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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0858; Special Conditions No. 25–518–SC]

Special Conditions: Bombardier Inc., Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Fuselage Post-Crash Fire Survivability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These features are associated with an aluminum-lithium fuselage construction that may provide different levels of protection from post-crash fire threats than similar aircraft constructed from traditional aluminum structure. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* March 21, 2014.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone (425) 227–2195; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2009, Bombardier Inc. applied for a type certificate for their new Models BD–500–1A10 and BD–500–1A11 series airplanes (hereafter collectively referred to as ''C-series''). The C-series airplanes are swept-wing monoplanes with an aluminum alloy fuselage sized for 5-abreast seating. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11.

The fuselage of the Bombardier C-series airplanes will be fabricated using aluminum-lithium construction. Structures fabricated from aluminum-lithium may provide different levels of protection from post-crash fuel-fed fire threats than similar aircraft with traditional aluminum structure.

There are no existing regulations that adequately ensure that aluminum-lithium structure offers passengers the same protection from a post-crash fire condition as would a conventional aluminum structure. These special conditions are necessary to ensure that the Bombardier C-series airplanes provide a level of safety equivalent to that provided by Title 14, Code of Federal Regulations (14 CFR) part 25.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Bombardier Inc. must show that the C-series airplanes meet the applicable provisions of part 25, as amended by Amendment 25–1 through 25–129 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR Part 25) do not contain adequate or appropriate safety standards for the C-series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the C-series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR Part 34 and the noise certification requirements of 14 CFR Part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Bombardier C-series airplanes will incorporate the following novel or unusual design features: The fuselage will be fabricated using aluminum-lithium materials instead of conventional aluminum.

The performance of airplanes consisting of a conventional aluminum fuselage is understood based on service history and extensive intermediate and large-scale fire testing. The new aluminum-lithium materials must provide the same levels of protection against post-crash fuel-fed fire threats.

Discussion

The certification basis for the Bombardier C-series airplanes includes meeting the burn through requirements defined in § 25.856(b). The Bombardier C-series airplanes are introducing a new material from what has traditionally been shown to be survivable from a toxic standpoint. Toxicity levels from post-crash fire threats are typically more severe than threats generated from an in-flight fire with regards to the quantity level of toxins produced by off-gases from burning materials. Therefore, it is necessary to ensure that the material being used does not introduce a new hazard that would reduce the survivability of the passengers during a post-crash situation, or produce levels of toxic fumes that would be lethal or incapacitating, thus preventing evacuation of the aircraft in a crash scenario.

Bombardier Inc. will have to demonstrate that aluminum-lithium material does not produce levels of toxic fumes that will reduce the survivability of the passengers or their ability to evacuate when compared to typically constructed aluminum airplanes.

A way of showing acceptable capability is to conduct a laboratory-scale test to assess the survivability

characteristics of this non-traditional fuselage material. If negligible amounts of combustion products are produced in this test, the material can be considered acceptable with respect to post crash survivability. A test method developed by the FAA's William J. Hughes Technical Center should be used (Ref. DOT/FAA/AR–TN07/15 dated August 2008).

Related regulations, including §§ 25.853 and 25.856(a), remain valid for this airplane, but they do not reflect the potential threat generated from toxic levels of gases produced from aluminum-lithium materials.

Discussion of Comments

Notice of proposed special conditions No. 25–13–08–SC for the Bombardier C-series airplanes was published in the **Federal Register** on October 31, 2013 (78 FR 65233). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Models BD–500–1A10 and BD–500–1A11 series airplanes. Should Bombardier Inc. apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on two model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 (C-series) airplanes.

Fuselage Post-Crash Fire Survivability. The Bombardier C-series airplanes must show that any toxic levels of gases produced from the aluminum-lithium material are in no way an additional threat to the passengers and their ability to evacuate when compared to a typically constructed aluminum airplane exposed to a post-crash fuel-fed fire.

Issued in Renton, Washington, on January 22, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–03585 Filed 2–18–14; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0819; Special Conditions No. 25–519–SC]

Special Conditions: Bombardier Inc., Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Fuselage In-Flight Fire Safety and Flammability Resistance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 series airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These features are associated with the materials used to fabricate the fuselage, which may affect fire propagation during an in-flight fire. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* March 21, 2014.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2195; facsimile 425–227–1232.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2009, Bombardier Inc. applied for a type certificate for their new Models BD–500–1A10 and BD–500–1A1 series airplanes (hereafter collectively referred to as ''C-series''). The C-series airplanes are swept-wing monoplanes with an aluminum alloy fuselage sized for 5-abreast seating. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11.

The Bombardier C-series airplanes will be fabricated using aluminum-lithium materials. The performance of airplanes consisting of a conventional aluminum fuselage in an inaccessible in-flight fire scenario is understood based on service history and extensive intermediate and large-scale fire testing. The fuselage itself does not contribute to in-flight fire propagation. This may not be the case for an all-aluminum-lithium fuselage. Experience has shown that eliminating the fire propagation of the interior materials and insulation materials tends to increase survivability since other aspects of in-flight fire safety (e.g., toxic gas emission and smoke obscuration) are typically by-products of the propagating fire. The Bombardier C-series airplanes must provide protection against an in-flight fire propagating along the surface of the fuselage.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Bombardier Inc. must show that the C-series airplanes meet the applicable provisions of part 25, as amended by Amendment 25–1 through 25–129 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR Part 25) do not contain adequate or appropriate safety standards for the C-series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the C-series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR Part 34 and the noise certification requirements of 14 CFR Part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of

the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Bombardier C-series airplanes will incorporate the following novel or unusual design features: The fuselage will be fabricated using aluminum-lithium materials instead of conventional aluminum. This new type of material must provide protection against an in-flight fire propagating along the surface of the fuselage.

Discussion

The Bombardier C-series airplanes will be fabricated using aluminum-lithium materials. The performance of airplanes consisting of a conventional aluminum fuselage in an inaccessible in-flight fire scenario is understood based on service history and extensive intermediate and large-scale fire testing. Experience has shown that eliminating the fire propagation of the interior materials and insulation materials tends to increase survivability since other aspects of in-flight fire safety (e.g., toxic gas emission and smoke obscuration) are typically by-products of the propagating fire. The fuselage itself does not contribute to in-flight fire propagation. This may not be the case for an all-aluminum-lithium fuselage.

In the past, fatal in-flight fires have originated in inaccessible areas of the airplane where thermal/acoustic insulation located adjacent to the aluminum airplane skin has been the path for flame propagation and fire growth. Concern over the fire performance of thermal/acoustic insulation was initially raised by five incidents in the 1990's, which revealed unexpected flame spread along the insulation film that covered the thermal/acoustic insulation. In all cases, the ignition source was relatively modest and, in most cases, was electrical in origin (e.g., electrical short circuit, arcing caused by chafed wiring, ruptured ballast case).

In 1996, the FAA Technical Center began a program to develop new fire test criteria for insulation films directly relating to in-flight fire resistance. The current test standard at that time was evaluated as well as another small-scale test method that has been used by airplane manufacturers to evaluate flame propagation on thermal/acoustic insulation materials.

An inter-laboratory comparison of these methods revealed a number of deficiencies. A new test method subjecting a material to a pilot flame while the material is heated by a radiant panel was developed. The new radiant panel test method and criteria were specifically established to improve the evaluation of the in-flight fire ignition/flame propagation of thermal/acoustic insulation materials based on real-world fire scenarios. While these tests were developed for thermal/acoustic insulation materials, this same type of test methodology can be used to assess the flammability characteristics of the proposed aluminum-lithium material for the fuselage.

The FAA reviewed the test method proposed by Bombardier Inc. and determined that a larger flame and test article would be necessary to make a determination of the potential flammability of the aluminum-lithium material. It would also be more representative of a real-life fire scenario.

The FAA recently conducted additional testing in our Components Fire Test facility and determined that another way to assess the survivability within the cabin of the C-series airplanes is to use the cargo liner flammability test (part III of appendix F to part 25, *Test Method to Determine Flame Penetration Resistance of Cargo Compartment Liners*). However, the problem with using this particular test is that when the aluminum panels melt, molten globs of aluminum fall directly into the burner, which adversely affects the flame. So the FAA decided that a similar test for the measurement of insulation burnthrough resistance could be used (part VII of appendix F to part 25, *Test Method to Determine the Burnthrough Resistance of Thermal/Acoustic Insulation Materials*). Although this test method uses the same burner as the cargo liner test, it uses a slightly larger flame. In addition, the burner is not vertical, so there was no problem with molten material falling into it, requiring disassembly of the burner. The only slight change was the size of the sample and the sample holder. These were modified slightly to accommodate the samples that we received.

The recent FAA tests that were conducted in our Components Fire Test facility used a 6-gallon/hour oil burner, the same apparatus used to determine burnthrough resistance of thermal/acoustic insulation (part VII of appendix F to part 25). The test used 16 by 24-inch Al-Li panels that were installed into a sheet steel subframe, which measured 18 by 32 inches (outside dimensions). The subframe had an opening cut into it, which measured 14.5 by 22.5 inches; this allowed the test panels to be mounted onto the subframe using .250–20 UNC threaded bolts.

The FAA proposes that Bombardier use the test method contained in part VII of appendix F to part 25, *Test Method to Determine the Burnthrough Resistance of Thermal/Acoustic Insulation Materials,* with the slight changes to the sample size and sample holder as an alternate test method to show compliance with applicable requirements. Bombardier Inc. is responsible for finding a suitable testing facility in which to conduct the testing.

Discussion of Comments

Notice of proposed special conditions No. 25–13–06–SC for the Bombardier C-series airplanes was published in the **Federal Register** on October 31, 2013 (78 FR 65231). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Models BD–500–1A10 and BD–500–1A11 series airplanes. Should Bombardier Inc. apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on two model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Inc. Models BD–500–1A10 and BD–500–1A11 (C-series) airplanes.

1. *Fuselage In-Flight Fire Safety and Flammability Resistance.* Bombardier must demonstrate that the fuselage would not materially contribute to the propagation of an in-flight fire or introduce any additional in-flight fire risk.

2. To demonstrate compliance, the test set-up and methodology must be commensurate with 14 CFR Part 25, appendix F, part VII, except the size of the test samples, modifications to the sample holder, and the test methodology would be varied as described below.

