co-ltr.pdf.*

[436] Paul Hastings Letter.

[437] *See* SEC Rel. No. 34–64437 (May 6, 2011) [76 FR 27710].

[438] *See, e.g.,* Global OTC (f/k/a ArcaEdge), Shares Post Financial Corporation, Second Market, Inc., and OTC Link LLC.

[439] *See* discussion of proposed Regulation A ongoing reporting requirements in Section II.E. above.

[440] *See also* discussion in Section II.C.1. (Electronic Filing; Delivery Requirements) and Section II.C.3.a. (Part I (Notification)) above.

[441] *See* Section II.E.1.a. above for a discussion of the requirements for proposed new Form 1–K.

[442] *See* Exchange Act Section 15(d), 15 U.S.C. 78*o*(d); Exchange Act Rule 12h–3, 17 CFR 240.12h–3.

terminate its Regulation A reporting obligation as to any fiscal year, other than the year in which the offering was made, if at the beginning of such fiscal year, the securities of the class sold in reliance on Regulation A are held of record by fewer than 300 persons.[443] We propose to permit an issuer in a Tier 2 offering that has filed all ongoing reports required by Regulation A for the shorter of (i) the period since the issuer became subject to such reporting obligation, or (ii) its most recent three fiscal years and the portion of the current year preceding the date of filing Form 1–Z to immediately suspend its ongoing reporting obligation under Regulation A at any time after completing reporting for the fiscal year in which the offering statement was qualified, if the securities of each class to which the offering statement relates are held of record by fewer than 300 persons and offers or sales made in reliance on a qualified offering statement are not ongoing.[444] In such circumstances, an issuer's obligation to continue to file ongoing reports in a Tier 2 offering under Regulation A would be suspended immediately upon the filing of a notice to the Commission on Part II of proposed new Form 1–Z. A manually-signed copy of the Form 1–Z would have to be executed by the issuer and related signatories before or at the time of filing and retained by the issuer for a period of five years.[445] Issuers would be required to produce the manually signed copy to the Commission, upon request.[446]

We further propose that issuers' obligations to file ongoing reports in a Tier 2 offering under Regulation A would be automatically suspended upon registration of a class of securities under Section 12 of the Exchange Act or registration of an offering of securities under the Securities Act, such that Exchange Act reporting obligations would always supersede ongoing reporting obligations under Regulation A. If an issuer terminates or suspends its reporting obligations under the Exchange Act and the issuer would be eligible to suspend its Regulation A reporting obligation by filing a Form 1–Z at that time, the ongoing reporting obligations would terminate automatically and no Form 1–Z filing would be required to terminate the issuer's Regulation A reporting obligation. If the issuer would not be eligible to file a Form 1–Z at that time, it would need to recommence its Regulation A reporting with the report covering any financial period not completely covered by a registration statement or Exchange Act report.[447]

Request for Comment

107. As currently proposed, should we modify the current requirement in Regulation A that issuers file a Form 2–A to report sales and the termination of sales made under Regulation A to instead require issuers conducting Tier 1 offerings to report such information only after the termination or completion of the offering on Part I of proposed new Form 1–Z and issuers in Tier 2 offerings to report such information on either Part I of Form 1–Z or proposed new Form 1–K? Why or why not?

108. Is there any additional information about an issuer's recently completed or terminated Regulation A offering that should be required to be disclosed? Alternatively, should we not require any disclosure of summary information about an issuer's recently completed Regulation A offering? Why or why not?

109. Should we permit issuers to suspend their reporting obligations in a Tier 2 offering under Regulation A, as proposed, when they take on Exchange Act reporting obligations? Should we otherwise alter the proposed provisions regarding the suspension or termination of an issuer's ongoing reporting obligations in Tier 2 offering? Should issuers in Tier 2 offerings be able to suspend or terminate ongoing reporting under Regulation A on some other basis? For example, should we permit issuers to terminate their ongoing reporting obligations immediately upon completion of the offering, provided, at that time, they have less than 300 holders of record? Why or why not? Should we require a Form 1–Z filing for issuers that would be eligible to immediately file that form upon the suspension or termination of their Exchange Act reporting obligations?

110. Should we alter the number of record holders below which an issuer in a Tier 2 offering can suspend or terminate its ongoing reporting obligations from the proposed 300 record holders? Or should we alter the threshold below which certain types of issuers that are subject to a Tier 2 ongoing reporting obligation would be able to suspend or terminate reporting (*e.g.,* 2,000 or 500 holders of record)? For example, similar to the provisions of Title VI of the JOBS Act, should we allow banks and bank holding companies to terminate their ongoing Regulation A reporting obligations by falling below a higher threshold of record holders (*e.g.,* 1,200 holders of record)?[448] Or should we increase or decrease the number of record holders below which all issuers in Tier 2 offerings, irrespective of issuer-type, could suspend or terminate their ongoing reporting obligations? Why or why not? Please explain.

F. Insignificant Deviations From a Term, Condition or Requirement

Currently, Rule 260 provides that certain insignificant deviations from a term, condition or requirement of Regulation A will not result in the issuer's loss of the exemption from registration under Section 5 of the Securities Act.[449] Under Rule 260, the provisions of current Rule(s) 251(a) (issuer eligibility), 251(b) (aggregate offering price), 251(d)(1) (offers) and 251(d)(3) (continuous or delayed offerings) of Regulation A are, however, deemed to be significant to the offering as a whole, and any deviations from these provisions would result in the issuer's loss of the exemption. We have not received any comment on Rule 260, nor do we propose to amend the rule. We do, however, solicit comment on whether the provision should be amended to, for example, alter the list of significant deviations.

Request for Comment

111. Should we amend Rule 260 to alter the list of deviations that would be deemed significant to the offering as a whole? Why or why not? If so, which provision(s) should be amended? Alternatively, are there other provisions within Rule 260 that should be amended? If so, please state which provisions and describe why they should be amended.

G. Bad Actor Disqualification

Under Securities Act Section 3(b)(2)(G)(ii), the Commission has discretion to issue rules disqualifying certain ''felons and other 'bad actors' '' from using the new exemption. Such rules, if adopted, must be ''substantially similar'' to those adopted to implement Section 926 of the Dodd-Frank Act, which requires the Commission to adopt disqualification rules for securities offerings under Rule 506 of Regulation D. The Commission adopted the disqualification provisions required by Section 926 in Rule 506(d), and a

[443] ABA Letter.

[444] *See* proposed Rule 257(d)(2).

[445] *See* Instruction to proposed Form 1–Z.

[446] *Id.*

[447] *See* proposed Rule 257(d)(1) and (e).

[448] *See* Title VI of the JOBS Act, Public Law 112–106,—601 (Capital Expansion).

[449] 17 CFR 230.260.

related disclosure requirement in Rule 506(e).[450]

All commenters on potential ''bad actor'' disqualification provisions in the context of Title IV of the JOBS Act suggest that the Commission apply the same standards for bad actor disqualification under Regulation A as under Rule 506.[451] One commenter further suggested that the Commission adopt uniform disqualification rules across Regulation D, Section 4(a)(5), and the expanded Regulation A exemption.[452]

Regulation A currently provides for the disqualification of ''bad actors'' in Rule 262.[453] We propose to amend Rule 262 to include bad actor disqualification provisions in substantially the same form as recently adopted under Rule 506(d), but without the categories of covered persons specific to fund issuers, which would not be eligible to use Regulation A under the proposal.[454] Such ''bad actor'' disqualification requirements would disqualify securities offerings from reliance on Regulation A if the issuer or other relevant persons (such as underwriters, placement agents, and the directors, officers and significant shareholders of the issuer) have been convicted of, or are subject to court or administrative sanctions for, securities fraud or other violations of specified laws.

Under the proposed amendment, the disqualification provisions would apply to the following categories of persons (''covered persons''):

- The issuer and any predecessor of the issuer or affiliated issuer;
- any director, executive officer, or other officer participating in the offering, general partner, or managing member of the issuer;
- any beneficial owner of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power;
- any promoter connected with the issuer in any capacity at the time of filing of the offering statement or any offers or sales after qualification;
- any underwriter or person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with sales of securities in the offering;
- any general partner or managing member of any such solicitor; and
- any director, executive officer or other officer participating in the offering of any such underwriter or solicitor or of a general partner or managing member of any such underwriter or compensated solicitor.

An offering would be disqualified from reliance on the Regulation A exemption if any covered person had been the subject of the following disqualifying events:

- Criminal convictions (felony or misdemeanor) entered within five years before the filing of the offering statement in the case of issuers, their predecessors and affiliated issuers, and ten years in the case of other covered persons:
- In connection with the purchase or sale of any security;
- involving the making of a false filing with the Commission; or
- arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities;[455]
- Court injunctions and restraining orders, including any order, judgment, or decree of any court of competent jurisdiction, entered no more than five years before the filing of the offering statement, that, at the time of such filing, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:
- In connection with the purchase or sale of any security;
- involving the making of a false filing with the Commission; or
- arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities;[456]
- Final orders issued by state securities, banking, credit union, and insurance regulators, federal banking regulators, the U.S. Commodity Futures Trading Commission, and the National Credit Union Administration that at the time of filing of the offering statement either:
- Bar the covered person from association with any entity regulated by the regulator issuing the order, or from engaging in the business of securities, insurance or banking, or from savings association or credit union activities; or
- are based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the last ten years;[457]
- Commission disciplinary orders entered pursuant to Section 15(b) or 15(B)(c) of the Exchange Act or Section 203(e) or (f) of the Investment Advisers Act of 1940 (the ''Advisers Act'') that, at the time of filing of the offering statement:
- Suspend or revoke a person's registration as a broker, dealer, municipal securities dealer, or investment adviser;
- place limitations on the activities, functions, or operations of such person; or
- bar such person from being associated with any entity or from participating in the offering of any penny stock;[458]
- Commission cease and desist orders entered no more than five years before the filing of the offering statement that, at the time of such filing, order the person to cease and desist from committing or causing a violation or future violation of any scienter-based anti-fraud provision of the federal securities laws or Section 5 of the Securities Act;[459]
- Suspension or expulsion from membership in, or suspension or a bar from association with a member of, an SRO, *i.e.,* a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;[460]
- Stop orders applicable to a registration statement and orders suspending the Regulation A exemption for an offering statement that an issuer filed or in which the person was named as an underwriter no more than five years before the filing of the offering statement, and proceedings pending at the time of such filing as to whether such a stop or suspension order should be issued;[461] and
- U.S. Postal Service false representation orders including temporary or preliminary orders entered no more than five years before the filing of the offering statement.[462]

The proposed triggering events are substantially the same as the triggering events included in Rule 506(d).[463] We believe that creating a uniform set of

[450] SEC Rel. No. 33–9414 (July 10, 2013) [78 FR 44729]. The Commission recently proposed rules substantially similar to those adopted pursuant Section 926 of the Dodd-Frank Act in the proposing release for securities-based crowdfunding transactions under Title III of the JOBS Act. *See* SEC Rel. No. 33–9470, at 284.

[451] ABA Letter; WR Hambrecht + Co. Letter; NASAA Letter 2; Kaplan Voekler Letter 2. *See also* Final Report of the 31st Annual SEC Government-Business Forum on Small Business Capital Formation, Recommendation 13B, at 25 (Nov. 15, 2012) (*available at: http://www.sec.gov/info/smallbus/gbfor31.pdf*).

[452] NASAA Letter 2.

[453] 17 CFR 230.262.

[454] *See* proposed Rule 262.

[455] *See* proposed Rule 262(a)(1).

[456] *See* proposed Rule 262(a)(2).

[457] *See* proposed Rule 262(a)(3).

[458] *See* proposed Rule 262(a)(4).

[459] *See* proposed Rule 262(a)(5).

[460] *See* proposed Rule 262(a)(6).

[461] *See* proposed Rule 262(a)(7).

[462] *See* proposed Rule 262(a)(8).

[463] 17 CFR 230.506(d).

bad actor triggering events should simplify diligence, particularly for issuers that may engage in different types of exempt offerings. It could also foster the creation of third-party databases or other data sources regarding bad actors that could aid issuers in conducting diligence. As noted above, however, the proposed rules in Regulation A would specify that an order must bar the covered person at the time of filing [464] of the offering statement, as opposed to the requirement in Rule 506(d) that the order must bar the covered person at the time of the relevant sale. This clarification accords with the current provisions of Rule 262 and is appropriate in the context of Regulation A because there is no filing requirement before the time of first sale in Rule 506.[465]

We further propose a reasonable care exception under Regulation A on a basis consistent with Rule 506.[466] Under proposed Rule 262(b)(4), an issuer would not lose the benefit of the Regulation A exemption if it could show that it did not know, and in the exercise of reasonable care could not have known, of the existence of a disqualification.

Proposed Rule 262 is very similar in substance to existing Rule 262, although the format is different. In its current form, Rule 262 provides three different categories of offering participants and related persons, with different disqualification triggers for each category. The amendments we propose are based on a simplified framework of potentially disqualified persons and disqualifying events, which aligns with Rule 506(d). The covered persons are the same as under current Rule 262, except that the proposal includes references to managing members of limited liability companies and, like Rule 506(d), would cover compensated solicitors of investors in addition to underwriters; executive officers and other officers participating in the offering, rather than all officers, of the issuer and any underwriter or compensated solicitor; and beneficial owners of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power, rather than beneficial owners of 10% of any class of the issuer's equity securities. The proposals would also add two new disqualification triggers: proposed Rule 262(a)(3), which covers final orders and bars of certain state and other federal regulators, and proposed Rule 262(a)(5), which covers Commission cease-and-desist orders relating to violations of scienter-based anti-fraud provisions of the federal securities laws or Section 5 of the Securities Act. Finally, the proposals include a ''reasonable care'' exception modeled on the Rule 506(d) provision. We believe these changes to Rule 262 are appropriate in light of the Section 3(b)(2)(G)(ii) mandate and the benefits of creating a more uniform set of standards for all exemptions that include bad actor disqualification.[467]

Under the proposal, offerings that would have been disqualified from reliance on Regulation A under Rule 262 as currently in effect would continue to be disqualified. Triggering events that are not currently covered by Rule 262—namely, the events specified in proposed Rule 262(a)(3) and 262(a)(5)—and that pre-date effectiveness of any rule amendments would not cause disqualification, but would be required to be disclosed on a basis consistent with new Rule 506(e). Specifically, issuers would be required to indicate in Part I of Form 1–A that disclosure of triggering events that would have triggered disqualification, but occurred before the effective date of the Regulation A amendments, will be provided in Part II of Form 1–A.[468]

In addition to soliciting comment on the proposed amendments to Rule 262, we are also soliciting comment more broadly on the interpretation of the phrase ''voting equity securities,'' as it appears in ''any beneficial owner of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power,'' a category of covered persons in Rule 506(d) and proposed Rule 201(r)(2) of Regulation Crowdfunding, as well as in Rule 262, as proposed to be amended. When we adopted Rule 506(d), we did not define ''voting equity securities,'' but rather indicated that our initial intention would be to consider securities as voting equity securities if ''securityholders have or share the ability, either currently or on a contingent basis, to control or significantly influence the management and policies of the issuer through the exercise of a voting right.'' [469] In light of numerous questions and concerns raised about the implications of such an interpretation, however, we are reconsidering our initial views. In particular, we are concerned that our initial interpretation may be overbroad, and that a ''bright-line'' test may be more workable and would facilitate compliance. We are therefore soliciting comment about alternative interpretations of the phrase ''voting equity securities'' as it appears in current and proposed bad actor disqualification rules.

Request for Comment

112. Should we amend Rule 262, as proposed, to align with Rule 506(d)? Are there proposed amendments to the covered persons or disqualification triggering events of Rule 262 that we should not make? Why not? Are there other amendments consistent with the statutory mandate of Section 3(b)(2)(G)(ii) that we should consider?

113. How should the phrase ''voting equity securities'' as it appears in ''any beneficial owner of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power'' in Rule 506(d), proposed Rule 201(r)(2) of Regulation Crowdfunding, and Rule 262 as proposed to be amended, be interpreted? Should we interpret it consistently with the definition of ''voting securities'' in Rule 405, as equity securities ''the holders of which are presently entitled to vote for the election of directors''? Are there factors other than the current ability to vote for directors (or their equivalents) that should be taken into account?

H. Relationship With State Securities Law

Commenters have suggested that the cost of state securities law compliance, which they identify as an obstacle to the use of existing Regulation A, would discourage market participants from using the new exemption. In addition, as discussed previously, Section 402 of the JOBS Act required the Comptroller General to conduct a study on the impact of state ''blue sky'' laws on

[464] In order to simplify the application of the rules, we do not propose to require that an order bar the covered person at the time of non-public submission of the offering statement. As a practical matter, if a covered person is involved with a proposed Regulation A offering at the time of non-public submission or filing, the issuer would be ineligible to qualify the offering in reliance on Regulation A under either circumstance.

[465] Under Rule 503 of Regulation D, issuers must file a notice of sales on Form D no later than 15 calendar days after the first sale of securities. 17 CFR 230.503(a).

[466] *See* proposed Rule 262(b)(4).

[467] If adopted, the amendments to Rule 262 would also effectively modify the bad actor disqualification provisions of Rule 505 of Regulation D, which incorporate Rule 262 by reference. We are proposing technical amendments to Rule 505 to update the citations to Rule 262.

[468] As discussed in Section II.C.3.a. above, Part I of Form 1–A focuses, in part, on issuer eligibility, and forces issuers to make an eligibility determination at the outset of filling out Form 1–A, while also facilitating quick eligibility determinations by Commission staff reviewing Regulation A offering materials.

[469] SEC Rel. No. 33–9414 (July 10, 2013) [78 FR 44729], text accompanying fn. 62.

offerings conducted under Regulation A, and to report its findings to Congress. The resulting GAO report to Congress indicates that state securities laws were among several central factors that may have contributed to the lack of use of Regulation A.[470]

NASAA recently proposed a coordinated review process for Regulation A offerings, which, if implemented, could potentially reduce the state law disclosure and compliance obligations of Regulation A issuers.[471] As proposed, the coordinated review program would permit issuers to file Regulation A offering materials with the states using an electronic filing depository system currently in development by NASAA. The administrator of the coordinated review program would select a lead disclosure examiner and, where applicable, a lead merit examiner, which would be responsible for drafting and circulating a comment letter to the participating jurisdictions, and for seeking resolution of those comments with the issuer and its counsel. The draft review protocol also contemplates that certain NASAA statements of policy would be modified or would not apply to offerings undergoing coordinated review. There are a number of open questions about the proposal: Whether NASAA will adopt a coordinated review program as proposed; if the proposal were to be adopted in the future, how many states would elect to participate; when such a program, if adopted, could be implemented; and if adopted as proposed, whether the protocol would address the concerns related to state securities law compliance identified by the GAO and commenters.[472] NASAA has stated that its members broadly support the proposed program and would be able to implement it promptly.[473]

In the absence of any such coordinated review, issuers would be required to analyze and comply with separate registration or qualification requirements, or to identify and comply with applicable exemptions, in each state in which they intend to offer or sell securities under revised Regulation A, as is currently the case under Regulation A. Depending on the nature of any such coordinated review process, state securities laws could impose additional requirements and limitations on offerings beyond those imposed by Regulation A, either currently or as proposed to be amended.[474]

As a result, most commenters strongly supported some form of state securities law preemption.[475] Section 18 of the Securities Act generally provides for exemption from state law registration and qualification requirements for certain categories of securities, defined as ''covered securities.''[476] Although Section 401(b) of the JOBS Act does not itself exempt offerings made under Section 3(b)(2) and the related rules from state law registration and qualification requirements, it did add Section 18(b)(4)(D) to the Securities Act. That provision states that Section 3(b)(2) securities are covered securities for purposes of Section 18 if they are ''offered or sold on a national securities exchange'' or ''offered or sold to a qualified purchaser, as defined by the Commission pursuant to [Section 18(b)(3)] with respect to that purchase or sale.'' Section 18(b)(3) provides that ''the Commission may define the term 'qualified purchaser' differently with respect to different categories of securities, consistent with the public interest and the protection of investors.''

Some commenters suggested that the Commission preempt state securities laws by permitting Section 3(b)(2) securities to be listed and traded on a national securities exchange,[477] others suggested preemption by means of a ''qualified purchaser'' definition,[478] while others still suggested some combination of both approaches.[479]

Commenters advocating listing and trading of Section 3(b)(2) securities on a national securities exchange have suggested we permit such listing without attendant registration of the securities under Section 12(b) of the Exchange Act[480] or through short-form Exchange Act registration on Form 8–A.[481] Commission action would not be required to effect the preemption of state securities laws for Regulation A securities that are listed or traded on an exchange. Under Section 18(b)(1) of the Securities Act, any securities that are listed or authorized for listing on a national securities exchange are exempt from state securities law registration and qualification requirements.[482] Section 401(b) of the JOBS Act in effect restated this provision specifically for Regulation A securities, by adding Section 18(b)(4)(D)(i) to the Securities Act.[483] We expect, however, that this approach to preemption will have limited impact, because many Regulation A issuers would not meet the standards for listing on a national securities exchange.[484]

[470] *See* Section I.C. above.

[471] *See* NASAA Release, dated October 30, 2013, Notice of Request for Public Comment: Proposed Coordinated Review Program for Section 3(b)(2) Offerings (the comment period for NASAA's proposal was scheduled to close on November 30, 2013), *available at: http://www.nasaa.org/27427/notice-request-public-comment-proposed-coordinated-review-program-section-3b2-offerings/*.

[472] *See, e.g.,* GAO–12–839, at 14 (discussing the varying standards and degrees of stringency applied during the qualification and review process in merit review states); *see also* Paul Hastings Letter.

[473] Letter from Andrea Seidt, President, NASAA, December 12, 2013 (''NASAA Letter 3''). If the proposed coordinated review program were not adopted by every state, we could consider adoption of a ''qualified purchaser'' definition that would provide preemption as to the non-participating states.

[474] For example, under the proposed coordinated review protocol, Regulation A offerings would be subject to most aspects of current NASAA policies regarding lock-up of shares held by promoters and disclosure and procedural requirements for loans and other material transactions involving issuer affiliates.

[475] Karr Tuttle Letter; Letter from Robert J. Tresslar, Title Company Data Provider, Property Tax Lien Investor, June 28, 2012 ''Tresslar Letter''; McCarter & English Letter; ABA Letter; Letter from Paul Getty, Managing Director, Satwik Ventures LLC, Nov. 7, 2012 (''Satwik Ventures Letter''); Campbell Letter; WR Hambrecht + Co. Letter; Kaplan Voekler Letter 2; Fallbrook Letter; Paul Hastings Letter. *See also* Final Report of the 29th Annual SEC Government-Business Forum on Small Business Capital Formation, Recommendation 7B, at 19 (Nov. 18, 2010) (*available at: http://www.sec.gov/info/smallbus/gbfor29.pdf*); Final Report of the 30th Annual SEC Government-Business Forum on Small Business Capital Formation, Recommendation 8, at 30 (Nov. 17, 2011) (*available at: http://www.sec.gov/info/smallbus/gbfor30.pdf*); Final Report of the 31st Annual SEC Government-Business Forum on Small Business Capital Formation, Recommendations 12 and 14, at 25 (Nov. 15, 2012) (*available at: http://www.sec.gov/info/smallbus/gbfor31.pdf*); ECTF Report (Recommendations 1.2, 1.3, and 1.4).

[476] *See* Section 18(c), 15 U.S.C. 77r(c). State securities regulators retain authority to impose certain filing and fee requirements and general antifraud enforcement authority with respect to covered securities. *See* Section 18(c), 15 U.S.C. 77r(c).

[477] *See, e.g.,* Karr Tuttle Letter.

[478] *See, e.g.,* Tresslar Letter; McCarter & English Letter; Campbell Letter; Kaplan Voekler Letter 2; *see also* Final Report of the 31st Annual SEC Government-Business Forum on Small Business Capital Formation, Recommendations 12 and 14, at 25 (Nov. 15, 2012); ECTF Report (Recommendation 1.3).

[479] *See, e.g.,* ABA Letter; Satwik Ventures Letter; WR Hambrecht + Co. Letter.

[480] Karr Tuttle Letter (suggesting a lower tier of exchange-listed security).

[481] WR Hambrecht + Co. Letter (suggesting upper tier exchange listing, but on a shorter form Exchange Act registration statement); *see also* Final Report of the 29th Annual SEC Government-Business Forum on Small Business Capital Formation, Recommendation 5, at 18 (Nov. 18, 2010) (*available at: http://www.sec.gov/info/smallbus/gbfor29.pdf*).

[482] Section 18(b)(1), 15 U.S.C. 77r(b)(1).

[483] Section 18(b)(4)(D)(i) uses the language ''offered or sold on a national securities exchange,'' whereas Section 18(b)(1) uses the language, ''listed, or authorized for listing, on a national securities exchange.''

[484] *See also* ECTF Report. As discussed in Section II.E.3. above, we solicit comment on whether we should facilitate the listing of Regulation A securities on a national securities exchange by permitting issuers to file a short-form Exchange Act registration statement on Form 8–A concurrently with the qualification of a Regulation A offering statement.

From those commenters advocating preemption through a qualified purchaser definition, suggested definitions included:

- Any purchaser in a Regulation A offering;[485]
- Any purchaser meeting a specified net worth standard, set at or lower than the current ''accredited investor'' definition in Rule 501 of Regulation D;[486]
- Any purchaser meeting a net worth or income test based on thresholds below accredited investor thresholds, combined with an investment cap;[487] or
- Any purchaser who purchased through a registered broker-dealer.[488]

One commenter stated that it did not object to the Commission's defining ''qualified purchaser'' for Section 3(b)(2) securities, but objected to a definition based on transactions effected through a broker-dealer or on purchaser criteria commensurate with or less stringent than current ''accredited investor'' thresholds.[489] In its view, Congress intended a qualified purchaser definition under Section 18(b)(3) of the Securities Act to require investor qualifications greater than those provided in the accredited investor definition, and sales through broker-dealers do not provide adequate protections.[490] This commenter suggested that ''qualified purchaser'' could be defined based on existing definitions of ''qualified purchaser'' in the Investment Company Act[491] or ''qualified client'' in Rule 205 under the Investment Advisers Act.[492]

In light of the issues raised by commenters and in the GAO study, we are concerned that the costs associated with state securities law compliance may deter issuers from using Regulation A, even if the increased cap on offering size and other proposals intended to make Regulation A more workable are implemented. This could significantly limit the possible impact of an amended Regulation A as a tool for capital formation. We believe that the addition of Section 18(b)(4)(D)(ii) of the Securities Act, which specifically refers to a ''qualified purchaser'' definition that would apply to transactions under the new 3(b)(2) exemption, suggests that it is appropriate for us to consider including such a definition in our rulemaking to implement Title IV of the JOBS Act.

We also believe that Regulation A, as we propose to amend it, would provide substantial protections to purchasers. Under the proposed amendments, a Regulation A offering statement would continue to provide substantive narrative and financial disclosures about the issuer, including an MD&A discussion. The proposed electronic filing requirement, including the structured data in Part I of the offering circular, would provide ready access to key information about the issuer and the offering, and would facilitate analysis of the offering in relation to comparable opportunities. We expect that Regulation A offering statements would continue to receive the same level of Commission staff review as registration statements. Additional investor protections would be afforded by Regulation A's limitations on eligible issuers and ''bad actor'' disqualification provisions, which we are proposing to expand.

The requirements for Tier 2 offerings would provide further protection, because the financial statements contained in the offering circular would be required to be audited, the issuer would have an obligation to provide ongoing reporting to purchasers, and such purchasers would be limited in the percentage of income or net worth that could be invested in a single offering. Ongoing reporting would assure a continuing flow of information to investors and could support the development of secondary markets for Regulation A securities, offering the prospect of reduced investor risk through liquidity.

The approach to investor protection for Tier 2 of Regulation A is in some ways similar to the approach taken under Title III of the JOBS Act and our recently proposed rules for securities-based crowdfunding transactions under Section 4(a)(6) of the Securities Act.[493] In Section 4(a)(6), Congress outlined a new exemption for securities-based crowdfunding transactions intended to take advantage of the internet and social media to facilitate capital-raising by the general public, or crowd. In that provision, Congress directly preempted state securities laws relying, in part, on a variety of investor protections, including disclosure requirements, the use of regulated intermediaries and limitations on the amount of securities an investor could acquire through this type of offering required by the JOBS Act.[494]

Like the proposed provisions for securities-based crowdfunding, Regulation A—both as currently in effect and as proposed to be amended—is available to all types of investors, and therefore we believe it should include certain appropriate investor protections. We believe that the substantial investor protections embedded in the issuer eligibility conditions, limitations on investment, disclosure requirements, qualification process and ongoing reporting requirements of proposed Tier 2 of Regulation A, in combination, could address potential concerns that may arise as a result of the preemption of state securities law registration and qualification requirements.

We therefore propose to define the term ''qualified purchaser'' for certain purposes under Regulation A. As proposed, ''qualified purchasers'' in a Regulation A offering would consist of:

(i) All offerees; and

(ii) All purchasers in a Tier 2 offering.[495]

We believe that this approach would protect offerees and investors in Regulation A securities, while streamlining compliance and reducing transaction costs.

We believe it would be appropriate to preempt blue sky requirements with respect to all offerees in a Regulation A offering, in order to make Regulation A a workable approach to capital raising. Issuers relying on Regulation A should be able to communicate with potential investors about their offerings using the

[485] Campbell Letter.

[486] Tresslar Letter; McCarter & English Letter; ABA Letter; Satwik Ventures Letter; WR Hambrecht + Co. Letter. *See also* Final Report of the 31st Annual SEC Government-Business Forum on Small Business Capital Formation, Recommendation 14, at 25 (Nov. 15, 2012) (*available at: http://www.sec.gov/info/smallbus/gbfor31.pdf*).

[487] Kaplan Voekler Letter 2.

[488] ABA Letter; WR Hambrecht + Co. Letter; Paul Hastings Letter (suggesting that, in addition to primary offerings, the qualified purchaser definition apply in connection with secondary trading in Regulation A securities, where the issuer is subject to an ongoing reporting obligation under Regulation A); *see also* ECTF Report (Recommendation 1.2).

[489] NASAA Letter 2; *see also* NASAA Letter 3 (indicating NASAA's concerns with the Commission's use of either the ''qualified purchaser'' or ''accredited investor'' definition in the context of implementing rules for Section 3(b)(2) of the Securities Act).

[490] NASAA Letter 2; *see also* NASAA Letter 3. Section 18(b)(3) was enacted under the National Securities Markets Improvement Act of 1996 (NSMIA), Public Law 104–290, 110 Stat. 3416 (Oct. 11, 1996).

[491] 15 U.S.C. 80a–2(a)(51). For natural persons to be ''qualified purchasers'' under this definition, they must own at least $5 million in investment assets.

[492] 17 CFR 275.205–3. For natural persons to be ''qualified clients,'' they must have at least $1 million in assets under management with the investment adviser or have a net worth of more than $2 million, excluding the value of their primary residence.

[493] *See* Section 4(a)(6)(ii) of the Securities Act, 15 U.S.C. 77d(a)(6)(ii), and SEC Rel. No. 33–9470.

[494] *See, generally,* the requirements for issuers and intermediaries and state securities law preemption set forth in Title III of the JOBS Act, Public Law 112–106, 126 Stat. 306, §§ 301–305.

[495] *See* Proposed Rule 256.

internet, social media, and other means of widespread communication, without concern that such communications might trigger registration requirements under state law. We believe this is consistent with Section 3(b)(2)(E) of the Securities Act and the ''testing the waters'' provisions of Rule 254 of existing Regulation A, which we are proposing to expand, and that it would result in reduced costs to issuers seeking capital while maintaining investor protections.[496]

Alternatively, we could import existing ''qualified purchaser'' definitions from other regulatory regimes. These other regimes may not, however, account for the regulatory protections and limited offering size of Regulation A, or the likelihood that issuers that target investors meeting these other standards could choose to rely on other Securities Act exemptions, such as Regulation D, rather than Regulation A. We could also consider the involvement of a regulated intermediary or advisor in a transaction as, or as part of, the basis for such a definition. Such intermediaries may, however, increase costs to issuers and investors without commensurate investor protection benefits. Finally, we could consider a broad definition such that any purchaser in any Regulation A offering would be treated as a ''qualified purchaser.'' Our preliminary view is that the investment limitations, enhanced disclosure and ongoing reporting obligations associated with Tier 2 would meaningfully bolster the protections otherwise embedded in Regulation A, and justify a difference in treatment to offerings conducted pursuant to Tier 1.

We believe the proposed ''qualified purchaser'' definition for Tier 2 offerings would help to make Regulation A a more workable means of capital formation. We are soliciting comment, however, on whether we should adopt such a definition or an alternative definition and, if so, what it should require. In particular, we are mindful that, if NASAA and its members are able to implement a coordinated review program for Regulation A offerings, the costs to issuers of state law registration and qualification requirements and the time required for qualification may be substantially lower in the future. We solicit comment below on whether, rather than adopting a definition of ''qualified purchaser'' for Regulation A as proposed, we should wait to determine whether such a coordinated review program can be finalized, adopted and successfully implemented and, if so, whether such a program would sufficiently address current concerns about the costs of blue sky compliance.[497] We solicit comment on the extent to which state securities law registration and qualification requirements may affect the use of Regulation A, as proposed to be amended. We will also consult with the states and consider any changes to the states' processes and requirements for reviewing offerings before we adopt final amendments.

Request for Comment

114. Should we preempt state securities law registration and qualification requirements for certain Regulation A offerings by adopting a definition of ''qualified purchaser,'' as proposed? Why or why not? Please explain. In responding to this question and the questions below, please address both the practical implications of preemption for capital formation and the impact on investor protection.

115. Is there any potential alternative approach by which we might address the concern raised by commenters and the GAO that state securities regulation poses a significant impediment to the use of Regulation A?[498] In particular, could NASAA's proposed coordinated review program be effectively implemented in the near term? If NASAA implements a coordinated review program, should we consider changes to the proposed ''qualified purchaser'' definition or other provisions of the proposed rules? Are there other methods to streamline state review, such as a process based on review or qualification in a single state?

116. Does proposed Tier 2 of Regulation A include sufficient investor protections to justify the preemption of state securities law registration and qualification requirements for offerings sold to ''qualified purchasers,'' defined as proposed or otherwise? If not, are there additional investor protections that would justify such preemption? What are they?

117. As proposed, should we adopt a ''qualified purchaser'' definition for purposes of Regulation A to include all offerees and all purchasers in a Tier 2 offering? Is it appropriate, as proposed, to treat all offerees as qualified purchasers? Is it appropriate to treat all purchasers in a Tier 2 offering as qualified purchasers, or should we impose additional limitations (based on, for example, an income threshold, a net worth threshold and/or an investment assets threshold)? Should we base the definition of ''qualified purchasers'' on the Investment Company Act definition of that term, or on the definition of ''qualified client'' under the Investment Advisers Act? Alternatively, should we define all accredited investors as qualified purchasers, as has been previously proposed?[499] Why or why not?

118. Are there other approaches we should consider to defining ''qualified purchaser'' for Regulation A offerings? For example, should we define ''qualified purchaser'' as any offeree or purchaser in a Regulation A offering by an issuer that meets certain criteria—for example, specified financial criteria or operating or other criteria indicative of reduced risk? Or should we define it based on attributes of the offering that may reduce risk to investors (*e.g.,* firm commitment underwritten offerings or offerings through a registered broker-dealer)? Alternatively, should we consider a ''qualified purchaser'' definition that reflects some attributes of the purchaser, issuer and offering?

119. Should we consider defining ''qualified purchaser'' unconditionally, as all offerees and all purchasers in any Regulation A offering? Would such a definition better address potential burdens to capital formation under Regulation A? If so, how? Would such a definition provide sufficient investor protections to support the preemption of state securities law registration and qualification requirements? If not, what would support unconditional preemption of state securities laws? Please explain.

120. In addition to providing blue sky preemption for Tier 2 offerings, should we also consider providing preemption for some or all resales of Regulation A securities? Would the need to comply with blue sky laws prevent the development of a liquid secondary market for Regulation A securities?

121. Would the preemption of state securities law registration and

[496] We understand that some state securities regulators do not require the registration of broadly advertised offerings such as internet offerings, if the advertisement indicates, directly or indirectly, that the offering is not available to residents of that state. *See, e.g.,* Washington State Dep't of Financial Institutions, Securities Act Policy Statement—16, *available at: http://dfi.wa.gov/sd/securitiespolicy.htm#ps-16*; *see also* NASAA Reports ¶ 7,040 (regarding NASAA resolution, dated January 7, 1996, which encourages states to take appropriate steps to exempt from securities registration offers of securities over the Internet).

[497] If the proposed coordinated review program were not adopted by every state, we could consider whether a ''qualified purchaser'' definition that would provide preemption as to the non-participating states would be appropriate.

[498] *See* related discussion and requests for comment in Section II.I. below.

[499] *See* SEC Rel. No. 33–8041 (Dec. 19, 2001) [66 FR 66839].

qualification requirements provided by Section 18(b)(1) of the Securities Act for securities that are listed or authorized for listing on a national securities exchange be a viable option for many Regulation A issuers? Why or why not?

I. Regulation A in Comparison to Other Methods of Capital Formation

As noted above, in developing the proposals, we have attempted to create a workable exemption that both promotes small company capital formation and provides for meaningful investor protections. In that context, we are mindful that issuers have a range of possible approaches to capital-raising, including Securities Act registration and other exemptions from registration, such as the statutory exemption under Section 4(a)(2) of the Securities Act, Rules 504, 505 and 506 under Regulation D [500] and Section 4(a)(6) of the Securities Act and the proposed rules for a crowdfunding exemption.[501]

Request for Comment

122. How does Regulation A, as proposed to be amended, compare—in terms of the type of companies that may use the exemption, its requirements, and its potential effectiveness—to other methods of capital raising that issuers may choose for small offerings? How would it compare to the proposed crowdfunding exemption? Either by reference to today's proposals or more generally, are there ways in which Regulation A could be amended that would make it a more usable exemption?

J. Additional Considerations Related to Smaller Offerings

As noted above, in recent years, Regulation A offerings have been rare. Commenters [502] and the GAO identified a number of factors that have influenced the use of Regulation A in its current form, including the process of filing the offering statement with the Commission, state securities law compliance, the types of investors businesses seek to attract, and the cost-effectiveness of Regulation A relative to other exemptions.[503] In developing the proposals, we have attempted to create a more efficient and effective method to raise capital that incorporates important investor protections. We also have been cognizant of how issuers seeking to raise relatively smaller amounts of capital could consider a range of possible approaches to capital-raising.[504]

Under our proposal, offerings for up to $5 million that are conducted under Tier 1 would benefit from the proposed updates to Regulation A's filing and qualification processes, but the proposed amendments would not otherwise substantially alter the existing exemption for such offerings.[505] We are mindful of the possibility that additional changes to Tier 1 could expand its use by, and thus potentially benefit, issuers conducting smaller offerings. An intermediate tier between proposed Tier 1 and Tier 2 could also potentially help increase the effectiveness of Regulation A for smaller offerings by, among other things, permitting additional modifications to requirements in light of the size of the offering. We are soliciting comment on additional considerations with respect to Tier 1 and an intermediate tier for offerings incrementally larger than Tier 1 offerings and how they would affect investor protection and capital formation.