3. In demonstrating that the aluminum-lithium material used to fabricate the fuselage has equal or better flammability resistance characteristics than the aluminum alloy sheet typically used as skin material on similar airplanes, the accepted test methods for compliance include:

a. Each test sample must consist of a flat test specimen. A set of three samples of the material must be tested. The size of each sample must be 16 inches by 24 inches by 0.063 inches.

b. The test samples must be installed into a steel sheet subframe with outside dimensions of 18 inches by 32 inches. The subframe must have an opening cut into it of 14.5 inches by 22.5 inches. The tests samples must be mounted onto the subframe using .250–20 UNC threaded bolts.

c. Test specimens must be conditioned at 70 °F ± 5 °F and 55 percent ± 5 percent humidity for at least 24 hours before testing.

4. Demonstration of compliance will be achieved if the material is not ignited during any of the tests.

Issued in Renton, Washington, on January 22, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–03586 Filed 2–18–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0632; Directorate Identifier 2013–NM–045–AD; Amendment 39–17752; AD 2014–03–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A330–200 and –300 series airplanes, and Model A340–200, –300, –500, and –600 series airplanes. This AD was prompted by results from fuel system reviews conducted by the airplane manufacturer. This AD requires removing bulb-type maintenance lights; installing a drain mast on certain airplanes; and installing muffs on connecting bleed elements on certain airplanes. We are issuing this AD to prevent ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD becomes effective March 26, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 26, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0632;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A330–200 and –300 series airplanes, and Model A340–200, –300, –500, and –600 series airplanes. The NPRM published in the **Federal Register** on July 31, 2013 (78 FR 46306). The NPRM was prompted by results from fuel system reviews conducted by the airplane manufacturer. The NPRM proposed to require removing bulb-type maintenance lights; installing a drain mast on certain airplanes; and installing muffs on connecting bleed elements on certain airplanes. We are issuing this AD to prevent ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0033, dated February 19, 2013 (referred to after this the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> [Subsequent to accidents involving fuel tank system explosions in flight and on ground], the FAA published Special Federal Aviation Regulation (SFAR) 88 [66FR 23086, May 7, 2001], and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12.
>
> In response to these regulations, a global design review conducted by Airbus on the A330 and A340 type design Section 19, which is a flammable fluid leakage zone and a zone adjacent to a fuel tank, highlighted potential deviations. The specific identified cases were that drainage is inefficient in flight on A340–500/–600 aeroplanes, maintenance lights are not qualified explosion proof, and hot surfaces may exist on bleed system during normal/failure operations.
>
> This condition, if not corrected, in combination with a fuel leak generating flammable vapours in the area, could result in a fuel tank explosion and consequent loss of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires removal of bulb type maintenance lights for all aeroplanes, installation of the drain mast between Frame (FR) 80 and FR83 for A340–500/–600, and installation of muffs on connecting bleed elements to minimize hot surfaces on A330 and A340–200/–300.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0632-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received. The following presents the comments received on the proposal (78 FR 46306, July 31, 2013) and the FAA's response to each comment.

Request To Require New Service Information

Airbus requested that we specify the use of Revision 01 of Airbus Mandatory Service Bulletin A340–36–4035, dated September 24, 2013, instead of the original issue of Airbus Mandatory Service Bulletin A340–36–4035, dated September 18, 2012. Airbus stated that since the issuance of the MCAI, it identified an inversion of configurations in Airbus Mandatory Service Bulletin A340–36–4035. Airbus stated that it

determined that this inversion had an impact on the NPRM (78 FR 46306, July 31, 2013) intent and it agreed with the EASA that the MCAI needs to be superseded to mandate Revision 01 of Airbus Mandatory Service Bulletin A340–36–4035, dated September 24, 2013.

We agree with the commenter. Airbus Mandatory Service Bulletin A340–36–4035, Revision 01, dated September 24, 2013, introduces corrections to part numbers for two insulation sleeves between frames 83 and 84 in configurations 002, 003, and 005. This revision also adds an additional work task for configurations 002, 003, and 005 to replace two insulation sleeves between frame 83 and 84, and changes the insulation sleeves kit allocation for configurations 002, 003, and 005 to allocate the correct kit to every configuration.

Even though Airbus Mandatory Service Bulletin A340–36–4035, Revision 01, dated September 24, 2013, introduces additional work it does not affect United States operators since there are no Model A340 airplanes registered in the United States.

We have changed paragraph (h) of this final rule to reference Airbus Mandatory Service Bulletin A340–36–4035, Revision 01, dated September 24, 2013.

Request To Reference Certain Service Bulletins

Airbus noted that we reference Airbus Service Bulletin A340–33–5007 in Note 1 to paragraph (g) of the NPRM (78 FR 46306, July 31, 2013). Airbus stated that it is working on the issuance of equivalent service bulletins, and requested that we reference these service bulletins.

We disagree with the commenter's request. The referenced service information is not available. To delay this action would be inappropriate, since we have determined that an unsafe condition exists and that actions specified in this final rule must be conducted to ensure continued safety. We might consider additional rulemaking when new service information is made available. We have not changed this final rule in this regard.

Request To Remove Certain Credit for Previous Actions

Airbus requested that we remove the credit given for actions accomplished in accordance with Airbus Service Bulletin A330–36–3037, dated September 23, 2011, which is referenced in paragraph (k)(3) of the NPRM (78 FR 46306, July 31, 2013). Airbus stated that it was on purpose that no credit was provided in the MCAI for this service bulletin.

We agree with the commenter's request. Airbus Service Bulletin A330–36–3037, Revision 01, dated January 24, 2013, introduces corrections to accomplish certain procedures that are used to comply with the intent of this final rule. We have removed the reference to Airbus Service Bulletin A330–36–3037, dated September 23, 2011, in paragraph (k)(3) of this final rule.

Request To Use Alternative Materials

Delta Airlines (DAL) requested that we provide authorization to use alternative materials to those listed in Airbus Mandatory Service Bulletin A330–33–3041, Revision 01, dated July 10, 2012: and Airbus Mandatory Service Bulletin A330–36–3040, Revision 01, dated November 26, 2012. DAL stated that it cannot acquire certain materials, and suggested certain alternative materials.

We disagree with the commenter's request. The use of the alternative materials proposed by the commenter to those listed in Airbus Mandatory Service Bulletin A330–33–3041, Revision 01, dated July 10, 2012; and Airbus Mandatory Service Bulletin A330–36–3040, Revision 01, dated November 26, 2012; is not authorized by the airplane manufacturer. Under the provisions of paragraph (l) of this final rule, however, we will consider requests for approval of use of other materials as alternative methods of compliance. We have not changed this final rule in this regard.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 46306, July 31, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 46306, July 31, 2013).

Costs of Compliance

We estimate that this AD affects 43 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation	Up to 21 work-hours × $85 per hour = $1,785.	Up to $5,219	Up to $7,004	Up to $301,172.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0632;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2014–03–14 Airbus: Amendment 39–17752. Docket No. FAA–2013–0632; Directorate Identifier 2013–NM–045–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 26, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, specified in paragraphs (c)(1) and (c)(2) of this AD, all manufacturer serial numbers.

(1) Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(2) Airbus Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection; 33, Lights; 36, Pneumatic; 53, Fuselage.

(e) Reason

This AD results from fuel system reviews conducted by the airplane manufacturer. We are issuing this AD to prevent ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Maintenance Light Removal

Except airplanes on which Airbus Modification 56739 has been incorporated in production: Within 26 months after the effective date of this AD, remove the maintenance lights, in accordance with the Accomplishment Instructions of the applicable Airbus service information specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(1) Airbus Mandatory Service Bulletin A330–33–3041, Revision 01, dated July 10, 2012 (for Model A330 series airplanes).

(2) Airbus Mandatory Service Bulletin A340–33–4026, Revision 01, dated July 10, 2012 (for Model A340–200 and –300 series airplanes).

(3) Airbus Mandatory Service Bulletin A340–33–5006, dated January 3, 2012 (for Model A340–500 and –600 series airplanes).

Note 1 to paragraph (g) of this AD: For Model A340–500 and –600 series airplanes, Airbus has issued Airbus Service Bulletin A340–33–5007 to introduce halogen type lights which are qualified as explosion proof and that can be installed (at operators' discretion) after removal of the non-explosion proof lights required by paragraph (g) of this AD.

(h) Insulation Muff Installation

For Model A330–200 and –300 series airplanes, and Model A340–200 and –300 series airplanes, except those airplanes on which Airbus Modification 52260 has been incorporated in production: Within 26 months after the effective date of this AD, install insulation muffs on connecting auxiliary power unit bleed air duct, in accordance with the Accomplishment Instructions of the applicable Airbus service information specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD.

(1) Airbus Service Bulletin A330–36–3038, dated January 16, 2012, for Model A330 series airplanes on which Airbus Service Bulletin A330–36–3032 has been incorporated.

(2) Airbus Mandatory Service Bulletin A330–36–3040, Revision 01, dated November 26, 2012, for Model A330 series airplanes on which Airbus Service Bulletin A330–36–3032 has not been incorporated.

(3) Airbus Mandatory Service Bulletin A340–36–4035, Revision 01, dated September 24, 2013, for Model A340 series airplanes.

(i) Alternative Action to Paragraph (h) of This AD

For Model A330 series airplanes on which the modification described in Airbus service information A330–36–3032 has not been incorporated, and for Model A340 series airplanes: Doing the bleed leak detection loop modification of the auxiliary power unit (APU), in accordance with the Accomplishment Instructions of the applicable Airbus Service Bulletin specified in paragraphs (i)(1) and (i)(2) of this AD, is an acceptable alternative to the actions required by paragraph (h) of this AD, provided the modification is accomplished within 26 months after the effective date of this AD.

(1) Airbus Service Bulletin A330–36–3037, Revision 01, dated January 24, 2013.

(2) Airbus Service Bulletin A340–36–4033, Revision 01, dated January 28, 2013.

(j) Drain Mast Installation

For Model A340–500 and –600 series airplanes, except those on which Airbus Modification 54636 or 54637 has been incorporated in production: Within 26 months after the effective date of this AD, install a drain mast between frame (FR) 80 and FR 83, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–53–5031, Revision 02, dated August 3, 2011.

(k) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A330–33–3041, dated January 3, 2012; or Airbus Mandatory Service Bulletin A340–33–4026, dated January 3, 2012; as applicable; which are not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A330–36–3040, dated September 18, 2012, which is not incorporated by reference in this AD.