Request for Comment

123. As proposed, and as is currently the case for Regulation A, state law registration and qualification requirements would not be preempted for Tier 1 offerings. Issuers in offerings of up to $5 million could also elect to proceed under Tier 2, which would provide for preemption by complying with the additional requirements for Tier 2 (investment limitations, audited financial statements in the offering statement and ongoing reporting). Are there circumstances in which we should provide for preemption for Tier 1 offerings? If so, what are the circumstances? Should we consider including in Tier 1 certain elements of Tier 2, such as investment limitations, audited financial statements in the offering statement, or ongoing reporting, or some combination of these requirements in order to provide for preemption? Should we consider including requirements that draw on those for other approaches to capital-raising? If so, which requirements should we include and why? If we require ongoing reporting for issuers that have conducted Tier 1 offerings, should the substance or frequency of the requirements be different from the requirements proposed for Tier 2, such as requiring only an annual report consisting of annual financial statements and a cover sheet or only an annual report, or an annual report and current updates but no semiannual report?

124. Should we consider adding an intermediate tier for offerings exceeding $5 million but significantly less than the $50 million (*e.g.,* $10 million) limitation for Tier 2? Why or why not? If so, what would be an appropriate annual offering limitation for any such intermediate tier? What requirements of Tier 1 and Tier 2 (*e.g.,* audited financial statements, investor limitations) should or should not apply to any such intermediate tier? Should those requirements be modified with respect to the intermediate tier? If so, how? Should we consider other requirements? How would such requirements compare to requirements for other avenues of capital-raising that an issuer might choose? Should offerings made using this intermediate tier be preempted from state law registration and qualification requirements? If so, under what circumstances should we provide for preemption?

125. If an issuer undergoes a registration or qualification process that complies with the coordinated review protocol proposed and being developed by NASAA,[506] assuming such a program is adopted and fully implemented, should an offering under Tier 1 or any potential intermediate tier also be subject to review, in whole or in part, by the Commission's staff? Why or why not? Should the Commission's rules specify the scope or other requirements of any such coordinated review? What standards would apply to the review and what would the review entail (*e.g.,* would the state review for compliance with state law requirements, compliance with requirements of the federal securities laws and Commission rules and forms, or both)?

126. Should we provide for preemption in a Tier 1 offering or an offering conducted pursuant to the requirements for any potential intermediate tier if an issuer undergoes a registration or qualification process in

[500] The Regulation D market is large, in recent years approaching the size of the registered market. *See* Vladimir Ivanov and Scott Bauguess, *Capital Raising in the U.S.: An Analysis of Unregistered Offerings Using the Regulation D Exemption,* 2009–2012 (July 2013), *available at: http://www.sec.gov/divisions/riskfin/whitepapers/dera-unregistered-offerings-reg-d.pdf.*

[501] *See* SEC Rel. No. 33–9470.

[502] *See, e.g.,* Karr Tuttle Letter; Lacey Letter; Kaplan Voekler Letters 1 and 2; McCarter & English Letter; ABA Letter; Alpine Ventures Letter; Campbell Letter; WR Hambrecht + Co. Letter; and Oggilby Letter.

[503] *See* fn. 35 above.

[504] These methods include, for example, Rules 504, 505 and 506 under Regulation D and Section 4(a)(6) of the Securities Act and the proposed rules for a crowdfunding exemption. *See* Section II.I. above.

[505] *See* Kaplan Voekler Letter 1 (suggesting updating the filing and qualification processes of, but otherwise preserving a separate $5 million tier based on, existing Regulation A in the revised exemption); *see also* Beacon Investment Letter (suggesting existing Regulation A be preserved as a separate exemption from the implementing rules for Title IV of the JOBS Act).

[506] *See* discussion in Section II.H. above.

a single state? If we develop a process based on registration or qualification in a single state for Tier 1 offerings or for offerings conducted pursuant to the requirements for an intermediate tier, how should it be determined which state would review and qualify the offering? Should we specify how the issuer would determine the state for review (e.g., the state of the issuer's principal place of business or the state in which the issuer is incorporated)? If an offering were subject to a single state review, should the offering also be subject to review, in whole or in part, by the Commission's staff? Why or why not? Would the answer depend on whether the state had a disclosure or merit review program? Should the Commission's rules specify the scope or other requirements of any such state review? What role, if any, would other states have in any such state review? What standards would apply to the review and what would the review entail (e.g., would the state review for compliance with state law requirements, compliance with requirements of the federal securities laws and Commission rules and forms, or both)? How would allowing a single state review or qualification process affect the filing choices made by issuers and the regulatory choices made by states? Would such a process enhance or diminish the comparability and consistency of state regulatory frameworks? If so, how? What would be the impact of such a process on investor protection and capital formation?

K. Regulation A Offering Limitation

As noted above, Section 401 of the JOBS Act requires the Commission to review the $50 million offering limit not later than two years after enactment of the JOBS Act and every two years thereafter and, if the Commission decides not to increase the amount, requires that it report its reasoning to Congress.[507] The first such review must be completed by April 5, 2014. We solicit comment on whether the Commission should adopt an offering amount under Regulation A, as proposed to be amended, that is higher than the $50 million limitation for offerings in a twelve-month period provided in Section 3(b)(2) of the Securities Act.

Request for Comment

127. As proposed to be amended, and consistent with Section 3(b)(2), should we limit offerings conducted in reliance on Regulation A in a twelve-month period to $50 million? Or should the Commission adopt an offering limit under Regulation A that is higher than $50 million in a twelve-month period?[508] Why or why not? If so, what would be an appropriate threshold for offerings in a twelve-month period conducted in reliance on Regulation A, as proposed to be amended?

L. Technical and Conforming Amendments

We propose to amend existing Rules 251–263[509] under Regulation A.[510] The proposed rule amendments take into account changes to Regulation A associated with the addition of Section 3(b)(2)[511] to the Securities Act,[512] and the proposals detailed in this release.

In connection with these actions, we propose to revise Form 1–A,[513] to rescind Form 2–A,[514] and to create four new forms, Form 1–K (annual updates), Form 1–SA (semiannual updates), Form 1–U (current reporting), and Form 1–Z (exit report).

We also propose to revise Rule 4a–1[515] under the Trust Indenture Act[516] to increase the dollar ceiling of the exemption from the requirement to issue securities pursuant to an indenture, and to amend Rule 15c2–11[517] of the Exchange Act[518] to permit an issuer's ongoing reports filed under Regulation A to satisfy a broker-dealer's obligations to review and maintain certain information about an issuer's quoted securities. In addition, we are proposing a technical amendment to Exchange Act Rule 15c2–11 to amend subsection (d)(2)(i) of the rule to update the outdated reference to the ''Schedule H of the By-Laws of the National Association of Securities Dealers, Inc.'' which is now known as the ''Financial Industry Regulatory Authority, Inc.'' and to reflect the correct rule reference.

As a result of the proposed revisions to Regulation A, conforming and technical amendments would be made to Rule 157(a),[519] in order to reflect amendments to Section 3(b) of the Securities Act, and Rule 505(b)(2)(iii),[520] in order to reflect the proposed changes to Rule 262 of Regulation A. Additionally, Item 101(a)[521] of Regulation S–T[522] would be revised to reflect the mandatory electronic filing of all issuer initial filing and ongoing reporting requirements under proposed Regulation A. The portion of Item 101(c)(6)[523] of Regulation S–T dealing with paper filings related to a Regulation A offering, and Item 101(b)(8)[524] of Regulation S–T dealing with the optional electronic filing of Form F–X by Canadian issuers, would therefore be rescinded.

III. General Request for Comment

We solicit comment, both specific and general, on each component of the proposals. We request and encourage any interested person to submit comments regarding:

- the proposals that are the subject of this release;
- additional or different revisions to Regulation A; and
- other matters that may have an effect on the proposals contained in this release.

Comment is solicited from the point of view of both issuers and investors, as well as of capital formation facilitators, such as broker-dealers, and other regulatory bodies, such as state securities regulators. Any interested person wishing to submit written comments on any aspect of the proposal is requested to do so. With regard to any comments, we note that such comments are of particular assistance to us if accompanied by supporting data and analysis of the issues addressed in those comments. We urge commenters to be as specific as possible.

IV. Economic Analysis

As discussed above, Title IV of the JOBS Act requires the Commission to adopt rules under Section 3(b)(2) of the Securities Act exempting from Securities Act registration the offer and sale of securities that, in the aggregate, shall not exceed $50 million in a twelve-month period. Congress enacted Section 3(b)(2) against a background of public commentary suggesting that Regulation A, an existing exemption for offerings of up to $5 million in a twelve-month period adopted under Section 3(b)(1) of the Securities Act, should be expanded and updated to make it more useful to small companies.

We are mindful of the costs imposed by, and the benefits to be obtained from, our rules. Securities Act Section 2(b) and Exchange Act Section 3(f) require

[507] *See* discussion in Section I.D. above.

[508] *See* Section 3(a)(5) of the Securities Act (requiring the review of the Section 3(b)(2) offering limit every two years after enactment of Title IV of the JOBS Act). 15 U.S.C. 77c(b)(5).

[509] 17 CFR 230.251 through 230.263.

[510] 17 CFR 230.251 through 230.263.

[511] 15 U.S.C. 77c(b)(2).

[512] 15 U.S.C. 77a *et seq.*

[513] 17 CFR 239.90.

[514] 17 CFR 239.91.

[515] 17 CFR 260.4a–1.

[516] 15 U.S.C. 77aaa *et seq.*

[517] 17 CFR 240.15c2–11.

[518] 15 U.S.C. 78a *et seq.*

[519] 17 CFR 230.157(a).

[520] 17 CFR 230.505(b)(2)(ii).

[521] 17 CFR 232.101(a).

[522] 17 CFR 232.10 *et seq.*

[523] 17 CFR 232.101(c)(6).

[524] 17 CFR 232.101(b)(8).

us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. Exchange Act Section 23(a)(2) requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition and not to adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The discussion below addresses the economic effects of the proposed rules, including the likely costs and benefits of the proposed rules, as well as the likely effect of the proposed rules on efficiency, competition and capital formation. The proposed rules include provisions mandated by the statute as well as provisions that rely on the Commission's discretionary authority. As a result, while many of the costs and benefits of the proposed rules stem from the statutory mandate of Title IV, certain costs and benefits are affected by the discretion we propose to exercise in connection with implementing this mandate. For purposes of this economic analysis, we address the costs and benefits resulting from the mandatory statutory provisions and our exercise of discretion together, because the two types of benefits and costs are not separable. We also analyze the potential costs and benefits of significant alternatives to what is proposed.

We request comment on all aspects of our economic analysis, including the potential costs and benefits of the proposed rules.

A. Economic Baseline [525]

The baseline for our economic analysis of proposed amendments to Regulation A, including the baseline for our consideration of the effects of the proposed rules on efficiency, competition and capital formation, is a description of market conditions today, in which companies seeking to raise capital through securities offerings must register the offer and sale of securities under the Securities Act unless they can rely on an exemption from registration under the federal securities laws. The baseline also includes a description of investors in offerings of similar amounts and a discussion of liquidity considerations that impact issuers' choice of capital markets.

1. Current Methods of Raising up to $50 Million of Capital

While there are a number of factors that companies consider when determining how to raise capital, a key consideration is whether to issue securities through a registered public offering or through an offering that is exempt from Securities Act registration and ongoing Exchange Act financial reporting requirements. The choice of offering method may also depend on the size of the issuer and the amount of new capital sought. Registered offerings entail initial and ongoing fixed costs that can weigh more heavily on smaller companies, providing incentive to remain private and to pursue capital outside of public markets. As we describe throughout this economic analysis, the proposed amendments to Regulation A are intended to provide small issuers access to sources for capital unavailable through other offering exemptions without imposing the full registration and ongoing reporting requirements of a registered public offering. This section describes the various currently available offering methods and prevalence of their use.

a. Exempt Offerings

Currently, small companies can raise capital by relying on an exemption from registration under the Securities Act, such as Section 3(a)(11),[526] Section 4(a)(2),[527] Regulation D [528] and Regulation A.[529] Each of these exemptions, however, includes restrictions that may limit its utility for small companies. For example, the exemption under Securities Act Section 3(a)(11) is limited to intrastate offerings, and Regulation D offerings may limit or prohibit participation by unaccredited investors. Additionally, offerings relying on Regulation A require submission of offering materials to, and qualification of the offering statement by, the Commission, and may require qualification or registration in multiple states.[530] The table below summarizes the main features of each exemption.

Type of offering	Offering limit [531]	Solicitation	Issuer and investor requirements	Filing requirement	Resale restrictions	Blue Sky Law preemption
Section 3(a)(11) ..	None	No limitations	All issuers and investors must be resident in state.	None	Restricted in some cases [532].	No.
Section 4(a)(2)	None	No general solicitation.	All investors must meet sophistication and access to information test.	None	Restricted securities.	No.

[525] Several rules mandated by the JOBS Act have been proposed by the Commission and one has been adopted recently. These rules may affect the economic baseline for proposed Regulation A, but because of data limitations the analysis below cannot account for potential changes that may result from other Commission actions. For example, pursuant to Title II the Commission recently amended Rule 506 of Regulation D to permit issuers relying on the exemption in Rule 506(c) to use general solicitation or general advertising, subject to certain conditions. *See* SEC Rel. No. 33–9415. This recent change could increase the use of Regulation D, but the sample of Regulation D offerings analyzed below does not include offerings utilizing this amendment.

[526] Under Securities Act Section 3(a)(11), except as expressly provided, the provisions of the Securities Act (including the registration requirement under Securities Act Section 5) do not apply to a security that is ''part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory.'' 15 U.S.C 77c(a)(3)(a)(11).

[527] Securities Act Section 4(a)(2) provides that the provisions of the Securities Act shall not apply to ''transactions by an issuer not involving a public offering.'' 15 U.S.C. 77d(4)(a)(2).

[528] Regulation D contains three rules providing exemptions from the registration requirements, allowing some companies to offer and sell their securities without having to register the securities with the SEC. 17 CFR 230.504, 505, 506.

[529] *See* release text Section I.B. above for a description of the current terms and conditions of Regulation A.

[530] *See* Rutheford B. Campbell, *Regulation A: Small Business' Search for a Moderate Capital,* 31 Del. J. Corp. L. 77, 106 (2005). *See also* GAO–12–839, ''Factors that May Affect Trends in Regulation A Offerings'', (July 3, 2012).

Type of offering	Offering limit [531]	Solicitation	Issuer and investor requirements	Filing requirement	Resale restrictions	Blue Sky Law preemption
Regulation A	$5 million with $1.5 million limit on secondary sales.	"Testing the waters" permitted before filing; general solicitation permitted after qualification.	U.S. or Canadian issuers, excluding investment companies, blank-check companies, and reporting companies.	File "testing the waters" materials, Form 1–A, Form 2–A.	No	No.
Rule 504 Regulation D.	$1 million	General solicitation permitted in some cases [533].	Excludes investment companies, blank-check companies, and reporting companies.	File Form D [534]	Restricted in some cases [535].	No.
Rule 505 Regulation D.	$5 million	No general solicitation.	Unlimited accredited investors and 35 non-accredited investors.	File Form D [536]	Restricted securities.	No.
Rule 506 Regulation D.	None	General solicitation permitted in some cases [537].	Unlimited accredited investors. Limitations on unaccredited investors [538].	File Form D [539]	Restricted securities.	Yes.

[531] Aggregate offering limit on securities sold within a twelve-month period.
[532] Resale restrictions are determined by state securities laws, which typically restrict in-state resales for a one-year period.
[533] No general solicitation or advertising are permitted unless registered in a state requiring the use of a substantive disclosure document or sold under state exemption for sales to accredited investors with general solicitation.
[534] Filing is not a condition of the exemption.
[535] Restricted unless registered in a state requiring use of a substantive disclosure document or sold under state exemption for sale to accredited investors.
[536] Filing is not a condition of the exemption.
[537] No general solicitation or advertising is permitted under Rule 506(b). General solicitation and general advertising permitted under Rule 506(c), provided all purchasers are accredited investors and the issuer takes reasonable steps to verify accredited investor status.
[538] Under Rule 506(b), offerings may involve an unlimited number of accredited investors and up to 35 non-accredited investors. Under Rule 506(c), all purchasers must be accredited investors.
[539] Filing is not a condition of the exemption.

While we do not have adequate data on offerings relying on an exemption under Section 3(a)(11) or Section 4(a)(2), certain data available related to Regulation D and Regulation A filings allow us to gauge how frequently issuers currently use these exemptions when raising capital.

(1) Regulation A Offerings

Companies rarely rely on existing Regulation A when raising capital. The chart below, from the GAO study,[540] reports the number of filed and qualified Regulation A offerings in fiscal years 1992 to 2011.[541] Specifically, the GAO notes that the number of filed Regulation A offerings decreased from 116 in 1997 to 19 in 2011. The number of qualified offerings dropped from 57 in 1998 to 1 in fiscal year 2011.

Data from GAO Study: Regulation A offerings filed and qualified, 1992-2011

[540] *See Factors That May Affect Trends in Regulation A Offerings,* U.S. Government Accountability Office (Jul. 3, 2012), *available at http://www.gao.gov/products/GAO-12-839* ("GAO Report").

[541] A Regulation A offering is considered "filed" when the Commission receives a potential issuer's offering materials through Form 1–A. A Regulation A offering is considered qualified after the Commission has reviewed the offering materials and certified that all conditions have been met. Therefore, offerings that are filed and not qualified are either pending, withdrawn, or abandoned.

Based on information submitted in 1,001 Form 1–A filings between 1993 and 2012, there were 914 unique Regulation A issuers during this period. Of these, 439 offerings by 393 unique issuers were qualified by SEC staff. Examination of these filings shows that 80% of the offerings were for equity. Although issuers may include up to $1.5 million in secondary sales under existing regulations, more than 95% of Regulation A offerings included only primary shares. Analysis of industry composition indicates that many of the issuers operate in the financial industry (49%). In the year of the offering, the median financial industry issuer had assets and annual revenue of $29.3 million and $2.9 million respectively, while the median non-financial industry issuer had assets of $188,000 and annual revenue of $34,000.

Section 402 of the JOBS Act required the GAO to study the impact of blue sky laws on Regulation A offerings. The GAO examined (1) trends in Regulation A filings, (2) differences in state registration of Regulation A filings, and (3) factors that may have affected the number of Regulation A filings. In its July 2012 report on Regulation A, the GAO cited four central factors affecting the use of Regulation A offerings: (1) Costs associated with compliance with state securities regulations, or ''blue sky laws''; (2) the availability of alternative offering methods exempt from registration, such as Regulation D offerings; (3) costs associated with the filing and qualification process with the SEC; and (4) the type of investors businesses sought to attract.

As identified by the GAO, compliance with state securities laws may currently affect the use of existing Regulation A. While state securities law filing fees are likely not significant in any particular state (filing fees are, on average, approximately $1000 in every state), such fees can become non-trivial when the offering extends across multiple states.[542] For example, state securities law filing fees averaged $35,000 in initial public offerings under $50 million.[543] Legal and compliance costs for issuers seeking to offer securities in multiple states may be significant for issuers due to myriad differences in securities laws and applicable procedures across states. Inconsistencies in state laws and exemptions, as well as in the process of registration or qualification of an offering under state law, can result in an expensive, drawn-out process for issuers that could adversely affect their efforts to raise capital in a timely and cost-effective manner.

The GAO also identified costs associated with the filing and qualification process for Regulation A offerings as a potential reason for its current limited use. As described above, a business that relies on Regulation A must file an offering statement with the Commission that is subject to review by Commission staff and must be qualified before the offering can proceed. From 2002 through 2012, Regulation A filings took an average of 241 days to qualify.[544] While some of this timeframe reflects delays associated with the paper filing method, most of the delay results from the concurrent review by state securities regulators and the fact that the review process may encompass several rounds of discussion between Commission staff and issuers. It may also take longer to qualify when issuers fail to provide all required information in their filings or to address all questions from previous correspondence with the Commission. Issuer size may also be related to the speed at which offerings are qualified. For example, larger companies (i.e., those with total assets greater than the median ($1.4 million) for all qualified Regulation A offerings) navigate the qualifying process on average 97 days faster than smaller companies.[545]

Unlike other exemptions, existing Regulation A permits offerings to an unlimited number of unaccredited investors, provided that the total amount sold does not exceed $5 million in a twelve-month period. Further, securities sold under existing Regulation A have no restrictions on resale. As discussed below, Regulation A issuers currently have limited involvement in secondary markets.

(2) Regulation D Offerings

Based on information available to us, it appears that the most common way to issue up to $50 million of securities is in reliance on a Regulation D offering exemption. Regulation D includes three rules providing exemptions from the registration requirements of the Securities Act. Specifically, as described in the table above, eligible issuers can rely on Rule 504 to raise up to $1 million within a twelve-month period, Rule 505 to raise up to $5 million within a twelve-month period, and Rule 506 to raise an unlimited amount. As the table notes, the three rules have different requirements that affect their use. In total, based on analysis of issuer offering details reported on Form D, Regulation D accounts for approximately $900 billion in annual capital raising.[546] During the 2009 to 2012 period, most issuers chose to raise capital by relying on Rule 506, even when their offering permitted reliance on Rule 504 or Rule 505.[547]

During 2012, there were nearly 22,000 Regulation D offerings reported on Form D. Of these, approximately 12,000 would meet the conditions of Regulation A, as proposed to be amended, which excludes offerings by reporting companies, foreign issuers and investment companies, and offerings of interests in claims on natural resources. The following table reports the breakdown of Regulation D filings from 2012 for all issuers that would be eligible to use Regulation A, as proposed to be amended.[548]

[542] *See* Paul Hastings Letter, at 2 and Exhibit A (citing estimated costs of state securities law filings under Section 3(b)(2) of $50,000 to $70,000); *Cf.* Regulation D Rule 506 Blue Sky Filing Chart available at *http://americansaferetirements.com/agents/wp-content/uploads/2012/09/Blue-Sky-Filing-Chart-Reg-D-506-.pdf.*

[543] This calculation is based on data provided by Capital IQ and is obtained from S–1 filings from 1996–2012 which reports six categories of IPO-related fees, shown in more detail in the ''IPO-related fees'' table below.

[544] This estimate is based on the initial Form 1–A filing and the last Form 1–A filing through which the offering was qualified. The median number of calendar days for an offering to be qualified was approximately 189. The fastest offering qualified in 4 calendar days and the slowest offering took 693 calendar days.

[545] *Id.* It is also possible that because most of the larger Regulation A issuers are financial institutions, such as banks and trusts, which are regulated and disclose more information than other Regulation A issuers, they are able to prepare offering materials relatively quickly and easily, based on information they are required to provide to other regulators.

[546] These exclude issuances of pooled investment vehicles.

[547] This tendency could, in part, be attributed to two features of Rule 506: Blue sky law preemption and an unlimited offering amount. *See also Factors That May Affect Trends in Regulation A Offerings,* U.S. Government Accountability Office (Jul. 3, 2012), *available at http://www.gao.gov/products/GAO-12-839.*

[548] These numbers are calculated using data from raw Form D's filed with the Commission. We have adjusted for amended filings by dropping old filings if an amended filing exists. This analysis excludes filings from issuers relying on Regulation D as a pooled investment fund.

REGULATION D OFFERINGS DURING 2012 BY ISSUERS ELIGIBLE TO RELY ON REGULATION A [549]

Offering size	Rule 504	Rule 505	Rule 506		
	<$1M	<$5M	<$5M	$5M–$50M	>$50M
Current Reg A Eligible	Yes	Yes	Yes	No	No
Proposed Reg A Eligible	Yes	Yes	Yes	Yes	No
Number of filings	385	142	7,202	2,784	330
Median offering amount ($ millions)	0.4	1.0	1.0	10.0	88.9
Average offering amount ($ millions)	0.5	1.3	1.4	13.7	481
Average amount raised (% of offering) [550]	62.2	67.9	72.1	72.7	76.4
Portion with unaccredited investors (% of deals)	62.1	36.8	7.8	5.0	8.2
Average fees (% of funds raised)	0.1	0.2	0.7	0.7	0.8
Median number of investors	4	4	5	8	12

Excludes offerings by reporting companies, foreign issuers and investment companies, offerings of interests in natural resources, and issuers who failed to sell any securities.

As shown in the table above, most Regulation D offerings that would be eligible for Regulation A under the proposed rules are relying on Rule 506 of Regulation D. A comparison of Rule 506 offerings over $50 million to those below $50 million shows that larger offerings involve more investors and have generally raised a greater percentage of the amount of capital sought at the time of the Form D filing. This evidence indicates potentially higher success rates for larger offerings, although this cannot be confirmed because there is no requirement for issuers to file an amended Form D at the completion of an offering.

Most Regulation D issuers elect not to disclose their revenue range in their Form D filings. The following table shows the breakdown of the issuers potentially eligible to rely on Regulation A that did not disclose, and those that elected to disclose a revenue range for offerings made in 2012.

AMOUNT RAISED THROUGH REGULATION D OFFERINGS IN 2012 BY ISSUERS ELIGIBLE TO RELY ON REGULATION A, BY ISSUER REVENUE RANGE.[551]

Revenue range	Frequency offering < $5M	Frequency offering $5M–$50M	Avg. raised ($ millions) offering <$50M
Not Applicable [552]	141	92	4.7
Decline to Disclose	4,543	2091	4.3
No revenues	1,353	264	1.4
$1–$1,000,000	1,168	118	1.0
$1,000,001–$5,000,000	315	64	2.1
$5,000,001–$25,000,000	132	93	3.8
$25,000,001–$100,000,000	53	41	7.7
Over $100,000,000	24	21	6.9

Excludes offerings by reporting companies, foreign issuers and investment companies, offerings of interests in natural resources, and issuers who failed to sell any securities.

If issuers that disclose a revenue range are representative of all Form D filers, then nearly half of the issuers that file Form D have no revenues. The portion of issuers without revenues is noteworthy because debt is not likely to be a feasible source of capital for companies without regular cash flows.

b. Registered Offerings

Companies seeking to raise capital without being subject to the restrictions under exempt offerings can register the offer and sale of securities under the Securities Act.

The following figure shows the frequency of IPOs each year for companies issuing above or below $50 million.[553] Consistent with many previous observations about the recent IPO market, the number of IPOs, particularly those under $50 million, has fallen dramatically since the late 1990s.[554]

[549] *Id.*

[550] The total offering amount is not always equivalent to the total amount raised at the time of filing. Regulation D permits filing a Form D before completion of the fundraising round. Thus for most companies, the difference between the total offering amount and amount raised results from filing a Form D before securing all funds promised. In addition, some companies (usually pooled investment funds) use Form D for open-ended offerings.

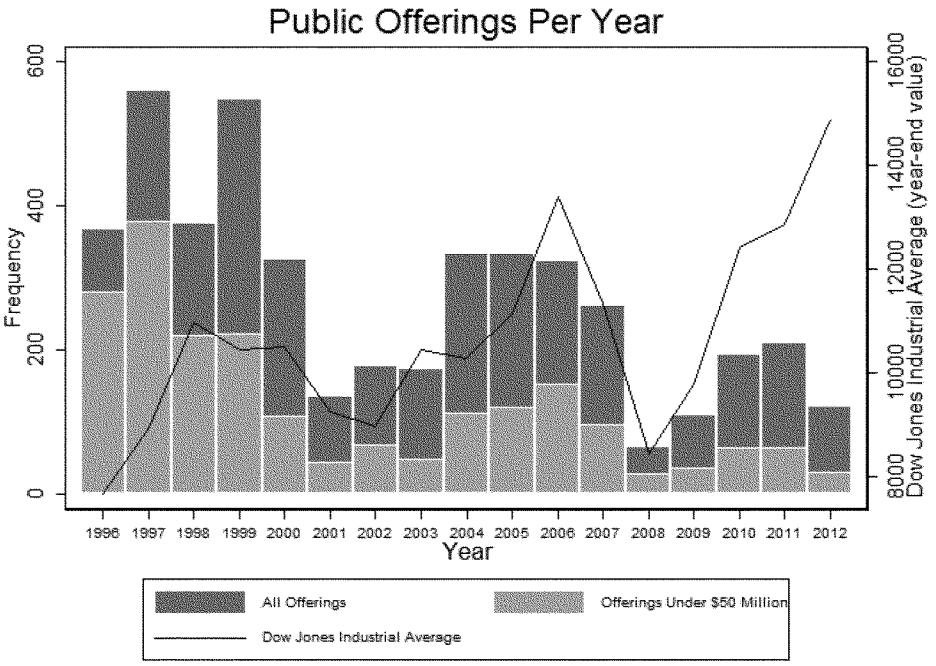
[551] *Id.*

[552] These could be Regulation D issuers (non-registered investment companies) that manage assets and report net asset value, for example, REITS, or spillover from the ''No revenues'' category.

[553] There were approximately 25 registered initial public offerings up to $50 million in 2012 according to data from Capital IQ.

[554] *See, e.g.,* D. Weild and E. Kim, *A wake-up call for America,* 2009. In 2011, the Treasury Department hosted a conference on access to capital to better understand how to restore access to capital for emerging companies. The conference featured the findings of an IPO task force comprised of a number of experienced venture capitalists, investment bankers, and lawyers. Their findings provide a number of possible explanations for the decline in the number of IPOs, including that 92% of the surveyed CEOs listed the ''Administrative Burden of Public Reporting'' as being one of the most significant challenges of an IPO.

Frequency of all initial public offerings and offerings under $50 million by year.[555]



One possible reason for the decreasing number of IPOs under $50 million is that public offerings may be too costly to be a viable alternative for some small companies.[556] In particular, commissions paid to underwriters average 7% for IPOs, 5% for seasoned public issuances, and 1% for bond issuances.[557] Issuers conducting registered public offerings must also pay Commission registration fees and FINRA filing fees, legal and accounting fees and expenses, transfer agent and registrar fees, costs associated with periodic reporting requirements and other regulatory requirements and various other fees. Two surveys concluded that regulatory compliance costs of IPOs average $2.5 million initially, followed by an ongoing $1.5 million per year.[558]

Because of the fixed-cost nature of many of the fees associated with public offerings, size may be one of the most important determinates of whether an offering is made available to the public. As shown in the scatter plot below, there is a downward trend in IPO-related fees (excluding underwriter and printing costs and reported as a percentage of offering proceeds) as offering size increases.[559]

[555] The data is provided by Capital IQ and this sample excludes offerings from blank check companies and non-Canadian foreign issuers.

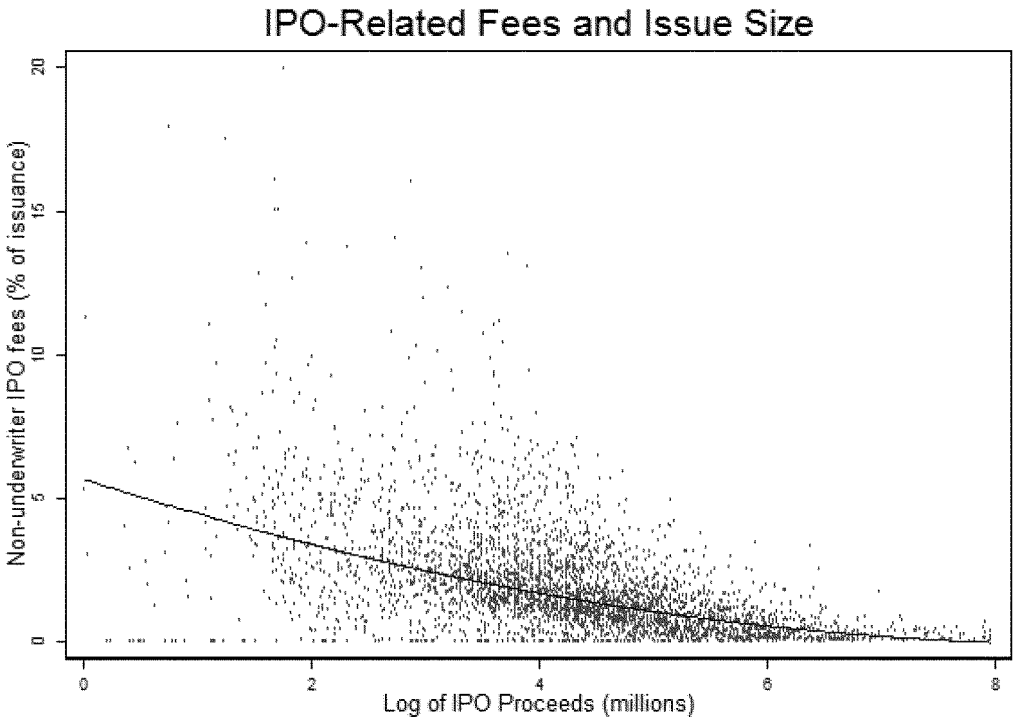
[556] *See also* Gao, Xiaohui, Jay R. Ritter, and Zhongyan Zhu. *Where have all the IPOs gone?,* Working Paper, University of Florida, 2012 (suggesting, among other things, that acquisitions have partially supplanted the traditional IPO as an exit path for smaller companies).

[557] *See, e.g.,* H. Chen and J. Ritter (2000), *The Seven Percent Solution,* Journal of Finance 55, pp. 1105–1131; S. Corwin (2000), *The Determinants of Underpricing for Seasoned Equity Offers,* Journal of Finance 58 pp. 2249–2279; L. Fang (2005), *Investment Bank Reputation and the Price and Quality of Underwriting Services,* Journal of Finance 60, pp. 2729–2761.

[558] *See* IPO Task Force, *Rebuilding the IPO On-Ramp,* 9 (Oct. 20, 2011), *available at http://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf* (''IPO Task Force'').

[559] Fee information is compiled by Capital IQ and is obtained from S–1 filings from 1996–2012 which reports six categories of IPO-related fees. The analysis includes four of the fees: legal, accounting, blue sky, and registration, which we collectively refer to as ''compliance fees''.

Portion of IPO-related fees paid relative to net proceeds after excluding fees paid to underwriters.



For offerings below $50 million, the fixed cost components of legal and accounting-related fees, as a percentage of offering size, are particularly burdensome. In the table below, which reports the six fee types reported in Form S–1, offerings less than $50 million incur compliance related fees that are on average nearly twice those incurred by larger offerings, measured as a percentage of proceeds.

IPO-Related Fees as a Percentage of Offering Size for Offerings Completed From 1996 to 2012.

	All offerings (N=4868) %	Offerings $5–$50 million (N = 2017) %	Offering > $50 million (N = 2851) %
Total Fees	9.55	11.15	8.44
Compliance Fees	1.39	1.91	1.03
Registration Fees	0.03	0.04	0.02
Blue Sky Fees	0.03	0.07	0.01
Accounting Fees	0.53	0.72	0.40
Legal Fees	0.80	1.08	0.60
Underwriter Fees	6.45	6.87	6.17
Printing Fees	0.32	0.47	0.22

Analysis excludes offerings from non-Canadian foreign issuers and blank-check companies.

Additional statistical analysis [560] of these fees using regression methodologies shows that fees have increased by approximately six basis points per year since 1996, and that these fees have increased disproportionately more for small offerings than for large offerings. For example, fees related to offerings over $50 million increased by approximately 50 basis points from 2000 to 2010, while fees related to offerings below $50 million increased by 100 basis points over the same period.

In addition to increased compliance costs, there are a number of other possible explanations for the decline in IPOs. For example, one benefit of a public listing is the increased liquidity that results from access to retail investors; however, catering to retail owners can involve investor relations challenges and liability-related costs.[561] A second explanation for the decline of IPOs could result if current offerings are

[560] We tested for statistical significance in the relationship between fees and issue size using regression analysis of fees disclosed in S–1 filings. The data is from Capital IQ, which tabulates S–1 and other filings. Due to the abnormal distribution of IPO-related fees, we use quantile regressions. Fees were calculated as described in the table above. The sample eliminates all observations by issuers who would be ineligible for the proposed Regulation A exemption. Finally, we determine that fees have increased more rapidly for smaller issuers by including an interaction term of issuance date with offering size.

[561] For instance, the 2011 IPO Task-Force survey results indicate that 88% of CEOs that had completed an IPO listed ''Managing Public Communications Restrictions'' as one of the most significant challenges brought on by becoming a reporting company.

concentrated in high-technology sectors that are sensitive to R&D-related disclosure requirements, which could potentially cause issuers to rely more on private capital sources.[562] Access to capital may also be especially time-sensitive for the types of companies most likely to make small offerings, rendering these companies unwilling to go through a potentially lengthy registration process. It is also possible that directors and officers of companies looking to raise less than $50 million may not want to subject themselves to the increased liability and takeover threats that come with dispersed ownership.[563] Finally, the decline of public offerings could result from macro-economic effects on investment opportunities in the economy and the cost of capital.[564]

Companies that have completed an IPO often continue to raise capital through follow-on offerings. In 2012, public follow-on offerings accounted for $155 billion, $4 billion of which came from offerings less than $50 million,[565] which is significantly more than the amount raised through IPOs over the same period, suggesting that follow-on offerings (also known as ''seasoned equity offerings'') comprise a prevalent source of capital for companies.[566]

c. Private Debt Offerings

Companies with regular cash flows often rely on debt as a source of capital; however, borrowing may not be a cost effective option for many early-stage companies as they may face large information asymmetries with investors, irregular cash-flow projections, insufficient assets to offer as collateral, and high external monitoring costs.[567] For example, an internet start-up company without steady revenues might have trouble securing a loan or a line of credit from a bank because it would have difficulty signaling the quality of its business model and ability to repay. Conversely, an owner of a restaurant franchise could reasonably rely on regular cash flows and its own credit history to support a loan application. Additionally, some companies may find loan requirements imposed by financial institutions difficult to meet. For example, financial institutions generally require a borrower to provide collateral and/or a guarantee by owners,[568] which some companies may not be able to or may be reluctant to provide.[569]

2. Liquidity Considerations

As described above, various financing options are available to small companies looking to raise up to $50 million of capital. For many companies, access to liquid markets is an important consideration as they compare the merits of these options.

There are important differences in liquidity for securities issued in a registered offering or under Regulation D or Regulation A. Securities in registered offerings that meet listing requirements benefit from the liquidity of listing on a national securities exchange. Conversely, securities sold under Regulation D are relatively illiquid due to restrictions that prohibit resale in the public market for up to a year. Although securities issued under Regulation A are freely tradable, they typically trade in over-the-counter markets (if at all), as these issuers may not meet listing standards of a national securities exchange or be willing or able to bear the costs of ongoing reporting.[570] In fact, a much larger proportion of the qualified Regulation A offerings from 2001 to 2012 are quoted in the OTC market than listed on a national securities exchange; although most of these offerings are not currently quoted on OTC markets.[571]

More generally, OTC-traded securities are significantly less liquid than those listed on a national securities exchange.[572] Existing studies of bid-ask spreads, trading volume, and price volatility find statistically lower liquidity in OTC securities and a comparison group [573] of similar securities listed on a national securities exchange.[574]

There is also evidence that illiquidity is especially expensive for companies that trade on OTC markets.[575] A recent study finds OTC-traded securities differ from listed securities in that they are primarily held by retail investors and have a larger illiquidity return premium.[576] One explanation for the higher liquidity premium is the likelihood of increased asymmetric information,[577] as the cost of illiquidity is largest for securities whose issuers choose not to disclose financial information and that are primarily held by retail investors.[578] The desire of issuers to alleviate this illiquidity discount may explain why many OTC quoted companies that are not required to report financial information under the Exchange Act voluntarily provide limited financial information to investors.[579]

3. Investors in Offerings of up to $50 Million

The various methods of raising up to $50 million in capital may attract different types of investors. For example, as discussed above, Regulation A and public offerings have no limit on the number of unaccredited investors that can participate. In contrast,

[562] Campbell, Tim S. (1979), *Optimal investment financing decisions and the value of confidentiality,* Journal of Financial and Quantitative Analysis: pp. 913–924.