(3) This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A340–36–4033, dated September 23, 2011, which is not incorporated by reference in this AD.

(4) This paragraph provides credit for actions required by paragraph (j) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A340–53–5031, dated July 31, 2006; or Airbus Service Bulletin A340–53–5031, Revision 01, dated January 10, 2008; as applicable; which are not incorporated by reference in this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly

to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or by the Design Approval Holder with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) The European Aviation Safety Agency Airworthiness Directive 2013–0033, dated February 19, 2013, for related information. You may examine the MCAI in the AD docket on the Internet *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0632-0002*.

(2) Service information identified in this AD that is not incorporated by reference may be obtained at the addresses specified in paragraphs (n)(4) and (n)(5) of this AD.

(n) Material Incorporated by Reference

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

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

(i) Airbus Mandatory Service Bulletin A330–33–3041, Revision 01, dated July 10, 2012.

(ii) Airbus Mandatory Service Bulletin A330–36–3040, Revision 01, dated November 26, 2012.

(iii) Airbus Mandatory Service Bulletin A340–33–4026, Revision 01, dated July 10, 2012.

(iv) Airbus Mandatory Service Bulletin A340–33–5006, dated January 3, 2012.

(v) Airbus Mandatory Service Bulletin A340–36–4035, Revision 01, dated September 24, 2013.

(vi) Airbus Mandatory Service Bulletin A340–53–5031, Revision 02, dated August 3, 2011.

(vii) Airbus Service Bulletin A330–36–3037, Revision 01, dated January 24, 2013.

(viii) Airbus Service Bulletin A330–36–3038, dated January 16, 2012.

(ix) Airbus Service Bulletin A340–36–4033, Revision 01, dated January 28, 2013.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com*.

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

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

Issued in Renton, Washington, on January 31, 2014.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–02994 Filed 2–18–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0736; Directorate Identifier 2013–SW–013–AD; Amendment 39–17747; AD 2014–03–10]

RIN 2120–AA64

Airworthiness Directives; Various Restricted Category Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for various restricted category helicopters, originally manufactured by Bell Helicopter Textron, Inc. (Bell), model numbers HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P. This AD requires inspecting the tail rotor (T/R) cable assembly for an incorrectly machined body. This AD is prompted by a report from Bell that a defective body on the cable prevents the barrel assembly from fully engaging in the body cavity. These actions are intended to prevent disengagement of the cable from the barrel, failure of the T/R pitch control, and subsequent loss of control of the helicopter.

DATES: This AD is effective March 26, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of March 26, 2014.

ADDRESSES: For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/*. You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Helene Gandy, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5413; email *7-AVS-ASW-170@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On August 20, 2013, at 78 FR 51127, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to various restricted category helicopters originally manufactured by Bell, Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P, with a cable assembly, part number 205–001–720–001 installed. The current type certificate holders for these models include but are not limited to Arrow Falcon Exporters Inc.; AST, Inc.; Bell Helicopter Textron, Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC; International Helicopters, Inc.; JJASPP Engineering Services, LLC; Northwest Rotorcraft, LLC; OAS Parts LLC; Richards Heavylift Helo, Inc.; Robinson Air Crane, Inc.; Rotorcraft Development Corporation; San Joaquin Helicopters; Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation International, Inc.; Tamarack Helicopters, Inc.; and Southwest Florida

Aviation, Inc. The NPRM proposed to require inspecting each cable assembly to determine if an incorrectly machined body is installed. If an incorrectly machined body is installed, the NPRM proposed to require replacing the cable assembly within 50 hours time-in-service. Until the cable assembly is replaced, the NPRM proposed to require inspecting the assembly for separation daily.

The proposed requirements were intended to prevent disengagement of the cable from the body, T/R pitch control failure in a fixed position, and subsequent loss of control of the helicopter.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (78 FR 51127, August 20, 2013).

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of the same type design and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information

We reviewed Bell Alert Service Bulletin No. UH–1H–12–08, dated August 28, 2012 (ASB), which describes procedures for inspecting the barrel assembly to determine if an incorrectly machined body is installed. If an incorrectly machined body is installed, the ASB specifies replacing the cable assembly. The ASB further specifies inspecting the barrel assembly and cable connection daily until the cable assembly is replaced.

Differences Between This AD and the Service Information

The ASB specifies inspecting the barrel assembly at the next daily inspection; this AD specifies inspecting within 25 hours TIS. The ASB also specifies replacing any defective cable assembly at the next phase inspection, within 50 hours TIS, or by December 31, 2012; this AD specifies replacing the cable assembly within 50 hours TIS.

Costs of Compliance

We estimate that this AD will affect 716 helicopters of U.S. Registry. We estimate that operators will incur the following costs in order to comply with this AD. At an average labor rate of $85 per hour, inspecting the barrel assembly requires about 1 work-hour, for a cost per helicopter of $85 and a total cost of $60,860 for the fleet. If required, replacing a defective cable assembly requires about 8 work-hours, and required parts cost about $625, for a cost per helicopter of $1,305.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–03–10 Various Restricted Category Helicopters: Amendment 39–17747; Docket No. FAA–2013–0736; Directorate Identifier 2013–SW–013–AD.

(a) Applicability

This AD applies to various restricted category helicopters originally manufactured by Bell Helicopter Textron, Inc., Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; current type certificate holders include but are not limited to Arrow Falcon Exporters Inc.; AST, Inc.; Bell Helicopter Textron, Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC; International Helicopters, Inc.; JJASPP Engineering Services, LLC; Northwest Rotorcraft, LLC; OAS Parts LLC; Richards Heavylift Helo, Inc.; Robinson Air Crane, Inc.; Rotorcraft Development Corporation; San Joaquin Helicopters; Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation International, Inc.; Tamarack Helicopters, Inc.; and Southwest Florida Aviation, Inc., with a cable assembly, part number 205–001–720–001 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an incorrectly machined body on the cable assembly, which could prevent the barrel assembly from fully engaging in the body cavity. This condition could result in disengagement of the cable from the barrel, failure of the tail rotor pitch control, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective March 26, 2014.

(d) Compliance

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

(e) Required Actions

(1) Within 25 hours time in service (TIS), inspect each cable assembly to determine if there is a false cut on the body of the barrel assembly, as depicted in Figure 1 of Bell Alert Service Bulletin No. UH–1H–12–08, dated August 28, 2012.

(2) If there is a false cut, before the first flight of each day, inspect the cable assembly for separation of the barrel assembly from the body. If there is any separation, before further flight, replace the cable assembly.

(3) Within 50 hours TIS, replace the cable assembly with an airworthy cable assembly that does not have a false cut in the body. Replacing the cable assembly is terminating action for the inspections required by paragraph (e)(2) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Helene Gandy, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5413; email *7-AVS-ASW-170@faa.gov*.

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

(g) Subject

Joint Aircraft Service Component (JASC) Code: 6720: Tail Rotor Control System.

(h) Material Incorporated by Reference

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

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

(i) Bell Alert Service Bulletin No. UH–1H–12–08, dated August 28, 2012.

(ii) Reserved.

(3) For Bell service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/*.

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on January 31, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–02962 Filed 2–18–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0799; Directorate Identifier 2012–NM–153–AD; Amendment 39–17746; AD 2014–03–09]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

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

ACTION: Final Rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain ATR—GIE Avions de Transport Régional Model ATR42 and Model ATR72 airplanes. This AD was prompted by reports of defective sealing between the nacelle lower fairing and the underwing box. This AD requires a one-time general visual inspection for damaged (worn, torn, or abraded) or missing seals between the nacelle lower fairing and the underwing box of both the left-hand and right-hand engine nacelles, and replacement of the seal and/or shims if necessary. We are issuing this AD to prevent the decrease of the fire extinguishing agent efficiency, which could delay fire extinction and allow fire propagation out of the nacelle fire protected area, resulting in damage to the airplane.

DATES: This AD becomes effective March 26, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 26, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0799*; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr.fr*; Internet *http://www.aerochain.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain ATR—GIE Avions de Transport Régional Model ATR42 and Model ATR72 airplanes. The NPRM published in the **Federal Register** on September 25, 2013 (78 FR 58967). The NPRM was prompted by reports of defective sealing between the nacelle lower fairing and the underwing box. The NPRM proposed to require a one-time general visual inspection for damaged (worn, torn, or abraded) or missing seals between the nacelle lower fairing and the underwing box of both the left-hand and right-hand engine nacelles, and replacement of the seal and/or shims if necessary. We are issuing this AD to prevent the decrease of the fire extinguishing agent efficiency, which could delay fire extinction and allow fire propagation out of the nacelle fire protected area, resulting in damage to the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0160, dated August 24, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Some cases of defective sealing have been reported on in-service aeroplanes on Left-Hand (LH) and Right-Hand (RH), between the nacelle lower fairing and the underwing box.
>
> Investigation results have shown that this issue was due to either damaged or missing seal and/or incorrect adjustment of the nacelle lower fairing.
>
> This condition, if not detected and corrected, may decrease the extinguishing agent efficiency, delay the fire extinction and allow fire propagation out of the nacelle fire protected area, possibly resulting in damage to the aeroplane.
>
> For the reasons described above, this [EASA] AD requires a one-time [general visual] inspection of the affected area [between the nacelle lower fairing and the underbox wing for damaged (worn, torn, or abraded) or missing seals] and, depending on findings, accomplishment of applicable corrective actions to restore the area integrity.

Corrective actions include replacing the seal and/or shims. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0799-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 58967, September 25, 2013) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 58967, September 25, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 58967, September 25, 2013).

Costs of Compliance

We estimate that this AD affects 42 airplanes of U.S. registry.

We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $14,280, or $340 per product.

In addition, we estimate that any necessary follow-on actions will take about 36-work-hours and require parts costing $341, for a cost of $3,401 per product. We have no way of determining the number of aircraft that might need this action.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave., SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0799;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2014–03–09 ATR—GIE Avions de Transport Régional: Amendment 39–17746. Docket No. FAA–2013–0799; Directorate Identifier 2012–NM–153–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 26, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) ATR—GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes, certificated in any category, manufacturer serial numbers 003 through 623 inclusive.

(2) ATR—GIE Avions de Transport Régional Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes, certificated in any category, manufacturer serial numbers 108 through 710 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by reports of defective sealing between the nacelle lower fairing and the underwing box. We are issuing this AD to prevent the decrease of the fire extinguishing agent efficiency, which could delay fire extinction and allow fire propagation out of the nacelle fire protected area, resulting in damage to the airplane.

(f) Compliance

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

(g) Inspection and Corrective Actions

Within 5,000 flight hours after the effective date of this AD: Do a one-time general visual

inspection for damaged (worn, torn, or abraded) and missing shims and seals, between the nacelle lower fairing and the underwing box of both the left-hand and right-hand engine nacelles, in accordance with the Accomplishment Instructions of Avions de Transport Régional Service Bulletin ATR42–54–0029; or ATR72–54–1023; both dated July 18, 2012; as applicable. If any seal or shim is damaged or missing, before further flight, replace, as applicable, in accordance with the Accomplishment Instructions of Avions de Transport Régional Service Bulletin ATR42–54–0029; or ATR72–54–1023; both dated July 18, 2012; as applicable.

(h) Reporting

At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD: Submit a report using the applicable Accomplishment Report of Avions de Transport Régional Service Bulletin ATR42–54–0029; or ATR72–54–1023; both dated July 18, 2012; to ATR Engineering, Service Bulletin Group, 1 Allee Pierre Nadot, 31712 Blagnac Cedex, France; phone: +33 (0) 5 62 21 62 21; fax: +33 (0) 5 62 21 69 41; email: *techdesk@atr.fr*.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2012–0160, dated August 24, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0799-0002.*

(k) Material Incorporated by Reference

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

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

(i) ATR Service Bulletin ATR42–54–0029, dated July 18, 2012.

(ii) ATR Service Bulletin ATR72–54–1023, dated July 18, 2012.

(3) For service information identified in this AD, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr.fr*; Internet *http://www.aerochain.com*.

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

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

Issued in Renton, Washington, on January 21, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–02774 Filed 2–18–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0054; Directorate Identifier 2014–NM–001–AD; Amendment 39–17754; AD 2014–03–17]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. This AD requires repetitive inspections for fractured or incorrectly oriented fasteners on the inboard flap hinge-box forward fittings on both wings, and fastener replacement if necessary. This AD was prompted by two reports of fractured fastener heads found on the inboard flap hinge-box forward fitting. We are issuing this AD to detect and correct incorrectly oriented or fractured fasteners, which could result in detachment of the flap hinge-box and the flap surface, and consequent reduced controllability of the airplane.

DATES: This AD becomes effective March 6, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 6, 2014

We must receive comments on this AD by April 7, 2014.

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

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

For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec

H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0054; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ricardo Garcia, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7331; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–39, dated December 6, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or the ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

There have been two in-service reports of a fractured fastener head, on the inboard flap hinge-box forward fitting at Wing Station (WS) 76.50, found during a routine maintenance inspection. Investigation revealed that the installation of these fasteners on the inboard flap hinge-box forward fittings at WS 76.50 and WS 127.25, on both wings, does not conform to the engineering drawings. Incorrect installation may result in premature failure of the fasteners attaching the inboard flap hinge-box forward fitting. Failure of the fasteners could lead to the detachment of the flap hinge box and consequently the detachment of the flap surface. The loss of a flap surface could adversely affect the continued safe operation of the aeroplane [consequent reduced controllability of the airplane].

This [Canadian] AD mandates a detailed visual inspection (DVI) of each inboard flap hinge-box forward fitting [for incorrectly oriented or fractured fasteners], on both wings, and rectification [fastener replacement] as required. Incorrectly oriented fasteners require repetitive inspections until the terminating action [fastener replacement] is accomplished.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0054.

Relevant Service Information

Bombardier has issued Alert Service Bulletins:

- A600–0763, including Appendices 1 and 2, dated September 26, 2013 (for Model CL–600–1A11 (CL–600) airplanes);
- A601–0627, including Appendices 1 and 2, dated September 26, 2013 (for Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes;
- A604–57–006, Revision 01, dated September 26, 2013, including Appendices 1 and 2, dated September 26, 2013 (for Model CL–600–2B16 (CL–604 Variant) airplanes with serial numbers 5301 through 5665 inclusive); and
- A605–57–004, Revision 01, dated September 26, 2013, including Appendices 1 and 2, dated September 26, 2013 (for Model CL–600–2B16 (CL–604 Variant) airplanes with serial numbers 5701 through 5920 inclusive).

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because incorrectly installed or fractured fasteners could result in detachment of the flap hinge-box and the flap surface, and consequently, reduced controllability of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Interim Action

We consider this AD interim action. We are currently considering requiring replacement of incorrectly oriented fasteners, which will constitute terminating action for the repetitive inspections required by this AD action. However, the planned compliance time for the replacement would allow enough time to provide notice and opportunity for prior public comment on the merits of the modification.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0054; Directorate Identifier 2014–NM–001–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

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

Costs of Compliance

We estimate that this AD affects 105 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $8,925, or $85 per product.

In addition, we estimate that any necessary follow-on actions will take about 58 work-hours per product. We have no way of determining the number of aircraft that might need these actions.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for

affected individuals. Therefore, the parts costs are not included in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–03–17 Bombardier, Inc.: Amendment 39–17754. Docket No. FAA–2014–0054; Directorate Identifier 2014–NM–001–AD.

(a) Effective Date

This AD becomes effective March 6, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Bombardier, Inc. airplanes identified in paragraphs (c)(1) through (c)(3) of this AD, certificated in any category.

(1) Bombardier, Inc. Model CL–600–1A11 (CL–600) airplanes, having serial numbers (S/Ns) 1004 through 1085 inclusive.

(2) Bombardier, Inc. Model CL–600–2A12 (CL–601) airplanes, having S/Ns 3001 through 3066 inclusive.

(3) Bombardier, Inc. Model CL–600–2B16 (CL–601–3A, CL–601–3R, & CL–604 Variants) airplanes, having S/Ns 5001 through 5194 inclusive, 5301 through 5665 inclusive, and 5701 through 5920 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by two reports of fractured fastener heads found on the inboard flap hinge-box forward fitting at wing station (WS) 76.50. We are issuing this AD to detect and correct incorrectly oriented or fractured fasteners, which could result in detachment of the flap hinge-box and the flap surface, and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Inspection

Within 100 flight cycles after the effective date of this AD: Do a detailed visual inspection for incorrect orientation and any fracturing (missing fastener heads) of each inboard flap fastener of the hinge-box forward fitting at WS 76.50 and WS 127.25, on both wings, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1) through (g)(4) of this AD.

(1) For Model CL–600–1A11 (CL–600) airplanes having S/Ns 1004 through 1085 inclusive: Bombardier Alert Service Bulletin A600–0763, including Appendices 1 and 2, dated September 26, 2013.

(2) For Model CL–600–2A12 (CL–601) airplanes having S/Ns 3001 through 3066 inclusive, and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes having S/Ns 5001 through 5194 inclusive: Bombardier Alert Service Bulletin A601–0627, including Appendices 1 and 2, dated September 26, 2013.

(3) For Model CL–600–2B16 (CL–604 Variant) airplanes having S/Ns 5301 through 5665 inclusive: Bombardier Alert Service Bulletin A604–57–006, Revision 01, dated September 26, 2013, including Appendices 1 and 2, dated September 26, 2013.

(4) For Model CL–600–2B16 (CL–604 Variant) airplanes having S/Ns 5701 through 5920 inclusive: Bombardier Alert Service Bulletin A605–57–004, Revision 01, dated September 26, 2013, including Appendices 1 and 2, dated September 26, 2013.

(h) All Fasteners Correctly Oriented and Not Fractured

If all fasteners are found correctly oriented and not fractured (intact) during any inspection required by paragraph (g) of this AD, no further action is required by this AD.

(i) Fractured Fasteners

If any fastener is found fractured (missing fastener head) during any inspection required by paragraph (g) of this AD: Before further flight, remove and replace all fractured fasteners and all incorrectly oriented forward and aft fasteners at WS 76.50 and WS 127.25, on both wings, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1) through (g)(4) of this AD. After accomplishing the replacement required by this paragraph, no further action is required by this AD.

(j) Incorrectly Oriented Fasteners

If any fastener is found incorrectly oriented but none are found to be fractured (fasteners found intact) during any inspection required by paragraph (g) of this AD: Repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 100 flight cycles until the terminating action specified in paragraph (k) of this AD is accomplished.

(k) Optional Terminating Action for Incorrectly Oriented Fasteners

Replacement of all incorrectly oriented forward and aft fasteners at WS 76.50 and WS 127.25, on both wings, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1) through (g)(4) of this AD, terminates the requirements of paragraph (j) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local

flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(m) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–39, dated December 6, 2013, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0054.

(n) Material Incorporated by Reference

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

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

(i) Bombardier Alert Service Bulletin A600–0763, including Appendices 1 and 2, dated September 26, 2013.

(ii) Bombardier Alert Service Bulletin A601–0627, including Appendices 1 and 2, dated September 26, 2013.

(iii) Bombardier Alert Service Bulletin A604–57–006, Revision 01, dated September 26, 2013, including Appendices 1 and 2, dated September 26, 2013.

(iv) Bombardier Alert Service Bulletin A605–57–004, Revision 01, dated September 26, 2013, including Appendices 1 and 2, dated September 26, 2013.

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

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

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

Issued in Renton, Washington, on February 3, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–02977 Filed 2–18–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0210; Directorate Identifier 2012–NM–053–AD; Amendment 39–17744; AD 2014–03–07]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2009–26–16 for certain The Boeing Company Model MD–11 and MD–11F airplanes. AD 2009–26–16 required inspecting to determine if wires touch the upper surface of the center upper auxiliary fuel tank, and marking the location, as necessary; inspecting all wire bundles above the center upper auxiliary fuel tank for splices and damage; inspecting for damage to the fuel vapor barrier seal and upper surface of the center upper auxiliary fuel tank; and performing corrective actions, as necessary. AD 2009–26–16 also required installing nonmetallic barrier/shield sleeving, new clamps, new attaching hardware, and a new extruded channel. This new AD requires inspections of additional center upper auxiliary fuel tank locations and corrective actions as necessary. This AD was prompted by reports that identified additional locations where inspections and corrective actions of the center upper auxiliary fuel tank are needed. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective March 26, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 26, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of February 4, 2010 (74 FR 69249, December 31, 2009).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0210; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: (562) 627–5262; fax: (562) 627–5210; email: *samuel.lee@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR Part 39 to supersede AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009). AD 2009–26–16 applied to certain The Boeing Company Model MD–11 and MD–11F airplanes. The NPRM published in the **Federal Register** on March 14, 2013 (78 FR 16198). The NPRM was prompted by reports that identified additional locations where inspections and corrective actions of the center upper auxiliary fuel tank are needed. The NPRM proposed to continue to require inspecting to determine if wires touch the upper surface of the center upper auxiliary fuel tank, and marking the location, as necessary; inspecting all wire bundles above the center upper auxiliary fuel tank for splices and damage; inspecting for damage to the

fuel vapor barrier seal and upper surface of the center upper auxiliary fuel tank; and performing corrective actions, as necessary. The NPRM also proposed to continue to require installing nonmetallic barrier/shield sleeving, new clamps, new attaching hardware, and a new extruded channel. The NPRM also proposed to require inspections of the center upper auxiliary fuel tank at additional locations and corrective actions as necessary. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 16198, March 14, 2013) and the FAA's response to each comment.