[563] Burkart, Mike, Denis Gromb, and Fausto Panunzi (2000), *Agency conflicts in public and negotiated transfers of corporate control,* The Journal of Finance 55.2, pp. 647–677.

[564] Lowry, Michelle (2003), *Why does IPO volume fluctuate so much?,* Journal of Financial Economics 67.1, pp. 3–40.

[565] There were approximately 211 public follow-on offerings in 2012 according to data from Thompson Reuters SDC.

[566] These estimates are based on our analysis of data on seasoned equity offerings from Thompson Financials SDC Platinum and excludes offerings from non-Canadian foreign issuers.

[567] Robb, Alicia M., and David T. Robinson, *The capital structure decisions of new firms,* No. w16272, National Bureau of Economic Research, 2010.

[568] Approximately 92% of all small business debt to financial institutions is secured, and owners of the firm guarantee about 52% of that debt. *See* Berger, Allen N., and Gregory F. Udell. *Relationship lending and lines of credit in small firm finance.* Journal of Business (1995): 351–381.

[569] Some of these companies might instead rely on trade credit, which can be an important source of capital for young firms. *See, e.g.* Petersen, Mitchell A., and Raghuram G. Rajan, *Trade credit: theories and evidence,* Review of Financial Studies 10.3 (1997): 661–691; and Murfin, Justin, and Ken Njoroge, *The Implicit Costs of Trade Credit Borrowing by Large Firms.,* working paper.

[570] *See, e.g.,* Sanger and Peterson, 1990; Harris, Panchapagesan, and Werner, 2008; Macey, O'Hara, and Pompilio, 2008.

[571] This conclusion is based on a review of three databases with coverage of OTC markets: CapitalIQ, iMetrix, and OTC quote.

[572] *See, e.g.,* Sanger and Peterson, 1990; Harris, Panchapagesan, and Werner, 2008; Macey, O'Hara, and Pompilio, 2008.

[573] Choosing a comparison set of companies with similar characteristics, such as market capitalization, helps isolate the effect of trading venue on liquidity.

[574] Ang, A., Shtauber, A., & Tetlock, P. *Asset pricing in the Dark: The Cross Section of OTC Stocks* (July 1, 2013). Netspar Discussion Paper No. 11/2010–093, *available at* SSRN: *http://ssrn.com/abstract=1817542* or *http://dx.doi.org/10.2139/ssrn.1817542.* Review of Financial Studies, forthcoming. The study analyzes 486 OTC stocks and compares them with a benchmarked (size-based) sample of listed stocks.

[575] *Id.*

[576] *Id.*

[577] Lev, Baruch. *Toward a theory of equitable and efficient accounting policy.* Accounting Review (1988): 1–22.

[578] Ang, A., Shtauber, A., & Tetlock, P. 2011. *Asset pricing in the Dark: The Cross Section of Over-the-Counter Stocks.* Review of Financial Studies, forthcoming. The study analyzes 486 OTC stocks and compares them a benchmark group of listed stocks.

[579] Analysis by staff in the Division of Economic and Risk Analysis found that in 2012, there were more than 700 companies quoted through the OTC Markets Group platform that provided limited financial information to qualify as OTC Pink Limited Information securities, which are quoted in a tier above firms that do not provide financial information.

offerings under Rule 506(b) of Regulation D are limited to a maximum of 35 unaccredited investors.

Data from Form D filings suggests that unaccredited investors are not significantly involved in Regulation D offerings of up to $50 million. While unaccredited investors can and do participate in Regulation D offerings, offerings involving unaccredited investors are typically smaller than those that do not involve unaccredited investors. In 2012, we estimate that there were approximately 220,000 investor participations in nearly 11,000 Regulation D offerings of below $50 million by issuers that would be eligible for exemption under Regulation A, as proposed to be amended.[580] Of these offerings, approximately 9.4% involved at least one unaccredited investor. Offerings to exclusively accredited investors averaged 12 investors per offering and raised an average of $3.7 million per offering. In contrast, an average of 107 investors participated in offerings that involved at least one unaccredited investor and raised an average of $1.5 million.[581]

As of 2010, 8.7 million U.S. households, or 7.4% of all U.S. households, qualified as accredited investors based on the net worth standard in the definition of ''accredited investor,'' [582] which is substantially larger than the total number of investors that reported as having participated in an unregistered offering, but considerably less than the total number of retail investors, which we estimate could be as high as 33 million.[583] Thus the current pool of investors eligible to participate in Regulation A offerings and public offerings is substantially larger than the estimated total number of accredited investors or current levels of investor participation in the private offering market.

B. Analysis of Proposed Rules

1. General Considerations

The impact of the proposed rules on the level and efficiency of capital formation will depend on the extent to which companies use the new offering method to raise capital that would not otherwise have been available to them. It will also depend on the extent to which companies elect to rely on Regulation A, as proposed to be amended, in place of existing offering methods. As discussed above, many companies finance their operations and investments with credit from banks and other financial entities.[584] Other companies, particularly early-stage and high growth companies, seek capital through equity-based financing because they do not have sufficient collateral or the revenue streams necessary to support the fixed repayment schedule of debt financing.[585] These companies often seek capital from institutional or accredited investors through offerings that are exempt from registration because the minimum fixed costs of going public through a registered offering can be disproportionately large for small issuers.[586] But private offerings impose restrictions on resale, offering amounts, or participating investors in ways that can limit the ability to raise capital and may not be attractive to some small companies or investors.

The proposed amendments to Regulation A are intended to provide small issuers access to sources for capital unavailable through other offering exemptions without imposing the full registration and ongoing reporting requirements of a registered public offering. Hence, it is likely that companies seeking to raise capital through an offering conducted under Regulation A, as proposed to be amended, would have been able to access to capital through private offerings or registered public offerings. In this respect, the impact of the proposed Regulation A amendments on capital formation could be redistributive in nature, but with potentially significant positive effects on capital formation and allocative efficiency by providing the issuers less costly access to capital than alternative offering methods and by providing unaccredited (retail) investors with additional investment opportunities.

The potential future use of an amended Regulation A depends largely on the perceived trade-off between the costs of qualification and ongoing disclosure requirements and the potential benefits to issuers from access to a broad investor base and secondary market liquidity.[587] For example, companies considering a traditional IPO may alternatively consider issuing securities pursuant to Regulation A, as amended, if they believe that the benefits of reduced disclosure requirements offset the potential loss of secondary market liquidity that may result from an issuer's inability to have its securities quoted on platforms that are available only for Exchange Act-registered securities. Alternatively, companies considering seeking capital from institutional or accredited investors through a private offering might consider an offering under amended Regulation A if they believe that there is a more dispersed investor base, which could include retail investors, willing to provide capital at a lower cost.

We preliminarily believe that an approach that generally preserves existing Regulation A while also introducing an option that allows issuers to raise greater amounts of capital without state review but with additional disclosure requirements is a prudent first step to adapting Regulation A for larger offerings. We believe this approach balances the trade-offs among compliance costs, investor protection, and benefits associated with liquidity and access to investors. We recognize, however, that this approach may limit the use of Regulation A for certain issuers, and we accordingly are requesting comment on additional considerations for smaller offerings. For example, the ongoing reporting obligations of a Tier 2 offering may be proportionately more burdensome for smaller issuers that are looking to raise substantially less than $50 million, and may not provide the same benefit to smaller issuers that are not pursuing secondary market liquidity. For these issuers, it may also not be reasonable to pursue a Tier 1 offering because the $5 million maximum issuance threshold may be insufficient in light of costs associated with the existing offering process. We recognize that observing market behavior under the proposed approach would provide information that would allow us to assess the need for modifications to the proposed

[580] These numbers are based on analysis by the Division of Economic and Risk Analysis of initial Form D filings submitted during calendar year 2012. The estimated total number of investor participations is likely greater than the actual number of Regulation D investors because investors could have participated in more than one offering.

[581] Because some investors participate in multiple offerings, these numbers likely overestimate the actual number of unique investors in these reported offerings.

[582] *See* analysis presented in SEC Rel. No. 33–9415 (July 10, 2013) [78 FR 44771].

[583] *Id.*

[584] Berger, Allen N., and Gregory F. Udell, 1998, *The economics of small business finance: The roles of private equity and debt markets in the financial growth cycle,* Journal of Banking & Finance 22.6, pp. 613–673.

[585] *Id.*

[586] *See* Section I.A. above.

[587] The Commission also recognizes that other important considerations could affect the use of Regulation A as proposed to be amended. In particular, as explained above, the GAO study of Regulation A offerings found that blue sky law compliance was a primary factor in the infrequent reliance on Regulation A. Because we are proposing to define qualified purchasers in a way that has the potential to include a large percentage of Regulation A investors, we believe that compliance costs associated with blue sky laws will be eliminated for most offerings, making them similar to Regulation D offerings and registered offerings in this respect.

approach, which also could be made when the Commission considers the efficacy of the $50 million threshold, as mandated by Congress every two years.

The disclosure requirements that we are proposing account for the trade-offs identified above and are guided by current and past market experiences. For example, prior to 1999, securities traded over-the-counter (OTC) and quoted on the OTC Bulletin Board (OTCBB) interdealer quotation system were not required to be Exchange Act reporting companies. In January 1999, the SEC approved an OTCBB eligibility rule that required companies whose securities are quoted on OTCBB to file periodic financial reports under the Exchange Act or with their primary regulator if not the SEC.[588] One study evaluating this change found improved liquidity at companies that were already providing periodic reports, or that chose to comply with Exchange Act reporting requirements to remain eligible for quotation on OTCBB.[589] Approximately three-fourths of the companies that were not already reporting chose not to satisfy the new eligibility requirement by becoming an Exchange Act reporting company and instead entered less regulated and less liquid OTC markets, indicating that, for these companies, the expected costs associated with mandatory public reporting under the Exchange Act outweighed the expected liquidity benefits.[590]

The Tier 2 reporting requirements are substantially less than Exchange Act reporting requirements, but greater than what is currently required for an exemption from registration under the existing Regulation A rules and those under Regulation D. The following table shows a selection of commonly filed reports for Exchange Act registered companies and the analogous form, if any, that would be required for securities issued under Regulation A, as proposed to be amended, or Regulation D.

OVERVIEW COMPARISON OF DIFFERENCES IN REPORTING REQUIREMENTS FOR OFFERINGS EXEMPT UNDER REGULATION D, REGULATION A, REGULATION A AS PROPOSED TO BE AMENDED AND REGISTERED OFFERINGS

Common disclosure types	Regulation D	Current regulation A	Proposed regulation A tier 1	Proposed regulation A tier 2	Registered [591]
Offering document or notice	D [592]	1–A	1–A	1–A	S–1
Auditors				No requirement for a PCAOB-registered Auditor.	PCAOB-registered Auditor.
Report of material events				1–U	8–K
Interim report				1–SA	10–Q
Annual report				1–K	10–K
Termination of registration		2–A	1–Z	1–Z	15

Tier 2 reporting requirements are also greater than what is proposed to be required under Tier 1. We believe that it is appropriate to require some additional disclosure from issuers of larger offerings up to $50 million in order to better protect investors under the new Regulation A regime.

We recognize that even if the proposed rules reduce compliance costs and require sufficient disclosure to enable investors, particularly retail investors, to make informed capital allocation decisions, some issuers may still prefer other offering exemptions. Preferences for other offering exemptions could be particularly strong given that general solicitation is now permissible in certain cases under Rule 506(c). In particular, it is possible that issuers relying on Rule 506(c) may now be in a better position to identify institutional and accredited investors, such that seeking capital from a broader retail investor base is not required or desired. In addition, eliminating the ban on general solicitation for certain Rule 506 offerings may encourage new trading platforms for privately placed securities once their resale restrictions are lifted. While secondary markets for private offerings are unlikely to achieve the same level of liquidity of OTC or other listing venues, it is nonetheless possible that trading platforms could achieve levels of liquidity sufficient to allow certain types of securityholders (like founders and other affiliated owners) to exit once resale restrictions are lifted.

2. Scope of Exemption

a. Eligible Issuers

Under the proposed rules, and consistent with current Regulation A eligibility requirements, eligible issuers include any companies organized and with their principal place of business inside the United States or Canada excluding investment companies, reporting companies, blank check companies, and issuers of claims on natural resources, and certain disqualified ''bad actors''. We also propose to exclude some issuers that are currently eligible to rely on Regulation A. Specifically, the Commission is proposing to exclude from eligibility issuers that are subject to a denial, suspension, or revocation order by the Commission pursuant to Section 12(j) of the Exchange Act within the five years immediately preceding the filing of the offering statement and issuers that have not filed required ongoing reports pursuant to Regulation A, as proposed to be amended, in the two-year period immediately preceding the filing of a new offering statement.

The proposed changes to the Regulation A eligibility requirements would have benefits and costs. In particular, we believe that the proposed exclusion from eligibility of issuers that have not complied with ongoing reporting requirements in the two-year period immediately preceding the filing of a new offering statement would

[588] *See* Order Granting Approval of Proposed Rule Change and Amendment No. 1 from the National Association of Securities Dealers, Inc. Relating to Microcap Initiatives-Amendments to NASD Rules 6530 and 6540, Exchange Act Release No. 34–40878 (Jan. 4, 1999), 64 FR 1255 (Jan. 8, 1999).

[589] Bushee, Brian J., and Christian Leuz, (2005), *Economic consequences of SEC disclosure regulation: Evidence from the OTC bulletin board,* Journal of Accounting and Economics 39.2, pp. 233–264.

[590] *Id.*

[591] This comparison does not cover offerings by foreign private issuers.

[592] Form D is a notice of sale under Regulation D, not a disclosure document, although certain disclosures are required. Regulation D does not require filing of a disclosure document with the Commission, and does not generally impose disclosure requirements except when sales are made to purchasers that are not accredited investors. *See* Rule 502(b), 17 CFR 230.502(b).

incentivize issuers that intend to rely on Regulation A in the future to comply with ongoing reporting requirements, which would allow investors to make better informed investment decisions. This exclusion, however, should not impose additional burdens or costs on issuers that would not have already been incurred with the proposed ongoing reporting requirements of Regulation A.

The Commission is also proposing to exclude from eligibility issuers that are subject to a denial, suspension, or revocation order by the Commission pursuant to Section 12(j) of the Exchange Act within the five years immediately preceding the filing of the offering statement. This exclusion may incentivize Exchange Act registrants to comply with their obligations, and would prevent companies with a history of reporting non-compliance from relying on Regulation A. We also recognize that this exclusion could prevent offerings by issuers that intend to comply with Regulation A requirements despite a history of Exchange Act non-compliance, which could limit capital formation in certain situations.

The proposed rules continue to exclude non-Canadian foreign issuers from use of Regulation A, but, as discussed above, we are soliciting comment about the alternative of amending Regulation A to expand eligibility to additional foreign issuers. Allowing participation by non-Canadian foreign issuers could increase competition between foreign and domestic issuers for U.S.-based investor capital. This increased competition could raise the cost of capital for Regulation A issuers to the extent that there is not a commensurate increase in the supply of Regulation A capital. It is also possible, however, that expanding eligibility to use Regulation A to non-Canadian foreign issuers could attract additional investor capital to the market such that the change would not have a material impact on domestic issuers' cost of capital.

The proposed rules also continue to exclude blank-check companies. We believe that this exclusion is appropriate given the potential difficulty for retail investors to evaluate the investment opportunities posed by these issuers, particularly because the issuers do not explicitly identify investment opportunities at the time of offering. The continued exclusion of blank check companies could prevent some legitimate early-stage companies that would otherwise be eligible issuers from relying on Regulation A.

We are not proposing to amend the existing exclusion of companies subject to the ongoing reporting requirements of Section 13 or 15(d) of the Exchange Act (''reporting companies''). As an alternative, we could amend Regulation A to expand the category of eligible issuers to include reporting companies. Although reporting companies do occasionally rely on exemptions for private placements, we believe that many reporting companies generally would not benefit from eligibility to rely on Regulation A as proposed to be amended. In particular, reporting companies are subject to Exchange Act reporting requirements that are more extensive than those proposed for Regulation A, so would not benefit from the reduced disclosure requirements; although reporting companies could potentially benefit from the liability standards conferred by reliance on Regulation A, and such issuers that do not have the class of securities being offered already listed, or are not simultaneously listing, on a national securities exchange could potentially benefit from blue sky law preemption. Nonetheless, we believe that the benefits of amending Regulation A to permit reporting companies to rely on the exemption are minimal.[593]

The proposed rules also continue to exclude investment companies and BDCs. If, as an alternative, the Commission were to permit investment companies to use Regulation A, offerings from investment companies could increase investment opportunities for retail investors. Additionally, the Commission recognizes that permitting investment companies to rely on Regulation A could enhance capital formation indirectly. Specifically, if the use of proposed Regulation A decreased the cost of capital for investment companies and those savings were passed through to the company recipients of the investment companies' capital, expanding the eligibility for Regulation A to investment companies could potentially enhance capital formation.[594]

b. Eligible Securities and Maximum Offering Size

Consistent with the statute, the proposed rules increase the maximum offering size from $5 million to $50 million of ''equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities.'' The proposed rules exclude asset-backed securities (''ABS'') from eligibility. As discussed above, the Commission does not believe that ABS issuers are the intended beneficiaries of the mandated expansion of Regulation A. ABS are designed to pool the risk of already-issued loans and other financial assets, and, in this respect, do not constitute new capital formation. We recognize, however, that allowing ABS offerings under Regulation A could, in certain cases, lower the cost of capital for underlying borrowers whose loans are eventually securitized by ABS issuers and therefore indirectly facilitate capital formation.[595]

Although there are potential indirect benefits from allowing ABS offerings under Regulation A, we believe that, in practice, Regulation A would have little appeal to ABS issuers if available. Most ABS offerings are much larger than the maximum allowable offer size under the proposed rules. Average ABS offering sizes are generally well over $50 million.[596] Because of their large size, unregistered ABS offerings—for which Regulation A might be an alternative offering method—currently target Qualified Institutional Buyers (QIBs) under Rule 144A. For these reasons, we do not believe excluding ABS from eligibility for Regulation A will have an adverse effect on capital formation.

As explained above, we are proposing to increase the maximum offering size of Regulation A offerings by introducing two tiers of offerings. Tier 1 offerings may be up to $5 million and Tier 2 offerings may be up to $50 million. As compared to the current rules, the

[593] This exemption does not bar reporting companies from suspending or terminating their reporting obligations and then relying on Regulation A. This option could appeal even to large reporting companies if they are not looking to raise more than $50 million of new capital. Many follow-on offerings, for example, are for less than $50 million, as discussed above. This could have both benefits (in the form of reduced transaction costs and compliance costs for issuers) and costs (in the form of reduced accountability and reduced information available to investors).

[594] Brewer, Elijah, et al. (1996), *Performance and access to government guarantees: The case of small business investment companies,* Economic Perspectives—Federal Reserve Bank of Chicago 20, pp. 16–30.

[595] This indirect effect may result because, due to bank accounting standards and capital requirements, securitization allows banks sponsoring ABS issuers to move assets off balance sheet, freeing up capital for additional loans. The resulting increase in capital available for lending could lead to lower borrowing costs for all borrowers down the capital supply chain. *See, e.g.,* Pennacchi, George G. (1995), *Loan sales and the cost of bank capital,* The Journal of Finance 43, no. 2, pp. 375–396.; Carlstrom, Charles T., and Katherine A. Samolyk (1995), *Loan sales as a response to market-based capital constraints,* Journal of Banking & Finance 19, no. 3, pp. 627–646.

[596] Our analysis indicates that from 2011–2013, 2.9% of ABS issuances were below $50 million. This calculation uses the AB Alert and CM Alert databases and includes only private label (non-GSE) ABS deals.

increase in the offering limit for some Regulation A offerings should significantly lower issuance costs as a proportion of proceeds to the extent that issuers face certain fixed costs or costs that do not otherwise scale in proportion to offering size. This could make Regulation A, as proposed to be amended, more cost effective and attractive for issuers than existing Regulation A.[597]

Increasing the maximum offering size could lead to improved liquidity of the securities sold in offerings under Regulation A as proposed to be amended, to the extent that larger issuances permit greater breadth of ownership.[598] This would be of particular benefit to companies that have a greater interest in floating their securities in the public market for the purpose of creating liquidity than in raising capital. Greater investor participation, particularly retail investor participation, could increase investors' demand for liquidity, resulting in more frequent trading and further increases in liquidity. As a result of improved liquidity, current and potential investors in larger Regulation A offerings could more easily unwind their investments and at lower cost, thus making such investments more attractive.

The increase in maximum offering size could also increase the potential feasibility and value of intermediation services, such market making and analyst coverage, with respect to Regulation A securities. These services require sufficient investor demand for securities and information following the issuance because market makers and analysts are generally compensated on a per transaction or subscription basis. The presence of these intermediation services could also have a positive impact on investor participation and aftermarket liquidity of Regulation A offerings, providing further demand for such services. It is also possible, however, that even the large increase in maximum offering size included in the statute and proposed rules would not be sufficient to make such services economically feasible. [599]

Lastly, the increased maximum offering size could make Regulation A more attractive to larger or more mature companies that are in less need of capital than business start-ups. For these issuers, secondary market liquidity may be the primary goal of an offering, and it is possible that their resulting market capitalization could be much greater than the maximum offering size.[600] It is not clear whether existing OTC markets would be able to supply the liquidity necessary for large issuers.

c. Limitations on Secondary Sales

We propose to permit sales by selling securityholders of up to $1.5 million in Tier 1 offerings and to $15 million in Tier 2 offerings in any twelve-month period, which represents 30% of the total maximum offering size.[601] This percentage is consistent with the current Regulation A rules, which permit secondary sales of up to $1.5 million, or 30% of the $5 million maximum offering size. The proposed rules would also eliminate current Rule 251(b), which prohibits resales by affiliated parties unless the issuer has had operating income in at least one of the last two years.[602] As discussed above, selling securityholder access to Regulation A has historically been an important part of the exemptive scheme, and for some issuers, secondary market liquidity and the ability for significant company insiders and affiliates to exit all or a portion of their holdings in the issuer may be a more important consideration than the ability to raise new capital.[603] Hence, we believe that removing the limitation on affiliate resales would have negligible costs and could enhance capital formation and allocative efficiency of capital; however, it is also possible that the limit on resales would not be a constraint on selling securityholders in most instances. The table below shows that if the proposed $15 million resale cap for Regulation A Tier 2 offerings had been applied to registered offerings conducted in 2012, only a small fraction of offerings below $50 million would have been affected.

OVERVIEW BY OFFERING SIZE OF THE PERCENT OF REGISTERED OFFERINGS CONDUCTED IN 2012 THAT WOULD HAVE BEEN AFFECTED BY A $15 MILLION LIMIT ON SECONDARY SALES

	Initial public offerings[604] (millions)			Follow-on public offerings[605] (millions)		
	<$5 %	$5–$50 %	>$50 %	<$5 %	$5–$50 %	>$50 %
Average percentage of proceeds to existing shareholders sales	0.0	1.4	13.4	2.8	5.1	21.7
Percentage offerings with proceeds to existing shareholders > $15 million	n/a	0.8	26.5	n/a	0.0	6.2

[597] Section 401 of the JOBS Act also requires the Commission to review the $50 million offering limit not later than two years after enactment of the JOBS Act and every two years thereafter and, if the Commission decides not to increase the amount, requires that it report its reasoning to Congress. This requirement will benefit issuers and investors by establishing a regular schedule for the Commission to review whether the offering limit remains appropriate or should be increased.

[598] Grullon, Gustavo, George Kanatas, and James P. Weston, *Advertising, breadth of ownership, and liquidity,* Review of Financial Studies 17.2, pp. 439–461. The study shows that large issuances permit greater analyst coverage, which leads to higher breadth of ownership.

[599] For instance, one prominent study finds that firm size is an important predictor of analyst coverage. *See* Barth, Mary E., Ron Kasznik, and Maureen F. McNichols., *Analyst coverage and intangible assets.* Journal of Accounting Research 39.1 (2001): 1–34.

[600] For instance, an issuer that floats 20% of its shares at $50 million would be valued at $250 million following the issuance. For this issuer, secondary market liquidity may facilitate subsequent offerings by founders, employees, affiliates, and other pre-issuance shareholders who are seeking a partial or full exit of their holdings.

[601] So, for example, an offering under $5 million but involving secondary sales in excess of $1.5 million would require exemption under section 3(b)(2) of the Exchange Act and would therefore be a Tier 2 offering.

[602] Tier 1 offerings may still be subject to state law limitations on secondary sales and sales from affiliates.

[603] *For example, see* Rydqvist, Kristian, and Kenneth Högholm (1995), *Going public in the 1980s: evidence from Sweden,* European Financial Management 1.3, pp. 287–315.

Permitting these secondary sales provides exit options for company founders, employees, and institutional investors, such as private equity or venture capital investors, which can have a positive effect on capital formation. For instance, because these investors consider available exit options before participating in a new venture, permitting secondary sales increases the incentives to make the original investment.[606] Allowing these exits could also facilitate an optimal re-allocation of human capital. In particular, entrepreneurs and venture capitalists have valuable talents and allowing them to exit may free their attention for new projects and business ventures, and allow them to make investments not otherwise possible.[607] In turn, their exits facilitate new investment opportunities for investors with different skills and risk preferences, and potentially a more appropriate investor base for an issuer.

As an alternative, we could increase the cap on secondary sales above the proposed $1.5 million for Tier 1 offerings and $15 million for Tier 2 offerings. Increasing the cap on secondary sales could provide additional exit options for incumbent shareholders, which could indirectly increase capital formation because exiting investors could more quickly redeploy their capital into new projects and business ventures.

It is also possible that increasing the cap on secondary sales could lead to better monitoring of the underwriter or placement agent if used, as the selling securityholders have incentives to ensure that the underwriter values the securities and conducts the offering so as to maximize the value of their investment.[608] Finally, increasing the cap on secondary share offerings could result in more dispersed ownership, resulting in better liquidity in the secondary resale market. As described above, an increase in the portion of securities sold to the public generally increases investor participation and the breadth of ownership. The exit of a large shareholder that accounts for an increase in public float has the benefit of changing the composition of shareholders to those that do not have access to non-public information about the issuer's operations and that predominantly trade based on liquidity needs or publicly available information. Studies show that this can result in lower spreads because it minimizes the inventory risk that dealers face.[609]

Increasing the permitted amount of secondary sales could also result in potential costs. In particular, it is often argued that the incentives of company management are better aligned with other shareholders when managers hold a significant equity interest in the company.[610] Specifically, it can be important for insiders to retain some ownership stake to ensure that the incentives of directors and officers are aligned.[611] Hence, it is possible that affiliate sales, if too large, could be detrimental to purchasing investors. However, there is no conclusive evidence that affiliate sales are associated with poor post-offering performance in the context of IPOs,[612] and there is some evidence that affiliate sales are associated with positive post-IPO performance, as the selling affiliates have incentives to monitor and limit rent capture by underwriters.[613]

There may also be investor protection benefits in some cases from precluding affiliate sales by limiting transactions between informed investors (affiliates) and uninformed investors, such as retail investors. These potential benefits may be limited, as buyers are aware that they are less informed than affiliates and consequently, security prices should generally reflect these asymmetries at the time of the offering.[614] Investors also may prefer to transact with affiliates in an offering because affiliates assume additional liability for misstatements in the offering documents. Thus affiliates may be sensitive to the risks of exploiting uninformed investors during an offering in which they are selling securities. For example, some empirical evidence suggests venture capitalists avoid reputational consequences of selling over-valued securities to uninformed investors during IPOs.[615] Furthermore, we believe that state oversight of affiliate sales in Tier 1 offerings and the proposed investment limitation and financial statement and disclosure requirements for Tier 2 offerings could provide additional investor protection.

Using an operating income criterion for permitting secondary sales could promote investor confidence with respect to issuer viability by reducing the incidence of insiders offloading investments in companies that are not financially viable. However, the Commission believes that doing so may result in an under- or over-inclusion of companies that are viable investment opportunities because there is no single criterion that would provide an accurate measure of the financial health of all companies that could rely on Regulation A.[616]

d. Investment Limitation

Regulation A currently does not place any limitations on the amount of securities that may be purchased by an investor. As explained above, we are proposing that purchasers of Tier 2 offerings be limited to investing no more than 10% of the greater of the investor's annual income and net worth.[617] By limiting investment size in Tier 2 Regulation A offerings in that way, the proposed rules could limit potential

[604] These estimates use data provided by Capital IQ and are calculated by comparing the total IPO proceeds to the proceeds from the IPO that went to incumbent shareholders as disclosed on Form S–1.

[605] These estimates use SCD data provided by Thompson Analytics and, as above, these numbers are calculated by comparing total offering proceeds to the proceeds that went to incumbent shareholders.

[606] Cumming, Douglas J., and Jeffrey G. MacIntosh (2003), *Venture-capital exits in Canada and the United States,* The University of Toronto Law Journal 53.2, pp. 101–199.

[607] Zhang, Junfu (2011), *The advantage of experienced start-up founders in venture capital acquisition: Evidence from serial entrepreneurs,* Small Business Economics 36.2, pp. 187–208. Also *see,* Gompers, P., A. Kovner, J. Lerner, D. Scharfstein (2006), *Skill vs. luck in entrepreneurship and venture capital: Evidence from serial entrepreneurs,* No. w12592. National Bureau of Economic Research.

[608] Ljungqvist, Alexander, and William J. Wilhelm (2003), *IPO pricing in the dot-com bubble,* The Journal of Finance 58.2, pp. 723–752.

[609] Bharath, S. and Amy Dittmar (2010), *Why Do Firms Use Private Equity to Opt Out of Public Markets?,* Review of Financial Studies 23(5), pp. 1771–1818.

[610] *See, e.g.,* Jensen, Michael C., and William H. Meckling (1978), *Theory of the firm: Managerial behavior, agency costs and ownership structure,* Journal of Financial Economics 3.4, pp. 305–360.

[611] Core, John E., Robert W. Holthausen, and David F. Larcker (1999), *Corporate governance, chief executive officer compensation, and firm performance,* Journal of Financial Economics 51.3, pp. 371–406.; Mehran, Hamid (1995), *Executive compensation structure, ownership, and firm performance,* Journal of Financial Economics 38.2, pp. 163–184.

[612] Mikkelson, Wayne H., M. Megan Partch, and Kshitij Shah. *Ownership and operating performance of companies that go public.* Journal of Financial Economics 44.3 (1997): 281–307.

[613] Ljungqvist, Alexander, and William J. Wilhelm (2003), *IPO pricing in the dot-com bubble,* The Journal of Finance 58.2, pp. 723–752.

[614] Easley, David, and Maureen O'Hara (2004), *Information and the cost of capital*, The Journal of Finance 59.4, 1553–1583.

[615] Lin, Timothy H., and Richard L. Smith (1998), *Insider reputation and selling decisions: the unwinding of venture capital investments during equity IPOs,* Journal of Corporate Finance 4.3, pp. 241–263.

[616] Indeed, one study suggests that standard accounting measures are often poor indicators of financial health in small companies. Davila, Antonio, and George Foster (2005), *Management accounting systems adoption decisions: evidence and performance implications from early-stage/startup companies,* The Accounting Review 80.4, pp. 1039–1068.

[617] Annual income and net worth would be calculated for individual purchasers as provided in the accredited investor definition in Rule 501 of Regulation D. *See* 17 CFR 230.501. For example, individuals' net worth calculations would exclude the value of their primary residence.

proposed rules could limit potential losses to investors; however, they could also limit potential gains.

The proposed rules would permit issuers to rely on investors' representation that they are investing no more than 10% of their net worth and annual income. The ability to rely on investor representations should help to mitigate potential costs that issuers could incur in relation to this requirement. At the same time, we realize that investors might make inaccurate representations, whether intentionally or not, which could expose these investors to the risk of increased losses.

It is also possible that preventing investors from investing more than 10% of the greater of their income and net worth in a Tier 2 Regulation A offering could limit capital formation, particularly if potential purchasers of Tier 2 offerings are not able to meet minimum investment sizes that may be required by some issuers.[618] While these issuers could require smaller minimum investment sizes, doing so may entail searching for, and involving more, investors that contribute to a smaller portion of the offering, which could increase transaction costs. If issuers maintain minimum investment sizes, the proposed rules could limit investor participation in Tier 2 offerings.

Furthermore, in some settings, it may be beneficial for issuers to involve large investments from some types of investors in Regulation A offerings. For example, it could be beneficial to allow company officers to invest a substantial portion of their net worth in an offering as a mechanism to align the officers' incentives with those of the other securityholders. While we recognize that limiting investment size could result in less capital being raised by issuers in Regulation A offerings, we believe that preventing investors from exposing more than 10% of the greater of their income or net worth in a Tier 2 offering could enhance investor protection by limiting potential losses.

As an alternative, we could also require that purchasers of Tier 1 offerings, like purchasers of Tier 2 offerings, be limited to investing no more than 10% of the greater of their annual income and net worth. We believe, however, that because Tier 1 offerings would continue to be subject to additional state oversight, any benefit associated with limiting the investment size in Tier 1 offerings could potentially be eclipsed by state-level protections. We also recognize that Tier 1 offerings would be subject to fewer reporting obligations and other investor protections than Tier 2 offerings, which could make investor losses due to fraud more likely under Tier 1.

e. Integration

We are proposing to allow companies to conduct other exempt offerings that would not be integrated with an offering made in reliance on Regulation A under the proposed amendments, as long as the company complies with the requirements of the exemption relied upon for the particular offering. We could have selected an alternative that would have aggregated the amounts offered in reliance on Regulation A with the amounts offered pursuant to other exempt offerings. Under such an alternative, the amounts raised in other exempt offerings would count toward the maximum offering amount under Regulation A. Compared to this alternative, the ability of issuers to conduct other exempt offerings that would not count toward the maximum offering amount under Regulation A would allow issuers to raise more capital.

f. Exclusion From Section 12(g)

As amended by the JOBS Act, Section 12(g) of the Exchange Act requires, among other things, that an issuer with total assets exceeding $10 million and a class of securities held of record by either 2,000 persons, or 500 persons who are not accredited investors, register such class of securities with the Commission.[619] As explained above, the JOBS Act includes a provision regarding the treatment under Section 12(g) of securities issued in securities-based crowdfunding transactions pursuant to Section 4(a)(6) of the Securities Act, but did not provide a similar provision in Section 3(b)(2). We are not proposing to exempt Regulation A securities from the requirements of Section 12(g).

As discussed above and in more detail below, the intent of the proposed rules is to provide sufficient financial disclosure to help investors make informed decisions while limiting the costs imposed on issuers for doing so. We believe that the limited required initial and ongoing disclosures, as proposed, accomplish this objective. If Regulation A issuers cross the shareholder of record threshold described above, however, they would no longer benefit from the limited Regulation A disclosure environment and would be subject to the more comprehensive periodic reporting requirements under the Exchange Act. This may not have significant economic consequences for issuers that are prepared to list on a national securities exchange and would otherwise be required to register with the Commission under Section 12(b) and become subject to Exchange Act reporting requirements. For issuers that do not wish to list on a national securities exchange or do not meet listing requirements, the additional disclosure burden could provide incentive to take actions that would allow them to deregister and cease reporting.[620] In this case, the benefits of the Regulation A environment would be lost to the issuer's securityholders.

Because of the manner in which shareholders of record are tabulated, the likelihood of a Regulation A issuer triggering the 12(g) threshold is low if not triggered at the time of offering. In particular, beneficial owners of Regulation A issuers who hold their shares at a broker are not counted as a record holder. Their shares, held in ''street name,'' are counted at the broker level, so that each brokerage at which there is a least one beneficial owner would constitute one shareholder of record. Because of this treatment, the number of shareholders of record is often significantly less than the number of beneficial owners.[621]

g. Liability Under Section 12(a)(2)

Consistent with current Regulation A, sellers of securities under Regulation A as proposed to be amended would be subject to liability to investors under Section 12(a)(2) for any offer or sale by means of an offering circular or an oral communication that includes a material misleading statement or material misstatement of fact. We believe that this would continue to benefit investors by encouraging issuers and selling securityholders to truthfully disclose all relevant facts associated with an offering, which in turn would allow potential investors to better assess the merits of the offering and make informed decisions. We do not expect this requirement to impose any significant costs beyond the liability already incurred by current Regulation A issuers.

[618] For example, in 2012 approximately half of the Regulation D offerings that would have been eligible for reliance on Regulation A included a minimum investment amount; the median minimum investment amount was $20,000.

[619] *See* Section 501 of the JOBS Act.

[620] Leuz, Christian, Alexander Triantis, and Tracy Yue Wang (2008), *Why do firms go dark? Causes and economic consequences of voluntary SEC deregistrations,* Journal of Accounting and Economics 45.2, pp. 181–208.

[621] Langevoort, Donald, and Robert Thompson, *≥Publicness' in Contemporary Securities Regulation after the JOBS Act,* Georgetown Law Journal, pp. 12–002.

In the context of registered transactions, Section 11 liability applies not only to the issuer and underwriter but also, in certain circumstances, to other specified persons, including the accountants, attorneys and other experts involved in preparing the registration statement. In contrast, Section 12(a)(2) liability applies by its terms only to sellers, and does not extend to ''those who merely assist in another's solicitation efforts.'' [622] Therefore, we anticipate that auditors and placement agents may not demand as much compensation for bearing the legal risks associated with participation in Regulation A offerings as they would for offerings subject to Section 11 liability. We recognize, however, that Section 12(a)(2) liability may result in lower levels of scrutiny by such intermediaries and may therefore expose investors to additional risks.

3. Offering Statement

We are proposing a number of modifications to the offering statement required under Regulation A. Under current Regulation A, offering materials are submitted to the Commission in paper form. We are proposing to require electronic submission of offering materials so that these materials can more easily be made available to the public.

As discussed in detail above, electronic submission has numerous benefits to issuers and investors. For example, electronic filing allows offering materials to be more easily accessed and analyzed by regulators, investors, and financial market researchers. We anticipate the effect of providing electronic access to offering materials to the public will promote liquidity and pricing efficiency for the issued securities. We also recognize that electronic filing on EDGAR may impose costs on issuers, as discussed below.

We also are proposing a number of modifications to Form 1–A intended to streamline the type of information included in the offering circular. In general, we are proposing to maintain Form 1–A's three-part structure and to make various revisions and updates to the form. For Part I, the substantive additions to Regulation A items are: issuer eligibility, bad actor disqualification and disclosure, and a summary of key issuer financial information and offering details. Since most of this information is already contained in other offering materials, the additional reporting burden in Part I of the Form 1–A should not entail significantly higher costs in terms of time or out-of-pocket expenses.

Regulation A issuers currently are required to file their offering statements on paper. Paper documents are difficult to process both for the Commission and for investors, analysts, and other researchers. The proposed rules require issuer and offering details in Part I of Form 1–A to be reported in XML format that once filed with the Commission will be machine readable. This format will allow for more efficient reviews and the systematic tracking of offering particulars by investors, regulators, and other market participants such as financial market data aggregators.

The rule also proposes eliminating one of the three alternate models for providing narrative disclosure under Part II of the offering statement. Currently, issuers can choose between Model A (for issuers that are corporations only), Model B, and Part 1 of Form S–1 as described in the release. Elimination of Model A, wherein issuers provided disclosure in a question-and-answer format, is unlikely to affect most issuers, as historically, only about 20% of issuers have elected to use Model A. Eliminating Model A also addresses regulators' concerns about possible confusion that could result from the lack of uniformity of information presented in the question-and-answer in the format. Issuers continue to have the option of using Form S–1.