Request for Approval of Alternative Methods of Compliance (AMOCs)

FedEx requested that AMOCs previously approved for AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009), be approved as AMOCs for the requirements of the NPRM (78 FR 16198, March 14, 2013). FedEx also requested that Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011, be revised to incorporate changes made by seven Boeing Information Notices, which were not FAA-approved.

We acknowledge the commenter's request. However, paragraph (k)(4) of the NPRM (78 FR 16198, March 14, 2013) already states that AMOCs approved for AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009), are approved as AMOCs for the corresponding requirements of this AD. Also, the changes in all seven Boeing Information Notices were either incorporated or resolved in Boeing Service Bulletin MD11–28–126, Revision 2, dated November 18, 2010, except for Boeing MD11 Service Bulletin Information Notice MD11–28–126 IN 07, December 3, 2012, which was issued for information only, and therefore does not affect the requirements of this final rule. No changes have been made to this final rule in this regard.

Request To Extend Compliance Time

FedEx requested that the compliance time for the NPRM (78 FR 16198, March 14, 2013) be extended from ''Within 60 months after February 4, 2010 (the effective date of AD 2009–26–16),'' for the retained inspection and actions specified in paragraphs (g)(1) through (g)(5) of the NPRM to 72 months, or February 4, 2016, at a minimum. FedEx stated that work would have to be accomplished by February 4, 2015, and due to the labor intensive nature of the work, 18 to 20 months is not enough time to fit into a 'C' check time interval.

We do not agree with FedEx's request. In developing an appropriate compliance time for this action, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation for an appropriate compliance time, the availability of required parts, and the practical aspect of installing the required modification within an interval of time that corresponds to the typical scheduled maintenance for the majority of affected operators. The retained inspection and corrective action were previously required by AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009), so operators should have already completed or be scheduled to have the work completed. Under the provisions of paragraph (k) of this final rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Revise Costs of Compliance

FedEx requested that the Costs of Compliance be revised since material costs have drastically increased. FedEx stated that Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011, (which we referred to in the NPRM (78 FR 16198, March 14, 2013), as the appropriate source of service information for doing the actions) specifies a cost of $18,139 for kit part number SB11280126–11. FedEx stated that a recent quote for this kit is $25,904. Also, the original cost for kit SB11280126–13 was $12,268; it is now $17,568.

We agree with the request to revise the Costs of Compliance because current costs for kits differ greatly from when the NPRM (78 FR 16198, March 14, 2013) was issued. The retained actions from AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009), had a parts cost of $9,405 to $12,201; the revised parts cost is $15,708 to $28,005. The parts cost for the new action was revised from $2,863 to $6,166. We have revised the information contained in the Costs of Compliance accordingly.

Explanation of Additional Change Made to the Costs of Compliance

We have revised this AD to revise the Costs of Compliance, which incorrectly specified inspection and installation costs for four Group 6 airplanes as new actions. We have revised the information contained in the Costs of Compliance tables by removing the row containing Group 6 airplanes accordingly.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 16198, March 14, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 16198, March 14, 2013).

Costs of Compliance

We estimate that this AD affects 125 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection/Installation [retained actions from AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009)].	168 to 182 work-hours × $85 per hour = $14,280 to $15,470 per inspection cycle.	$15,708 to $28,005	$29,988 to $43,475 per inspection cycle.	$3,748,500 to $5,434,375 per inspection cycle.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection/installation Groups 1, 2, and 5, all Configuration 2 airplanes [new action].	Up to 9 work-hours × $85 per hour = $765.	$6,166	Up to $6,931	Up to $866,375.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009), and adding the following new AD:

2014–03–07 The Boeing Company: Amendment 39–17744; Docket No. FAA–2013–0210; Directorate Identifier 2012–NM–053–AD.

(a) Effective Date

This AD is effective March 26, 2014.

(b) Affected ADs

This AD supersedes AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009).

(c) Applicability

This AD applies to The Boeing Company Model MD–11 and MD–11F airplanes, certificated in any category, as identified in Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports that identified additional locations where inspections and corrective actions of the center upper auxiliary fuel tank are needed. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Retained Inspection and Corrective Action

This paragraph restates the requirements of paragraph (g) of AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009), with revised service information. For airplanes identified in Boeing Service Bulletin MD11–28–126, Revision 1, dated June 18, 2009: Within 60 months after February 4, 2010 (the effective date of AD 2009–26–16), do the actions specified in paragraphs (g)(1) through (g)(5) of this AD, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD11–28–126, Revision 1, dated June 18, 2009; or Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011; except as required by paragraph (j) of this AD. After the effective date of this AD, only Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011, may be used. Do all applicable corrective actions before further flight.

(1) Do a general visual inspection of the wire bundles between Stations 1238.950 and 1361.000 to determine if wires touch the upper surface of the center upper auxiliary fuel tank, and mark the location, as applicable.

(2) Do a detailed inspection for splices and damage of all wire bundles above the center upper auxiliary fuel tank between Stations 1218.950 and 1381.000.

(3) Do a detailed inspection for damage (burn marks) of the upper surface of the center upper auxiliary fuel tank.

(4) Do a detailed inspection for damage (burn marks) on the fuel vapor barrier seal.

(5) Install a nonmetallic barrier/shield sleeving, new clamps, new attaching hardware, and a new extruded channel.

(h) New Inspections and Corrective Action for Group 1, Configuration 2; Group 2, Configuration 2; and Group 5, Configuration 2 Airplanes

For airplanes in Group 1, Configuration 2; Group 2, Configuration 2; and Group 5, Configuration 2; as identified in Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011: Within 60 months after the effective date of this AD, do a detailed inspection of wire bundles for splices and damage (chafing, arcing, and broken insulation) and damage (burn marks) on the upper surface of the center upper auxiliary fuel tank and fuel vapor barrier seal; install barrier/shield sleeving and clamping; and do all applicable corrective actions at the locations specified in paragraphs (h)(1) through (h)(3) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin

MD11–28–126, Revision 4, dated November 29, 2011, except as required by paragraph (j) of this AD. Do all applicable corrective actions before further flight.

(1) For Group 1, Configuration 2 airplanes: between Stations 1238.950 and 1381.000, Stations 1238.950 and 1256.000, and Stations 1238.950 and 1256.800, depending on passenger or freighter configuration.

(2) For Group 2, Configuration 2 airplanes: between Stations 1238.950 and 1275.250, and Stations 1238.950 and 1275.250, passenger configuration only.

(3) For Group 5, Configuration 2 airplanes: between Stations 1381.000 and 1238.950.

(i) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD, using the service bulletins specified in paragraphs (i)(1)(i) or (i)(1)(ii) of this AD.

(i) Boeing Service Bulletin MD11–28–126, Revision 2, dated November 18, 2010, which is not incorporated by reference in this AD.

(ii) Boeing Service Bulletin MD11–28–126, Revision 3, dated June 3, 2011, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD, using Boeing Service Bulletin MD11–28–126, Revision 3, dated June 3, 2011, which is not incorporated by reference in this AD.

(j) Repair

Where Boeing Service Bulletin MD11–28–126, Revision 1, dated June 18, 2009; or Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011; specifies to contact The Boeing Company for repair instructions: Before further flight, repair the auxiliary fuel tank in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the Los Angeles ACO, send it to the attention of the person identified in paragraph (l) of this AD.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by Structures Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2009–26–16, Amendment 39–16155 (74 FR 69249, December 31, 2009), are approved as AMOCs for the corresponding requirements of this AD.

(l) Related Information

(1) For more information about this AD, contact Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: (562) 627–5262; fax: (562) 627–5210; email: *samuel.lee@faa.gov.*

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

(m) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on March 26, 2014.

(i) Boeing Service Bulletin MD11–28–126, Revision 4, dated November 29, 2011.

(ii) Reserved.

(4) The following service information was approved for IBR on February 4, 2010, (74 FR 69249, December 31, 2009).

(i) Boeing Service Bulletin MD11–28–126, Revision 1, dated June 18, 2009.

(ii) Reserved.

(5) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on January 21, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–02997 Filed 2–18–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0737; Directorate Identifier 2012–SW–111–AD; Amendment 39–17739; AD 2014–03–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Type Certificate Previously Held by Eurocopter France)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model AS332C, AS332L, AS332L1, AS332L2, and SA330J helicopters. This AD requires inspecting the crimping of the ball joint of the upper- and lower- end-fittings of the main servo-control and, depending on findings, replacing the main servo-control or repairing the ball joint. This AD was prompted by incidents of missing crimping on the ball joints of servo-control end-fittings. The actions of this AD are intended to prevent failure of a main servo-control upper end fitting, and subsequent failure of the flight controls and loss of control of the helicopter.

DATES: This AD is effective March 26, 2014.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of March 26, 2014.

ADDRESSES: For service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the

Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Wilbanks, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *matt.wilbanks@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On August 20, 2013, at 78 FR 51115, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to certain Eurocopter France (Eurocopter) Model AS332C, AS332L, AS332L1, AS332L2, and SA330J helicopters. The NPRM proposed visually inspecting the applicable ball joint of the upper and lower end-fittings of the main servo control for crimping. If the ball joint of the upper end-fitting was not crimped and the slipping of the ball joint was one millimeter (mm) or greater, the NPRM proposed replacing the servo-control. If the ball joint of the upper end-fitting was not crimped and the slipping of the ball joint was less than one mm, the NPRM proposed replacing the servo-control or crimping the ball joint. If the ball joint of the lower end-fitting was not crimped, the NPRM proposed crimping the ball joint. The proposed requirements were intended to prevent failure of a main servo-control upper end fitting, and subsequent failure of the flight controls and loss of control of the helicopter.

The NPRM was prompted by AD No. 2012–0248, dated November 20, 2012, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Eurocopter Model AS 332 C, AS 332 C1, AS 332 L, AS 332 L1, AS 332 L2, and SA 330 J helicopters with certain part-numbered main servo-controls installed. EASA advises that several occurrences were reported to Eurocopter of missing crimping on ball joints of servo-control end-fittings. EASA states that while slipping of the ball joint of the lower end-fitting does not affect its service life, slipping of the ball joint of the upper end-fitting can lead to a significant reduction of the service life of this end-fitting. As a result, the EASA AD requires inspecting each ball joint for crimping and, depending on the findings, replacing the main servo-control.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (78 FR 51115, August 20, 2013).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed except for a minor editorial change. The type certificate holder's name for the affected models in this AD changed from Eurocopter France to Airbus Helicopters on January 10, 2014. This editorial change is consistent with the intent of the proposals in the NPRM (78 FR 51115, August 20, 2013) and will not increase the economic burden on any operator nor increase the scope of this AD.

Related Service Information

Eurocopter issued one Emergency Alert Service Bulletin (EASB) with three different numbers, all Revision 1, and all dated December 5, 2012. EASB No. 67.00.45 applies to civilian Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and military Model AS332B, AS332B1, AS332M, AS332M1, and AS332F1 helicopters. EASB No. 67.00.31 applies to military Model AS532AC, AS532AL, AS532SC, AS532UC, AS532UE, AS532UL, AS532A2, and AS532U2 helicopters. EASB No. 67.19 applies to civilian Model SA330J and military Model SA330Ba, SA330Ca, SA330Ea, SA330L, SA330Jm, SA330S1, and SA330Sm helicopters. The EASB specifies visually checking for crimping of the ball joints of the upper- and lower- servo control end-fittings and informing the Eurocopter Technical Support Department of any ball joint that is not crimped. For an upper end-fitting ball joint that is not crimped and slips one mm or greater, the EASB specifies returning the servo-control for replacement of the ball joint and the end-fitting. For an upper end-fitting ball joint that is not crimped and slips less than one mm, the EASB specifies either crimping the ball joint or returning the servo-control for ball joint crimping. For a lower end-fitting ball joint that is not crimped, the EASB states to crimp the ball joint. The EASB also states that if a ball joint is crimped, no action on that ball joint is required in regard to this unsafe condition.

Costs of Compliance

We estimate that this AD affects 18 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. We estimate it will take 1 work-hour to inspect the ball joint for crimping at an average labor cost of $85 per work-hour. Based on these figures, it will cost about $85 per helicopter for the inspection, or $1,530 for U.S. operators. We estimate it will take 4 work-hours to replace a servo-control and parts will cost approximately $60,358 for a total estimated cost of $60,698 for replacement.

According to the Eurocopter service information some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by Airbus Helicopters, Eurocopter, or UTC Actuation Systems/Goodrich Actuation Systems. Accordingly, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–03–02 Airbus Helicopters (Type Certificate previously held by Eurocopter France): Amendment 39–17739; Docket No. FAA–2013–0737; Directorate Identifier 2012–SW–111–AD.

(a) Applicability

This AD applies to the following model helicopters, certificated in any category, with a part-numbered main servo-control listed below: overhauled or repaired by UTC Actuation Systems/Goodrich Actuation Systems between June 1, 2008, and September 15, 2012, inclusive; or with a serial number listed in Appendix 1 of Eurocopter Emergency Alert Service Bulletin No. 67.00.45 (EASB 67.00.45) or 67.19 (EASB 67.19), both Revision 1, and both dated December 5, 2012, as applicable to your model helicopter:

(1) Model AS332C, AS332L, AS332L1, and AS332L2 helicopters with main servo-control, part number (P/N) SC7202, SC7202– (all dash numbers), SC7203, SC7203– (all dash numbers), SC7221, or SC7221– (all dash numbers), installed; and

(2) Model SA330J helicopters with main servo-control P/N SC7111, SC7111– (all dash numbers) SC7112, or SC7112– (all dash numbers), installed.

(b) Unsafe Condition

This AD defines the unsafe condition as missing crimping on a ball joint of a main servo-control end-fitting. This condition could result in failure of a main servo-control upper end fitting, failure of the flight controls, and loss of control of the helicopter.

(c) Effective Date

This AD becomes effective March 26, 2014.

(d) Compliance

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

(e) Required Actions

(1) Within 85 hours time-in-service (TIS):

(i) Using a light source, inspect the ball joint of the upper end-fitting of the main servo control for crimping in accordance with Detail A and Detail B, Figure 1, of Eurocopter EASB 67.00.45 or EASB 67.19, as applicable to your model helicopter.

(A) If the upper ball joint is not crimped and the ball joint slips a distance of 1 millimeter (mm) or greater, replace the servo-control with an airworthy servo-control.

(B) If the upper ball joint is not crimped and the ball joint slips a distance of less than 1mm, either crimp the ball joint or replace the servo-control with an airworthy servo-control.

(ii) Using a light source, inspect the ball joint of the lower end-fitting of the main servo-control for crimping in accordance with Detail A and Detail B, Figure 1, of Eurocopter EASB 67.00.45 or EASB 67.19, as applicable to your model helicopter. If the lower ball joint is not crimped, crimp the ball joint.

(2) Prior to installing any servo-control that is affected by this AD, perform the required actions in accordance with paragraphs (e)(1) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Wilbanks, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *matt.wilbanks@faa.gov*.

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2012–0248, dated November 20, 2012. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2013–0737.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6730, Rotor Flight Control—Rotorcraft Servo System.

(i) Material Incorporated by Reference

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

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

(i) Eurocopter Emergency Alert Service Bulletin No. 67.00.45, Revision 1, dated December 5, 2012.

(ii) Eurocopter Emergency Alert Service Bulletin No. 67.19, Revision 1, dated December 5, 2012.

Note 1 to paragraph (i)(2): Eurocopter Emergency Alert Service Bulletin (EASB) Nos. 67.00.45 and 67.19, both Revision 1, and both dated December 5, 2012, are co-published as one document along with Eurocopter EASB No. 67.00.31, Revision 1, dated December 5, 2012, which is not incorporated by reference.

(3) For Eurocopter service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub*.

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on January 24, 2014.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–02972 Filed 2–18–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0791; Directorate Identifier 2012–NM–026–AD; Amendment 39–17745; AD 2014–03–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A318, A319, A320, and A321 series airplanes. This AD was prompted by a report that an investigation showed that when a certain combination of a target/proximity sensor serial number is installed on a flap interconnecting strut, a ''target FAR'' signal cannot be detected when it reaches the mechanical end stop of the interconnecting strut. This AD requires an inspection to determine the part number of the interconnecting struts installed on the wings, identifying the part number and the serial number of the associated target and proximity sensor if applicable, and replacing or re-identifying the flap interconnecting strut if applicable. We are issuing this AD to detect and correct a latent failure of the flap down drive disconnection due to an already-failed interconnecting strut sensor, which could result in asymmetric flap panel movement and consequent loss of control of the airplane.

DATES: This AD becomes effective March 26, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 26, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0791;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A318, A319, A320, and A321 series airplanes. The NPRM published in the **Federal Register** on September 25, 2013 (78 FR 58975). The NPRM was prompted by a report that an investigation showed that when a certain combination of a target/proximity sensor serial number is installed on a flap interconnecting strut, a ''target FAR'' signal cannot be detected when it reaches the mechanical end stop of the interconnecting strut. The NPRM proposed to require an inspection to determine the part number of the interconnecting struts installed on the wings, identifying the part number and the serial number of the associated target and proximity sensor if applicable, and replacing or re-identifying the flap interconnecting strut if applicable. We are issuing this AD to detect and correct a latent failure of the flap down drive disconnection due to an already-failed interconnecting strut sensor, which could result in asymmetric flap panel movement and consequent loss of control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0012, dated January 23, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The flap interconnecting strut is a safety device of the High Lift System which acts as an alternative load path from one flap surface to another in case of a flap drive system disconnection. In such a failure case, the installed proximity provide information to the slat flap control computer (SFCC) and the operation of the flap drive system is inhibited.
>
> A recent engineering investigation has shown that, when a certain combination of target/sensor serial number (s/n) is installed on a flap interconnecting strut, a ''target FAR'' signal cannot be detected when reaching the mechanical end stop of the interconnecting strut.
>
> This condition, if not corrected, could cause a flap down drive disconnection to remain undetected, due to an already-failed interconnecting strut sensor, potentially resulting in asymmetric flap panel movement and consequent loss of control of the aeroplane.
>
> For the reason described above, this [EASA] AD requires the identification and replacement [or re-identifying] of struts that have a certain target/sensor s/n combination installed.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0791-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 58975, September 25, 2013) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 58975, September 25, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 58975, September 25, 2013).

Costs of Compliance

We estimate that this AD affects 755 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and Re-identification ...	8 work-hours × $85 per hour = $680 per inspection cycle	$0	$680	$513,400

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	10 work-hours × $85 per hour = $850	$0	$850

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0791;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2014–03–08 Airbus: Amendment 39–17745. Docket No. FAA–2013–0791; Directorate Identifier 2012–NM–026–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 26, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by a report that an investigation showed that when a certain combination of a target/proximity sensor serial number is installed on a flap interconnecting strut, a ''target FAR'' signal cannot be detected when reaching the mechanical end stop of the interconnecting strut. We are issuing this AD to detect and correct a latent failure of the flap down drive disconnection due to an already-failed interconnecting strut sensor, which could result in asymmetric flap panel movement and consequent loss of control of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection To Determine the Part Number of the Interconnecting Struts

Within 8,000 flight hours after the effective date of this AD, inspect to determine the part number of the interconnecting struts installed on both the left-hand (LH) and right-hand (RH) wings of the airplane, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, Revision 01, dated October 10, 2011. A review of the airplane maintenance records is acceptable for determining the part number of the installed interconnecting struts, in lieu of the inspection, if the part number of the installed interconnecting struts, and the part number and the serial number of the associated target and proximity sensor, can be conclusively determined from that review.