The proposed changes to Model B include statutorily required disclosures and a section containing management discussion and analysis of the issuer's liquidity, capital resources, and business operations. As discussed in more detail below, these additional items may impose costs on the issuer, while providing important information to investors.

Consistent with JOBS Act requirements with regard to ongoing reporting by Regulation A issuers, we are proposing to require offering materials to include audited financial statements, but only for issuers conducting a Tier 2 offering. The benefits of audited financial statements should provide investors with greater confidence in the accuracy and quality of the financial statements of issuers seeking to raise larger amounts of capital. We understand that audited financial statements could entail significant costs to issuers, and that the costs of an audit may discourage the use of Regulation A as proposed to be amended. Based on a compilation of data submitted by reporting companies, the average cost of an audit for offerings of less than $50 million is approximately $114,000.[623] Additionally, the proposed rules do not require that the auditor be PCAOB registered, which could reduce the cost of an audit for some issuers.

The proposed amendments also include a limitation on the age of financial statements at the time of qualification or filing (on these dates, financial statement data must not be older than nine months). This provision ensures that qualification is based on information that closely reflects a company's current financial condition. The additional costs from these changes are somewhat mitigated by decreases in disclosure requirements regarding the issuer's business and transactions with related persons. The higher level of disclosure would, however, enable investors to have better information for making their investment decisions.

The proposed rules would also allow for continuous or delayed offerings of eligible securities by an eligible issuer under Regulation A, on a basis analogous to shelf registration under Rule 415 for registered offerings, although acquisition shelves would not be permitted under Regulation A. Unlike existing Regulation A, the proposed rules also restrict at-the-market shelf offerings. Issuers would need to update their offering circulars annually and after the second fiscal quarter, the same timetable as is proposed to apply for ongoing reporting requirements.

The current Regulation A rules allow for continuous or delayed offerings under Rule 415, but Rule 415 only discusses registered offerings, which may have caused confusion in its application to Regulation A. The provisions in Regulation A as proposed explicitly allow for continuous or delayed offerings and would provide greater clarity. It would now be clear that eligible issuers would have greater flexibility to select the timing of their offerings based on macroeconomic conditions such as interest rates and market volatility, or other company specific factors that may contribute to a successful offering.[624] Issuers would not have to wait for the Commission or a state regulator to complete what can sometimes be a lengthy review process. These factors should contribute to more timely financing decisions and higher capital market efficiency. For example,

[622] Pinter v. Dahl 486 U.S. 622 (1988), at 651 fn. 21.

[623] *See* Audit Analytics, *Auditor-Fees, available at http://www.auditanalytics.com/0002/audit-data-company.php.* The auditor fee database contains fee data disclosed by SEC reporting companies in electronic filings since January 1, 2001.

[624] Bayless, Mark and Susan Chaplinsky, 1996, ''*Is there a window of opportunity for seasoned equity issuance*?'' Journal of Finance 51, 253–278.

existing research for Rule 415 offerings in the registered offering market shows that costs of intermediation in shelf offerings, and consequently the cost of raising equity through shelf registration, is lower than through traditional registration.[625]

Excluding at the market offerings will avoid situations where sales at fluctuating market prices result in a breach of the offering ceiling or the cap on secondary sales. Issuers could thus avoid losing their exemption under Regulation A due to unanticipated market factors. While eligible issuers have to file periodic updates and amendments as described above, they have the flexibility to file only a supplement to the offering circular if there were no fundamental changes. Hence, the cost to issuers of having the flexibility to make a continuous or delayed offering could be minimal.

4. Solicitation of Interest (''Testing the Waters'')

Consistent with Title IV of the JOBS Act, the proposed rules permit issuers to ''test the waters'' by soliciting interest in the offering. Regulation A issuers would be allowed to use all forms of communications with all potential investors in these communications. Under current Regulation A, testing the waters is permitted only until the offering statement is filed with the Commission, and solicitation material is required to be filed prior to or concurrent with first use. Under the proposal, testing the waters would be permitted both before and after filing of the offering statement, and testing the water materials would be required to be filed with the Commission at the time of initial submission of the offering statement, and would be updated thereafter.

In general, allowing issuers to gauge interest through testing the waters may reduce uncertainty regarding whether an offering could be completed successfully. If after testing the waters, the issuer is not confident that it will attract sufficient investment, the issuer can consider alternate methods of raising capital and thereby avoid the costs of an unsubscribed or under-subscribed offering. Allowing solicitation prior to filing enables issuers to determine market interest in their securities before incurring the costs of preparing and filing an offering statement.

By expanding the permissible scope of testing the waters, the proposed rules could have several benefits. In particular, allowing issuers to advertise their intention to raise capital prior to qualification of the offering statement could decrease the time required to raise the desired amount of capital. This option may be useful for smaller companies, especially early-stage companies, which may find it too costly to solicit through intermediaries. Thus, at least for some companies, the proposed rules could lead to lower search costs and therefore lower issuance costs. The expansion of testing the waters could also increase the type and extent of information available to investors, which could lead to more efficient prices for the offered securities.

In addition, to the extent that the proposed rules permit testing the waters for an expanded period of time, investors who previously found it difficult to find investment opportunities in private offerings may be able to find and potentially invest in a larger and more diverse pool of investment opportunities, allowing investors to more efficiently allocate their capital. The net effect would be to enhance both capital formation and allocative efficiency. Further, requiring issuers to attach the offering statement to their testing the waters materials (or providing information about where it can be accessed) would allow investors to be fully aware of the details of the offering material in a timely manner that would support sound investment decisions.

We recognize that there would also be potential costs associated with expanding the use of testing the waters. In particular, to the extent that testing the waters increases under the proposed rules, the proposed rules could result in increased levels of inappropriate and potentially fraudulent activity, because solicitation of these offerings can be directed towards all investors, including non-accredited and unsophisticated investors. To some extent, these costs are mitigated by the application of Section 12(a)(2) and the general antifraud provisions of the federal securities laws. By expanding the scope of permissible testing the waters, the proposed amendments could also lead to investor confusion about how to process the different disclosure materials they receive. For example, investors already aware of an impending offering through testing the waters materials may neglect to read the offering circular, which could be substantively different from the material distributed when testing the waters.

The Commission could require submission of testing the waters materials before or concurrent with first use, allowing regulators to better assess how testing the waters is used to gauge investor interest prior to filing of the offering statement. Requiring initial submission of testing the waters materials could increase costs for issuers that decide not to proceed with the offering after testing the waters. Requiring submission before filing the offering circular could decrease issuers' willingness to test the waters and could potentially limit the overall reliance on Regulation A. Any additional solicitation materials that could result from requiring early submission would also lead to an increase in the amount of material available for investors about the offering, which could increase confusion and the costs incurred by investors evaluating their investment opportunities.

5. Ongoing Reporting Requirements

Requiring limited ongoing disclosure could improve investor decision-making and ultimately benefit issuers by improving the price efficiency of securities issued through an amended Regulation A offering, to the extent that secondary markets for these securities develop. Ongoing financial disclosures and mandatory disclosures of key material events would allow existing and potential future investors to periodically update their expectations of the issuer's prospects and act accordingly. By standardizing the content, timing, and form of these disclosures, the proposed amendments would make it easier for investors to compare information across issuers than if disclosure decisions were otherwise left to voluntary, bilateral arrangements between issuers and investors, as would be the case without mandatory disclosures. Hence, the proposed amendments to require ongoing disclosure under Regulation A would eliminate many potential differences in disclosures between issuers that could otherwise impair the capital allocation decisions of investors,[626] particularly to the extent that such securities trade in OTC markets.

More generally, the proposed ongoing disclosure requirements should result in fewer information asymmetries between issuers and their investors than currently exist for securities offered under the existing Regulation A or other exempt offering methods. The enhanced disclosure requirements should help improve the ability of investors with different risk preferences to identify investment opportunities best suited for

[625] Bethel, Jennifer and Laurie Krigman, ''*Managing the Cost of Issuing Common Equity: The Role of Registration Choice*'', Quarterly Journal of Finance and Accounting, 47 (4) (2008), pp. 57–85.

[626] *See, e.g.,* Luigi Zingales (2009), *The Future of Securities Regulation,* Journal of Accounting Review, Vol 47, pp. 391–425.

their risk tolerance. They will provide investors with a useful benchmark with which to evaluate the performance of other companies, both within and outside of the proposed Regulation A market. This enhanced information environment should improve the allocative efficiency of capital and facilitate the subsequent transfer of issued securities in secondary markets, allowing for more efficient pricing and liquidity.[627]

In addition to the direct costs of preparing the mandatory disclosures, issuers of securities in a Regulation A offering under the proposed rules would be subject to potential indirect disclosure costs by revealing to their competitors and other market participants information about their business not previously required to be disclosed.[628] For these issuers, ongoing reporting requirements under Regulation A may render alternative offering methods more appealing, such as Rule 506(c) of Regulation D, which allows general solicitation but does not impose any ongoing disclosure requirements.

Nonetheless, the indirect costs of increased disclosures are present for any issuer seeking improved liquidity through access to public capital markets and a broader investor base that includes unaccredited investors. Enhanced disclosure is likely to improve the liquidity of the securities of Regulation A issuers in the secondary market, particularly for securities that are traded in the OTC market.[629] As discussed above, there is a positive feedback effect from increased liquidity, whereby increased trading engenders more accurate pricing by incorporating a greater number of investors' views. More accurate pricing, in turn, encourages greater investor participation and greater liquidity, and provides investors with more accurate information. Increased price efficiency can also facilitate a lower cost of capital by lessening the discount investors otherwise place on illiquid securities and securities for which there is increased risk of asymmetric information. Hence, there would be significant indirect effects of improving capital formation.

a. Periodic Reporting Requirements

Currently, Regulation A issuers do not have ongoing reporting obligations. Under the proposed amendments, issuers that conducted Tier 2 offerings would be required to provide annual audited financial statements on Form 1–K. The Commission is further proposing that issuers that conducted Tier 2 offerings provide a semi-annual update on Form 1–SA and current event reporting on Form 1–U. These proposed requirements are more extensive, in terms of breadth and frequency, than those for current Regulation A offerings and those for other exempt offerings.[630] The proposed additional disclosures are intended to reduce the information asymmetries between companies that conduct Tier 2 offerings and their potential investors, both at the time of the offering, through the disclosure document, and on an ongoing basis, via ongoing reporting. While we considered whether we should require certain additional disclosures to be provided in structured data format, the proposed rules do not require these disclosures to be machine readable. Not requiring structured data should help to limit costs to issuers while still providing meaningful information to investors. While not requiring a structured data format could limit the ability for investors, academics, regulators and other market participants to analyze firms relying on Regulation A, as proposed to be amended, we do not believe it is advisable to impose such a requirement on issuers relying on the exemption.

b. Current Event Reporting Requirements

As discussed above, in addition to the proposed annual and semi-annual reporting requirements, the proposed rules include several event-based disclosure requirements, similar to the event-based reporting of reporting companies on Form 8–K. These events, like the ongoing financial performance of a company, can be important determinants in an investor's capital allocation decision. The direct cost of reporting these events is often minimal, particularly to the extent that the disclosed information is simply the announcement of a new development, such as the sale of an unregistered security. Of the 26 relevant current reporting items on Form 8–K, listed in the table below, eleven are proposed to be required to be reported, in whole or in part, by issuers that conducted Tier 2 offerings.

8–K Item No.	Description of event triggering reporting obligation	Proposed Regulation A requirement
	Section 1—Registrant's Business and Operations	
Item 1.01	Entry into a Material Definitive Agreement	Sometimes.
Item 1.02	Termination of a Material Definitive Agreement	Sometimes.
Item 1.03	Bankruptcy or Receivership	Yes.
Item 1.04	Mine Safety—Reporting of Shutdowns and Patterns of Violations	No.
	Section 2—Financial Information	
Item 2.01	Completion of Acquisition or Disposition of Assets	Sometimes.
Item 2.02	Results of Operations and Financial Condition	No.
Item 2.03	Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.	No.
Item 2.04	Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Shelf Arrangement.	No.
Item 2.05	Costs Associated with Exit or Disposal Activities	No.

[627] *See* Graham, J., C. Harvey and S. Rajgopal (2005), *The Economic Implications of Corporate Financial Reporting.* Journal of Accounting and Economics 40, pp. 3–73; Durnev, A., R. Morck and B. Yeung (2003), *Value Enhancing Capital Budgeting and Firm-Specific Stock Returns Variation,* Journal of Finance 59, pp. 65–106.

[628] Campbell, Tim S (1979), "*Optimal investment financing decisions and the value of confidentiality.*" Journal of Financial and Quantitative Analysis, pp. 913–924.

[629] Ang, A., Shtauber, A., & Tetlock, P. (2011). *Asset Pricing in the Dark: The Cross Section of Over-the-Counter Stocks.* Review of Financial Studies, forthcoming.

[630] Small private companies, such as those that might consider a Regulation A offering, typically do not disclose information as frequently or as extensively as public companies, if at all. Moreover, unlike public companies, small private companies are not required to have their financial statements audited or to hire an independent third party to certify the information disclosed.

8–K Item No.	Description of event triggering reporting obligation	Proposed Regulation A requirement
Item 2.06	Material Impairments	No.
	Section 3—Securities and Trading Markets	
Item 3.01	Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing	N/A.
Item 3.02	Unregistered Sales of Equity Securities	Yes.
Item 3.03	Material Modification to Rights of Security Holders	Yes.
	Section 4—Matters Related to Accountants and Financial Statements	
Item 4.01	Changes in Registrant's Certifying Accountant	Yes.
Item 4.02	Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.	Yes.
	Section 5—Corporate Governance and Management	
Item 5.01	Changes in Control of Registrant	Yes.
Item 5.02	Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.	Sometimes.[631]
Item 5.03	Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year	No.
Item 5.04	Temporary Suspension of Trading Under Registrant's Employee Benefit Plans	No.
Item 5.05	Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics	No.
Item 5.06	Change in Shell Company Status	No.
Item 5.07	Submission of Matters to a Vote of Security Holders	No.
Item 5.08	Shareholder Director Nominations	No.
	Section 6—Asset-Backed Securities (N/A)	
	Sections 7–9—Other	
Item 7.01	Regulation FD Disclosure	No.
Item 8.01	Other Events	Optional.
Item 9.01	Financial Statements and Exhibits	Sometimes.

We have chosen to require the reporting of key current events based on our assessment of their potential usefulness to investors in these types of offerings and issuers and based on the suggestions of commenters. For instance, we are proposing to require the disclosure of certain events that directly affect the rights of securityholders (Items 3.02 and 3.03). Because sales of securities provide important information about an issuer's capital structure and could dilute existing shareholders, these events can have direct securities pricing implications. We are also proposing to require issuers to disclose changes in their certifying accountant or non-reliance on previously issued financial statements or a related audit report (Items 4.01 and 4.02). We believe that these items are relevant information for investors who rely on the information made available to them through the issuer's periodic reporting, and it is important for investors to know if financial statements could be incorrect or compromised in some way.

We also propose requiring disclosure of certain meaningful corporate events. Bankruptcy (Item 1.03) can have direct effects on valuation as it changes a number of obligations of the issuer,[632] the fiduciary duties of executive officers and directors,[633] and can potentially call into question the claims of existing securities to issuer assets and cash flows.[634] Similarly, reorganizations, such as takeovers (Item 5.01), debt restructuring and mergers (Items 1.01, 1.02, and 2.01), change companies' obligations and organizational structure in ways that can have a material impact on security prices.

Finally, we propose requiring the disclosure of changes in issuer management, which can have direct implications on the issuer's future prospects and security prices.[635] Therefore we believe disclosure of management changes would benefit investors.

c. Termination or Suspension of Reporting Requirements

The proposed rules allow for a termination or suspension of an issuer's ongoing reporting obligations if the number of record holders of the class of securities to which the Regulation A offering statement relates falls below 300 persons or suspension upon registration of a class of securities under Section 12 of the Exchange Act or registration of an offering of securities under the Securities Act.

For Tier 2 issuers, which are subject to substantial ongoing reporting requirements, the option for suspending or terminating the Regulation A reporting obligations could be beneficial, especially for issuers that are not seeking secondary market liquidity, and smaller issuers for which the fixed costs of complying with the ongoing disclosure requirements would weigh more heavily.[636] The option to suspend or terminate periodic reporting might be costly for investors because it would decrease the amount of information available about the issuer, making it

[631] Form 1–U focuses on officers, as discussed in the release.

[632] For example, the automatic stay provision suspends contractual obligations.

[633] Firms nearing the ''zone of insolvency'' have a responsibility to maximize ''enterprise value'', which is generally not the same as firm value, as it can include the value of providing employment, among other things.

[634] Renegotiation plans are subject to approval from a majority of owners of the ''fulcrum'' security which can be difficult to determine.

[635] Murphy, Kevin J., and Jerold L. Zimmerman (1993), *Financial performance surrounding CEO turnover.* Journal of Accounting and Economics 16.1 pp. 273–315.

[636] *See* Request for Comment 90 above (seeking comment on, among other things, whether we should exempt some issuers from ongoing reporting on the basis of whether such issuer has taken steps to foster a secondary market for their securities).

more difficult to monitor the issuer and accurately price its securities or to find a trading venue that would allow liquidation of the investment. Suspension or termination of reporting might particularly adversely affect minority investors if the lack of current financial or other material information, and/or the presence of large inside or affiliate shareholders could make it easier for controlling shareholders to expropriate capital from minority investors. In most cases we propose to require Tier 2 issuers to notify the Commission upon suspension or termination of reporting requirements through Form 1–Z, which for Tier 2 issuers, will request information regarding the reason for the suspension or termination. To the extent that ongoing reporting is suspended due to registration of a class of securities under the Exchange Act, investors may benefit from enhanced reporting under the Exchange Act requirements.

Although Tier 1 issuers are not subject to periodic and current event reporting requirements, we propose to require issuers of Tier 1 offerings to notify the Commission of their terminated reporting obligation using Form 1–Z upon completion of the offering. Under the proposed rules, Form 1–Z would take the place of Form 2–A, which is currently required upon completion of a Regulation A offering. For Tier 1 issuers, Form 1–Z will require issuers to provide updated information regarding some features of the completed offering, such as the final proceeds raised net of fees.[637] This information will allow the Commission to monitor whether issuers can reliably raise the projected amount of capital in Regulation A offerings. Form 1–Z would elicit limited summary information about the completed offering and the issuer, would not require any additional information from issuers that would not have been forecasted and provided in the offering materials of Tier 1 issuers and, therefore, should not impose substantial additional costs on the issuer.

6. Bad Actor Disqualification

We propose to amend Rule 262 to include bad actor disqualification provisions in substantially the same form recently adopted under Rule 506(d), but without the categories of covered persons specific to fund issuers, which are not proposed to be eligible to use Regulation A.[638] We believe that the proposed disqualification provisions are not likely to impose significant incremental costs on issuers and other covered persons because the proposed rules are substantially similar to the disqualification provisions under existing Regulation A and other exemptions.

The proposed rules likely would induce issuers to implement measures to restrict bad actor participation in offerings made in reliance on Regulation A, which could help reduce the potential for fraud in these types of offerings. If disqualification standards lower the risk premium associated with the presence of bad actors in securities offerings, any resulting reduction in fraud could also reduce the cost of raising capital to issuers that rely on Regulation A as proposed to be amended. In addition, the requirement that issuers determine whether any covered persons are subject to disqualification might reduce the need for investors to do their own investigations and could therefore increase efficiency.

The proposed disqualification provisions likely would also impose costs on issuers, other covered persons and investors. If issuers are disqualified from participating in offerings made in reliance on proposed Regulation A, they may experience increased costs in raising capital through alternative methods. These costs could hinder potential investment opportunities for such issuers, which could have negative effects on capital formation. In addition, issuers may incur personnel costs to avoid the participation of covered persons who are subject to disqualifying events. Issuers also might incur costs by restructuring share ownership to avoid beneficial ownership of more than 20% from individuals subject to disqualifying events. Finally, issuers might incur costs by devoting resources to seeking disqualification waivers.

As discussed above, we are also proposing a reasonable care exception under Regulation A on a basis consistent with Rule 506.[639] We anticipate that the reasonable care exception also would impose benefits and costs. For example, a reasonable care exception could encourage capital formation by enabling Regulation A offerings to go forward, where issuers might have been deterred from relying on Regulation A if they risked potential liability under Section 5 of the Securities Act for unknown disqualifying events. This exception could increase the potential for fraud by limiting issuers' incentive to determine whether bad actors are involved with their offerings. We also recognize that some issuers might incur costs associated with conducting and documenting their factual inquiry into possible disqualifications. The rule's flexibility about the nature and extent of the factual inquiry required could increase these costs because uncertainty could drive issuers to misunderstand requirements for compliance; however, the flexibility would allow an issuer to tailor its factual inquiry as appropriate to its particular circumstance, thereby potentially reducing costs associated with conducting the inquiry.

The proposed requirement that issuers disclose matters that would have triggered disqualification, had such matters occurred after the effective date of proposed Regulation A, also would impose costs and benefits. The proposed disclosure requirement would likely reduce issuer costs, relative to the cost of disqualification. This approach would not preclude the participation of past bad actors, whose disqualifying events occurred prior to the effective date of the proposed rules, which could expose investors to the risks that arise when bad actors are associated with an offering. Nevertheless, investors would benefit by having access to such information that could inform their investment decisions. Disclosure of triggering events may also make it more difficult for issuers to attract investors, and issuers may experience some or all of the impact of disqualification as a result. Some issuers may, accordingly, choose to exclude involvement from prior bad actors to avoid such disclosures.

We believe the inclusion of Commission cease-and-desist orders in the list of disqualifying events would not impose a significant, incremental cost on issuers and other covered persons because many might already be subject to Commission cease-and-desist orders or may already be disqualified on the basis of orders issued by state regulators, federal banking regulators and the National Credit Union Administration.[640] The inclusion of Commission cease-and-desist orders in the list of disqualifying events might change how settlement negotiations are conducted between respondents and the Commission, and the Commission could grant an appropriate waiver from disqualification.

Under the proposed rules, orders issued by the CFTC would trigger

[637] We do not propose to require notification of the completion of a Tier 2 offering as the information will be included in other ongoing reporting materials required from issuers of Tier 2 offerings.

[638] *See* proposed Rule 262.

[639] *See* proposed Rule 262(b)(4).

[640] *See* SEC Rel. No. 33–9414 (July 10, 2013) [78 FR 44729] (''Bad Actor'' adopting release).

disqualification to the same extent as orders of the regulators enumerated in Section 302(d)(2)(B)(i) of the JOBS Act (*e.g.,* state securities, insurance and banking regulators, federal banking agencies and the National Credit Union Administration). We believe that including orders of the CFTC would result in the similar treatment, for disqualification purposes, of comparable sanctions. In this regard, we note that the conduct that would typically give rise to CFTC sanctions is similar to the type of conduct that would result in disqualification if it were the subject of sanctions by another financial services industry regulator. This provision should enable the disqualification rules to more effectively screen out bad actors.

7. Relationship With State Securities Law

As explained above, Regulation A offerings are subject to registration or qualification under state ''blue sky laws,'' unless the offering is made to ''qualified purchasers'' (as the Commission may define that term) or is offered or sold on a national securities exchange. Compliance with blue sky law requirements can impose significant costs, predominantly as a result of having to coordinate independent reviews across multiple regulatory regimes when issuers are offering securities to investors in multiple states.[641]

The GAO study of Regulation A offerings found that blue sky law compliance was one of four central factors in the infrequent reliance on Regulation A.[642] Commenters have also raised the importance of state securities law preemption to the utilization of Regulation A.[643] As discussed above, we are concerned that the costs associated with state securities law compliance may deter issuers from using Regulation A, even if the increased cap on offering size and other proposals intended to make Regulation A more workable are implemented. This would limit the possible impact of an amended Regulation A as a tool for capital formation. We believe that Regulation A, as we propose to amend it for Tier 2 offerings, would provide substantial protections to purchasers. Under the proposed amendments, a Regulation A offering statement would continue to provide substantive narrative and financial disclosures about the issuer, including an MD&A discussion. We expect that Regulation A offering statements would continue to receive the same level of Commission staff review as registration statements. Additional investor protections would be afforded by Regulation A's limitations on eligible issuers and ''bad actor'' disqualification provisions, which we are proposing to expand. In addition, the requirements for Tier 2 offerings would provide further protection by requiring the audited financial statements in the offering circular, an obligation for issuers to provide ongoing reporting to purchasers, and a limitation on the percentage of annual income or net worth that an investor could invest in a single offering. Ongoing reporting would assure a continuing flow of information to investors and could support the development of secondary markets for Regulation A securities, offering the prospect of reduced investor risk through liquidity.

Based on these requirements, we are proposing to define the term ''qualified purchasers'' for purposes of Regulation A to include all offerees in a Regulation A offering and all purchasers in a Tier 2 Regulation A offering. Therefore, as proposed, Tier 1 offerings would be subject to state registration and qualification requirements to the same extent as offerings under current Regulation A, whereas such requirements would be preempted for Tier 2 offerings.

Because state registration requirements were cited as a central factor in the infrequent reliance on Regulation A,[644] we believe that by eliminating these costs of state law compliance for Tier 2 offerings issuers may be more likely to rely on amended Regulation A relative to the current rules under Regulation A, which do not preempt state securities laws.[645] We believe that this definition could facilitate capital formation, as suggested in several comment letters.[646] It is also possible that the preemption of state securities laws for Tier 2 offerings could attract issuers away from offerings conducted under Rule 506, which also provides preemption of state laws, but restricts resales. Given that in 2012 the majority of Rule 506 offerings by eligible issuers were less than $50 million, some shift from Rule 506 to Regulation A is possible; however, we are unable to quantify its magnitude. The infrequent and issuer-specific use of existing Regulation A makes it difficult to identify general findings about the effect of preemption on Regulation A, as proposed to be amended, and to quantify the potential effects of defining qualified purchasers to include all offerees in a Regulation A offering and all purchasers in Tier 2 offerings made under the proposed amendments.

We recognize that the proposal could impose some costs. For example, because the types of issuers and investors that would participate in Regulation A offerings could vary by state, state-specific securities requirements may potentially be tailored to the specific investors and issuers involved in these transactions. It is possible that state securities regulators could provide a meaningful level of investor protection for certain offerings because of greater familiarity with local issuers and investors.

As a policy alternative, we could permit one or a subset of states to qualify certain Regulation A offerings either in place of, or in addition to, federal qualification. This alternative could allow state securities regulators to provide a comparable level of oversight, while still limiting the costs associated with requiring issuers to undergo multiple review processes. Depending on how this alternative is implemented, it may not result in comparable review. For example, if state review is conducted by a single state, issuers could seek review from the state with the least stringent standards and could therefore increase the level of fraud in Regulation A offerings. A potentially greater risk of fraud could negatively affect both investors and issuers, which may find it more expensive to raise capital using Regulation A, as proposed to be amended, if investors demand higher returns because of any perceived increase in the risk associated with this type of offering. The Commission also recognizes that there are a number of alternative definitions of qualified purchaser that we could propose. One alternative that we could have selected is to define as a ''qualified purchaser'' any purchaser in any Regulation A offering. Compared to the definition in the proposed rulemaking, such a broad definition would allow Tier 1 Regulation A offerings to qualify for the state law preemption, which in turn would decrease the cost of such offerings and potentially enhance capital formation. However, the resulting loss of state review for Tier 1

[641] *See* discussion in Section IV.A.1.a. above regarding the determinates of trends in Regulation A issuances.

[642] *See* GAO–12–839, ''Factors that May Affect Trends in Regulation A Offerings'', (July 3, 2012).

[643] *See* Fallbrook Letter (''It cannot be understated as to how critical state securities law preemption is to ensuring the Regulation A+ Rules are user-friendly and attractive for utilization by growing companies.'').

[644] *See* GAO–12–839, ''Factors that May Affect Trends in Regulation A Offerings'', (July 3, 2012).

[645] *See* discussion in Section IV.A.1.a. above.

[646] *See, e.g.,* Campbell Letter, Kaplan Voekler Letter, WR Hambrecht + Co. Letter, and Tresslar Letter.

offerings, combined with the absence of the additional investor protections included in Tier 2, could increase the likelihood of fraud in these offerings.

Other alternatives can be broadly categorized as relying on attributes of the investor, the issuer, and/or the offering. We discuss these alternatives in greater detail below.

We could have selected a policy alternative that defines as a ''qualified purchaser'' any purchaser who meets a specified income or net worth standard that is set either lower or higher than the current ''accredited investor'' definition in Rule 501 of Regulation D. Compared to the definition in the proposed rulemaking, such an alternative could limit the number of offerings that would qualify for state preemption because some investors that purchased securities in Tier 2 offerings would not satisfy these alternative definitions. However, such alternatives might allow the preemption of blue sky law for Tier 1 offerings, which are not subject to the same reporting and other obligations proposed for Tier 2. Limiting eligible investors could result in higher offering costs for potential Regulation A issuers but could also lower the likelihood of fraud in Regulation A offerings compared to the proposed rules.

Another policy alternative that we could have adopted is to define a ''qualified purchaser'' as any purchaser who purchases securities in a Regulation A offering through a registered broker-dealer. Such an alternative could have limited the number of offerings that would qualify for state preemption because some investors might not use broker-dealers when participating in Tier 2 offerings. Such a limitation could result in higher offering costs for issuers. Additionally, such an alternative could have increased the cost to investors participating in Tier 2 offerings because they would have to pay broker-dealer fees. On the other hand, the presence of registered broker-dealers, who presumably perform due diligence on potential investments, could result in lower likelihood of fraud in this market compared to the proposed rules, and could support blue sky preemption for Tier 1 offerings as well as Tier 2 offerings.

In addition, we could have defined qualified purchasers as investors in a Regulation A offering in which the issuer meets specified conditions. For example, the definition could require that the issuer meet some financial criteria, or that the issuer meet some governance requirements. The potential advantage of defining qualified purchaser according to attributes of the issuer is that indicators of fraud or risky investments are often characteristics of the issuer (e.g. shell companies, financially distressed companies, etc.). Therefore, a definition based on issuer attributes might effectively identify the investments most in need of additional regulatory oversight. However, it may be difficult to identify criteria that effectively distinguish between fraudulent or excessively risky investments and safer investments, given the wide variety of potential issuers. For example, a high degree of leverage would be indicative of financial distress in some companies, but could be optimal in others.

Lastly, we could have used attributes of the offering, other than or in addition to the proposed requirements for Tier 2, to define qualified purchasers. For example, qualified purchasers could be defined in relation to offerings in which issuers and agents of the issuer assume increased liability for material misstatements and omissions, offerings over a certain size, or offerings with a firm commitment underwriting. While some of these factors are correlated with the riskiness of the offering, using a definition based on these factors could prompt issuers to sub-optimally modify features of the offering in order to avoid state regulation.

We considered the policy alternative suggested by one commenter to preempt blue sky laws with respect to secondary sales of Regulation A securities in addition to preempting blue sky laws governing primary offerings.[647] If blue sky laws pertaining to resales affect the ability to conduct or the cost of transactions involving Regulation A securities, preemption of sales in addition to offers could help facilitate liquid secondary markets, and could therefore enhance capital formation. We are currently unaware of any evidence suggesting that blue sky laws inhibit trading in OTC markets; therefore, we are not proposing to preempt blue sky laws with respect to secondary sales of Regulation A securities at this time.

8. Effect of Regulation A on OTC Markets and Dealer Intermediation

For securities issued in Regulation A offerings that end up trading on the OTC market, the proposed new Tier 2 disclosure requirements would provide timely and relevant issuer information to broker-dealers that initiate quotations and make markets in these securities and to investors in these securities. This information would be much more detailed than what is currently required for non-reporting issuers under Rule 15c2–11 and reported on Form 211. Similarly, for issuers with existing securities trading on the OTC market, the disclosure proposed to be required under Tier 2 would supplement the issuer information otherwise used by broker-dealers when relying on the existing piggyback exception of Rule 15c2–11.[648] For Tier 2 issuers, the proposed new periodic reporting requirements, including audited financials, would allow broker-dealers to obtain more current information about these issuers more frequently and at lower cost. Thus, broker-dealers quoting securities for such issuers under Rule 15c2–11 would have a more robust basis for believing that the issuer information is accurate. The availability of more current information about Tier 2 issuers would likely improve the pricing efficiency and reduce the likelihood of fraud in the OTC market for their securities. We expect this effect to be much stronger for issuers that do not currently provide voluntary disclosure to the OTC market. The overall effect of the required disclosure would also depend on what fraction of Regulation A securities eventually trade on the OTC market and on how many current OTC participants decide to make offerings under Regulation A.

A particular set of OTC-listed companies—those that cease reporting and, if necessary, delist from national securities exchanges—might find the proposed rules attractive for raising capital. As mentioned above, the proposed Tier 2 disclosure requirements are less stringent than those applicable to reporting companies. Companies that delist from national exchanges might be able to use Regulation A offerings to raise capital as well as maintain liquid securities in the OTC market. The potential effect of the proposed rules on companies that delist from national securities exchanges is difficult to predict. Companies that would like to maintain liquidity for their securities trading in the OTC market and face a less burdensome disclosure regime than entailed by Exchange Act registration might find Regulation A useful. On the other hand, companies that delist from national securities exchanges because they want to minimize disclosure and

[647] *See* Paul Hastings Letter.

[648] Rule 15c2–11(a)(5) currently provides that issuer information must be made available upon request to any person expressing an interest in a transaction in that issuer's security with the broker-dealer. This requirement may have little practical effect because only the first broker-dealer to publish quotations must have the information, and an investor might find it difficult to identify that broker-dealer. In fact, that broker-dealer may no longer be publishing quotations.

cease reporting might find the proposed disclosure requirements under Regulation A too burdensome, and might prefer other offering methods to raise capital (e.g., Regulation D).

The potential future use of Regulation A could also depend on the willingness of financial intermediaries such as placement agents or underwriters to participate in offerings. For example, in registered offerings, underwriters are frequently used to identify potential investors and are primarily responsible for facilitating a successful distribution of the offered securities. Some commenters claim that underwriters are generally unwilling to participate in small offerings because the commissions are not sufficient to warrant their involvement.[649] If the services of financial intermediaries continue to be limited for small offerings under Regulation A as proposed to be amended, it could be difficult for Regulation A issuers to place all offered securities. As noted in the GAO report,[650] increasing the allowed maximum Regulation A offering amount may make placement agents more inclined to participate in offerings because they would be able to collect more compensation from larger offerings. Furthermore, underwriter costs for offerings under Regulation A as proposed to be amended may be lower than for registered public offerings because underwriters would not take on liability under Section 11 of the Securities Act (although they could be liable as sellers under Section 12(a)(2)). Finally, if the requirements for qualification of Regulation A offerings are substantially lighter than the requirements for registered offerings, an underwriting market could develop to provide expedient Regulation A underwriting services.

C. Request for Comment

Throughout this release, we have discussed the anticipated costs and benefits of the proposed rules and their potential impact on efficiency, competition and capital formation. We request and encourage any interested person to submit comments regarding the proposed rules, our analysis of the potential effects of the rules and other matters that may have an effect on the proposed rules. We request comment from the point of view of issuers, investors and other market participants. With regard to any comments, we note that such comments are of particular assistance to us if accompanied by supporting data and analysis of the issues addressed in those comments. We also are interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we may have overlooked. We urge commenters to be as specific as possible.

Request for Comment

128. What types of companies (*e.g.,* in terms of size, industry, age, etc.) would most likely rely on the amended Regulation A exemption? Would Exchange Act reporting companies, which are ineligible to rely on proposed Regulation A, consider raising additional capital through Regulation A by first terminating or suspending their reporting requirements?

129. Are investors in private companies likely to use the amended Regulation A exemption to exit their investments? Would eliminating current Rule 251(b), which prohibits resales by affiliated parties unless the issuer has had operating income in at least one of the last two years, affect fraud in this market?

130. How likely is the amended Regulation A exemption to attract companies that are considering a traditional IPO? What types of companies (*e.g.,* in terms of size, industry, age, etc.) would prefer a Regulation A offering to a traditional IPO? How would the cost of a traditional IPO compare to the cost of a Regulation A offering? Could a Regulation A offering serve as a stepping stone for a future traditional IPO or a national securities exchange listing?

131. How likely is the amended Regulation A exemption to attract companies that are considering offerings relying on Rule 506(b) or Rule 506(c) of Regulation D? What would be the costs and benefits from relying on the amended Regulation A exemption versus Rule 506(b) or Rule 506(c) of Regulation D? Please provide estimates, where possible.

132. What is the economic effect of the proposed investment limitation in Tier 2 Regulation A offerings? What types of issuers and investors are most likely to be affected by this restriction? Will this restriction enhance investor protection? What would be the economic effect of imposing a similar restriction on Tier 1 Regulation A offerings?

133. Would the amended Regulation A exemption attract intermediaries (e.g., broker-dealers or underwriters) to the market for Regulation A offerings? How would the presence of intermediaries change the cost structure for Regulation A issuers? Would the amended Regulation A exemption make it economically feasible for intermediaries to serve as market makers and provide research and analyst coverage? Would the presence of intermediaries likely increase the chances that a wider variety of investors will participate in Regulation A offerings?

134. Do the proposed disclosure requirements help ensure that investors have a reasonable understanding of the risks and costs of investing in Regulation A securities? If not, what additional requirements would further mitigate the associated risks? How would the costs and benefits of the requirements compare to the costs and benefits of the disclosure that currently exists for securities offered under the current Regulation A requirements? How would the costs and benefits compare to other exempt offering methods? Please provide estimates, where possible.

135. How would the proposed preemption of state blue sky laws for offerings made to qualified purchasers, as we propose to define that term, affect the costs and benefits of Tier 1 and Tier 2 Regulation A offerings? Please provide estimates, where possible. Would the proposed blue sky law preemption affect fraud and investor protection and capital formation in this market?

136. The Commission is interested in receiving comments, views, estimates and data on all aspects of the proposal and the following:

- Expected size of the Regulation A market (*e.g.,* number of offerings, number of issuers, size of offerings, number of investors, etc., as well as information comparing these estimates to the current baseline);
- Overall economic impact of the proposed rules; and
- Any other aspect of the economic analysis.

137. What would be the economic impact of the policy alternatives discussed in the proposed rules?

V. Paperwork Reduction Act

A. Background

Certain provisions of the proposed rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[651] We are submitting the proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[652] The titles for the collections of information are:

[649] *See, e.g.,* Karr Tuttle Letter.

[650] *See* GAO–12–839, ''Factors that May Affect Trends in Regulation A Offerings'', (July 3, 2012).

[651] 44 U.S.C. 3501 *et seq.*

[652] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

(1) ''Regulation A (Form 1–A and Form 2–A)'' (OMB Control Number 3235–0286);

(2) ''Form 1–K'' (a proposed new collection of information);

(3) ''Form 1–SA'' (a proposed new collection of information);

(4) ''Form 1–U'' (a proposed new collection of information);

(5) ''Form 1–Z'' (a proposed new collection of information);

(6) ''Form ID'' (OMB Control Number 3235–0328).

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. We are applying for OMB control numbers for the proposed new collections of information in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13, and OMB has not yet assigned a control number to each new collection. Responses to these new collections of information would be mandatory for issuers raising capital under Regulation A.