(1) Airplanes on which Airbus Modification 27956 has been embodied in

production, and on which no interconnecting strut has been replaced with a strut having a part number specified in figure 1 to paragraph (g) of this AD since the airplane's first flight: No further work is required by paragraph (g) of this AD.

(2) If, during the inspection required by paragraph (g) of this AD, any interconnecting strut is installed with a part number specified in figure 1 to paragraph (g) of this AD: Within 8,000 flight hours after the effective date of this AD, determine the part number and the serial number of the associated target and proximity sensor.

FIGURE 1 TO PARAGRAPH (G) OF THIS AD—INTERCONNECTING STRUT PART NUMBERS

Interconnecting strut part numbers
D5757030500000
D5757030500100
D5757030500200
D5757030500600
D5757030500800
D5757030501000
D5757030501200
D5757032200000

(i) For airplanes having conditions specified in paragraphs (g)(2)(i)(A), (g)(2)(i)(B), (g)(2)(i)(C), and (g)(2)(i)(D) of this AD: Before further flight, replace the interconnecting strut with a serviceable unit, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, Revision 01, dated October 10, 2011. For the purposes of this AD, a serviceable interconnecting strut is a unit which has been determined to be in compliance with the following requirements of this AD:

(A) A target part number (P/N) ABS0121–13 or P/N 8–536–01; and

(B) A target serial number lower than 1600, or a target serial number that is unreadable; and

(C) A proximity sensor having P/N ABS0121–31 or P/N 8–372–04; and

(D) A proximity sensor having a serial number between C59198 and C59435, or a serial number (S/N) C500000 or higher.

(ii) For a target having S/N 1600 or higher and target P/N ABS0121–13 or P/N 8–536–01: Within 8,000 flight hours after the effective date of this AD, re-identify the interconnecting strut, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1206, Revision 01, dated October 10, 2011.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install an interconnecting strut with a part number specified in figure 1 to paragraph (g) of this AD, on any airplane, except for parts identified in paragraph (g)(2)(ii) of this AD, provided that the actions in paragraph (g)(2)(ii) are done.

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–27–1206, dated January 28, 2011, and if additional work has been accomplished using Airbus Service Bulletin A320–27–1206, Revision 01, dated October 10, 2011. Airbus Service Bulletin A320–27–1206, dated January 28, 2011, is not incorporated by reference in this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2012–0012, dated January 23, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0791-0002.*

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

(l) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–27–1206, Revision 01, dated October 10, 2011.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on January 22, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–02996 Filed 2–18–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0735; Directorate Identifier 2013–SW–014–AD; Amendment 39–17748; AD 2014–03–11]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. (Bell) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Bell Model 204B helicopters with a certain cable assembly installed. This AD requires inspecting the tail rotor (T/R) cable assembly for an incorrectly machined body. This AD is prompted by a report from Bell that a defective body on the cable prevents the barrel assembly from fully engaging in the body cavity. These actions are intended to prevent disengagement of the cable from the barrel, failure of the T/R pitch control, and subsequent loss of control of the helicopter.

DATES: This AD is effective March 26, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of March 26, 2014.

ADDRESSES: For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* You may review a copy of the

referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Helene Gandy, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5413; email *7-AVS-ASW-170@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On August 20, 2013, at 78 FR 51126, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Bell Model 204B helicopters with a cable assembly, part number 205–001–720–001 installed. The NPRM proposed to require inspecting each cable assembly to determine if an incorrectly machined body is installed. If an incorrectly machined body is installed, the NPRM proposed to require replacing the cable assembly within 100 hours time-in-service (TIS). Until the cable assembly is replaced, the NPRM proposed to require inspecting the assembly for separation daily.

The proposed requirements were intended to prevent disengagement of the cable from the body, T/R pitch control failure in a fixed position, and subsequent loss of control of the helicopter.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (78 FR 51126, August 20, 2013).

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of the same type design and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information

We reviewed Bell Alert Service Bulletin No. 204B–12–68, dated October 10, 2012 (ASB), which describes procedures for inspecting the barrel assembly to determine if an incorrectly machined body is installed. If an incorrectly machined body is installed, the ASB specifies replacing the cable assembly. The ASB further specifies inspecting the barrel assembly and cable connection daily until the cable assembly is replaced.

Differences Between This AD and the Service Information

The ASB specifies replacing any defective cable assembly within 100 hours TIS or by January 31, 2013; this AD requires replacing the cable assembly within 100 hours TIS.

Costs of Compliance

We estimate that this AD will affect 9 helicopters of U.S. Registry. We estimate that operators will incur the following costs in order to comply with this AD. At an average labor rate of $85 per hour, inspecting the barrel assembly requires about 1 work-hour, for a cost per helicopter of $85 and a total cost of $765 for the fleet. If required, replacing a defective cable assembly requires about 8 work-hours, and required parts cost about $625, for a cost per helicopter of $1,305.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–03–11 Bell Helicopter Textron, Inc. (Bell) Helicopters: Amendment 39–17748; Docket No. FAA–2013–0735; Directorate Identifier 2013–SW–014–AD.

(a) Applicability

This AD applies to Bell Model 204B helicopters with a cable assembly, part number 205–001–720–001 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an incorrectly machined body on the cable assembly, which could prevent the barrel assembly from fully engaging in the body cavity. This condition could result in disengagement of the cable from the barrel, failure of the tail rotor pitch control, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective March 26, 2014.

(d) Compliance

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

(e) Required Actions

(1) Within 25 hours time in service (TIS), inspect each cable assembly to determine if there is a false cut on the body of the barrel assembly, as depicted in Figure 1 of Bell Alert Service Bulletin No. 204B–12–68, dated October 10, 2012.

(2) If there is a false cut, before the first flight of each day, inspect the cable assembly for separation of the barrel assembly from the body. If there is any separation, before further flight, replace the cable assembly.

(3) Within 100 hours TIS, replace the cable assembly with an airworthy cable assembly that does not have a false cut in the body. Replacing the cable assembly is terminating action for the inspections required by paragraph (e)(2) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Helene Gandy, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5413; email *7-AVS-ASW-170@faa.gov.*

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

(g) Subject

Joint Aircraft Service Component (JASC) Code: 6720: Tail Rotor Control System.

(h) Material Incorporated by Reference

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

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

(i) Bell Alert Service Bulletin No. 204B–12–68, dated October 10, 2012.

(ii) Reserved.

(3) For Bell service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on January 31, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–02961 Filed 2–18–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM14–5–000; Order No. 795]

Delegation of Authority Regarding Consideration of Notice of Penalty

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Commission issues this Final Rule to revise its regulations to delegate authority to the Director of the Commission's Office of Electric Reliability to issue orders extending the period of time for consideration of Notices of Penalty filed by the Electric Reliability Organization. In addition, this Final Rule revises the Commission's regulations to remove the same authority, and certain related authority, that is currently delegated to the Director of the Commission's Office of Enforcement. These revisions are necessary to enable the Commission to process routine, non-controversial Notices of Penalty in a timely and efficient manner.

DATES: *Effective Date:* This Rule will become effective February 19, 2014.

FOR FURTHER INFORMATION CONTACT: Matthew Vlissides, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8408, *Matthew.Vlissides@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Before Commissioners: Cheryl A. LaFleur, Acting Chairman; Philip D. Moeller, John R. Norris, and Tony Clark.

Final Rule

(Issued February 11, 2014)

1. The Commission issues this Final Rule to revise its delegations of authority to allow for the efficient and timely processing of Notices of Penalty (Notices) issued by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). Specifically, this Final Rule delegates authority to the Director of the Office of Electric Reliability to issue orders extending the period of time for consideration of Notices filed by the ERO. This Final Rule removes the same authority currently delegated to the Director of the Office of Enforcement to extend the period of time to consider Notices. This Final Rule also removes the authority delegated to the Director of the Office of Enforcement to direct NERC or applicable Regional Entities to submit information when necessary to process Notices without the need for Commission action.

I. Background

2. The Energy Policy Act of 2005 added section 215 to the Federal Power Act (FPA), which requires a Commission-certified Electric Reliability Organization to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[1] Pursuant to FPA section 215(e)(1), the ERO may impose a penalty on a user, owner or operator of the Bulk-Power System for a violation of a Reliability Standard approved by the Commission. Pursuant to FPA section 215(e)(4), the Commission authorized NERC, in its capacity as the ERO, to delegate authority to impose such penalties to eight Regional Entities through Commission-approved Delegation Agreements. Under FPA section 215(e), NERC must file each Notice with the Commission. The penalty is subject to Commission review upon its own motion or upon application by the entity subject to the proposed penalty within 30 days. If no review is sought or initiated, the penalty takes effect by operation of law.

3. In Order No. 728, the Commission determined that, in many cases involving the assessment of zero dollar penalties, Notices could be processed without a Commission vote.[2] Previously, when the Commission received a Notice, it was analyzed within thirty days by staff from the Office of Enforcement, the Office of Electric Reliability, and the Office of General Counsel, who then recommended to the Commission whether the Notice should become

[1] 16 U.S.C. 824o.

[2] *Delegations for Notices of Penalty*, Order No. 728, FERC Stats. & Regs. ¶ 31,298, at P 5 (2009) (cross-referenced at 129 FERC ¶ 61,094 (2009)).

effective by operation of law. The Commission would conduct a vote and, if it decided that no further action was warranted, the Commission instructed the Secretary to issue a public notice to that effect. In Order No. 728, the Commission stated that, in proceedings involving non-controversial zero dollar penalties, a Notice could be processed more efficiently by allowing the Secretary, without a formal Commission vote, to issue a notice indicating that the Commission will take no further action.

4. In Order No. 728, the Commission delegated authority to the Director of the Office of Enforcement to direct NERC or applicable Regional Entities to submit further information on a Notice where the Commission did not have sufficient information to reach a decision on the Notice. The Commission also delegated to the Director of the Office of Enforcement the authority to extend the period of time to consider Notices for the purpose of obtaining additional information from NERC and Regional Entities. Sections 375.311(u) and (v) of the Commission's regulations delegate these authorities to the Director of the Office of Enforcement. Order No. 728 also stated a policy that ''Notices will not need a formal Commission vote only in zero dollar penalty cases that do not raise significant concerns or other issues,'' and specified various types of issues that would still require a formal Commission vote.[3]

II. Discussion

5. The Commission believes that its internal processes will be more efficient if the Office of Electric Reliability is the lead office for reviewing and processing Notices. Accordingly, this Final Rule revises the delegations to the Director of the Office of Electric Reliability and Director of the Office of Enforcement. Specifically, this Final Rule transfers the authority to extend the period of time to consider Notices for the purpose of obtaining additional information, which is currently delegated to the Director of the Office of Enforcement in section 375.311(v) of the Commission's regulations, to the Director of the Office of Electric Reliability. In addition, this Final Rule removes the related authority delegated to the Director of the Office of Enforcement to require NERC or applicable Regional Entities to provide information necessary to review and process Notices, which is currently delegated in section 375.311(u) of the Commission's regulations.[4]

6. New section 375.303(a)(2)(vi) delegates to the Director of the Office of Electric Reliability the authority to extend the period of time to review Notices.