B. Estimate of Issuers

The number, type and size of the issuers that would participate in offerings of securities under Regulation A, as proposed to be amended, is uncertain, but data regarding current market practices may help identify the number and characteristics of potential issuers that may offer and sell securities in reliance on the proposed rules.[653] We estimate that there are currently approximately 22 Regulation A filings by issuers per year.[654] While it is not possible to predict the number of filings by issuers relating to offerings made in reliance on the proposed amendments to Regulation A, for purposes of this analysis, we estimate that the number would be 250 offerings per year. We base this estimate on (i) the current approximate number of issuers that, on average in recent years, filed a Form 1–A to qualify a Regulation A offering of securities under the existing rules, plus (ii) 95 percent of the estimated number of registered offering of securities of up to $50 million,[655] plus (iii) an additional four offerings that either would not otherwise occur or would have been conducted in reliance on another exemption from Securities Act registration, such as Regulation D.[656] We believe issuers that have either previously relied on Regulation A or have offered securities in amounts up to the revised offering ceiling of $50 million in a twelve-month period would be similar to the potential issuers that may participate in offerings of securities under Regulation A as proposed to be amended.

C. Estimate of Issuer Burdens

1. Regulation A (Form 1–A and Form 2–A)

Currently, Regulation A requires issuers to file a Form 1–A: Offering Statement and a Form 2–A: Report of Sales and Uses of Proceeds with the Commission. Regulation A has 1.00 administrative burden hour associated with it, while current Form 1–A takes approximately 608.00 hours to prepare and Form 2–A takes approximately 12.00 hours to prepare.[657] We do not anticipate that the 1.00 administrative burden hour associated with Regulation A would change as a result of the proposal. As discussed more fully below, we believe the burden hours associated with Form 1–A would change, while Form 2–A and the associated burden hours would be eliminated as a result of today's proposal.[658]

Under the proposed rules, an issuer conducting a transaction in reliance on Regulation A would be able to conduct either a Tier 1 offering or a Tier 2 offering.[659] In either case, a Regulation A issuer would continue to be required to file with the Commission specified disclosures on a Form 1–A: Offering Statement.[660] An issuer also would file amendments to Form 1–A to reflect comments from Commission staff and to disclose material changes in the disclosure previously provided to the Commission or investors.[661] In light of the proposed electronic filing requirements for Regulation A offering materials discussed above,[662] issuers would no longer be required to file a manually signed copy of the Form 1–A with the Commission.[663] Issuers would, however, be required to manually sign a copy of the offering statement before or at the time of non-public submission or filing that would have to be retained by the issuer for a period of five years and produced to the Commission, upon request.[664] As issuers are currently required to manually sign the Form 1–A and file it with the Commission, we do not anticipate the proposed Form 1–A retention requirement would alter an issuer's compliance burden. As proposed, Form 1–A is similar to existing Form 1–A. In some instances, Form 1–A, as proposed, would contain fewer disclosure items than existing Form 1–A (*e.g.,* Part I (Notification) of Form 1–A would not require disclosure of ''Affiliate Sales''; Part II (Offering Circular) of Form 1–A would require a description of the issuer's business for a period of three years, rather than five years). Part II of Form 1–A would no longer permit disclosure in reliance on the Model A disclosure format, but direct issuers to follow the provisions of Model B (renamed ''Offering Circular'') or Part I of Form S–1.[665] In other instances, Form 1–A would contain more disclosure items than existing Form 1–A (*e.g.,* Part I of Form 1–A would require additional disclosure of certain summary information regarding the issuer and the offering; Part II of Form 1–A would require a more detailed management discussion and analysis of the issuer's liquidity and capital resources and results of operations). Form 1–A would require disclosure similar to that required in a Form S–1 registration statement for registered offerings under the Securities Act, but it would require fewer disclosure items (*e.g.,* it would require less disclosure about the compensation of officers and directors, and less detailed management discussion and analysis of the issuer's liquidity and capital resources and results of operations) and, under certain circumstances, not require issuers to file audited financial statements.[666]

We expect that issuers relying on proposed Regulation A for Tier 1 offerings of up to $5 million in a twelve-month period would largely be at a similar stage of development to issuers relying on existing Regulation A and would therefore not experience an increased compliance burden with proposed Form 1–A. Given the increased annual offering threshold of $50 million, however, we expect that issuers conducting Tier 2 offerings pursuant to proposed Regulation A may be at a more advanced stage of

[653] *See* Section I.C. above for a discussion of the data regarding current market practices.

[654] From 2009 through 2012, there were 87 Form 1-As filed with the Commission, and 19 qualified offering statements during this same period. *See also* figures for current use of Regulation A in Section I.C. above.

[655] *See* figures and graphs for registered offerings cited in Section IV. above (citing approximately 236 registered initial public offerings or follow-on offerings of up to $50 million in calendar year 2012).

[656] *See* figures and graphs for registered and exempt offerings under Regulation D cited in Section IV.A.1.a(2). above (citing approximately 12,000 issuances of up to $50 million in reliance on Regulation D in calendar year 2012).

[657] *See* Form 1–A at 1; Form 2–A at 1.

[658] *See* discussion in Section II.E.1. above.

[659] *See* discussion in Section II.B.3. above.

[660] *See* 17 CFR 239.91 (Form 1–A) (OMB Control Number 3235–0286) and proposed Rule 252.

[661] *See* proposed Rule 252(h).

[662] *See* discussion in Section II.C.1. above.

[663] *See* discussion in Section II.C.3.d. above.

[664] *See* Instruction 2. to Signatures in Form 1–A.

[665] *See* discussion at Section II.C.3.b. above.

[666] *See* discussion in Section II.C.3.b. above.

development than issuers offering securities at a lower threshold. In such cases, the complexity of the required disclosure and, in turn, the burden of compliance with the requirements of proposed Form 1–A may be greater for some issuers than for issuers relying on existing Form 1–A.[667] We estimate that the total burden to prepare and file proposed Form 1–A, including any amendments to the form, would increase on average across all issuers in comparison to existing Form 1–A to approximately 750.00 hours.[668] We believe that the burden hour response of proposed Form 1–A would be greater than the current estimated 608.00 burden hours per response, but would not be as great as the current estimated 972.32 burden hours per response for Form S–1. We estimate that the issuer would internally carry 75 percent of the burden of preparation and that outside professionals[669] retained by the issuer at an average cost of $400 per hour would carry 25 percent.[670]

We estimate that compliance with the requirements of a Form 1–A provided in connection with transactions made in reliance on proposed Regulation A would require 187,500 burden hours (250 offering statements × 750.00 hours/offering statement) in aggregate each year, which corresponds to 140,625 aggregated hours carried by the issuer internally (250 offering statements × 750.00 hours/offering statement × 0.75) and aggregated costs of $18,750,000 (250 offering statements × 750.00 hours/offering statement × 0.25 × $400) for the services of outside professionals. These estimates include the time and cost of collecting the information, preparing and reviewing disclosure, filing documents and retaining records. In deriving our estimates, we recognize that the burdens likely would vary among individual issuers based on a number of factors, including the stage of development of the business, the amount of capital an issuer seeks to raise and the number of years since inception of the business. We believe that some issuers would experience costs in excess of the average and some issuers may experience less than the average costs.

2. Form 1–K: Annual Report

Under the proposed rules, any issuer that conducts a Tier 2 offering in reliance on proposed Regulation A would be required to file an annual report with the Commission on Form 1–K: Annual Report.[671] A manually-signed copy of the Form 1–K would have to be executed by the issuer and related signatories before or at the time of electronic filing, retained by the issuer for a period of five years and, if requested, produced to Commission.[672] We do not anticipate that the proposed requirement to retain a manually-signed copy of the Form 1–K would affect an issuer's compliance burden. We believe the compliance burden on disclosure provided in Form 1–K would be less than the compliance burden associated with reporting required under Exchange Act Section 13 or 15(d). We also believe the burden would be more analogous to the compliance burden attendant to proposed Form 1–A. Unlike the disclosure required in Form 1–A, however, offering-specific disclosure in Form 1–K would not be required. Additionally, under certain circumstances, an issuer would also be required to disclose information similar to the information previously required of issuers on Form 2–A.[673] Unlike the disclosure previously required on Form 2–A, however, an issuer would not be required to provide disclosure about the use of proceeds. We estimate that the burden to prepare and file a Form 1–K would be less than that required to prepare and file a Form 1–A. We estimate that compliance with proposed Form 1–K would result in a burden of 600.00 hours per response.[674] We further estimate that 75 percent of the burden of preparation would be carried by the issuer internally and that 25 percent would be carried by outside professionals[675] retained by the issuer at an average cost of $400 per hour.[676] While we do not know the exact number of issuers that will seek to qualify offerings in excess of $5 million in a twelve-month period in reliance on proposed Regulation A, we estimate 75 percent of all issuers filing a Form 1–A (or 188 issuers, 250 issuers × .75) will enter the proposed ongoing reporting regime and therefore be required to file proposed Form 1–K.

We estimate that compliance with the requirements of Form 1–K for issuers with an ongoing reporting obligation under proposed Regulation A would require 112,800 burden hours (188 issuers × 600.00 hours/issuer) in the aggregate each year, which corresponds to 84,600 hours carried by the issuer internally (188 issuers × 600.00 hours/issuer × 0.75) and costs of $11,280,000 (188 issuers × 600.00 hours/issuer × 0.25 × $400) for the services of outside professionals.

3. Form 1–SA: Semiannual Report

Under the proposed rules, any issuer that conducts a Tier 2 offering in reliance on proposed Regulation A would be required to file a semiannual report with the Commission on Form 1–SA: Semiannual Report.[677] A manually-signed copy of the Form 1–SA would have to be executed by the issuer and related signatories before or at the time of electronic filing, retained by the issuer for a period of five years and, if requested, produced to Commission.[678] We do not anticipate that the proposed requirement to retain a manually-signed copy of the Form 1–SA would affect an issuer's compliance burden. Issuers would be required to provide semiannual updates on proposed Form 1–SA, which, much like a Form 10–Q,[679] would consist primarily of financial statements and MD&A. Unlike Form 10–Q, Form 1–SA would not require disclosure regarding quantitative and qualitative market risk or controls and procedures.[680] We estimate, however, that on balance the reduction in burden attributable to eliminating these two items in Form 1–SA would be offset by the increased burden associated with requiring financial statement disclosure covering six months, rather than three months. We therefore believe the per response compliance burden of Form 1–SA would be similar to the compliance burden for issuers filing a Form 10–Q under the Exchange Act.[681] Therefore,

[667] As noted above, we estimate the burden per response for preparing existing Form 1–A to be 608.00 hours. *See* Form 1–A at 1.

[668] By comparison, we estimate the burden per response for preparing Form S–1 to be 972.32 hours. *See* Form S–1, at 1.

[669] For example, an issuer may address certain disclosure requirements internally, but retain an outside professional to assist in the preparation of the financial statements.

[670] The costs of retaining outside professionals may vary depending on the nature of the professional services. For purposes of this PRA analysis, however, we estimate that such costs would be an average of $400/hour, which is consistent with the rate we typically estimate for outside legal services used in connection with public company reporting.

[671] *See* proposed Rule 257(b)(1).

[672] *See* General Instruction C. to proposed Form 1–K and related discussion in Section II.E.1.a. above.

[673] *See* discussion in Section II.E.1.a. above.

[674] We estimate that the burden of preparing the information required by Form 1–K would be approximately 3/4 of the burden for the Form 1–A due to the lack of offering-specific disclosure and an issuer's ability to update previously-provided disclosure.

[675] *See* fn. 669 above.

[676] *See* fn. 670 above.

[677] *See* proposed Rule 257(b)(3).

[678] *See* General Instruction C. to proposed Form 1–SA and related discussion in Section II.E.1.b. above.

[679] 17 CFR 249.308a.

[680] *See* discussion in Section II.E.1.b. above.

[681] Issuers would, however, have to file Form 1–SA, a semiannual report, less frequently than Form 10–Q, a quarterly report.

for purposes of this PRA, we estimate that the burden to prepare and file a Form 1–SA would equal the burden to prepare and file Form 10–Q, which we have previously estimated as 187.43 hours per response.[682] Unlike proposed Form 1–K, Form 1–SA does not require the provision of audited financial statements. We therefore believe, in comparison to Form 1–K, issuers filing a Form 1–SA will be able to handle more of the required disclosures internally. Accordingly, we estimate that 85 percent of the burden of preparation would be carried by the issuer internally and that 15 percent would be carried by outside professionals retained by the issuer at an average cost of $400 per hour.[683]

We estimate that compliance with the requirements of Form 1–SA for issuers with an ongoing reporting obligation under proposed Regulation A would require 23,428.75 burden hours (188 issuers × 187.43 hours/issuer) in the aggregate each year, which corresponds to 19,914.44 hours carried by the issuer internally (188 issuers × 187.43 hours/issuer × 0.85) and costs of $1,405,725 (188 issuers × 187.43 hours/issuer × 0.15 × $400) for the services of outside professionals.

4. Form 1–U: Current Reporting

Under the proposed rules, any issuer that conducts a Tier 2 offering in reliance on proposed Regulation A would be required to promptly file current reports on proposed Form 1–U with the Commission.[684] A manually-signed copy of the Form 1–U would have to be executed by the issuer and related signatories before or at the time of electronic filing, retained by the issuer for a period of five years and, if requested, produced to Commission.[685] We do not anticipate that the proposed requirement to retain a manually-signed copy of the Form 1–U would affect an issuer's compliance burden. Issuers would be required to file such reports in the event they experience certain corporate events, much the same way as issuers subject to an ongoing reporting obligation under the Exchange Act file current reports on Form 8–K.[686] The requirement to file a Form 1–U, however, would be triggered by significantly fewer corporate events than those that trigger a reporting requirement on a Form 8–K, and, as proposed, the form itself would be slightly less burdensome for issuers to fill out.[687] Thus, the frequency of filing the required disclosure and the burden to prepare and file a Form 1–U would be considerably less than for Form 8–K. We estimate that the burden to prepare and file each current report would be 5.00 hours. While we do not know for certain how often an issuer would experience a corporate event that would trigger a current report filing on Form 1–U, we estimate that many issuers may not experience a corporate event that triggers reporting, while others may experience multiple events that trigger reporting. On average, we estimate that an issuer would be required to file one current report annually.[688] Therefore, we estimate that an issuer's compliance with proposed Form 1–U would result in an annual aggregate burden of 5.00 hours (1.00 current report annually × 5.00 hours per current report) per issuer.

As with Form 1–SA, we estimate that 85 percent of the burden of preparation would be carried by the issuer internally and that 15 percent would be carried by outside professionals retained by the issuer at an average cost of $400 per hour.[689] We estimate that compliance with the requirements of Form 1–U would require 940 burden hours (188 issuers × 1 current report annually × 5.00 hours per current report) in aggregate each year, which corresponds to 799 hours carried by the issuer internally (188 issuers × 5.00 hours/issuer/year × 0.85) and costs of $56,400 (188 issuers × 5.00 hours/issuer/year × 0.15 × $400) for the services of outside professionals.

5. Form 1–Z: Exit Report

Under the proposed rules, all Regulation A issuers would be required to file a notice under cover of Form 1–Z: Exit Report. Issuers conducting Tier 1 offerings would be required to file Part I of Form 1–Z that would disclose information similar to the information previously required of issuers on Form 2–A.[690] Issuers conducting Tier 2 offerings would also be required to disclose the same information as issuers conducting Tier 1 offerings in Part I of Form 1–Z, unless previously reported by the issuer on Form 1–K. Issuers conducting Tier 2 offerings would also be required to fill out Part II of Form 1–Z in order to notify investors and the Commission that it will no longer file and provide annual reports pursuant to the requirements of Regulation A.[691] In Tier 2 offerings, an issuers' obligations to file ongoing reports could be terminated at any time after completion of reporting for the fiscal year in which the offering statement was qualified,[692] if the securities of each class to which the offering statement relates are held of record by fewer than 300 persons and offers and sales made in reliance on a qualified offering statement are not ongoing. A manually-signed copy of the Form 1–Z would have to be executed by the issuer and related signatories before or at the time of electronic filing, retained by the issuer for a period of five years and, if requested, produced to Commission.[693] We do not anticipate that the proposed requirement to retain a manually-signed copy of the Form 1–Z would affect an issuer's compliance burden. We estimate that 50 percent of issuers with an ongoing reporting obligation under proposed Regulation A (or 94 issuers, 188 issuers with an ongoing reporting obligation × .50 of issuers filing a Form 1–Z) would file a Form 1–Z in the second fiscal year after qualification of the offering statement. Although we believe that the vast majority of issuers subject to ongoing reporting under Regulation A would qualify for termination in the second fiscal year after qualification, we believe that only half or 50 percent of such issuers would actually choose to terminate their reporting obligations. An issuer may have many reasons, such as a desire to facilitate continued quotations in the over-the-counter (''OTC'') markets pursuant to proposed revisions to Exchange Act Rule 15c2–11,[694] to continue reporting even though entitled to terminate reporting.

The Form 1–Z would be similar to the Form 15 that issuers file to provide notice of termination of the registration of a class of securities under Exchange Act Section 12(g) or to provide notice of the suspension of the duty to file reports required by Exchange Act Sections 13(a) or 15(d).[695] Therefore, we estimate that compliance with the proposed Form 1–Z would result in a similar burden as compliance with Form 15, a burden of 1.50 hours per response. We estimate

[682] *See* Form 10–Q, at 1.

[683] *See* fn. 670 above.

[684] *See* proposed Rule 257(b)(4).

[685] *See* General Instruction C. to proposed Form 1–U and related discussion in Section II.E.1.c. above.

[686] We estimate the burden per response for preparing a Form 8–K to be 5.71 hours. *See* Form 8–K, at 1.

[687] *See* discussion at Section II.E.1.c. above.

[688] We have previously estimated that on average issuers file one current report on Form 8–K annually. Although we believe that the frequency of filing a Form 1–U would be considerably less than a Form 8–K, to be conservative, we are estimating that each issuer would be required to file one Form 1–U per year.

[689] *See* fn. 670 above.

[690] *See* discussion in Section II.E.1.a. above.

[691] *See* proposed Rule 257(d).

[692] *See* proposed Rule 252(h)(2).

[693] *See* Instruction to proposed Form 1–Z and related discussion in Section II.E.4. above.

[694] *See* discussion in Section II.E.2. above.

[695] We currently estimate the burden per response for preparing a Form 15 to be 1.50 hours. *See* Form 15 at 1.

that compliance with proposed Form 1–Z would result in a burden of 141 hours (94 issuers filing Form 1–Z × 1.50 hours/issuer) in the aggregate during the second fiscal year after qualification of the offering statement for issuers terminating their reporting obligations.

6. Form ID Filings

Under the proposed rules, an issuer would be required to file specified disclosures with the Commission on EDGAR.[696] We anticipate that many issuers relying on proposed Regulation A for the first time would not have previously filed an electronic submission with the Commission and so would need to file a Form ID. Form ID is the application form for access codes to permit filing on EDGAR. The proposed rules would not change the form itself, but we anticipate that the number of Form ID filings would increase due to an increase in issuers relying on proposed Regulation A. For purposes of this PRA discussion, we estimate that 75 percent of the issuers who would seek to offer and sell securities in reliance on proposed Regulation A would not have previously filed an electronic submission with the Commission and would, therefore, be required to file a Form ID. As noted above, we estimate that approximately 250 issuers per year would seek to offer and sell securities in reliance on proposed Regulation A, which would correspond to approximately 188 additional Form ID filings. As a result, we estimate the additional annual burden would be approximately 28.20 hours (188 filings × 0.15 hours/filing).[697]

D. Collections of Information Are Mandatory

The collections of information required under proposed Rules 251 through 263 would be mandatory for all issuers seeking to rely on the Regulation A exemption. Responses on Form 1–A, Form 1–K, Form 1–SA, Form 1–U and Form 1–Z would not be confidential, although issuers may request confidential treatment for certain materials submitted in conjunction with the filings.[698] It is anticipated that most of this material would be made public when the offering is qualified. A Form 1–A that is submitted by an issuer with a confidential treatment request and later abandoned before being publicly filed with the Commission and responses on Form ID would, however, remain non-public, absent a request for such information under the Freedom of Information Act.[699] The hours and costs associated with preparing and filing forms and retaining records constitute reporting and cost burdens imposed by the collection of information requirements.

E. Request for Comment

The Commission invites comment on all of the above estimates. Pursuant to 44 U.S.C. 3506(c)(2)(A), the Commission requests comment in order to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of our functions, including whether the information would have practical utility; (2) evaluate the accuracy of our estimate of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the proposed collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the proposed collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File No. S7–11–13. Requests for materials submitted to OMB by the Commission, with regard to these collections of information, should be in writing, with reference to File No. S7–11–13, and they should be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to the following:

- proposed amendments to Rules 251 through 263 of Regulation A, Form 1–A, Rule 4a–1 under the Trust Indenture Act, Rule 15c2–11 under the Exchange Act, and Item 101 of Regulation S–T;
- proposed new Forms 1–K, 1–SA, 1–U, and 1–Z; and
- the proposed rescission of Form 2–A.

A. Reasons for the Proposed Action

The proposed rule amendments, new forms, and rescission of Form 2–A are designed to implement the requirements of Section 3(b)(2) of the Securities Act and to make certain conforming changes based on our proposed amendments to Regulation A. Section 3(b)(2) directs the Commission to adopt rules adding a class of securities exempt from the registration requirements of the Securities Act for offerings of up to $50 million of securities within a twelve-month period, subject to various additional terms and conditions set forth in Section 3(b)(2) or as provided for by the Commission as part of the rulemaking process.

B. Objectives

Our primary objective is to implement Section 401 of the JOBS Act, as mandated by Section 3(b)(2), by expanding and updating Regulation A in a manner that makes public offerings of up to $50 million less costly and more flexible while providing a framework for regulatory oversight to protect investors. In so doing, we have endeavored to craft a workable revision of Regulation A that would both promote small company capital formation and provide for meaningful investor protection. We believe that issuers, particularly small businesses, benefit from having a wide range of capital-raising strategies available to them, and that an expanded and updated Regulation A could serve as a valuable option that augments the exemptions more frequently relied upon, thereby facilitating capital formation for small businesses.

C. Legal Basis

The amendments are being proposed under the authority set forth in Sections 3(b), 19 and 28 of the Securities Act of 1933, as amended, and Section 401 of the JOBS Act.[700]

D. Small Entities Subject to the Proposed Rules

For purposes of the Regulatory Flexibility Act, under our rules, an

[696] *See* proposed Rules 252 and 257.

[697] We currently estimate the burden associated with Form ID is 0.15 hours per response. *See* Form ID at 1.

[698] *See* Commission Rule 83, 17 CFR 200.83.

[699] 5 U.S.C. 552. The Commission's regulations that implement the Freedom of Information Act are at 17 CFR 200.80 *et seq.*

[700] Public Law 112–106, –401, 126 Stat. 307 (April 5, 2012).

issuer (other than an investment company) is a ''small business'' or ''small organization'' if it has total assets of $5 million or less as of the end of its most recent fiscal year and is engaged or proposing to engage in an offering of securities which does not exceed $5 million.[701]

While proposed Regulation A would be available for offerings of up to $50 million in securities in a twelve-month period, only offerings up to $5 million in securities in a twelve-month period would be offerings by small entities. It is difficult to predict the number of small businesses that would use proposed Regulation A due to the many variables created by our proposed amendments. Nevertheless, we believe that proposed Regulation A will increase the overall number of Regulation A offerings of $5 million or less due to the ability to non-publicly submit draft offering statements for review by the Commission's staff, the expanded use of solicitation of interest materials, the ability to electronically file and transmit offering statements and offering circulars, the potential for preemption of state regulatory review if the issuer elects to conduct a Tier 2 offering, and other significant changes summarized in Section II.A. above.

Regulation A is currently limited to offerings with an aggregate offering price of $5 million or less.[702] From 2009 through 2012, 87 issuers filed offering statements and 19 offering statements were qualified by the Commission, or an average of approximately 5 qualified offering statements per year. Of the 19 offering statements that were qualified, 12 included financial statements indicating that the issuer had total assets of $5 million or less (as of the most recent balance sheet included in such issuer's offering statement at the time of qualification), or an average of approximately 3 qualified offering statements per year in which the issuer indicated it had total assets of $5 million or less. Based on these data, and for the reasons discussed above, we believe that at least 3 small businesses will conduct offerings under proposed Regulation A per year.

E. Reporting, Recordkeeping, and Other Compliance Requirements

As discussed above in Section II.C., the proposed regulation includes reporting, recordkeeping and other compliance requirements. In particular, the proposed regulation would impose certain reporting requirements on issuers offering and selling securities in a transaction relying on the exemptions provided by Section 3(b) and Regulation A. The proposed rules would require that issuers relying on the exemption file with the Commission certain information specified in Form 1–A about the issuer and the offering, including the issuer's contact information; use of proceeds from the offering; price or method for calculating the price of the securities being offered; business and business plan; property; financial condition and results of operations; directors, officers, significant employees and certain beneficial owners; material agreements and contracts; and past securities sales.[703] Such issuers would also be required to provide information on the material factors that make an investment in the issuer speculative or risky; dilution; the plan of distribution for the offering; executive and director compensation; conflicts of interest and related party transactions; and financial statements. Similar to existing Regulation A, for Tier 1 offerings, Form 1–A would not require the financial statements to be audited unless the issuer has already had them audited for another purpose.[704]

As discussed above in Section II.E., issuers conducting Tier 2 offerings would also be required to file annual reports on proposed new Form 1–K, semiannual updates on proposed new Form 1–SA, current event reporting on proposed new Form 1–U, and to provide notice to the Commission of the termination of their ongoing reporting obligations on proposed new Form 1–Z. A Tier 1 offering would be limited to $5 million in a twelve-month period. Issuers in a Regulation A offering that would result in exceeding $5 million in a twelve-month period would be required to comply with the requirements for Tier 2 offerings, including being subject to ongoing reporting.

An issuer subject to the Tier 2 periodic and current event reporting described above would be required to provide information annually on Form 1–K, including the issuer's business and business plan; conflicts of interest and related party transactions; executive and director compensation; financial condition and results of operations; and audited financial statements. The semiannual update on Form 1–SA would consist primarily of unaudited, interim financial statements for the issuer's first two fiscal quarters and information regarding the issuer's financial condition and results of operations. The current event reporting on Form 1–U would require issuers to disclose certain major developments, including changes of control; changes in the principal executive officer and principal financial officer; fundamental changes in the nature of business; material transactions or corporate events; unregistered sales of five percent or more of outstanding equity securities; changes in the issuer's certifying accountant; and non-reliance on previous financial statements.

Unlike the other ongoing reporting requirements, Form 1–Z would only be required for issuers in both Tier 1 and Tier 2 offerings to report summary information about a completed or terminated Regulation A offering. Issuers conducting Tier 2 offerings would, however, be subject to the additional provision in Form 1–Z that relates to the voluntary termination of an issuer's continuous reporting obligations under Tier 2 and thus its use by small entities would be limited. Also, the information that is required in Form 1–Z is minimal.

Although we estimated that approximately 188 issuers under proposed Regulation A would enter the proposed ongoing reporting regime every year, we believe that very few small businesses would do so. A small business under our rules would only be required to file ongoing reports under Regulation A if a Regulation A offering would result in exceeding the Tier 1 annual offering limitation of $5 million in a twelve-month period.

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no federal rules that conflict with or duplicate the proposed rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective of our proposals, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments and

[701] 17 CFR 230.157. We note that currently this rule refers to ''the dollar limitation prescribed by Section 3(b) of the Securities Act.'' As noted earlier in this release, the JOBS Act amended Section 3(b) of the Securities Act. The former Section 3(b) is now Section 3(b)(1), and a new Section 3(b)(2) was added. To retain the meaning of 17 CFR 230.157, we are proposing a technical correction to replace the reference to ''Section 3(b)'' with a reference to ''Section 3(b)(1).''

[702] As explained in Section II.B.3. above, the aggregate offering price under existing and proposed Regulation A includes prior sales generated from Regulation A offerings that occurred in the twelve months preceding the current offering.

[703] *See* discussion in Section II.C.3. above.

[704] The distinction between a Tier 1 offering and Tier 2 offering are discussed in Section II.B.3. above.

rules, we considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rules, or any parts of the rules, for small entities.

We considered whether it is necessary or appropriate to establish different compliance or reporting requirements, timetables, or to clarify, consolidate, or simplify compliance and reporting requirements under the proposed rules for small entities. With respect to using performance rather than design standards, we used performance standards to the extent appropriate under the statute. For example, issuers have the flexibility to customize the presentation of certain disclosures in their offering statements.[705] We also considered whether there should be an exemption from coverage of the rules, or any parts of the rule for small entities. As discussed above, we do propose different compliance reporting requirements for issuers of less than $5 million that conduct an offering under Tier 1. For example, we are not proposing to subject entities likely to be small entities to ongoing reporting requirements and the requirement to provide audited financial statements. We also considered providing additional reductions in the disclosures required by Form 1–A for issuers of less than $5 million, but we believe that different compliance requirements for Form 1–A users may lead to investor confusion or reduced investor confidence in Regulation A offerings, especially considering that the disclosure requirements are already less than what is required by Form S–1 for registered offerings. Further, we anticipate that the burden for filling out a Form 1–A should be less for companies at an earlier stage of development and with less extensive operations that are likely to be small entities.[706] For these reasons, we believe that small entities should be covered by the proposed rules to the extent specified above. We believe that the proposed rules should have limited impact on small entities and we are not proposing to establish different compliance requirements for small entities other than what we have proposed. We do, however, seek comment on alternatives that may reduce any potential adverse impact on small entities but accomplish similar objectives.

H. Request for Comment

We encourage comments with respect to any aspect of this initial regulatory flexibility analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposals;
- The existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and
- How to quantify the impact of the proposed rules.

We request members of the public to submit comments and ask them to describe the nature of any impact on small entities they identify and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[707] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

We request those submitting comments to provide empirical data and other factual support for their views if possible.

VIII. Statutory Basis and Text of Proposed Amendments

The amendments and forms contained in this document are being proposed under the authority set forth in Sections 3(b), 19 and 28 of the Securities Act of 1933, as amended, and Section 401 of the JOBS Act.[708]

Text of Proposed Amendments

List of Subjects in 17 CFR Part 230, 232, 239, 240 and 260

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for part 230 is revised to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, § 201(a), § 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 2. § 230.157 paragraph (a) is revised to read as follows:

§ 230.157 Small entities under the Securities Act for purposes of the Regulatory Flexibility Act.

* * * * *

(a) When used with reference to an issuer, other than an investment company, for purposes of the Securities Act of 1933, means an issuer whose total assets on the last day of its most recent fiscal year were $5 million or less and that is engaged or proposing to engage in small business financing. An issuer is considered to be engaged or proposing to engage in small business financing under this section if it is conducting or proposes to conduct an offering of securities which does not exceed the dollar limitation prescribed by section 3(b)(1) of the Securities Act.

* * * * *

3. Revise the undesignated center heading and §§ 230.251 through 230.263 to read as follows:

* * * * *

Regulation A

Sec.

230.251 Scope of exemption.
230.252 Offering statement.
230.253 Offering circular.
230.254 Preliminary offering circular.
230.255 Solicitation of interest communications.
230.256 Definition of ''qualified purchaser.''
230.257 Periodic and current reporting; exit report.

[705] *See* Section II.C. above.

[706] *See* discussion in Section V.C.1. above.

[707] Public Law 104–121, Title II, 110 Stat. 857 (1996).

[708] Public Law 112–106, –401, 126 Stat. 307 (April 5, 2012).

230.258 Suspension of the exemption.
230.259 Withdrawal or abandonment of offering statements.
230.260 Insignificant deviations from a term, condition or requirement of Regulation A.
230.261 Definitions.
230.262 Disqualification provisions.
230.263 Consent to service of process.

* * * * *

■ 4. §§ 230.251 through 230.263 are revised to read as follows:

§ 230.251 Scope of exemption.

(a) *Tier 1 and Tier 2.* A public offer or sale of eligible securities, as defined in Rule 261 (§ 230.261), that meets the following terms and conditions shall be exempt under section 3(b) from the registration requirements of the Securities Act of 1933 (the ''Securities Act'') (15 U.S.C. 77a *et seq.*):

(1) Offerings pursuant to Regulation A in which the sum of all cash and other consideration to be received for the securities being offered (''aggregate offering price'') plus the aggregate offering price for all securities sold pursuant to other Regulation A offering statements within the twelve months before the start of and during the current offering of securities does not exceed $5,000,000, including not more than $1,500,000 offered by all selling securityholders (''Tier 1 offerings''); and

(2) Offerings pursuant to Regulation A in which such sum does not exceed $50,000,000, including not more than $15,000,000 offered by all selling securityholders (''Tier 2 offerings'').

Note: Where a mixture of cash and non-cash consideration is to be received, the aggregate offering price must be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency must be translated into United States currency at a currency exchange rate in effect on or at a reasonable time before the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price must be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Valuations of non-cash consideration must be reasonable at the time made. If convertible securities or warrants are being offered, the underlying securities must also be qualified and the aggregate offering price must include the conversion, exercise, or exchange price of such securities.

(b) *Issuer.* The issuer of the securities:

(1) Is an entity organized under the laws of the United States or Canada, or any State, Province, Territory or possession thereof, or the District of Columbia, with its principal place of business in the United States or Canada;

(2) Is not subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78a *et seq.*) immediately before the offering;

(3) Is not a development stage company that either has no specific business plan or purpose, or has indicated that its business plan is to merge with an unidentified company or companies;

(4) Is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48));

(5) Is not issuing fractional undivided interests in oil or gas rights, or a similar interest in other mineral rights;

(6) Is not, and has not been, subject to any order of the Commission entered pursuant to Section 12(j) of the Exchange Act (15 U.S.C. 78*l*(j)) within five years before the filing of the offering statement;

(7) Has filed with the Commission all the reports it was required to file, if any, pursuant to Rule 257 (§ 230.257) during the two years before the filing of the offering statement (or for such shorter period that the issuer was required to file such reports); and

(8) Is not disqualified under Rule 262 (§ 230.262).

(c) *Integration with other offerings.* Offers and sales made in reliance on this Regulation A will not be integrated with:

(1) Prior offers or sales of securities; or

(2) Subsequent offers or sales of securities that are:

(i) Registered under the Securities Act, except as provided in Rule 255(e) (§ 230.255(e));

(ii) Made pursuant to Rule 701 (§ 230.701);

(iii) Made pursuant to an employee benefit plan;

(iv) Made pursuant to Regulation S (§ 230.901–905);

(v) Made more than six months after the completion of the Regulation A offering; or

(vi) Made in reliance on Regulation Crowdfunding (§ 230.XX–XX).

Note: If these safe harbors do not apply, whether subsequent offers and sales of securities will be integrated with the Regulation A offering will depend on the particular facts and circumstances. See Securities Act Release No. 4552 (November 6, 1962) [27 FR 11316].

(d) *Offering conditions*—(1) *Offers.*

(i) Except as allowed by Rule 255 (§ 230.255), no offer of securities may be made unless a Form 1–A offering statement has been filed with the Commission.

(ii) After the Form 1–A offering statement has been filed, but before it is qualified:

(A) Oral offers may be made;

(B) Written offers pursuant to Rule 254 (§ 230.254) may be made; and

(C) Communications pursuant to Rule 255 (§ 230.255) may be made.

(iii) After the Form 1–A offering statement has been qualified, any written offers must be accompanied with or preceded by the most recent offering circular filed with the Commission for such offering.

(2) *Sales.*

(i) No sale of securities may be made until:

(A) The Form 1–A offering statement has been qualified;

(B) A Preliminary Offering Circular is delivered at least 48 hours before the sale to any person that before qualification of the offering statement had indicated an interest in purchasing securities in the offering, including those persons that responded to an issuer's solicitation of interest materials; and

(C) For Tier 2 offerings, no sale may be made to a purchaser if the aggregate purchase price paid by such purchaser for securities in the offering (including any conversion, exercise, or exchange price for securities that are convertible, exercisable or exchangeable for other securities) is more than ten percent (10%) of the greater of such purchaser's annual income and net worth, based on the representations of the purchaser (with annual income and net worth for natural person purchasers determined as provided in Rule 501 (§ 230.501), provided that the issuer does not know, at the time of sale, that any such representation is untrue.

(ii) In a transaction that represents a sale by the issuer or an underwriter, or a sale where there is not an exclusion or exemption from the requirement to deliver a Final Offering Circular pursuant to paragraph 251(d)(2)(iii) of this rule, each underwriter or dealer selling in such transaction must deliver to each purchaser from it, not later than two business days following the completion of such sale, a copy of the Final Offering Circular or, in lieu of such Final Offering Circular, a notice to the effect that the sale was made pursuant to a qualified offering statement that includes the uniform resource locator (''URL'') where the Final Offering Circular, or the offering statement of which such Final Offering Circular is part, may be obtained on EDGAR and contact information sufficient to notify a purchaser where a

request for a Final Offering Circular can be sent and received in response. If the sale was by the issuer and was not effected by or through an underwriter or dealer, the issuer is responsible for sending the Final Offering Circular or notice.

(iii) Sales by a dealer (including an underwriter no longer acting in that capacity for the security involved in such transaction) that take place within 90 calendar days after the qualification of the Regulation A offering statement may be made only if the dealer delivers a copy of the current offering circular to the purchaser before or with the confirmation of sale, provided that where an offering statement relates to offerings to be made from time to time pursuant to paragraph (d)(3) of this rule, such 90 calendar day period shall commence on the day of the first bona fide offering of securities under such offering statement; and

(3) *Continuous or delayed offerings.* (i) Continuous or delayed offerings may be made under this Regulation A, so long as the offering statement pertains only to:

(A) Securities that are to be offered or sold solely by or on behalf of a person or persons other than the issuer, a subsidiary of the issuer, or a person of which the issuer is a subsidiary;

(B) Securities that are to be offered and sold pursuant to a dividend or interest reinvestment plan or an employee benefit plan of the issuer;

(C) Securities that are to be issued upon the exercise of outstanding options, warrants, or rights;

(D) Securities that are to be issued upon conversion of other outstanding securities;

(E) Securities that are pledged as collateral; or

(F) Securities the offering of which will be commenced within two calendar days after the qualification date, will be made on a continuous basis, may continue for a period in excess of 30 days from the date of initial qualification, and will be offered in an amount that, at the time the offering statement is qualified, is reasonably expected to be offered and sold within two years from the initial qualification date. These securities may be offered and sold only if not more than three years have elapsed since the initial qualification date of the offering statement under which they are being offered and sold; provided, however, that if a new offering statement has been filed pursuant to this paragraph (d)(3)(i)(F), securities covered by the prior offering statement may continue to be offered and sold until the earlier of the qualification date of the new offering statement or 180 days after the third anniversary of the initial qualification date of the prior offering statement. Before the end of such three-year period, an issuer may file a new offering statement covering the securities. The new offering statement must include all the information that would be required at that time in an offering statement relating to all offerings that it covers. Before the qualification date of the new offering statement, the issuer may include as part of such new offering statement any unsold securities covered by the earlier offering statement by identifying on the cover page of the new offering circular or the latest amendment the amount of such unsold securities being included. The offering of securities on the earlier offering statement will be deemed terminated as of the date of qualification of the new offering statement. Securities may be sold pursuant this paragraph (d)(3)(i)(F) only if the issuer is current in its annual and semiannual filings pursuant to Rule 257(b) (§ 230.257(b)), at the time of such sale.

(ii) At the market offerings, by or on behalf of the issuer or otherwise, are not permitted under this Regulation A. As used in this paragraph (d)(3)(ii), the term *at the market offering* means an offering of equity securities into an existing trading market for outstanding shares of the same class at other than a fixed price.

§ 230.252 Offering statement.

(a) *Documents to be included.* The offering statement consists of the contents required by Form 1–A (§ 239.90 of this chapter) and any other material information necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(b) *Paper, printing, language and pagination.* Except as otherwise specified in this rule, the requirements for offering statements are the same as those specified in Rule 403 (§ 230.403) for registration statements under the Act. No fee is payable to the Commission upon either the submission or filing of an offering statement on Form 1–A, or any amendment to an offering statement.

(c) *Confidential treatment.* A request for confidential treatment may be made under Rule 406 (§ 230.406) for information required to be filed, and Rule 83 (§ 200.83) for information not required to be filed.

(d) *Signatures.* The issuer, its principal executive officer, principal financial officer, principal accounting officer, and a majority of the members of its board of directors or other governing body, must sign the offering statement. If a signature is by a person on behalf of any other person, evidence of authority to sign must be filed, except where an executive officer signs for the issuer.

(e) *How to file.* The offering statement must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'') in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). The offering statement must be signed in the manner prescribed by Form 1–A.

(f) *Non-public submission.* An issuer whose securities have not been previously sold pursuant to a qualified offering statement under this Regulation A or an effective registration statement under the Securities Act may submit under Rule 83 (§ 200.83) a draft offering statement to the Commission for non-public review by the staff of the Commission before public filing, provided that the offering statement shall not be qualified less than 21 calendar days after the public filing of (1) the initial non-public submission, (2) all non-public amendments with the Commission, and (3) all non-public correspondence submitted by or on behalf of the issuer to the Commission staff regarding such submissions (subject to any separately approved confidential treatment request under paragraph (c) of this rule). Draft offering statements must be submitted to the Commission in electronic format by means of EDGAR in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232).

(g) *Qualification.* An offering statement and any amendment thereto can be qualified only by order of the Commission.

(h) *Amendments.* (1)(i) Amendments to an offering statement must be signed and filed in the same manner as the initial filing. The amendment must be filed with the Commission in the manner set forth in paragraph (e) of this rule. Amendments to an offering statement must be filed under cover of Form 1–A and must be numbered consecutively in the order in which filed.

(ii) Every amendment that includes audited financial statements must include the consent of the certifying accountant to the use of such accountant's certificate in connection with the amended financial statements in the offering statement or offering circular and to being named as having audited such financial statements.

(iii) Amendments solely relating to Part III of Form 1–A must comply with

the requirements of paragraph (h)(1)(i) of this rule, except that such amendments may be limited to the Part I of Form 1–A, an explanatory note, and all of the information required by Part III of Form 1–A.

(2) Post-qualification amendments must be filed in the following circumstances for ongoing offerings:

(i) At least every 12 months after the qualification date to include the financial statements that would be required by Form 1–A as of such date; or

(ii) To reflect any facts or events arising after the qualification date of the offering statement (or the most recent post-qualification amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the offering statement.

§ 230.253 Offering circular.

(a) *Contents.* An offering circular must include the information required by Form 1–A for offering circulars.

(b) Notwithstanding paragraph (a) of this section, the offering circular may omit information with respect to the public offering price, underwriting syndicate (including any material relationships between the issuer or selling securityholders and the unnamed underwriters, brokers or dealers), underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices and other items dependent upon the offering price, delivery dates, and terms of the securities dependent upon the offering date; provided, that the following conditions are met:

(1) The securities to be qualified are offered for cash.

(2) The outside front cover page of the offering circular includes a bona fide estimate of the range of the maximum offering price and the maximum number of shares or other units of securities to be offered or a bona fide estimate of the principal amount of debt securities offered, subject to the following conditions:

(i) The range must not exceed $2 for offerings where the upper end of the range is $10 or less and 20% if the upper end of the price range is over $10; and

(ii) The upper end of the range must be used in determining the aggregate offering price under Rule 251(a) (§ 230.251(a)).

(3) The offering statement does not relate to securities to be offered by competitive bidding.

(4) The volume of securities (the number of equity securities or aggregate principal amount of debt securities) to be offered may not be omitted in reliance on this paragraph (b).

Note: A decrease in the volume of securities offered or a change in the bona fide estimate of the offering price range from that indicated in the offering circular filed as part of a qualified offering statement may be disclosed in the offering circular filed with the Commission pursuant to Rule 253(g) (§ 230.253(g)), so long as the decrease in the volume of securities offered or change in the price range would not materially change the disclosure contained in the offering statement at qualification. Notwithstanding the foregoing, any decrease in the volume of securities offered and any deviation from the low or high end of the price range may be reflected in the offering circular supplement filed with the Commission pursuant to Rule 253(g)(1) (§ 230.253(g)(1)) if, in the aggregate, the decrease in volume and/or change in price represent no more than a 20% change from the maximum aggregate offering price calculable using the information in the qualified offering statement. In no circumstances may this paragraph be used to offer securities where the maximum aggregate offering price would result in the offering exceeding the limit set forth in Rule 251(a) (§ 230.251(a)) for offerings under Regulation A or if the change would result in a Tier 1 offering becoming a Tier 2 offering. An offering circular supplement may not be used to increase the volume of securities being offered. Additional securities may only be offered pursuant to a new offering statement or post-qualification amendment qualified by the Commission.

(c) The information omitted from the offering circular in reliance upon paragraph (b) of this rule must be contained in an offering circular filed with the Commission pursuant to Rule 252(e) (§ 230.252(e)) and paragraph (g) of this rule; except that if such offering circular is not so filed by the later of 15 business days after the qualification date of the offering statement or 15 business days after the qualification of a post-qualification amendment thereto that contains an offering circular, the information omitted in reliance upon paragraph (b) of this rule must be contained in a qualified post-qualification amendment to the offering statement.

(d) *Presentation of information.*

(1) Information in the offering circular must be presented in a clear, concise and understandable manner and in a type size that is easily readable. Repetition of information should be avoided; cross-referencing of information within the document is permitted.

(2) Where an offering circular is distributed through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents by presenting all required information in a format readily communicated to investors.

(e) *Date.* An offering circular must be dated approximately as of the date it was filed with the Commission.

(f) *Cover page legend.* The cover page of every offering circular must display the following statement highlighted by prominent type or in another manner:

The United States Securities and Exchange Commission does not pass upon the merits of or give its approval to any securities offered or the terms of the offering, nor does it pass upon the accuracy or completeness of any offering circular or other solicitation materials. These securities are offered pursuant to an exemption from registration with the Commission; however, the Commission has not made an independent determination that the securities offered are exempt from registration.

(g) *Offering circular supplements.*

(1) An offering circular that discloses information previously omitted from the offering circular in reliance upon Rule 253(b) (§ 230.253(b)) must be filed with the Commission no later than two business days following the earlier of the date of determination of the offering price or the date such offering circular is first used after qualification in connection with a public offering or sale.

(2) An offering circular that reflects information other than that covered in paragraph (g)(1) of this rule that constitutes a substantive change from or addition to the information set forth in the last offering circular filed with the Commission must be filed with the Commission no later than five business days after the date it is first used after qualification in connection with a public offering or sales. If an offering circular filed pursuant to this paragraph (g)(2) consists of an offering circular supplement attached to an offering circular that (i) previously had been filed or (ii) was not required to be filed pursuant to paragraph (g) of this rule because it did not contain substantive changes from an offering circular that previously was filed, only the offering circular supplement need be filed under paragraph (g) of this rule, provided that the cover page of the offering circular supplement includes a cross reference to the date(s) of the related offering circular and any offering circular supplements thereto that together constitute the offering circular with respect to the securities currently being offered or sold.

(3) An offering circular that discloses information, facts or events covered in both paragraphs (g)(1) and (2) must be filed with the Commission no later than

two business days following the earlier of the date of the determination of the offering price or the date it is first used after qualification in connection with a public offering or sales.

(4) An offering circular required to be filed pursuant to paragraph (g) of this rule that is not filed within the time frames specified in paragraph (g) must be filed pursuant to this paragraph (4) as soon as practicable after the discovery of such failure to file.

(5) Each offering circular must be filed with the Commission in electronic format by means of EDGAR in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232).

(6) Each offering circular filed under this rule must contain in the upper right corner of the cover page the paragraph and subparagraph of this rule under which the filing is made, and the file number of the offering statement to which the offering circular relates.

§ 230.254 Preliminary offering circulars.

Before qualification of the required offering statement, but after its filing, a written offer of securities may be made if it meets the following requirements:

(a) The outside front cover page of the material bears the caption *Preliminary Offering Circular,* the date of issuance, and the following legend, which must be highlighted by prominent type or in another manner:

An offering statement pursuant to Regulation A relating to these securities has been filed with the Securities and Exchange Commission. Information contained in this Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted before the offering statement filed with the Commission is qualified. This Preliminary Offering Circular shall not constitute an offer to sell or the solicitation of an offer to buy nor may there be any sales of these securities in any state in which such offer, solicitation or sale would be unlawful before registration or qualification under the laws of any such state. We may elect to satisfy our obligation to deliver a Final Offering Circular by sending you a notice within two business days after the completion of our sale to you that contains the URL where the Final Offering Circular or the offering statement in which such Final Offering Circular was filed may be obtained.

(b) The Preliminary Offering Circular contains substantially the information required in an offering circular by Form 1–A (§ 239.90 of this chapter), except that information that may be omitted under Rule 253(b) (§ 230.253(b)) may be omitted if the conditions set forth in Rule 253(b) are met.

(c) The Preliminary Offering Circular is filed as a part of the offering statement.

§ 230.255 Solicitation of interest communications.

(a) At any time before the qualification of an offering statement, including before the non-public submission or public filing of such offering statement, an issuer or any person authorized to act on behalf of an issuer may communicate orally or in writing to determine whether there is any interest in a contemplated securities offering. Such communications are deemed to be an offer of a security for sale for purposes of the antifraud provisions of the federal securities laws. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any person is permitted until qualification of the offering statement.

(b) The communications must:

(1) State that no money or other consideration is being solicited, and if sent in response, will not be accepted;

(2) State that no offer to buy the securities can be accepted and no part of the purchase price can be received until the offering statement is qualified, and any such offer may be withdrawn or revoked, without obligation or commitment of any kind, at any time before notice of its acceptance given after the qualification date;

(3) State that a person's indication of interest involves no obligation or commitment of any kind; and

(4) After the public filing of the offering statement:

(i) State from whom a copy of the most recent version of the Preliminary Offering Circular may be obtained, including a phone number and address of such person;

(ii) Provide the URL where such Preliminary Offering Circular or to the offering statement in which such Preliminary Offering Circular was filed may be obtained; or

(iii) Include a complete copy of the Preliminary Offering Circular.

(c) Any written communication under this rule may include a means by which a person may indicate to the issuer that such person is interested in a potential offering. This issuer may require the name, address, telephone number, and/or email address in any response form included pursuant to this paragraph (c).

(d) If solicitation of interest materials are used after the public filing of the offering statement and such solicitation of interest materials contain information that is inaccurate or inadequate in any material respect, revised solicitation of interest materials must be redistributed in a manner substantially similar to the manner in which such materials were originally distributed. Notwithstanding the foregoing in this paragraph (d), if the only information that is inaccurate or inadequate is contained in a Preliminary Offering Circular provided with the solicitation of interest materials pursuant to paragraphs (b)(4)(i) or (b)(4)(ii) of this rule, no such redistribution is required in the following circumstances:

(1) in the case of paragraph (b)(4)(i) of this rule, the revised Preliminary Offering Circular will be provided to any persons making new inquiries and will be recirculated to any persons making any previous inquiries; or

(2) in the case of paragraph (b)(4)(ii) of this rule, the URL continues to link directly to the most recent Preliminary Offering Circular or to the offering statement in which such revised Preliminary Offering Circular was filed.

(e) Where an issuer decides to register an offering under the Securities Act after soliciting interest in a contemplated, but abandoned, Regulation A offering, the Regulation A exemption for offers would not be subject to integration with the registered offering, unless the issuer engaged in solicitations of interest pursuant to this rule to persons other than qualified institutional buyers and institutional accredited investors permitted by Section 5(d) of the Securities Act. In such circumstances, the issuer (and any underwriter, broker, dealer, or agent used by the issuer in connection with the proposed offering) must wait at least 30 calendar days between the last such solicitation of interest in the Regulation A offering and the filing of the registration statement with the Commission.

§ 230.256 Definition of ''qualified purchaser.''

For purposes of Section 18(b)(3) of the Securities Act [15 U.S.C. 77r(b)(3)], a ''qualified purchaser'' of a security offered or sold pursuant to Regulation A means any offeree of such security and, in a Tier 2 offering, any purchaser of such security.

§ 230.257 Periodic and current reporting; exit report.

(a) *Tier 1: Exit report.* Each issuer that has filed an offering statement for a Tier 1 offering that has been qualified pursuant to this Regulation A must file an exit report on Form 1–Z (§ 239.94) not later than 30 calendar days after the termination or completion of the offering.

(b) *Tier 2: Periodic and current reporting.* Each issuer that has filed an offering statement for a Tier 2 offering that has been qualified pursuant to this Regulation A must file with the Commission the following periodic and current reports in electronic format by means of EDGAR in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232):

(1) *Annual reports.* An annual report on Form 1–K (§ 239.91) for the fiscal year in which the offering statement became qualified and for any fiscal year thereafter, unless the issuer's obligation to file such annual report is suspended under paragraph (d) of this rule. Annual reports must be filed within the period specified in Form 1–K.

(2) *Special financial report.* (i) A special financial report if the offering statement did not contain the following:

(A) audited financial statements for the issuer's last full fiscal year (or for the life of the issuer if less than a full fiscal year) preceding the fiscal year in which the issuer's offering statement became qualified; or

(B) financial statements covering the first half of the issuer's current fiscal year if the offering statement was qualified during the second half of that fiscal year.

(ii) The special financial report described in paragraph (a)(2)(i)(A) of this rule must be filed under cover of Form 1–K within 120 calendar days after the qualification date of the offering statement and must include audited financial statements for such last full fiscal year or other period, as the case may be. The special financial report described in paragraph (a)(2)(i)(B) of this rule must be filed under cover of Form 1–SA within 90 calendar days after the qualification date of the offering statement and must include the semiannual financial statements for the first half of the issuer's fiscal year, which may be unaudited.

(iii) A special financial report must be signed in accordance with the requirements of the form on which it is filed.

(3) *Semiannual report.* A semiannual report on Form 1–SA (§ 239.92) within the period specified in Form 1–SA. Semiannual reports must cover the first half of each fiscal year of the issuer, commencing with the first half of the fiscal year following the most recent fiscal year for which full financial statements were included in the offering statement, or, if the offering statement included financial statements for the first half of the fiscal year following the most recent full fiscal year, for the first half of the following fiscal year.

(4) *Current reports.* Current reports on Form 1–U (§ 239.93) with respect to the matters and within the period specified in that form, unless substantially the same information has been previously reported to the Commission by the issuer under cover of Form 1–K or 1–SA.

(5) *Reporting by successor issuers.* Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of any issuer that is not required to file reports pursuant to paragraph (b) of this rule are issued to the holders of any class of securities of another issuer that is required to file such reports, the duty to file reports pursuant to paragraph (b) of this rule shall be deemed to have been assumed by the issuer of the class of securities so issued. The successor issuer must, after the consummation of the succession, file reports in accordance with paragraph (b) of this rule, unless that issuer is exempt from filing such reports or the duty to file such reports is suspended under paragraph (d).

(c) *Amendments.* All amendments to the reports described in paragraphs (a) and (b) of this rule must be filed under cover of the form amended, marked with the letter ''A'' to designate the document as an amendment, *e.g.,* ''1–K/A,'' and in compliance with pertinent requirements applicable to such reports. Amendments filed pursuant to this paragraph (c) must set forth the complete text of each item as amended, but need not include any items that were not amended. Amendments must be numbered sequentially and be filed separately for each report amended. Amendments must be signed on behalf of the issuer by a duly authorized representative of the issuer. An amendment to any report required to include certifications as specified in the applicable form must include new certifications by the appropriate persons.

(d) *Termination or suspension of duty to file reports.* (1) The duty to file reports under this rule shall be automatically suspended if and so long as the issuer is subject to the duty to file reports required by section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 15 U.S.C. 78o).

(2) The duty to file reports under paragraph (b) of this rule with respect to a class of securities held of record (as defined in Rule 12g5–1 (§ 240.12g5–1)) by less than 300 persons shall be suspended for such class of securities immediately upon filing with the Commission an exit report on Form 1–Z (§ 239.94) if the issuer of such class has filed all reports due pursuant to this rule before the date of such Form 1–Z filing for the shorter of (i) the period since the issuer became subject to such reporting obligation, or (ii) its most recent three fiscal years and the portion of the current year preceding the date of filing Form 1–Z. For the purposes of this subsection, the term ''class'' shall be construed to include all securities of an issuer that are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. If the Form 1–Z is subsequently withdrawn or denied, the issuer must, within 60 days, file with the Commission all reports which would have been required if such exit report had not been filed. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the notice must be filed by the successor issuer.

(3) The ability to suspend reporting, as described in paragraph (d)(2) of this rule, is not available for any class of securities if (i) during that fiscal year an offering statement was qualified or (ii) at the time of filing of Form 1–Z, offers or sales of securities of that class are being made pursuant to Regulation A.

(e) *Termination of suspension of duty to file reports.* If the duty to file reports is suspended pursuant to paragraph (d)(1) of this rule and such suspension ends because the issuer is no longer subject to the duty to file reports under the Exchange Act, the issuer's obligation to file reports under paragraph (b) of this rule shall:

(1) automatically terminate if the issuer is eligible to suspend its duty to file reports under paragraph (d)(2)–(3); or

(2) recommence with the report covering any financial period after that included in any registration statement or Exchange Act report.

§ 230.258 Suspension of the exemption.

(a) The Commission may at any time enter an order temporarily suspending a Regulation A exemption if it has reason to believe that:

(1) No exemption is available or any of the terms, conditions or requirements of Regulation A have not been complied with;

(2) The offering statement, any sales or solicitation of interest material, or any report filed pursuant to Rule 257 (§ 230.257) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

(3) The offering is being made or would be made in violation of section 17 of the Securities Act;

(4) An event has occurred after the filing of the offering statement that would have rendered the exemption hereunder unavailable if it had occurred before such filing;

(5) Any person specified in Rule 262(a) (§ 230.262(a)) has been indicted for any crime or offense of the character specified in Rule 262(a)(1) (§ 230.262(a)(1)), or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in Rule 262(a)(2) (§ 230.262(a)(2)), or any proceeding has been initiated for the purposes of Rule 262(a)(3)–(8) (§ 230.262(a)(3)–(8)); or

(6) The issuer or any promoter, officer, director or underwriter has failed to cooperate, or has obstructed or refused to permit the making of an investigation by the Commission in connection with any offering made or proposed to be made in reliance on Regulation A.

(b) Upon the entry of an order under paragraph (a) of this rule, the Commission will promptly give notice to the issuer, any underwriter and any selling securityholder:

(1) That such order has been entered, together with a brief statement of the reasons for the entry of the order; and

(2) That the Commission, upon receipt of a written request within 30 calendar days after the entry of the order, will within 20 calendar days after receiving the request, order a hearing at a place to be designated by the Commission.

(c) If no hearing is requested and none is ordered by the Commission, an order entered under paragraph (a) of this rule shall become permanent on the 30th calendar day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of and opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

(d) The Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the exemption for any reason upon which it could have entered a temporary suspension order under paragraph (a) of this rule. Any such order shall remain in effect until vacated by the Commission.

(e) All notices required by this rule must be given by personal service, registered or certified mail to the addresses given by the issuer, any underwriter and any selling securityholder in the offering statement.

§ 230.259 Withdrawal or abandonment of offering statements.

(a) If none of the securities that are the subject of an offering statement have been sold and such offering statement is not the subject of a proceeding under Rule 258 (§ 230.258), the offering statement may be withdrawn with the Commission's consent. The application for withdrawal must state the reason the offering statement is to be withdrawn, must be signed by an authorized representative of the issuer and must be filed with the Commission in electronic format by means of EDGAR in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). Any withdrawn document will remain in the Commission's files, as well as the related request for withdrawal.

(b) When an offering statement has been on file with the Commission for nine months without amendment and has not become qualified, the Commission may, in its discretion, declare the offering statement abandoned. If the offering statement has been amended, the nine-month period shall be computed from the date of the latest amendment.

§ 230.260 Insignificant deviations from a term, condition or requirement of Regulation A.

(a) A failure to comply with a term, condition or requirement of Regulation A will not result in the loss of the exemption from the requirements of section 5 of the Securities Act for any offer or sale to a particular individual or entity, if the person relying on the exemption establishes that:

(1) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity;

(2) The failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with paragraphs (a), (b), (d)(1) and (3) of Rule 251 (§ 230.251) shall be deemed to be significant to the offering as a whole; and

(3) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Regulation A.

(b) A transaction made in reliance upon Regulation A must comply with all applicable terms, conditions and requirements of the regulation. Where an exemption is established only through reliance upon paragraph (a) of this rule, the failure to comply shall nonetheless be actionable by the Commission under section 20 of the Securities Act.

(c) This provision provides no relief or protection from a proceeding under Rule 258 (§ 230.258).

§ 230.261 Definitions.

As used in this Regulation A, all terms have the same meanings as in Rule 405 (§ 230.405), except that all references to *registrant* in those definitions shall refer to the issuer of the securities to be offered and sold under Regulation A. In addition, these terms have the following meanings:

(a) *Business day.* Any day except Saturdays, Sundays or United States federal holidays.

(b) *Eligible securities.* Equity securities, debt securities, and debt securities convertible or exchangeable to equity interests, including any guarantees of such securities, but not including asset-backed securities as such term is defined in Item 1101(c) of Regulation AB.

(c) *Final offering circular.* The more recent of (1) the current offering circular contained in a qualified offering statement and (2) the offering circular filed pursuant to Rule 253(g) (§ 230.253(g)), or if the issuer is relying on Rule 253(b), the Final Offering Circular is the offering circular filed pursuant to Rule 253(g)(1) or (3) (§ 230.253(g)(1) or (3)).

(d) *Preliminary offering circular.* The offering circular described in Rule 254 (§ 230.254).

§ 230.262 Disqualification provisions.

(a) No exemption under this Regulation A shall be available for a sale of securities if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner or managing member of the issuer; any beneficial owner of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of filing, any offer after qualification, or such sale; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; any general partner or managing member of any such solicitor; or any director, executive officer or other officer participating in the offering of any such solicitor or general partner or managing member of such solicitor:

(1) Has been convicted, within ten years before the filing of the offering statement (or five years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the Commission; or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(2) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before the filing of the offering statement, that, at the time of such filing, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the Commission; or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(3) Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

(i) At the time of the filing of the offering statement, bars the person from:

(A) Association with an entity regulated by such commission, authority, agency, or officer;

(B) Engaging in the business of securities, insurance or banking; or

(C) Engaging in savings association or credit union activities; or

(ii) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before such sale;

(4) Is subject to an order of the Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78 *o* (b) or 78 *o* –4(c)) or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e) or (f)) that, at the time of the filing of the offering statement:

(i) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;

(ii) Places limitations on the activities, functions or operations of such person; or

(iii) Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(5) Is subject to any order of the Commission entered within five years before the filing of the offering statement that, at the time of such filing, orders the person to cease and desist from committing or causing a violation or future violation of:

(i) Any scienter-based anti-fraud provision of the federal securities laws, including without limitation section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. 77q(a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and 17 CFR 240.10b–5, section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78 *o* (c)(1)) and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(1)), or any other rule or regulation thereunder; or

(ii) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

(6) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(7) Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the Commission that, within five years before the filing of the offering statement, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such filing, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

(8) Is subject to a United States Postal Service false representation order entered within five years before the filing of the offering statement, or is, at the time of such filing, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

(b) Paragraph (a) of this rule shall not apply:

(1) With respect to any order under § 230.262(a)(3) or (a)(5) that occurred or was issued before [effective date of rule];

(2) Upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied;

(3) If, before the filing of the offering statement, the court or regulatory authority that entered the relevant order, judgment or decree advises in writing (whether contained in the relevant judgment, order or decree or separately to the Commission or its staff) that disqualification under paragraph (a) of this rule should not arise as a consequence of such order, judgment or decree; or

(4) If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under paragraph (a) of this rule.

Instruction to paragraph (b)(4). An issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

(c) For purposes of paragraph (a) of this rule, events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not:

(1) In control of the issuer; or

(2) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such events.

(d) *Disclosure of prior ''bad actor'' events.* The issuer must include in the offering circular a description of any matters that would have triggered disqualification under paragraph (a) of this rule but occurred before [effective date]. The failure to provide such information shall not prevent an issuer from relying on Regulation A if the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known of the existence of the undisclosed matter or matters.

Note: An issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

§ 230.263 Consent to service of process.

(a) If the issuer is not organized under the laws of any of the states of or the United States of America, it shall at the time of filing the offering statement required by Rule 252 (§ 230.252),

furnish to the Commission a written irrevocable consent and power of attorney on Form F–X (§ 239.42 of this chapter).

(b) Any change to the name or address of the agent for service of the issuer shall be communicated promptly to the Commission through amendment of the requisite form and referencing the file number of the relevant offering statement.

* * * * *

■ 5. § 230.505(b)(2)(iii)(A) and (B) are revised, in part, to read as follows:

§ 230.505 Exemption for limited offers and sales of securities not exceeding $5,000,000.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(A) The term ''filing of the offering statement'' as used in § 230.262 shall mean the first sale of securities under this section;

(B) The term ''underwriter'' as used in § 230.262(a) shall mean a person that has been or will be paid directly or indirectly remuneration for solicitation of purchasers in connection with sales of securities under this section; and

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 6. The authority citation for part 232 is revised to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 et seq.; 18 U.S.C. 1350; and Pub. L. 112–106, § 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 7. § 232.101 is amended by:

■ a. Revising paragraph (a)(1)(vii) and (c)(6);

■ b. Adding paragraph (a)(1)(xvii); and

■ c. Reserving paragraph (b)(8).

The revisions, additions and reservations read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(vii) Form F–X (§ 239.42 of this chapter) when filed in connection with a Form CB (§§ 239.800 and 249.480 of this chapter) or a Form 1–A (§ 239.90);

* * * * *

(xvii) Filings made pursuant to Regulation A (§§ 230.251–230.263 of this chapter).

* * * * *

(b) * * *

(8) [Reserved]

* * * * *

(c) * * *

(6) Filings on Form 144 (§ 239.144 of this chapter) where the issuer of the securities is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d), respectively).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 8. The authority citation for Part 239 is revised to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78ll, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, § 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 9. Amend Form 1–A (referenced in § 239.90) by revising it to read as follows:

BILLING CODE 8011–01–P

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 1-A
REGULATION A OFFERING STATEMENT UNDER THE SECURITIES ACT OF 1933

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form 1-A.

This Form is to be used for securities offerings made pursuant to Regulation A (17 CFR 230.251 *et seq.*). Careful attention should be directed to the terms, conditions and requirements of Regulation A, especially Rule 251, because the exemption is not available to all issuers or to every type of securities transaction. Further, the aggregate offering price of securities in any 12 month period is strictly limited to $5 million for Tier 1 offerings and $50 million for Tier 2 offerings, including no more than $1.5 million offered by all selling securityholders for Tier 1 offerings and $15 million for Tier 2 offerings. Please refer to Rule 251 of Regulation A for more details.

II. Preparation, Submission and Filing of the Offering Statement.

An offering statement must be prepared by all persons seeking exemption under the provisions of Regulation A. Parts I, II and III must be addressed by all issuers. Part II, which relates to the content of the required offering circular, provides two alternative formats, of which the issuer must choose one. General information regarding the preparation, format, content, and submission or filing of the offering statement is contained in Rule 252. Information regarding non-public submission of the offering statement is contained in Rule 252(f). Requirements relating to the offering circular are contained in Rules 253 and 254. The offering statement must be submitted or filed with the Securities and Exchange Commission in electronic format by means of the Commission's Electronic Data Gathering, Analysis and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232) for such submission or filing.

III. Incorporation by Reference.

An issuer may incorporate by reference to other documents previously submitted or filed on EDGAR pursuant to Regulation A, subject to the following additional conditions:

(a) The use of incorporation by reference in Part II of this Form is limited to the following items:

(1) Items 2-14 of Part II if following the Offering Circular format; or

(2) Items 3-11 of Form S-1 if following the Part I of Form S-1 format.

(b) Descriptions of where the information incorporated by reference can be found must be specific and must clearly identify the relevant document and portion thereof where such information can be found. For exhibits, this description must be noted in the exhibits index for each relevant exhibit. All such descriptions must be accompanied by a separate hyperlink to the incorporated document on EDGAR, which hyperlink need not remain active after the filing of the offering statement. Inactive hyperlinks must be updated in any amendment to the offering statement otherwise required. Reference may not be made to any document that incorporates another document by reference if the pertinent portion of the document containing the information to be incorporated by reference includes an incorporation by reference to another document. Incorporation by reference to documents not available on EDGAR is not permitted. Matter shall not be incorporated by reference in any case where such incorporation would render the statement or report incomplete, unclear, or confusing.

(c) If any substantive modification has occurred in the text of any document incorporated by reference since such document was filed, the issuer must file with the reference a statement containing the text and date of such modification.

IV. Supplemental Information.

The following information must be furnished to the Commission as supplemental information, if applicable:

(a) A statement as to whether or not the amount of compensation to be allowed or paid to the underwriter has been cleared with the Financial Industry Regulatory Authority (FINRA);

(b) Any engineering, management, market, or similar report referenced in the offering circular; and

(c) Such other information as requested by the staff in support of statements, representations and other assertions contained in the offering statement or any correspondence to the staff.

Correspondence appropriately responding to any staff comments made on the offering statement must also be furnished. When applicable, such correspondence must clearly indicate where changes responsive to the staff's comments may be found in the offering statement.

PART I—NOTIFICATION

The following information must be provided in the XML-based portion of Form 1-A available through the EDGAR portal and must be completed or updated before

uploading each offering statement or amendment thereto. The format of Part I shown below may differ from the electronic version available on EDGAR. The electronic version of Part I will allow issuers to attach Part II and Part III for filing by means of EDGAR. All items must be addressed, unless otherwise indicated.

* * * * * *

☐ No changes to the information required by Part I have occurred since the last filing of this offering statement.

ITEM 1. Issuer Information

Exact name of issuer as specified in the issuer's charter: _____

State or other jurisdiction of incorporation: _____

Year of incorporation:_____

CIK:_____

Primary Standard Industrial Classification Code:_____

I.R.S. Employer Identification Number:_____

Total number of full time employees:_____

Total number of part time employees:_____

Contact Information

Address of Principal Executive Offices: _____
_____

Telephone: (__)_____

Provide the following information for the person the Securities and Exchange Commission's staff should call in connection with any pre-qualification review of the offering statement:

Name:_____
Address:_____
Telephone: (__)_____

Optional: Provide up to two e-mail addresses to which the Securities and Exchange Commission's staff may send any comment letters relating to the offering statement. After qualification of the offering statement, such e-mail addresses are not required to remain active. Regardless of whether you provide this information here, you may be

asked to provide such e-mail addresses by the staff member reviewing your filing:_____

_____

Financial Statements

Use the financial statements for the most recent fiscal period contained in this offering statement to provide the following information about the issuer:

Balance Sheet Information

Total Assets: _____

Cash and Cash Equivalents: _____

Accounts Receivable: _____

Investment Assets: _____

Property, Plant and Equipment: _____

Total Liabilities: _____

Accounts Payable: _____

Short Term Liabilities: _____

Long Term Liabilities: _____

Income Statement Information

Total Revenues: _____

Total Expenses: _____

Research and Development Expenses: _____

Interest Expense: _____

Investment Income: _____

Name of Auditor (if any):_____

Outstanding Securities

	Units Outstanding	CUSIP (if any)	Units Publicly Traded
Common Equity			
Preferred Equity			
Debt Securities			

ITEM 2. Issuer Eligibility

☐ Check this box to certify that all of the following statements are true for the issuer:

- Organized under the laws of the United States or Canada, or any State, Province, Territory or possession thereof, or the District of Columbia.
- Principal place of business is in the United States or Canada.
- Not subject to section 13 or 15(d) of the Securities Exchange Act of 1934.
- Not a development stage company that either (a) has no specific business plan or purpose, or (b) has indicated that its business plan is to merge with an unidentified company or companies.
- Not an investment company registered or required to be registered under the Investment Company Act of 1940.
- Not issuing fractional undivided interests in oil or gas rights, or a similar interest in other mineral rights.
- Not issuing asset-backed securities as defined in Item 1101(c) of Regulation AB.
- Not, and has not been, subject to any order of the Commission entered pursuant to Section 12(j) of the Exchange Act (15 U.S.C. 78*l*(j)) within five years before the filing of this offering statement.
- Has filed with the Commission all the reports it was required to file, if any, pursuant to Rule 257 during the two years immediately before the filing of the offering statement (or for such shorter period that the issuer was required to file such reports).

ITEM 3. Application of Rule 262

☐ Check this box to certify that, as of the time of this filing, none of the persons described in Rule 262 of Regulation A are disqualified under that rule.

☐ Check this box if "bad actor" disclosure under Rule 262(d) is provided in Part II of the offering statement.

ITEM 4. Summary Information Regarding the Offering and Other Current or Proposed Offerings

Check the appropriate box to indicate whether you are conducting a Tier 1 or Tier 2 offering:

☐ Tier 1 ☐ Tier 2

Types of Securities Offered in this Offering Statement (select all that apply):

☐ Equity (common or preferred stock)

☐ Debt

☐ Option, warrant or other right to acquire another security

☐ Security to be acquired upon exercise of option, warrant or other right to acquire security

☐ Tenant-in-common securities

☐ Other (describe) _____

Does the issuer intend to offer the securities on a delayed or continuous basis pursuant to Rule 251(d)(3)?

Yes ☐ No ☐

Does the issuer intend this offering to last more than one year?
Yes ☐ No ☐

Does the issuer intend to price this offering after qualification pursuant to Rule 253(b)?
Yes ☐ No ☐

Will the issuer be conducting a best efforts offering?
Yes ☐ No ☐

Has the issuer used solicitation of interest communications in connection with the proposed offering?

Yes ☐ No ☐

Does the proposed offering involve the resale of securities by affiliates of the issuer?
Yes ☐ No ☐

Number of securities offered:_____

Number of securities of that class already outstanding:_____

The information called for by this item below may be omitted if undetermined at the time of filing or submission, except that if a price range has been included in the offering statement, the midpoint of that range must be used to respond. Please refer to Rule 251(a) for the definition of "aggregate offering price" as used in this item.

Price per security: $_____

The aggregate offering price for the securities being offered on behalf of the issuer:
$_____ ☐ N/A

The aggregate offering price for the securities being offered on behalf of selling securityholders:
$_____ ☐ N/A

The aggregate offering price for all securities of the issuer sold pursuant to a qualified offering statement within the 12 months before the qualification of this offering statement:
$_____ ☐ N/A

The estimated aggregate offering price of any securities that may be sold pursuant to any other qualified offering statement concurrently with securities being sold under this offering statement:
$_____ ☐ N/A

Total: $_____ (the sum of the aggregate offering prices in the four preceding paragraphs).

Anticipated fees in connection with this offering and names of service providers:

	Name of Service Provider	Fees
Underwriters:	_____	$ _____
Sales Commissions:	_____	$ _____
Finders' Fees:	_____	$ _____
Auditor:	_____	$ _____
Legal:	_____	$ _____
Promoters:	_____	$ _____
Blue Sky Compliance:	_____	$ _____

CRD Number of any broker or dealer listed:_____
Estimated net proceeds to the issuer: $_____

Clarification of responses (if necessary): _____

ITEM 5. Jurisdictions in Which Securities are to be Offered

Check the appropriate box for each jurisdiction in which the issuer intends to offer the securities:

☐ All States

☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	PR

Check the appropriate box for each jurisdiction in which the securities are to be offered by underwriters, dealers or sales persons:

☐ None

☐ Same as the jurisdictions in which the issuer intends to offer the securities.

☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	PR

ITEM 6. Unregistered Securities Issued or Sold Within One Year

☐ None

As to any unregistered securities issued by the issuer or any of its predecessors or affiliated issuers within one year before the filing of this Form 1-A, state:

(a) Name of such issuer;

(b) Title and amount of securities issued; and

(c) Aggregate consideration for which they were issued and basis for computing the amount thereof.

_____

_____

_____

As to any unregistered securities of the issuer or any of its predecessors or affiliated issuers that were sold within one year before the filing of this Form 1-A by or for the account of any person who at the time was a director, officer, promoter or principal securityholder of the issuer of such securities, or was an underwriter of any securities of such issuer, furnish the information specified in subsections (a) through (c) of the preceding paragraph: _____

_____

Indicate the section of the Securities Act or Commission rule or regulation relied upon for exemption from the registration requirements of such Act and state briefly the facts relied upon for such exemption: _____

_____

PART II — INFORMATION REQUIRED IN OFFERING CIRCULAR

(a) The narrative disclosure contents of offering circulars are specified as follows:

(1) The information required by:

(i) the Offering Circular format described below; or

(ii) The information required by Part I of Form S-1 (17 CFR 239.11) except for the financial statements, selected financial data, and supplementary financial information called for by that form. An issuer choosing to follow this format may follow the requirements for smaller reporting companies if it meets the definition of that term in Rule 405 (17 CFR 230.405);

(2) The offering circular must describe any matters that would have triggered disqualification under Rule 262(a) but for the provisions set forth in Rule 262(b)(1);

(3) The legend required by Rule 253(f) of Regulation A must be included on the offering circular cover page (for issuers following the S-1 disclosure model this legend must be included instead of the legend required by Item 501(b)(7) of Regulation S-K);

(4) For preliminary offering circulars, the legend required by Rule 254(a) must be included on the offering circular cover page (for issuers following the S-1 disclosure model, this legend must be included instead of the legend required by Item 501(b)(10) of Regulation S-K); and

(5) For Tier 2 offerings, the offering circular cover page must include the following legend highlighted by prominent type or in another manner:

No sale may be made to you in this offering if the aggregate purchase price you pay is more than 10% of the greater of your annual income and net worth. Before making any representation that your investment does

not exceed this threshold, we encourage you to refer to Rule 251(d)(2)(i)(C) of Regulation A, which provides additional details. For general information on investing, we encourage you to refer to www.investor.gov.

(b) The Commission encourages the use of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. See Rule 175, 17 CFR 230.175.

(c) Offering circulars need not follow the order of the items or the order of other requirements of the disclosure form except to the extent otherwise specifically provided. Such information may not, however, be set forth in such a fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. Information requested to be presented in a specified tabular format must be given in substantially the tabular format specified. For incorporation by reference, please refer to General Instruction III of this Form.

OFFERING CIRCULAR

Item 1. Cover Page of Offering Circular

The cover page of the offering circular must be limited to one page and must include the information specified in this item.

(a) Name of the issuer.

Instruction to Item 1(a):

> *If your name is the same as, or confusingly similar to, that of a company that is well known, include information to eliminate any possible confusion with the other company. If your name indicates a line of business in which you are not engaged or you are engaged only to a limited extent, include information to eliminate any misleading inference as to your business. In some circumstances, disclosure may not be sufficient and you may be required to change your name. You will not be required to change your name if you are an established company, the character of your business has changed, and the investing public is generally aware of the change and the character of your current business.*

(b) Full mailing address of the issuer's principal executive offices and the issuer's telephone number (including the area code) and, if applicable, website address.

(c) Date of the offering circular.

(d) Title and amount of securities offered. Separately state the amount of securities offered by selling securityholders, if any. Include a cross-reference to the section where the disclosure required by Item 14 of this Form 1-A has been provided;

(e) The information called for by the applicable table below as to all the securities being offered, in substantially the tabular format indicated. If necessary, you may estimate any underwriting discounts and commissions and the proceeds to the issuer or other persons.

	Price to public	Underwriting discount and commissions	Proceeds to issuer	Proceeds to other persons
Per share/unit:	_____	_____	_____	_____
Total:	_____	_____	_____	_____

If the securities are to be offered on a best efforts basis, the cover page must set forth the termination date, if any, of the offering, any minimum required sale and any arrangements to place the funds received in an escrow, trust, or similar arrangement. The following table must be used instead of the preceding table.

	Price to public	Underwriting discount and commissions	Proceeds to issuer	Proceeds to other persons
Per share/unit:	_____	_____	_____	_____
Total Minimum:	_____	_____	_____	_____
Total Maximum:	_____	_____	_____	_____

Instructions to Item 1(e):

1. The term "commissions" includes all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made in connection with the sale of such security.

2. Only commissions paid by the issuer in cash are to be indicated in the table. Commissions paid by other persons or any form of non-cash compensation must be briefly identified in a footnote to the table with a cross-reference to a more complete description elsewhere in the offering circular.

3. Before the commencement of sales pursuant to Regulation A, the issuer must inform the Commission whether or not the amount of compensation to be allowed

or paid to the underwriters, as described in the offering statement, has been cleared with FINRA.

4. If the securities are not to be offered for cash, state the basis upon which the offering is to be made.

5. Any finder's fees or similar payments must be disclosed on the cover page with a reference to a more complete discussion in the offering circular. Such disclosure must identify the finder, the nature of the services rendered and the nature of any relationship between the finder and the issuer, its officers, directors, promoters, principal stockholders and underwriters (including any affiliates of such persons).

6. The amount of the expenses of the offering borne by the issuer, including underwriting expenses to be borne by the issuer, must be disclosed in a footnote to the table.

(f) The name of the underwriter or underwriters.

(g) Any legend or information required by the law of any state in which the securities are to be offered.

(h) A cross-reference to the risk factors section, including the page number where it appears in the offering circular. Highlight this cross-reference by prominent type or in another manner.

(i) Approximate date of commencement of proposed sale to the public.

(j) If the issuer intends to rely on Rule 253(b) and a preliminary offering circular is circulated, provide (1) a bona fide estimate of the range of the maximum offering price and the maximum number of securities offered or (2) a bona fide estimate of the principal amount of the debt securities offered. The range must not exceed $2 for offerings where the upper end of the range is $10 or less and 20% if the upper end of the price range is over $10.

Instruction to Item 1(j):

The upper limit of the price range must be used in determining the aggregate offering price for purposes of Rule 251(a).

Item 2. Table of Contents

On the page immediately following the cover page of the offering circular, provide a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the offering circular. Include a specific listing of the risk factors section required by Item 3 of this Form 1-A.

Item 3. Summary and Risk Factors

(a) An issuer may provide a summary of the information in the offering circular where the length or complexity of the offering circular makes a summary useful. The summary should be brief and must not contain all of the detailed information in the offering circular.

(b) Immediately following the Table of Contents required by Item 2 or the Summary, there must be set forth under an appropriate caption, a carefully organized series of short, concise paragraphs, summarizing the most significant factors that make the offering speculative or substantially risky. Issuers should avoid generalized statements and include only factors that are specific to the issuer.

Item 4. Dilution

Where there is a material disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons for shares acquired by them in a transaction during the past year, or that they have a right to acquire, there must be included a comparison of the public contribution under the proposed public offering and the average effective cash contribution of such persons.

Item 5. Plan of Distribution and Selling Securityholders

(a) If the securities are to be offered through underwriters, give the names of the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship to the issuer and state the nature of the relationship. State briefly the nature of the underwriters' obligation to take the securities.

Instructions to Item 5(a):

> *1. All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is merely an agency or the type of best efforts arrangement under which the underwriters are required to take and to pay for only such securities as they may sell to the public. Conditions precedent to the underwriters' taking the securities, including market-outs, need not be described except in the case of an agency or best efforts arrangement.*
>
> *2. It is not necessary to disclose each member of a selling group. Disclosure may be limited to those underwriters who are in privity of contract with the issuer with respect to the offering.*

(b) State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other consideration to be received by any dealer in connection with the sale of the securities.

(c) Outline briefly the plan of distribution of any securities being issued that are to be offered through the selling efforts of brokers or dealers or otherwise than through underwriters.

(d) If any of the securities are to be offered for the account of securityholders, identify each selling securityholder, state the amount owned by the securityholder, the amount offered for his or her account and the amount to be owned after the offering. Provide such disclosure in a tabular format. At the bottom of the table, provide the total number of securities being offered for the account of all securityholders and describe what percent of the outstanding securities of such class the offering represents.

Instruction to Item 5(d):

> *The term "securityholder" in this paragraph refers to beneficial holders, not nominee holders or other such holders of record. If the selling securityholder is an entity, disclosure of the persons who have sole or shared voting or investment power must be included.*

(e) Describe any arrangements for the return of funds to subscribers if all of the securities to be offered are not sold. If there are no such arrangements, so state.

(f) If there will be a material delay in the payment of the proceeds of the offering by the underwriter to the issuer, the salient provisions in this regard and the effects on the issuer must be stated.

(g) Describe any arrangement to (1) limit or restrict the sale of other securities of the same class as those to be offered for the period of distribution, (2) stabilize the market for any of the securities to be offered, or (3) withhold commissions, or otherwise to hold each underwriter or dealer responsible for the distribution of its participation.

(h) Identify any underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the amount of securities so intended to be confirmed:

Instruction to Item 5:

> *Attention is directed to the provisions of Rules 10b-9 [17 CFR 240.10b-9] and 15c2-4 [17 CFR 240.15c2-4] under the Securities Exchange Act of 1934. These rules outline, among other things, antifraud provisions concerning the return of funds to subscribers and the transmission of proceeds of an offering to a seller.*

Item 6. Use of Proceeds to Issuer

State the principal purposes for which the net proceeds to the issuer from the securities to be offered are intended to be used and the approximate amount intended to be used for

each such purpose. If the issuer will not receive any of proceeds from the offering, so state.

Instructions to Item 6:

1. If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect must be made together with a statement of the amount of proceeds not so allocated.

2. State whether or not the proceeds will be used to compensate or otherwise make payments to officers or directors of the issuer or any of its subsidiaries.

3. For best efforts offerings, describe any anticipated material changes in the use of proceeds if all of the securities being qualified on the offering statement are not sold.

4. If an issuer must provide the disclosure described in Item 9(c) the use of proceeds and plan of operations should be consistent.

5. If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of such other funds.

6. If any material part of the proceeds is to be used to discharge indebtedness, describe the material terms of such indebtedness. If the indebtedness to be discharged was incurred within one year, describe the use of the proceeds arising from such indebtedness.

7. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, briefly describe and state the cost of the assets. If the assets are to be acquired from affiliates of the issuer or their associates, give the names of the persons from whom they are to be acquired and set forth the basis used in determining the purchase price to the issuer.

8. The issuer may reserve the right to change the use of proceeds, so long as the reservation is prominently disclosed in the section where the use of proceeds is discussed. It is not necessary to describe the possible alternative uses of proceeds unless the issuer believes that a change in circumstances leading to an alternative use of proceeds is likely to occur.

Item 7. Description of Business

(a) Narrative description of business.

(1) Describe the business done and intended to be done by the issuer and its subsidiaries and the general development of the business during the past three years or such shorter period as the issuer may have been in business. Such

description must include, but not be limited to, a discussion of the following factors if such factors are material to an understanding of the issuer's business:

(i) The principal products and services of the issuer and the principal market for and method of distribution of such products and services.

(ii) The status of a product or service if the issuer has made public information about a new product or service that would require the investment of a material amount of the assets of the issuer or is otherwise material.

(iii) The estimated amount spent during each of the last two fiscal years on company- sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state the estimated dollar amount spent during each of such years on material customer-sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

(iv) The total number of persons employed by the issuer, indicating the number employed full time.

(v) Any bankruptcy, receivership or similar proceeding.

(vi) Any legal proceedings material to the business or financial condition of the issuer.

(vii) Any material reclassification, merger, consolidation, or purchase or sale of a significant amount of assets not in the ordinary course of business.

(2) The issuer must also describe those distinctive or special characteristics of the issuer's operation or industry that may have a material impact upon the issuer's future financial performance. Examples of factors that might be discussed include dependence on one or a few major customers or suppliers (including suppliers of raw materials or financing), existing or probable governmental regulation (including environmental regulation), material terms of and/or expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions or royalty agreements, unusual competitive conditions in the industry, cyclicality of the industry and anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(3) Any engineering, management or similar reports that have been prepared or provided for external use by the issuer or by a principal underwriter in connection with the proposed offering must be furnished to the Commission at the time of filing the offering statement or as soon as practicable thereafter. There must also

be furnished at the same time a statement as to the actual or proposed use and distribution of such report or memorandum. Such statement must identify each class of persons who have received or will receive the report or memorandum, and state the number of copies distributed to each such class. If no such report or memorandum has been prepared, the Commission must be so informed in writing at the time the report or memorandum would otherwise have been submitted.

(b) Segment Data. If the issuer is required to include segment information in its financial statements, an appropriate cross-reference must be included in the description of business.

(c) Industry Guides. The disclosure guidelines in all Securities Act Industry Guides must be followed. To the extent that the industry guides are codified into Regulation S-K, the Regulation S-K industry disclosure items must be followed.

(d) For offerings of limited partnership or limited liability company interests, an issuer must comply with the Commission's interpretive views on substantive disclosure requirements set forth in Securities Act Release No. 6900 (June 17, 1991).

Item 8. Description of Property

State briefly the location and general character of any principal plants or other material physical properties of the issuer and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held. Include information regarding the suitability, adequacy, productive capacity and extent of utilization of the properties and facilities used in the issuer's business.

Instruction to Item 8:

Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 9. Management's Discussion and Analysis of Financial Condition and Results of Operations

Discuss the issuer's financial condition, changes in financial condition and results of operations for each year and interim period for which financial statements are required, including the causes of material changes from year to year or period to period in financial statement line items, to the extent necessary for an understanding of the issuer's business as a whole. Information provided also must relate to all separate segments of the issuer. Provide the information specified below as well as such other information that is necessary for an investor's understanding of the issuer's financial condition, changes in financial condition and results of operations.

(a) Operating results. Provide information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's

income from operations, indicating the extent to which income was so affected. Describe any other significant component of revenue or expenses necessary to understand the issuer's results of operations. To the extent that the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the extent to which such changes are attributable to changes in prices or to changes in the volume or amount of products or services being sold or to the introduction of new products or services.

(b) Liquidity and capital resources. Provide information regarding the following:

(1) the issuer's liquidity (both short and long term), including a description and evaluation of the internal and external sources of liquidity and a brief discussion of any material unused sources of liquidity. Include a statement by the issuer that, in its opinion, the working capital is sufficient for the issuer's present requirements, or, if not, how it proposes to provide the additional working capital needed.

(2) the level of borrowings at the end of the period under review, the seasonality of borrowing requirements and the maturity profile of borrowings and committed borrowing facilities, with a description of any restrictions on their use.

(3) the type of financial instruments used, the maturity profile of debt, currency and interest rate structure, the extent to which borrowings are at fixed rates, and the use of financial instruments for hedging purposes.

(4) the issuer's material commitments for capital expenditures as of the end of the latest financial year and any subsequent interim period and an indication of the general purpose of such commitments and the anticipated sources of funds needed to fulfill such commitments.

(c) Plan of Operations. Issuers (including predecessors) that have not received revenue from operations during each of the three fiscal years immediately before the filing of the offering statement must describe, if formulated, their plan of operation for the twelve months following the commencement of the proposed offering. If such information is not available, the reasons for its unavailability must be stated. Disclosure relating to any plan must include, among other things, a statement indicating whether, in the issuer's opinion, the proceeds from the offering will satisfy its cash requirements or whether it anticipates it will be necessary to raise additional funds in the next six months to implement the plan of operations.

(d) Trend information. The issuer must identify the most significant recent trends in production, sales and inventory, the state of the order book and costs and selling prices since the latest financial year. The issuer also must discuss, for at least the current financial year, any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer's net sales or revenues, income from continuing operations, profitability, liquidity or capital resources, or that would

cause reported financial information not necessarily to be indicative of future operating results or financial condition.

Item 10. Directors, Executive Officers and Significant Employees

(a) For each of the directors, persons nominated or chosen to become directors, executive officers, persons chosen to become executive officers, and significant employees, provide the information specified below in substantially the following tabular format:

Name	Position	Age	Term of Office(1)	Approximate hours per week(2)
Executive Officers:				
Directors:				
Significant Employees:				

(1) Provide the month and year of the start date and, if applicable, the end date. To the extent you are unable to provide specific dates, provide such other description in the table or in an appropriate footnote clarifying the term of office. If the person is a nominee or chosen to become a director or executive officer, it must be indicated in this column or by footnote.

(2) For executive officers and significant employees that are working part-time, indicate approximately the average number of hours per week or month such person works or is anticipated to work. This column may be left blank for directors. The entire column may be omitted if all those listed in the table work full time for the issuer.

In a footnote to the table, briefly describe any arrangement or understanding between the persons described above and any other persons (naming such persons) pursuant to which the person was or is to be selected to his or her office or position.

Instructions to Item 10(a):

1. No nominee or person chosen to become a director or person chosen to be an executive officer who has not consented to act as such may be named in response to this item.

2. The term "executive officer" means the president, secretary, treasurer, any vice-president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy making functions for the issuer.

3. The term "significant employee" means persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make significant contributions to the business of the issuer.

(b) Family relationships. State the nature of any family relationship between any director, executive officer, person nominated or chosen by the issuer to become a director or executive officer or any significant employee.

Instruction to Item 10(b):

The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) Business experience. Give a brief account of the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each significant employee, including his or her principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or significant employee has been employed by the issuer for less than five years, a brief explanation must be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of this prior business experience. What is required is information relating to the level of the employee's professional competence, which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(d) Involvement in certain legal proceedings. Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director, person nominated to become a director or executive officer of the issuer:

(1) A petition under the federal bankruptcy laws or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was general partner at or within two years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing; or

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses).

Item 11. Compensation of Directors and Officers

(a) Provide, in substantially the tabular format indicated, the annual compensation of each of the three highest paid persons who were officers or directors during the issuer's last completed fiscal year.

Name	Capacities in which compensation was received (e.g., Chief Executive Officer, director, etc.)	Cash compensation ($)	Other compensation ($)	Total compensation ($)

(b) Provide the aggregate annual compensation of the issuer's directors as a group for the issuer's last completed fiscal year.

(c) Briefly describe all proposed compensation to be made in the future pursuant to any ongoing plan or arrangement to the individuals specified in paragraphs (a) and (b) of this item. The description must include a summary of how each plan operates, any performance formula or measure in effect (or the criteria used to determine payment amounts), the time periods over which the measurements of benefits will be determined, payment schedules, and any recent material amendments to the plan. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation in favor of officers or directors of the issuer and that are available generally to all salaried employees.

Instructions to Item 11:

1. In case of compensation paid or to be paid otherwise than in cash, if it is impracticable to determine the cash value thereof, state in a note to the table the nature and amount thereof.

2. This item is to be answered on an accrual basis if practicable; if not so answered, state the basis used.

Item 12. Security Ownership of Management and Certain Securityholders

(a) Include the information specified in paragraph (b) of this item as of the most recent practicable date (stating the date used), in substantially the tabular format indicated, with respect to voting securities beneficially owned by:

(1) all officers and directors as a group, individually naming each director or officer who beneficially owns more than 10% of any class of the issuer's voting securities;

(2) any other shareholder who beneficially owns more than 10% of any class of the issuer's voting securities as such beneficial ownership would be calculated if the issuer were subject to Rule 13d-3(d)(1) of the Securities Exchange Act of 1934.

(b) Beneficial Ownership Table:

Title of Class	Name and address of beneficial owner[(1)]	Amount and nature of beneficial ownership	Amount and nature of beneficial ownership acquirable[(2)]	Percent of Class[(3)]

(1) The address given in this column may be a business, mailing, or residential address. The address may be included in an appropriate footnote to the table rather than in this column.

(2) This column must include the amount of equity securities each beneficial owner has the right to acquire using the manner specified in Rule 13d-3(d)(1) of the Securities Exchange Act of 1934. An appropriate footnote must be included if the column heading does not sufficiently describe the circumstances upon which such securities could be acquired.

(3) This column must use the amounts contained in the two preceding columns to calculate the percent of class owned by such beneficial owner.

Item 13. Interest of Management and Others in Certain Transactions

(a) Describe briefly any transactions or any currently proposed transactions during the issuer's last two completed fiscal years and the current fiscal year, to which the issuer or any of its subsidiaries was or is to be a participant and the amount involved exceeds the lesser of $120,000 or one percent of the average of the issuer's total assets at year end for the last two completed fiscal years, and in which any of the following persons had or is to have a direct or indirect material interest, naming the person and stating his or her relationship to the issuer, the nature of the person's interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the issuer;

(2) Any nominee for election as a director;

(3) Any securityholder named in answer to Item 12(a)(2);

(4) If the issuer was incorporated or organized within the past three years, any promoter of the issuer; or

(5) Any immediate family member of the above persons. An "immediate family member" of a person means such person's child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, or any person (other than a tenant or employee) sharing such person's household.

Instructions to Item 13(a):

1. For purposes of calculating the amount of the transaction described above, all periodic installments in the case of any lease or other agreement providing for periodic payments must be aggregated to the extent they occurred within the time period described in this item.

2. No information need be given in answer to this item as to any transaction where:

(a) The rates of charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro-rata basis by all of the holders of securities of the class.

3. This item calls for disclosure of indirect as well as direct material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity which engages in a transaction with the issuer or its subsidiaries may have an indirect interest in such transaction by reason of the position or relationship. However, a person is deemed not to have a material indirect interest in a transaction within the meaning of this item where:

(a) the interest arises only (i) from the person's position as a director of another corporation or organization (other than a partnership) that is a party to the transaction, or (ii) from the direct or indirect ownership by the person and all other persons specified in paragraphs (1) through (5) of this item, in the aggregate, of less than a 10 percent equity interest in

another person (other than a partnership) that is a party to the transaction, or (iii) from both such position and ownership;

(b) the interest arises only from the person's position as a limited partner in a partnership in which the person and all other persons specified in paragraphs (1) through (5) of this item had an interest of less than 10 percent; or

(c) the interest of the person arises solely from the holding of an equity interest (unless the equity interest confers management rights similar to a general partner interest) or a creditor interest in another person that is a party to the transaction with the issuer or any of its subsidiaries and the transaction is not material to the other person.

4. Include the name of each person whose interest in any transaction is described and the nature of the relationships by reason of which such interest is required to be described. The amount of the interest of any specified person must be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction must be disclosed.

5. Information must be included as to any material underwriting discounts and commissions upon the sale of securities by the issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters, the parties to which do not include the issuer or its subsidiaries.

6. As to any transaction involving the purchase or sale of assets by or to any issuer or any subsidiary, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years before the transaction, the cost to the seller.

7. Information must be furnished in answer to this item with respect to transactions not excluded above which involve compensation from the issuer or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furnishing the services to the issuer or its subsidiaries.

(b) If any expert named in the offering statement as having prepared or certified any part of the offering statement was employed for such purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a material interest in the issuer or any of its parents or subsidiaries or was connected with the issuer or any

of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee, describe the nature of such contingent basis, interest or connection.

Item 14. Securities Being Offered

(a) If capital stock is being offered, state the title of the class and furnish the following information regarding all classes of capital stock outstanding:

(1) Outline briefly: (i) dividend rights; (ii) voting rights; (iii) liquidation rights; (iv) preemptive rights; (v) conversion rights; (vi) redemption provisions; (vii) sinking fund provisions; (viii) liability to further calls or to assessment by the issuer; (ix) any classification of the Board of Directors, and the impact of classification where cumulative voting is permitted or required; (x) restrictions on alienability of the securities being offered; (xi) any provision discriminating against any existing or prospective holder of such securities as a result of such securityholder owning a substantial amount of securities; and (xii) any rights of holders that may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class.

(2) Briefly describe potential liabilities imposed on shareholders under state statutes or foreign law, for example, to employees of the issuer, unless such disclosure would be immaterial because the financial resources of the issuer are such as to make it unlikely that the liability will ever be imposed.

(3) If preferred stock is to be offered or is outstanding, describe briefly any restriction on the repurchase or redemption of shares by the issuer while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

(b) If debt securities are being offered, outline briefly the following:

(1) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund or retirement.

(2) Provisions with respect to the kind and priority of any lien securing the issue, together with a brief identification of the principal properties subject to such lien.

(3) Material affirmative and negative covenants.

Instruction to Item 14(b):

In the case of secured debt there must be stated: (i) the approximate amount of unbonded property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being issued are to be issued against such property, against the deposit of cash, or otherwise.

(c) If securities described are to be offered pursuant to warrants, rights, or convertible securities, state briefly:

(1) the amount of securities issuable upon the exercise or conversion of such warrants, convertible securities or rights;

(2) the period during which and the price at which the warrants, convertible securities or rights are exercisable;

(3) the amounts of warrants, convertible securities or rights outstanding; and

(4) any other material terms of such securities.

(d) In the case of any other kind of securities, appropriate information of a comparable character.

Part F/S

(a) General Rules

(1) The appropriate financial statements set forth below of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor must be filed as part of the offering statement and included in the offering circular that is distributed to investors.

(2) Unless the issuer is a Canadian company, financial statements must be prepared in accordance with generally accepted accounting principles in the United States (US GAAP). If the issuer is a Canadian company, such financial statements must be prepared in accordance with either US GAAP or International Financial Reporting Standards as issued by the International Accounting Standards Board. If the financial statements comply with International Financial Reporting Standards as issued by the International Accounting Standards Board, such compliance must be unreservedly and explicitly stated in the notes to the financial statements and the auditor's report must include an opinion on whether the financial statements comply with International Financial Reporting Standards as issued by the International Accounting Standards Board.

(3) The following requirements apply to all financial statements filed on this Form 1-A:

(i) The most recent balance sheet must be as of a date within nine months before filing the offering statement. For filings made more than three months after the end of the issuer's most recent fiscal year, the balance sheet must be dated as of the end of the most recent fiscal year. For filings made more than nine months after the end of the issuer's most recent

fiscal year, the balance sheet must be dated no earlier than as of six months after the end of the most recent fiscal year.

(ii) The date of the most recent balance sheet included pursuant to this Part F/S must be used to determine which fiscal years must be covered by the statements of income and cash flows and any other financial statement disclosure dependent on such date.

(iii) Financial statements for the two most recently completed fiscal years are required for the issuer. Financial statements for no more than the two most recently completed fiscal years are required for any businesses acquired or to be acquired.

(iv) Interim financial statements, which may be unaudited (in which case that fact must be stated), must cover at least the first six months of the issuer's fiscal year and the corresponding period of the preceding fiscal year.

(v) If the day that the financial statements included in the offering statement become stale falls on a Saturday, Sunday, or holiday, such offering statement may be filed on the first business day following the last day of the specified period.

(vi) *Financial Statements of Guarantors and Issuers of Guaranteed Securities.* Financial statements of a subsidiary of an issuer that issues securities guaranteed by the issuer or guarantees securities issued by the issuer must be presented as required by Rule 3-10 of Regulation S-X, except that the periods presented are those required by this paragraph (a)(3) of this Part F/S and that no audit is required for Tier 1 offerings unless paragraph (b)(7) applies.

(vii) *Financial Statements of Affiliates Whose Securities Collateralize an Issuance.* Financial statements for an issuer's affiliates whose securities constitute a substantial portion of the collateral for any class of securities being offered must be presented as required by Rule 3-16 of Regulation S-X, except that the periods presented are those required by this paragraph (a)(3) of this Part F/S and that no audit is required for Tier 1 offerings unless paragraph (b)(7) applies.

(viii) *Oil and Gas Producing Activities.* Issuers engaged in oil and gas producing activities must follow the financial accounting and reporting standards specified in Rule 4-10 of Regulation S-X.

(ix) Additional financial statement requirements depend on whether the offering is a Tier 1 or Tier 2 offering and those requirements are set forth in paragraphs (b) and (c) below.

(4) Issuers should refer to Rule 257(b)(2) to determine whether a special financial report will be required after qualification of the offering statement.

(b) Financial Statements for Tier 1 Offerings

(1) In addition to the general rules in paragraph (a), the rules in (2) through (8) of this paragraph should be followed in the preparation of the issuer's financial statements. Regulation S-X does not apply to the financial statements, except as otherwise specifically provided below.

(2) *Balance Sheet.* There must be filed consolidated balance sheets for the issuer and its subsidiaries as of the end of each of the two most recent fiscal years. If the issuer has been in existence for less than one fiscal year, the issuer must file a balance sheet as of a date within nine months of the date of the filing of the offering statement.

(3) *Statements of income, cash flows, and other stockholders equity.* File consolidated statements of income, cash flows, and other stockholders equity for each of the two fiscal years preceding the date of the most recent balance sheet being filed, and for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, and the corresponding period of the preceding fiscal year, or for the period of the issuer's existence if less than the period above.

(4) Income statements must be accompanied by a statement that in the opinion of management all adjustments necessary for a fair statement of results for the interim period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect must be made.

(5) *Financial Statements of Businesses Acquired or to be Acquired.* File the financial statements described in Rule 8-04 of Regulation S-X. The requirements of such rules apply as if the issuer were conducting a registered offering, except as otherwise provided in paragraph (a)(3) of this Part F/S and except that no audit is required unless paragraph (b)(7) applies.

(6) *Pro Forma Financial Information.*

(i) Pro forma information must be furnished if any of the following conditions exist:

(A) During the most recent fiscal year or subsequent interim period for which a balance sheet of the issuer is required, a significant business combination has occurred; or

(B) After the date of the issuer's most recent balance sheet, consummation of a significant business combination has occurred or is probable.

(ii) Pro forma statements must ordinarily be in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results and must include the following:

(A) If the transaction was consummated during the most recent fiscal year or in the subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or

(B) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet required and pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any.

(7) The financial statements prepared pursuant to this paragraph (b) need not be audited. However, if an audit of these financial statements is obtained for other purposes and that audit was performed in accordance with either U.S. generally accepted auditing standards or the Standards of the Public Company Accounting Oversight Board by an auditor that is independent pursuant to Rule 2-01 of Regulation S-X, those audited financial statements must be filed, and an audit opinion complying with Article 2 of Regulation S-X must be filed along with such financial statements. The auditor may, but need not, be registered with the Public Company Accounting Oversight Board.

(8) As an alternative, an issuer may—but need not—elect to comply with the provisions of paragraph (c).

(c) Financial Statement Requirements for Tier 2 Offerings

(1) In addition to the general rules in paragraph (a), the rules in (2) through (4) of this paragraph should be followed in the preparation of the issuer's financial statements.

(2) Audited financial statements are required for Tier 2 offerings.

(3) An issuer must comply with Article 8 of Regulation S-X as if it was conducting a registered offering on Form S-1, except as otherwise provided in paragraph (a)(3) of this Part F/S.

(4) The audit must be conducted in accordance with standards of the Public Company Accounting Oversight Board (United States). Accounting firms conducting audits for the financial statements included in the offering circular may, but need not, be registered with the Public Company Accounting Oversight Board.

PART III—EXHIBITS

Item 16. Index to Exhibits

(a) An exhibits index must be presented at the beginning of Part III.

(b) Each exhibit must be listed in the exhibit index according to the number assigned to it under Item 17 below.

(c) For incorporation by reference, please refer to General Instruction III of this Form.

Item 17. Description of Exhibits

As appropriate, the following documents must be filed as exhibits to the offering statement.

1. *Underwriting agreement*—Each underwriting contract or agreement with a principal underwriter or letter pursuant to which the securities are to be distributed; where the terms have yet to be finalized, proposed formats may be provided.

2. *Charter and bylaws*—The charter and bylaws of the issuer or instruments corresponding thereto as currently in effect and any amendments thereto.

3. *Instruments defining the rights of securityholders*—

(a) All instruments defining the rights of any holder of the issuer's securities, including but not limited to (i) holders of equity or debt securities being issued; (ii) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) The following instruments need not be filed if the issuer agrees to file them with the Commission upon request: (i) instruments defining the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated financial statements are required to be filed if such debt is not being issued pursuant to this Regulation A offering and the total amount of such authorized issuance does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis; (ii) any instrument with respect to a class of securities that is to be retired or redeemed before the issuance or upon delivery of the securities being issued pursuant to this Regulation A offering and appropriate

steps have been taken to assure such retirement or redemption; and (iii) copies of instruments evidencing scrip certificates or fractions of shares.

4. *Subscription agreement*—The form of any subscription agreement to be used in connection with the purchase of securities in this offering.

5. *Voting trust agreement*—Any voting trust agreements and amendments.

6. *Material contracts*

(a) Every contract not made in the ordinary course of business that is material to the issuer and is to be performed in whole or in part at or after the filing of the offering statement or was entered into not more than two years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the issuer and its subsidiaries, it is made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it must be filed except where immaterial in amount or significance: (i) any contract to which directors, officers, promoters, voting trustees, securityholders named in the offering statement, or underwriters are parties, except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price; (ii) any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase the major part of the issuer's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which the issuer's business depends to a material extent; (iii) any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the issuer on a consolidated basis; or (iv) any material lease under which a part of the property described in the offering statement is held by the issuer.

(c) Any management contract or any compensatory plan, contract or arrangement including, but not limited to, plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description) is deemed material and must be filed except for the following: (i) ordinary purchase and sales agency agreements; (ii) agreements with managers of stores in a chain organization or similar organization; (iii) contracts providing for labor or salesperson's bonuses or payments to a class of securityholders, as such; (iv) any compensatory plan, contract or arrangement that pursuant to its terms is available to employees generally and that in operation provides for the same method of allocation of benefits between management and non-management participants.

7. *Plan of acquisition, reorganization, arrangement, liquidation, or succession*—Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the offering statement. Schedules (or similar attachments) to these exhibits must not be filed unless such schedules contain information that is material to an investment decision and that is not otherwise disclosed in the agreement or the offering statement. The plan filed must contain a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish supplementally a copy of any omitted schedule to the Commission upon request.

8. *Escrow agreements*—Any escrow agreement or similar arrangement which has been executed in connection with the Regulation A offering.

9. *Letter re change in certifying accountant*—A letter from the issuer's former independent accountant regarding its concurrence or disagreement with the statements made by the issuer in the current report concerning the resignation or dismissal as the issuer's principal accountant.

10. *Power of attorney*—If any name is signed to the offering statement pursuant to a power of attorney, signed copies of the power of attorney must be filed. Where the power of attorney is contained elsewhere in the offering statement or documents filed therewith, a reference must be made in the index to the part of the offering statement or document containing such power of attorney. In addition, if the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature must also be filed. A power of attorney that is filed with the Commission must relate to a specific filing or an amendment thereto. A power of attorney that confers general authority may not be filed with the Commission.

11. *Consents*—

(a) Experts: The written consent of (i) any accountant, counsel, engineer, geologist, appraiser or any persons whose profession gives authority to a statement made by them and who is named in the offering statement as having prepared or certified any part of the document or is named as having prepared or certified a report or evaluation whether or not for use in connection with the offering statement; (ii) the expert that authored any portion of a report quoted or summarized as such in the offering statement, expressly stating their consent to the use of such quotation or summary; (iii) any persons who are referenced as having reviewed or passed upon any information in the offering statement, and that such information is being included on the basis of their authority or in reliance upon their status as experts.

(b) All written consents must be dated and signed.

12. *Opinion re legality*—An opinion of counsel as to the legality of the securities covered by the Offering Statement, indicating whether they will when sold, be legally issued, fully paid and non-assessable, and if debt securities, whether they will be binding obligations of the issuer.

13. *"Test the waters" materials*—Any written communication or broadcast script used under the authorization of Rule 255. Such materials need not be filed if they are substantively the same as materials previously filed with the offering statement.

14. *Appointment of agent for service of process*—A Canadian issuer must file Form F-X.

15. *Additional exhibits*—

(a) Any non-public, draft offering statement previously submitted pursuant to Rule 252(f) and any related, non-public correspondence submitted by or on behalf of the issuer.

(b) Any additional exhibits which the issuer may wish to file, which must be so marked as to indicate clearly the subject matters to which they refer.

SIGNATURES

Pursuant to the requirements of Regulation A, the issuer certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form 1-A and has duly caused this offering statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on___ _____ *(date)*.

(Exact name of issuer as specified in its charter) _____

By (Signature and Title) _____

This offering statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature)_____

(Title)_____

(Date)_____

Instructions to Signatures:

1. The offering statement must be signed by the issuer, its principal executive officer, principal financial officer, principal accounting officer, and a majority of the members of its board of directors or other governing body. If a signature is

by a person on behalf of any other person, evidence of authority to sign must be filed with the offering statement, except where an executive officer signs on behalf of the issuer.

2. The offering statement must be signed using a typed signature. Each signatory to the filing must also manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document must be executed before or at the time the filing is made and must be retained by the issuer for a period of five years. Upon request, the issuer must furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

3. The name and title of each person signing the offering statement must be typed or printed beneath the signature.

Note: The text of Form 1-A will not appear in the Code of Federal Regulations.

* * * * *

■ 10. Revise § 239.91 to read as follows:

§ 239.91 Form 1–K

This form shall be used for filing annual reports under Regulation A (§§ 230.251–230.263 of this chapter).

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 1-K

GENERAL INSTRUCTIONS

A. Rules as to Use of Form 1-K.

(1) This Form shall be used for annual reports pursuant to Rule 257(b)(1) of Regulation A (§§ 230.251-230.263).

(2) Annual reports on this Form shall be filed within 120 days after the end of the fiscal year covered by the report.

(3) This Form also shall be used for special financial reports filed pursuant to Rule 257(b)(2)(i)(A) of Regulation A. Such special financial reports shall be filed and signed in the manner set forth in this Form, but otherwise need only provide Part I and the financial statements required by Rule 257(b)(2)(i)(A). Special financial reports filed using this Form shall be filed within 120 calendar days after the qualification date of the offering statement.

B. Preparation of Report.

(1) Regulation A contains certain general requirements that are applicable to reports on any form, including amendments to reports. These general requirements should be carefully read and observed in the preparation and filing of reports on this Form.

(2) This Form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report.

(3) Except where information is required to be given for the fiscal year or as of a specified date, it shall be given as of the latest date reasonably practicable.

(4) References in this Form to the items in Form 1-A are to the items set forth in Part II and Part III of Form 1-A, not Part I.

(5) In addition to the information expressly required to be included in this Form, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

C. Signature and Filing of Report.

(1) The report must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232).

(2) The report must be signed by the issuer, its principal executive officer, principal financial officer, principal accounting officer, and at least a majority of the members of its board of directors or other governing body. If a signature is by a person on behalf of any other person, evidence of authority to sign must be filed with the report, except where an executive officer signs on behalf of the issuer.

(3) The report must be signed using a typed signature. Each signatory to the filing must also manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document must be executed before or at the time the filing is made and must be retained by the issuer for a period of five years. Upon request, the issuer must furnish to the Commission or its staff a copy of any or all documents retained pursuant to this paragraph.

D. Incorporation by Reference.

(1) An issuer may incorporate by reference to other documents previously submitted or filed on EDGAR pursuant to Regulation A. Descriptions of where the information incorporated by reference can be found must be specific and must clearly identify the relevant document and portion thereof where such information can be found. For exhibits, this description must be noted in the exhibits index for each relevant exhibit. All such descriptions must be accompanied by a separate hyperlink to the incorporated document on EDGAR. A hyperlink need not remain active after the filing of the report, except that amendments to the report must update any hyperlinks referred to in the amendment that are inactive. If any substantive modification has occurred in the text of any document incorporated by reference since such document was filed, the issuer must file with the reference a statement containing the text and date of such modification.

(2) Reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information to be incorporated by reference includes an incorporation by reference to another document. Incorporation by reference to documents not available on EDGAR is not permitted. Matter shall not be incorporated by reference in any case where such incorporation would render the statement or report incomplete, unclear, or confusing.

PART I
NOTIFICATION

The following information must be provided in the XML-based portion of Form 1-K available through the EDGAR portal and must be completed or updated before uploading each offering statement or amendment thereto. The format of Part I shown below may differ from the electronic version available on EDGAR. The electronic

version of Part I will allow issuers to attach Part II for filing by means of EDGAR. All items must be addressed, unless otherwise indicated.

* * * * * *

This Form 1-K is to provide an ☐ Annual Report ***OR*** ☐ Special Financial Report for the fiscal year ended _____

Exact name of issuer as specified in the issuer's charter: _____

State or other jurisdiction of incorporation: _____

I.R.S. Employer Identification Number:_____

Address of Principal Executive Offices: _____
_____

Telephone: ( ) _____

Title of each class of securities issued pursuant to Regulation A: _____
_____

Summary Information Regarding Prior Offerings and Proceeds

The following information must be provided for any Regulation A offering that has terminated or completed prior to the filing of this Form 1-K, unless such information has been previously reported in a manner permissible under Rule 257. If such information has been previously reported, check this box ☐ and leave the rest of Part I blank.

Date of qualification of the offering statement:_____

Date of commencement of the offering:_____

Number of securities qualified to be sold in the offering:_____

Number of securities sold in the offering:_____

Price per security: $_____

The aggregate offering price for securities sold on behalf of the issuer:
$_____ ☐ N/A

The aggregate offering price for the securities sold on behalf of selling securityholders:
$_____ ☐ N/A

Fees in connection with this offering and names of service providers:

	Name of Service Provider	Fees
Underwriters:	_____	$ _____
Sales Commissions:	_____	$ _____
Finders' Fees:	_____	$ _____
Auditor:	_____	$ _____
Legal:	_____	$ _____
Promoters:	_____	$ _____
Blue Sky Compliance:	_____	$ _____

CRD Number of any broker or dealer listed:_____

Net proceeds to the issuer: $_____

Clarification of responses (if necessary): _____

PART II
INFORMATION TO BE INCLUDED IN REPORT

Item 1. Business

Set forth the information required by Item 7 of Form 1-A.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Set forth the information required by Item 9 of Form 1-A for the previous two completed fiscal years.

Item 3. Directors and Officers

Set forth the information required by Items 10 and 11 of Form 1-A.

Item 4. Security Ownership of Management and Certain Securityholders

Set forth the information required by Item 12 of Form 1-A.

Item 5. Interest of Management and Others in Certain Transactions

Set forth the information required by Item 13 of Form 1-A.

Item 6. Other Information

Set forth any information required to be disclosed in a report on Form 1-U during the second half of the fiscal year covered by this Form 1-K, but not reported, whether or not otherwise required by this Form 1-K. If disclosure of such information is made under this item, it need not be repeated in a report on Form 1-U that would otherwise be

required to be filed with respect to such information or in a subsequent report on Form 1-U.

Item 7. Financial Statements

(a) At the beginning of the section where you provide the financial statements required by this Form, provide a list of the financial statements included.

(b) Include annual financial statements of the issuer that would meet the requirements of Part F/S of Form 1-A if included in an offering statement being qualified on the due date of the report.

Item 8. Exhibits

(a) An exhibits index must be presented immediately preceding the first signature page of the report.

(b) File, as exhibits to this Form, the exhibits required by Form 1-A, except for the exhibits required by paragraphs 1, 12, and 13 of Item 17.

SIGNATURES

Pursuant to the requirements of Regulation A, the issuer has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Exact name of issuer as specified in its charter)_____
_____

By (Signature and Title)_____

Date_____

Pursuant to the requirements of Regulation A, this report has been signed below by the following persons on behalf of the issuer and in the capacities and on the dates indicated.

By (Signature and Title)_____

Date_____

By (Signature and Title)_____

Date_____

Note: The text of Form 1-K will not appear in the Code of Federal Regulations.

■ 12. Revise § 239.92 to read as follows:

§ 230.92 Form 1–SA

This form shall be used for filing semiannual reports under Regulation A (§§ 230.251–230.263 of this chapter).

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 1-SA

[ ] SEMIANNUAL REPORT PURSUANT TO REGULATION A
or
[ ] SPECIAL FINANCIAL REPORT PURSUANT TO REGULATION A

For the fiscal semiannual period ended _____

_____
(Exact name of issuer as specified in its charter)

_____	_____
State or other jurisdiction of incorporation or organization	(I.R.S. Employer Identification No.)

_____
(Full mailing address of principal executive offices)

_____
(Issuer's telephone number, including area code)

GENERAL INSTRUCTIONS

A. Rules as to Use of Form 1-SA.

(1) This Form shall be used for semiannual reports pursuant to Rule 257(b)(3) of Regulation A (§§ 230.251-230.263).

(2) Semiannual reports on this Form shall be filed within 90 days after the end of the semiannual period covered by the report.

(3) This Form also shall be used for special financial reports filed pursuant to Rule 257(b)(2)(i)(B) of Regulation A. Such special financial reports shall be filed and signed in the manner set forth in this Form, but otherwise need only provide the cover page and financial statements required by Rule 257(b)(2)(i)(B). Special financial reports filed using this Form shall be filed within 90 calendar days after the qualification date of the offering statement.

B. Preparation of Report.

(1) Regulation A contains certain general requirements that are applicable to reports on any form, including amendments to reports. These general requirements should be carefully read and observed in the preparation and filing of reports on this Form.

(2) This Form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report.

(3) In addition to the information expressly required to be included in this Form, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

C. Signature and Filing of Report.

(1) The report must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232).

(2) The report must be signed by the issuer, its principal executive officer, principal financial officer and principal accounting officer. If a signature is by a person on behalf of any other person, evidence of authority to sign must be filed with the report, except where an executive officer signs on behalf of the issuer.

(3) The report must be signed using a typed signature. Each signatory to the filing must also manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document must be executed before or at the time the filing is made and must be retained by the issuer for a period of five years. Upon request, the issuer must furnish to the Commission or its staff a copy of any or all documents retained pursuant to this paragraph.

D. Incorporation by Reference.

(1) An issuer may incorporate by reference to other documents previously submitted or filed on EDGAR pursuant to Regulation A. Descriptions of where the information incorporated by reference can be found must be specific and must clearly identify the relevant document and portion thereof where such information can be found. For exhibits, this description must be noted in the exhibits index for each relevant exhibit. All such descriptions must be accompanied by a separate hyperlink to the incorporated document on EDGAR. A hyperlink need not remain active after the filing of the report, except that amendments to the report must update any hyperlinks referred to in the amendment that are inactive. If any substantive modification has occurred in the text of any document incorporated by reference since such document was filed, the issuer must file with the reference a statement containing the text and date of such modification.

(2) Reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information to be incorporated by reference includes an incorporation by reference to another document. Incorporation by reference to documents not available on EDGAR is not permitted. Matter shall not be incorporated by reference in any case where such incorporation would render the statement or report incomplete, unclear, or confusing.

INFORMATION TO BE INCLUDED IN REPORT

Item 1. Management's Discussion and Analysis of Financial Condition and Results of Operations

Set forth the information required by Item 9 of Form 1-A.

Item 2. Other Information

Set forth any information required to be disclosed in a report on Form 1-U during the semiannual period covered by this Form 1-SA, but not reported, whether or not otherwise required by this Form 1-SA. If disclosure of such information is made under this item, it need not be repeated in a report on Form 1-U that would otherwise be required to be filed with respect to such information or in a subsequent report on Form 1-U.

Item 3. Financial Statements

The appropriate financial statements set forth below of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor must be filed as part of the Form 1-SA.

Unless the issuer is a Canadian company, financial statements must be prepared on a consolidated basis in accordance with generally accepted accounting principles in the United States (US GAAP). If the issuer is a Canadian company, such financial statements must be prepared in accordance with either US GAAP or International Financial Reporting Standards as issued by the International Accounting Standards Board. If the financial statements comply with International Financial Reporting Standards as issued by the International Accounting Standards Board, such compliance must be unreservedly and explicitly stated in the notes to the financial statements.

The financial statements included pursuant to this item may be unaudited and are not required to be reviewed. The financial statements must include the following:

(a) An interim balance sheet as of the end of the six month period covered by this report and a balance sheet as of the end of the preceding fiscal year. An interim balance sheet as of the end of the corresponding six month interim period of the preceding fiscal year need not be provided unless necessary for an understanding of the impact of seasonal fluctuations on the issuer's financial condition.

(b) Interim statements of income must be provided for the six month interim period covered by this report and for the corresponding period of the preceding fiscal year. Income statements must be accompanied by a statement that in the opinion of management all adjustments necessary for a fair statement of results for the interim period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect must be made.

(c) Interim statements of cash flows must be provided for the six month interim period covered by this report and for the corresponding period of the preceding fiscal year.

(d) Interim statements of changes in financial position shall be provided for the period between the end of the preceding fiscal year and the end of the interim period covered by this report, and for the corresponding period of the preceding fiscal year.

(e) *Financial Statements of Guarantors and Issuers of Guaranteed Securities.* Financial statements of a subsidiary of an issuer that issues securities guaranteed by the issuer or guarantees securities issued by the issuer must be presented as required by Rule 3-10 of Regulation S-X, except that the periods presented are those required by this item and the financial statements need not be audited.

(f) *Financial Statements of Affiliates Whose Securities Collateralize an Issuance.* Financial statements for an issuer's affiliates whose securities constitute a substantial portion of the collateral for any class of securities being offered must be presented as required by Rule 3-16 of Regulation S-X, except that the periods presented are those required by this item and the financial statements need not be audited.

(g) *Oil and Gas Producing Activities.* Issuers engaged in oil and gas producing activities must follow the financial accounting and reporting standards specified in Rule 4-10 of Regulation S-X.

Item 4. Exhibits

(a) An exhibits index must be presented immediately preceding the first signature page of the report.

(b) File, as exhibits to this Form, the exhibits required by Form 1-A, except for the exhibits required by paragraphs 1, 12, and 13 of Item 17.

SIGNATURES

Pursuant to the requirements of Regulation A, the issuer has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Exact name of issuer as specified in its charter)_____

By (Signature and Title)_____

Date_____

Pursuant to the requirements of Regulation A, this report has been signed below by the following persons on behalf of the issuer and in the capacities and on the dates indicated.

By (Signature and Title)_____

Date_____

By (Signature and Title)_____

Date_____

Note: The text of Form 1-SA will not appear in the Code of Federal Regulations.

■ 13. Revise § 239.93 to read as follows:

§ 230.93 Form 1–U

This form shall be used for filing current reports under Regulation A (§§ 230.251–230.263 of this chapter).

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 1-U

CURRENT REPORT PURSUANT TO REGULATION A

Date of Report (Date of earliest event reported)_____

_____
(Exact name of issuer as specified in its charter)

_____	_____
State or other jurisdiction of incorporation or organization	(I.R.S. Employer Identification No.)

_____
(Full mailing address of principal executive offices)

_____
(Issuer's telephone number, including area code)

Title of each class of securities issued pursuant to Regulation A: _____
_____

GENERAL INSTRUCTIONS

A. Rules as to Use of Form 1-U.

(1) This Form shall be used for current reports pursuant to Rule 257(b)(4) of Regulation A (§§ 230.251-230.263).

(2) A report on this Form is required to be filed, as applicable, upon the occurrence of any one or more of the events specified in Items 1 – 9 of this Form. Unless otherwise specified, a report is to be filed within four business days after occurrence of the event. If the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the four business day period shall begin to run on, and include, the first business day thereafter.

(3) If the issuer previously has provided substantially the same information as required by this Form in a report required by Rule 257(b) of Regulation A, the issuer need not make an additional report of the information on this Form. To the extent that an item calls for

disclosure of developments concerning a previously reported event or transaction, any information required in the new report or amendment about the previously reported event or transaction may be provided by incorporation by reference to the previously filed report, if a hyperlink to such report as filed with the Commission is included.

(4) Copies of agreements, amendments or other documents or instruments required to be filed pursuant to Form 1-U are not required to be filed or furnished as exhibits to the Form 1-U unless specifically required to be filed or furnished by the applicable item. This instruction does not affect the requirement to otherwise file such agreements, amendments or other documents or instruments, including as exhibits to offering statements and periodic reports pursuant to the requirements of Regulation A.

B. Preparation of Report.

(1) Regulation A contains certain general requirements which are applicable to reports on any form, including amendments to reports. These general requirements should be carefully read and observed in the preparation and filing of reports on this Form.

(2) This Form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report. Nevertheless, the report shall contain the number and caption of the applicable item, but the text of such item may be omitted. All items that are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

(3) In addition to the information expressly required to be included in this Form, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

C. Signature and Filing of Report.

(1) The report must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232).

(2) The report must be signed by an officer duly authorized to sign on behalf of the issuer. The report must be signed using a typed signature. The signatory to the filing must also manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document must be executed before or at the time the filing is made and must be retained by the issuer for a period of five years. Upon request, the issuer must furnish to the Commission or its staff a copy of any or all documents retained pursuant to this paragraph.

D. Incorporation by Reference.

(1) An issuer may incorporate by reference to other documents previously submitted or filed on EDGAR pursuant to Regulation A. Descriptions of where the information incorporated by reference can be found must be specific and must clearly identify the relevant document and portion thereof where such information can be found. For exhibits, this description must be noted in the exhibits index for each relevant exhibit. All such descriptions must be accompanied by a separate hyperlink to the incorporated document on EDGAR. A hyperlink need not remain active after the filing of the report, except that amendments to the report must update any hyperlinks referred to in the amendment that are inactive. If any substantive modification has occurred in the text of any document incorporated by reference since such document was filed, the issuer must file with the reference a statement containing the text and date of such modification.

(2) Reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information to be incorporated by reference includes an incorporation by reference to another document. Incorporation by reference to documents not available on EDGAR is not permitted. Matter shall not be incorporated by reference in any case where such incorporation would render the statement or report incomplete, unclear, or confusing.

INFORMATION TO BE INCLUDED IN THE REPORT

Item 1. Fundamental Changes

(a) If the issuer has entered into or terminated a material definitive agreement that has resulted in or would reasonably be expected to result in a fundamental change to the nature of its business or plan of operations, disclose the following information to the extent applicable:

(1) the date on which the agreement was entered into, amended, or terminated, the identity of the parties to the agreement or amendment, and a brief description of any material relationship between the issuer or its affiliates and any of the parties (other than the relationship created by the material definitive agreement or amendment);

(2) a brief description of the material terms and conditions of the agreement;

(3) a brief description of the material circumstances surrounding the termination; and

(4) any material early termination penalties incurred by the issuer due to a termination.

(b) For purposes of this item, a material definitive agreement means an agreement that provides for obligations that are material to and enforceable against the issuer, or rights

that are material to the issuer and enforceable by the issuer against one or more other parties to the agreement, in each case whether or not subject to conditions.

(c) File any material definitive agreement disclosed pursuant to this item as an exhibit to the report on this Form.

Instructions to Item 1:

1. A material definitive agreement that is not made in the ordinary course of business is not necessarily required to be disclosed under this item if it does not result in, and would not reasonably be expected to result in, a fundamental change to the nature of the issuer's business or plan of operations.

2. Without limiting the generality of the foregoing, a material definitive agreement is deemed to result in a fundamental change if it involves any of the following:

a. A transaction that would exceed the significance thresholds in Rule 8-04 of Regulation S-X (17 CFR 210.8-04) if such rule applied;

b. A merger, consolidation, acquisition or similar transaction that requires approval by the issuer's securityholders;

c. Any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase the major part of the issuer's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which the issuer's business is substantially dependent; or

3. An issuer must provide disclosure under this item if the issuer succeeds as a party to the agreement or amendment to the agreement by assumption or assignment (other than in connection with a merger or acquisition or similar transaction that is otherwise reported pursuant to this item).

4. No disclosure under this item is required regarding the termination of a material definitive agreement if:

a. The agreement terminated on its stated termination date, or as a result of all parties completing their obligations under such agreement.

b. Only negotiations or discussions regarding termination of a material definitive agreement are being conducted and the agreement has not been terminated.

c. The issuer believes in good faith that the material definitive agreement has not been terminated, unless the issuer has received a notice of termination pursuant to the terms of agreement.

Item 2. Bankruptcy or Receivership

(a) If a receiver, fiscal agent or similar officer has been appointed for an issuer or its parent, in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state, federal, or Canadian laws, in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the issuer or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental authority, disclose the following information:

(1) the name or other identification of the proceeding;

(2) the identity of the court or governmental authority;

(3) the date that jurisdiction was assumed; and

(4) the identity of the receiver, fiscal agent or similar officer and the date of his or her appointment.

(b) If an order confirming a plan of reorganization, arrangement or liquidation has been entered by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the issuer or its parent, disclose the following:

(1) the identity of the court or governmental authority;

(2) the date that the order confirming the plan was entered by the court or governmental authority;

(3) a summary of the material features of the plan;

(4) the number of shares or other units of the issuer or its parent issued and outstanding, the number reserved for future issuance in respect of claims and interests filed and allowed under the plan, and the aggregate total of such numbers; and

(5) information as to the assets and liabilities of the issuer or its parent as of the date that the order confirming the plan was entered, or a date as close thereto as practicable.

Instruction to Item 2:

The information called for in paragraph (b)(5) of this item may be presented in the form in which it was furnished to the court or governmental authority.

Item 3. Material Modification to Rights of Securityholders

(a) If the constituent instruments defining the rights of the holders of any class of securities of the issuer that were issued pursuant to Regulation A have been materially modified, disclose the date of the modification, the title of the class of securities involved and briefly describe the general effect of such modification upon the rights of holders of such securities.

(b) If the rights or benefits evidenced by any class of securities issued pursuant to Regulation A have been materially limited or qualified by the issuance or modification of any other class of securities by the issuer, briefly disclose the date of the issuance or modification, the general effect of the issuance or modification of such other class of securities upon the rights or benefits of the holders of the securities issued pursuant to Regulation A.

Instruction to Item 3:

Working capital restrictions and other limitations upon the payment of dividends must be reported pursuant to this item.

Item 4. Changes in Issuer's Certifying Accountant

(a) If an independent accountant who was previously engaged as the principal accountant to audit the issuer's financial statements, or an independent accountant upon whom the principal accountant expressed reliance in its report regarding a significant subsidiary, resigns (or indicates that it declines to stand for re-appointment after completion of the current audit) or is dismissed, disclose the information that would be required under Item 304(a)(1) of Regulation S-K (17 CFR 229.304(a)(1)), including compliance with Item 304(a)(3) of Regulation S-K (17 CFR 229.304(a)(3)) if the issuer were a "registrant."

(b) If a new independent accountant has been engaged as either the principal accountant to audit the issuer's financial statements or as an independent accountant on whom the principal accountant is expected to express reliance in its report regarding a significant subsidiary, the issuer must disclose the information that would be required by Item 304(a)(2) of Regulation S-K (17 CFR 229.304(a)(2)) if the issuer were a "registrant."

Instructions to Item 4:

1. Information under this Item 4 is only required if the issuer's most recent qualified offering statement on Form 1-A or report on Form 1-K, whichever is most recent, contains audited financial statements.

2. The resignation or dismissal of an independent accountant, or its refusal to stand for re-appointment, is a reportable event separate from the engagement of a new independent accountant. On some occasions, two reports on Form 1-U are required for a single change in accountants, the first on the resignation (or refusal to stand for re-appointment) or dismissal of the former accountant and the second when the new accountant is engaged. Information required in the second Form 1-U in such situations need not be provided to the extent that it has been reported previously in the first Form 1-U.

Item 5. Non-reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review

(a) If the issuer's board of directors, a committee of the board of directors or the officer or officers of the issuer authorized to take such action if board action is not required, concludes that any previously issued financial statements, covering one or more years or interim periods for which the issuer is required to provide financial statements under Regulation A, including Form 1-A, should no longer be relied upon because of an error in such financial statements as addressed in FASB Accounting Standards Codification Topic 250, as may be modified, supplemented or succeeded, disclose the following information:

(1) the date of the conclusion regarding the non-reliance and an identification of the financial statements and years or periods covered that should no longer be relied upon;

(2) a brief description of the facts underlying the conclusion to the extent known to the issuer at the time of filing;
and

(3) a statement of whether the audit committee, or the board of directors in the absence of an audit committee, or authorized officer or officers, discussed with the issuer's independent accountant the matters disclosed in the filing pursuant to this paragraph (a).

(b) If the issuer is advised by, or receives notice from, its independent accountant that disclosure should be made or action should be taken to prevent future reliance on a previously issued audit report or completed interim review related to previously issued financial statements, disclose the following information:

(1) the date on which the issuer was so advised or notified;

(2) identification of the financial statements that should no longer be relied upon;

(3) a brief description of the information provided by the accountant; and

(4) a statement of whether the audit committee, or the board of directors in the absence of an audit committee, or authorized officer or officers, discussed with the independent accountant the matters disclosed in the filing pursuant to paragraph (b) of this item.

(c) If the issuer receives advisement or notice from its independent accountant requiring disclosure under paragraph (b) of this item, the issuer must:

(1) provide the independent accountant with a copy of the disclosures it is making in response to this item that the independent accountant shall receive no later than the day that the disclosures are filed with the Commission;

(2) request the independent accountant to furnish to the issuer as promptly as possible a letter addressed to the Commission stating whether the independent accountant agrees with the statements made by the issuer in response to this item and, if not, stating the respects in which it does not agree; and

(3) amend the issuer's previously filed Form 1-U by filing the independent accountant's letter as an exhibit to the filed Form 1-U no later than two business days after the issuer's receipt of the letter.

Item 6. Changes in Control of Issuer

(a) If, to the knowledge of the issuer's board of directors, a committee of the board of directors, governing body similar to a board of directors, or authorized officer or officers of the issuer, a change in control of the issuer has occurred, furnish the following information:

(1) the identity of the persons who acquired such control;

(2) the date and a description of the transactions which resulted in the change in control;

(3) the basis of the control, including the percentage of voting securities of the issuer now beneficially owned directly or indirectly by the persons who acquired control;

(4) the amount of the consideration used by such persons;

(5) the sources of funds used by the persons, unless all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Securities Exchange Act of 1934.

(6) the identity of the persons from whom control was assumed; and

(7) any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters.

(b) Describe any arrangements, known to the issuer, including any pledge by any person of securities of the issuer or any of its parents, the operation of which may at a subsequent date result in a change in control of the issuer. It is not necessary to describe ordinary default provisions contained in the charter, trust indentures, or other governing instruments relating to securities of the issuer in response to this paragraph.

Item 7. Departure of Certain Officers

If the issuer's principal executive officer, principal financial officer, principal accounting officer, or any person performing similar functions, retires, resigns or is terminated from that position, disclose the fact that the event has occurred and the date of the event.

Instruction to Item 7:

The disclosure requirements of this item do not apply to an issuer that is a wholly-owned subsidiary of an issuer with a class of securities registered under Section 12 of the Exchange Act (15 U.S.C. 78l), or that is required to file reports under Section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or under Regulation A.

Item 8. Unregistered Sales of Equity Securities

(a) If the issuer sells equity securities in a transaction that is not registered under the Securities Act or qualified under Regulation A, furnish the information set forth in Item 6 of Part I of Form 1-A. For purposes of determining the required filing date for the Form 1-U under this item, the issuer has no obligation to disclose information under this item until the issuer enters into an agreement enforceable against the issuer, whether or not subject to conditions, under which the equity securities are to be sold. If there is no such agreement, the issuer must provide the disclosure within four business days after the occurrence of the closing or settlement of the transaction or arrangement under which the equity securities are to be sold.

(b) No report need be filed if the equity securities sold, in the aggregate since its last report filed under this item or its last periodic report, whichever is more recent, constitute less than 5% of the number of shares outstanding of the class of equity securities sold.

Instructions to Item 8:

1. For purposes of this item, "the number of shares outstanding" refers to the actual number of shares of equity securities of the class outstanding and does not include outstanding securities convertible into or exchangeable for such equity securities.

2. It is not necessary to follow the format of Item 6 of Part I of Form 1-A when providing the information required by this item.

Item 9. Other Events

The issuer may, at its option, disclose under this item any events, with respect to which information is not otherwise called for by this Form, that the issuer deems of importance to securityholders.

SIGNATURES

Pursuant to the requirements of Regulation A, the issuer has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Exact name of issuer as specified in its charter)_____

By (Signature and Title)_____

Date_____

Note: The text of Form 1-U will not appear in the Code of Federal Regulations.

* * * * *

■ 13. Revise § 239.94 to read as follows:

§ 230.94 Form 1–Z

This form shall be used to file an exit report under Regulation A (§§ 230.251–230.263 of this chapter).

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 1-Z

EXIT REPORT UNDER REGULATION A

GENERAL INSTRUCTIONS

(1) The following information must be provided in the XML-based Form 1-Z available through the EDGAR portal. The format shown below may differ from the electronic version available on EDGAR.

(2) An issuer filing this Form pursuant to Rule 257(a) must only complete the Preliminary Information and Part I.

(3) An issuer filing this Form to suspend its duty to file reports under Rule 257(d) must complete the Preliminary Information and Part II. Such issuer must also provide Part I if it has not previously provided the Part I information in a Form 1-K filing.

* * * * * *

PRELIMINARY INFORMATION

Exact name of issuer as specified in the issuer's charter: _____

Address of Principal Executive Offices: _____
_____

Telephone: (__) _____

Commission File Number(s): _____

PART I
Summary Information Regarding the Offering and Proceeds

Date of qualification of the offering statement: _____

Date of commencement of the offering: _____

Number of securities qualified to be sold in the offering: _____

Number of securities sold in the offering: _____

Price per security: $_____

The aggregate offering price for securities sold on behalf of the issuer:
$_____ ☐ N/A

The aggregate offering price for the securities sold on behalf of selling securityholders:
$_____ ☐ N/A

Fees in connection with this offering and names of service providers:

	Name of Service Provider	Fees
Underwriters:	_____	$ _____
Sales Commissions:	_____	$ _____
Finders' Fees:	_____	$ _____
Auditor:	_____	$ _____
Legal:	_____	$ _____
Promoters:	_____	$ _____
Blue Sky Compliance:	_____	$ _____

CRD Number of any broker or dealer listed:_____

Net proceeds to the issuer: $_____

Clarification of responses (if necessary): _____

PART II
Certification of Suspension of Duty to File Reports

Title of each class of securities covered by this Form_____

Commission File Number(s)_____

Approximate number of holders of record as of the certification date:_____

Pursuant to the requirements of Regulation A, _____ *(Name of issuer as specified in charter)* certifies that it meets all of the conditions for termination of Regulation A reporting specified in Rule 257(d) and that there are no classes of securities other than those that are the subject of this Form 1-Z regarding which the issuer has Regulation A reporting obligations. _____ *(Name of issuer as specified in charter)* has caused this certification to be signed on its behalf by the undersigned duly authorized person.

By: _____ Date: _____
Title:_____

Instruction: This Part II of Form 1-Z is required by Rule 257(d) of Regulation A. An officer of the issuer or any other duly authorized person may sign, and must do so by typed signature. The name and title of the person signing the form must be typed or printed under the signature. The signatory to the filing must also manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document must be executed before or at the time the filing is made and must be retained by the issuer for a period of five years. Upon request, the issuer must furnish to the Commission or its staff a copy of any or all documents retained pursuant to this instruction.

Note: The text of Form 1-Z will not appear in the Code of Federal Regulations.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 14. The authority citation for Part 240 is amended by revising the sectional authority for § 240.15c2–11 to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 et. seq., and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376, (2010), unless otherwise noted.

* * * * *

Section 240.15c2–11 also issued under 15 U.S.C. 78j(b), 78o(c), 78q(a), 78w(a), and Pub. L. 112–106, § 401, 126 Stat. 313 (2012).

* * * * *

■ 15. § 240.15c2–11 is amended by revising paragraphs (a)(3) and (d)(2)(i) to read as follows:

§ 240.15c2–11 Initiation or resumption of quotations without specific information.

* * * * *

(a) * * *

(3) A copy of the issuer's most recent annual report filed pursuant to section 13 or 15(d) of the Act or pursuant to Regulation A ((§§ 230.251–230.263 of this chapter), or a copy of the annual statement referred to in section 12(g)(2)(G)(i) of the Act in the case of an issuer required to file reports pursuant to section 13 or 15(d) of the Act or an issuer of a security covered by section 12(g)(2)(B) or (G) of the Act, together with any semiannual, quarterly and current reports that have been filed under the provisions of the Act or Regulation A by the issuer after such annual report or annual statement; *provided, however,* that until such issuer has filed its first annual report pursuant to section 13 or 15(d) of the Act or pursuant to Regulation A, or annual statement referred to in section 12(g)(2)(G)(i) of the Act, the broker or dealer has in its records a copy of the prospectus specified by section 10(a) of the Securities Act of 1933 included in a registration statement filed by the issuer under the Securities Act of 1933, other than a registration statement on Form F–6, or a copy of the offering circular specified by Regulation A included in an offering statement filed by the issuer under Regulation A, that became effective or was qualified within the prior 16 months, or a copy of any registration statement filed by the issuer under section 12 of the Act that became effective within the prior 16 months, together with any semiannual, quarterly and current reports filed thereafter under section 13 or 15(d) of the Act or Regulation A; and *provided further,* that the broker or dealer has a reasonable basis under the circumstances for believing that the issuer is current in filing annual, semiannual, quarterly, and current reports filed pursuant to section 13 or 15(d) of the Act or Regulation A, or, in the case of an insurance company exempted from section 12(g) of the Act by reason of section 12(g)(2)(G) thereof, the annual statement referred to in section 12(g)(2)(G)(i) of the Act; or

* * * * *

(d) * * *

(2) * * *

(i) A broker-dealer shall be in compliance with the requirement to obtain current reports filed by the issuer if the broker-dealer obtains all current reports filed with the Commission by the issuer as of a date up to five business days in advance of the earlier of the date of submission of the quotation to the quotation medium and the date of submission of the paragraph (a) information pursuant to the applicable rule of the Financial Industry Regulatory Authority, Inc. or its successor organization; and

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

■ 16. The authority citation for Part 260 is revised to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77eee, 77ggg, 77nnn, 77sss, 78 ll (d), 80b–3, 80b–4, 80b–11 and Pub. L. 112–106, § 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 17. § 260.4a–1 is revised to read as follows:

§ 260.4a–1 Exempted securities under section 304(a)(8).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security that has been or will be issued otherwise than under an indenture. The same issuer may not claim this exemption within a period of twelve consecutive months for more than $50,000,000 aggregate principal amount of any securities.

Dated: December 18, 2013.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–30508 Filed 1–22–14; 8:45 am]

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Part III

Environmental Protection Agency

Seventy–Third Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0651; FRL–9905–19]

Seventy-Third Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its 73rd ITC Report to the EPA Administrator on December 31, 2013. In the 73rd ITC Report, which is included with this notice, the ITC is revising the *Priority Testing List* by removing five High Production Volume (HPV) Challenge Program orphan chemicals because they were included in a HPV Challenge Program submission or did not meet the ≥ 1 million lb criterion for the HPV Challenge Program.

DATES: Comments must be received on or before February 24, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2013–0651, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. ATTN: Docket ID Number EPA–HQ–OPPT–2013–0651. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2013–0651. EPA's policy is that all comments received will be included in the docket without change and may be made available at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure 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 electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Michael D. Mattheisen, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–3077; fax number: (202) 564–4745; email address: *mattheisen.mike@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action.

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. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 260l *et seq.*) authorizes the EPA Administrator to promulgate regulations under TSCA section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the EPA Administrator for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months. You may access additional information about the ITC at *http://www.epa.gov/oppt/itc.*

A. The 73rd ITC Report

The ITC is revising the TSCA section 4(e) *Priority Testing List* by removing five HPV Challenge Program orphan chemicals.

B. Status of the TSCA Section 4(e) Priority Testing List

The TSCA section 4(e) *Priority Testing List* includes 2 alkylphenols, 45 HPV Challenge Program orphan chemicals, cadmium, a category of cadmium compounds, 6 non-phthalate plasticizers, 25 phosphate ester flame retardants, 2 other flame retardants, 9 chemicals to which children living near hazardous waste sites may be exposed, and 19 diisocyanates and related compounds.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: January 16, 2014.

Barbara A. Cunningham,

Acting Director, Office of Pollution Prevention and Toxics.

Seventy-Third Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency

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V. The TSCA Interagency Testing Committee

Summary

The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) is revising the TCSA section 4(e) *Priority Testing List* by removing five High Production Volume (HPV) Challenge Program orphan chemicals. Orphan chemicals are those HPV chemicals for which no sponsors have volunteered to develop and submit robust summaries of basic hazard and fate testing data to EPA.

The TSCA section 4(e) *Priority Testing List* is Table 1 of this unit.

TABLE 1—TSCA SECTION 4(E) PRIORITY TESTING LIST (NOVEMBER 2013)

ITC Report	Date	Chemical Name/Group	Action
37	November 1995	Branched 4-nonylphenol (mixed isomers)	Recommended.
41	November 1997	4-(1,1,3,3-tetramethylbutyl) phenol	Recommended.
55	December 2004	44 High Production Volume (HPV) Challenge Program orphan chemicals.	Recommended.
56	August 2005	1 HPV Challenge Program orphan chemical, naphtha (petroleum), clay-treated light straight-run.	Recommended.
68	May 2011	Cadmium	Recommended.
69	November 2011	Cadmium compounds	Recommended.
69	November 2011	6 Non-phthalate plasticizers	Recommended.
69	November 2011	25 Phosphate ester flame retardants	Recommended.
69	November 2011	2 Other flame retardants	Recommended.
69	November 2011	9 Chemicals to which children living near hazardous waste sites may be exposed.	Recommended.
69	November 2011	19 Diisocyanates and related compounds	Recommended.

I. Background

The ITC was established by TSCA section 4(e) ''to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of rules for testing under section 4(a). . . At least every six months . . ., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions'' (Pub. L. 94–469, 90 Stat. 2003 *et seq.,* 15 U.S.C. 2601 *et seq.*). ITC reports are available from regulations.gov (*http://www.regulations.gov*) after publication in the **Federal Register**. The ITC produces its revisions to the TSCA section 4(e) *Priority Testing List* with administrative and technical support from the ITC staff, ITC members, and their U.S. Federal Government organizations. ITC members and staff are listed at the end of this report.

II. ITC's Activities During This Reporting Period (June 2013 to November 2013)

During this reporting period, the ITC discussed the 50 HPV Challenge Program orphan chemicals remaining on the TSCA section 4(e) *Priority Testing List.* As a result of these discussions, the ITC removed 5 HPV Challenge Program orphan chemicals from the TSCA section 4(e) *Priority Testing List.* The hazard and fate testing data requested by the EPA for HPV Challenge Program orphan chemicals are necessary to

establish a screening level understanding of their potential human health and environmental impacts. The HPV Challenge Program orphan chemicals are discussed further in section III of this 73rd ITC Report.

III. Revisions to the TSCA Section 4(e) *Priority Testing List:* Removal of HPV Challenge Program Orphan Chemicals

In 2004, at EPA's request, the ITC added 281 HPV Challenge Program orphan (unsponsored) chemicals to the *Priority Testing List* in the ITC's 55th and 56th ITC Reports (Refs. 1 and 2). As of June 2013, 231 HPV Challenge Program orphan chemicals had been removed from the *Priority Testing List* because they were included in EPA's test rules, the testing was voluntarily sponsored or because they no longer met the ≥ 1 million lb production or importation volume criterion for the HPV Challenge Program. During this reporting period, EPA requested that 5 HPV Challenge Program orphan chemicals be removed from the *Priority Testing List* in this 73rd ITC Report (Ref. 3). One of the HPV Challenge Program orphan chemicals is included in a HPV Challenge Program submission and 4 chemicals had production or importation volumes below 1 million lb reported to the 2006 Inventory Update Reporting (IUR) rule and the 2012 Chemical Data Reporting (CDR) rule. The five HPV Challenge Program orphan chemicals being removed from the *Priority Testing List* and the rationales for their removal are listed in Table 2 of this unit. The 45 HPV Challenge Program orphan chemicals remaining on the *Priority Testing List* are listed in Table 3 of this unit.

TABLE 2—HPV CHALLENGE PROGRAM ORPHAN CHEMICALS BEING REMOVED FROM THE PRIORITY TESTING LIST

CAS No.	Chemical name	Rationale
94–96–2	1,3-Hexanediol, 2-ethyl-	A
111–85–3	Octane, 1-chloro-	B
3386–33–2	Octadecane, 1-chloro-	B
52184–19–7	Phenol, 2,4-bis(1,1-dimethylpropyl)-6-[2-(2-nitrophenyl)diazenyl]-	B
68515–89–9	Barium, carbonate nonylphenol complexes	B

A—Included in a HPV Challenge Program submission *http://www.epa.gov/chemrtk/pubs/summaries/2ethlhex/c15756tp.pdf.*
B—Did not meet the ≥ 1 million lb production or importation volume criterion for the HPV Challenge Program in the 2006 Inventory Update Reporting (IUR) rule and the 2012 Chemical Data Reporting (CDR) rule.

TABLE 3—HPV CHALLENGE PROGRAM ORPHAN CHEMICALS REMAINING ON THE PRIORITY TESTING LIST

CAS No.	Chemical name
104–66–5	Benzene, 1,1'-[1,2-ethanediylbis(oxy)]bis-
107–39–1	1-Pentene, 2,4,4-trimethyl-
107–40–4	2-Pentene, 2,4,4-trimethyl-
121–82–4	1,3,5-Triazine, hexahydro-1,3,5-trinitro- (RDX)
137–20–2	Ethanesulfonic acid, 2-[methyl[(9Z)-1-oxo-9-octadecen-1-yl]amino]-, sodium salt (1:1)
529–34–0	1(2H)-Naphthalenone, 3,4-dihydro-
590–19–2	1,2-Butadiene
598–72–1	Propanoic acid, 2-bromo-
1401–55–4	Tannins
1738–25–6	Propanenitrile, 3-(dimethylamino)-
2210–79–9	Oxirane, 2-[(2-methylphenoxy)methyl]-
2372–45–4	1-Butanol, sodium salt (1:1)
2409–55–4	Phenol, 2-(1,1-dimethylethyl)-4-methyl-
2425–54–9	Tetradecane, 1-chloro-
2691–41–0	1,3,5,7-Tetrazocine, octahydro-1,3,5,7-tetranitro- (HMX)
3039–83–6	Ethenesulfonic acid, sodium salt (1:1)
4170–30–3	2-Butenal
4860–03–1	Hexadecane, 1-chloro-
8001–58–9	Creosote
17103–31–0	Urea, sulfate (2:1)
17976–43–1	2,4,6,8,3,5,7-Benzotetraoxatriplumbacycloundecin-3,5,7-triylidene, 1,9-dihydro-1,9-dioxo-
21351–39–3	Urea, sulfate (1:1)
24794–58–9	Formic acid, compd. with 2,2',2''-nitrilotris[ethanol] (1:1)
26680–54–6	2,5-Furandione, dihydro-3-(octen-1-yl)-
28908–00–1	Benzothiazole, 2-[(chloromethyl)thio]-
38321–18–5	Ethanol, 2-(2-butoxyethoxy)-, sodium salt (1:1)
56803–37–3	Phosphoric acid, (1,1-dimethylethyl)phenyl diphenyl ester
68187–41–7	Phosphorodithioic acid, O,O-di-C1–14-alkyl esters
68187–59–7	Coal, anthracite, calcined
68308–74–7	Amides, tall-oil fatty, N,N-di-Me
68309–27–3	Fatty acids, tall-oil, sulfonated, sodium salts
68441–66–7	Decanoic acid, mixed esters with dipentaerythritol, octanoic acid and valeric acid
68527–22–0	Naphtha (petroleum), clay-treated light straight-run
68584–25–8	Benzenesulfonic acid, C10–16-alkyl derivs., compds. with triethanolamine
68602–81–3	Distillates, hydrocarbon resin prodn. higher boiling
68649–42–3	Phosphorodithioic acid, O,O-di-C1–14-alkyl esters, zinc salts
68650–36–2	Aromatic hydrocarbons, C8, o-xylene-lean
68782–97–8	Distillates (petroleum), hydrofined lubricating-oil
68919–17–5	Hydrocarbons, C12–20, catalytic alkylation by-products
68953–80–0	Benzene, mixed with toluene, dealkylation product
68955–76–0	Aromatic hydrocarbons, C9–16, biphenyl deriv.-rich

TABLE 3—HPV CHALLENGE PROGRAM ORPHAN CHEMICALS REMAINING ON THE PRIORITY TESTING LIST—Continued

CAS No.	Chemical name
68990–61–4	Tar, coal, high-temp., high-solids
70084–98–9	Terpenes and Terpenoids, C10–30, distn. residues
71077–05–9	Ethanol, 2,2'-oxybis-, reaction products with ammonia, morpholine product tower residues
119345–02–7	Benzene, 1,1'-oxybis-, tetrapropylene derivs.

IV. References

1. ITC. Fifty-Fifth Report of the ITC; Notice. **Federal Register** (70 FR 7364, February 11, 2005) (FRL–7692–1). Available at *http://www.regulations.gov.* Docket ID number EPA–HQ–OPPT–2013–0651.
2. ITC. Fifty-Sixth Report of the ITC; Notice. **Federal Register** (70 FR 61520, October 24, 2005) (FRL–7739–9). Available at *http://www.regulations.gov.* Docket ID number EPA–HQ–OPPT–2013–0651.
3. EPA. Memo to Dr. John D. Walker, re: EPA's comments on removal of five High Production Volume (HPV) Challenge Program orphan chemicals from the TSCA section 4(e) *Priority Testing List.* December 12, 2013. Available at *http://www.regulations.gov.* Docket ID number EPA–HQ–OPPT–2013–0651.

VI. The TSCA Interagency Testing Committee

Statutory Organizations With Representatives

Department of Commerce

National Institute of Standards and Technology
Michele Schantz, Member
Jessica Reliner, Alternate

Environmental Protection Agency

John E. Schaeffer, Alternate

National Institute of Environmental Health Sciences

Nigel Walker, Member
Scott Masten, Alternate

National Institute for Occupational Safety and Health

Dennis W. Lynch, Alternate

National Science Foundation

Tyrone D. Mitchell, Member

Occupational Safety and Health Administration

Janet Carter, Member and Chairperson
Thomas Nerad, Alternate

Liaison Organizations With Representatives

Agency for Toxic Substances and Disease Registry

Glenn D. Todd, Member

Consumer Product Safety Commission

Dominique Johnson, Member

Department of Agriculture

Clifford P. Rice, Member
Cathleen J. Hapeman, Alternate

Department of Defense

Laurie E. Roszell, Member and Vice-Chairperson

Department of the Interior

Barnett A. Rattner, Member

Food and Drug Administration

Kirk Arvidson, Member
Ronald F. Chanderbhan, Alternate

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John D. Walker, Director
Carol Savage, Administrative Assistant (NOWCC Employee)

TSCA Interagency Testing Committee (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; url: *http://www.epa.gov/oppt/itc.*

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