III. Information Collection Statement

7. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[5] This Final Rule contains no new or revised information collections. Therefore, OMB review of this Final Rule is not required.

IV. Environmental Analysis

8. 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.[6] Excluded from this requirement are rules that are procedural, ministerial, or internal administrative and management actions, programs or decisions.[7] This Final Rule falls within this exception; consequently, no environmental consideration is necessary.

V. Regulatory Flexibility Act

9. The Regulatory Flexibility Act of 1980 (RFA)[8] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This Final Rule concerns a matter of internal agency procedure and it will not have such an impact. An analysis under the RFA is therefore not required.

VI. Document Availability

10. 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.

11. 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 (i.e., the sub docket number, 000) in the docket number field.

12. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at (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.*

VII. Effective Date and Congressional Notification

13. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules do not apply to this Final Rule because the rule concerns internal agency procedure and practice and will not substantially affect the rights of non-agency parties.

14. These regulations are effective on February 19, 2014. The Commission finds that notice and public comments are unnecessary because this Final Rule concerns only internal agency procedure and practice. Therefore the Commission finds good cause to waive the notice period otherwise required before the effective date of this Final Rule.

List of Subjects in 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends part 375, chapter I, title 18, *Code of Federal Regulations,* as follows:

PART 375—THE COMMISSION

■ 1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. In § 375.303 add paragraph (a)(2)(vi) to read as follows:

§ 375.303 Delegations to the Director of the Office of Electric Reliability.

* * * * *

(a) * * *

(2) * * *

(vi) Issue an order extending the period of time for consideration of a Notice of Penalty filed under Section

[3] Order No. 728, FERC Stats. & Regs. ¶ 31,298 at P 8 (cross-referenced at 129 FERC ¶ 61,094).

[4] As discussed in Order No. 728, the Director of the Office of Electric Reliability already possesses this delegated authority. Order No. 728, FERC Stats. & Regs. ¶ 31,298 at P 6 (cross-referenced at 129 FERC ¶ 61,094).

[5] 5 CFR part 1320.

[6] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[7] 18 CFR 380.4(a)(1).

[8] 5 U.S.C. 601–612.

215(e) of the Federal Power Act for the purpose of directing the Electric Reliability Organization or the applicable Regional Entity to provide such information as is necessary to implement Section 215(e)(2) of the Federal Power Act (16 U.S.C. 824o(e)(2)) pursuant to § 39.2 and Part 40 of this chapter.

* * * * *

§ 375.311 [Amended]

■ 3. In § 375.311 remove paragraphs (u) and (v).

[FR Doc. 2014–03432 Filed 2–18–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 619

RIN 1205–AB64

Federal-State Unemployment Insurance (UI) Program; Data Exchange Standardization as Required by Section 2104 of the Middle Class Tax Relief and Job Creation Act of 2012

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor's (Department's) Employment and Training Administration (ETA) issues this final rule to designate in regulation data exchange standards, developed in consultation with an interagency work group established by the Office of Management and Budget (OMB), for Unemployment Insurance (UI) administration, as required by amendments to Title IX of the Social Security Act (SSA) made by the Middle Class Tax Relief and Job Creation Act of 2012 (the Act). These regulations establish data exchange standards for three categories of information: real-time applications on the Interstate Connection Network (ICON); the State Information Data Exchange System (SIDES); and implementation of the standards identified for ICON and SIDES in major Information Technology (IT) modernization projects to upgrade UI Benefits and Tax systems by State Workforce Agencies (SWAs) using Federal funds.

DATES: *Effective date:* The rule will take effect on March 21, 2014. The Office of Management and Budget has pre-approved the information collection requirements contained in this rule under the Paperwork Reduction Act and has assigned them control number 1205–0510.

FOR FURTHER INFORMATION CONTACT: Gay M. Gilbert, Administrator, Office of Unemployment Insurance, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–4524, Washington, DC 20210; telephone (202) 693–3029 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

The preamble to this final rule is organized as follows:

I. Background—provides a brief description of the development of the rule.
II. Summary of the Comments—provides an overview of the comments received.
III. Section-by-Section Review—summarizes and discusses the regulations.
IV. Administrative Information—sets forth the applicable regulatory requirements.

I. Background

On February 22, 2012, the President signed the Middle Class Tax Relief and Job Creation Act. Section 2104 of the Act amends Title IX, SSA (42 U.S.C. 1101 *et seq.*) by adding a new section 911, which requires the Department to issue rules, developed in consultation with an interagency workgroup established by the OMB, that establish data exchange standards for certain functions related to administration of the UI [1] program. Before enactment of this requirement for data exchange standardization, the Department had been a proponent of and strong advocate for the use of open source technologies and data exchange standards in the development of IT systems supporting critical UI functions (such as ICON and SIDES), and of SWAs' overall UI IT modernization efforts. Section 911, SSA, contains two major subsections, (a) and (b), each of which requires data exchange standards; these requirements are discussed in detail below.

Section 911(a)(1), SSA, requires that the Secretary of Labor ''shall, *by rule,* designate a data exchange standard for *any* category of information required under title III [42 U.S.C. 501 *et seq.*], title XII [42 U.S.C. 1401 *et seq.*], or this title [IX] [42 U.S.C. 1101 *et seq.*].'' 42 U.S.C. 1111(a)(1) (Emphasis added.) The Department explained in the Notice of Proposed Rulemaking (NPRM), published in 78 FR 12655, Feb. 25, 2013, that this statutory language allows the Department to identify any category of information under the specified titles, by rule, for which to establish a data exchange standard. Section 911(b)(1), SSA, requires that the Secretary of Labor ''shall, *by rule,* designate data exchange standards to govern the reporting required under [the same specified titles].'' (Emphasis added.) 42 U.S.C. 1111(b)(1). This rule establishes data exchange standards for information required under section 303(a)(1), SSA, that meet the requirements of both sections 911(a)(1) and 911(b)(1), SSA.

Section 303(a)(1), SSA, commonly known as the ''methods of administration'' requirement, provides that State law, as a condition of the State receiving Unemployment Compensation (UC) administrative grants, must include ''such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.'' The Department chose to establish data exchange standards for information required under section 303(a)(1), SSA, because this section is the foundational statutory authority for the Department's guidance to States on the administration of the UI program, including guidance on program operations and reporting requirements.

In the NPRM, the Department indicated that it did not propose establishing data exchange standards for categories of information under Titles IX and XII, SSA, because they provided fewer opportunities for establishment of data exchange standards that would benefit the UI system broadly, given that their focus is primarily on Unemployment Trust Fund (UTF) management issues. Title IX establishes the account structure for the UTF, and Title XII establishes the processes for States to obtain advances if their States' accounts in the UTF are depleted. As discussed in more detail in the Comment Section below in response to the comment received on the NPRM, the Department will continue to review all UI reporting and determine the application of appropriate data exchange standards, where feasible. In this rule, the Department addresses the data exchange systems that are most immediately well-positioned to facilitate implementation of the data exchange standard.

To meet the requirements of section 911, SSA, the Department is designating in this final rule that eXtensible Markup

[1] The Department's Office of Unemployment Insurance uses the term Unemployment Compensation (UC) when referring to UC benefits paid or UC laws, and the term Unemployment Insurance (UI) to refer to the UI program, administration, and operations.

Language (XML)[2] be the data exchange standard for two systems that support the reporting of data and information for two core UI administrative functions: (1) employer reporting of information requested by SWAs to support eligibility determinations (SIDES); and (2) the reporting and exchange of wage information among the States that also supports determination of eligibility for benefits (ICON). XML is a markup language that defines a set of rules for encoding documents in a format designed to structure, store and transport data. XML data are stored in plain text format that is both human-readable and machine-readable. Use of XML also provides for a software- and hardware-independent method of exchanging data over incompatible applications or systems over the Internet.

Section 911(a)(2), SSA, requires that the data exchange standard implemented in this rulemaking ''to the extent practicable, be nonproprietary and interoperable.'' Section 911(b)(2), SSA, also requires that the data exchange standards implemented in this rulemaking ''to the extent practicable incorporate a widely accepted, nonproprietary, searchable, computer-readable format,'' and ''be capable of being continually upgraded as necessary.'' Section 911(b)(3), SSA, specifically requires that this rule, ''to the extent practicable, incorporate existing nonproprietary standards, such as the eXtensible Markup Language.'' The data exchange standards established in these regulations mandate the use of XML to meet the requirements of sections 911(a) and (b), SSA.

XML[3] provides an interoperable standard framework using common computer languages and standard formats and protocols to manage certain functions or communications. Gaining interoperability among the Department and 53 States and territories with different IT infrastructure and different program parameters (State UI programs have differing eligibility requirements and processes for supporting those requirements) is challenging. Therefore, the Department focused these regulations on core functions and reporting requirements that are truly common among the States.

Finally, section 911(a)(3)(A), SSA, requires that for data exchange reporting standards, the rule, to the extent practicable, incorporate interoperable standards developed and maintained by an international voluntary consensus standards body. The XML standard herein designated meets this requirement as it is recognized by the World Wide Web Consortium, an international voluntary consensus standards body. The rule also meets the requirement of incorporating standards developed and maintained by intergovernmental partnerships like the National Informational Exchange Model (NIEM) referenced in section 911(a)(3)(B), SSA. XML is a data exchange standard recognized by NIEM. The standard to be considered under Section 911(a)(3)(C), SSA, requires incorporation, to the extent practicable, of ''interoperable standards developed and maintained by Federal entities with authority over contracting and financial assistance, such as the Federal Acquisition Regulations Council.'' This requirement applies to contracting and procurement processes and is not applicable to UI processes.

In accordance with these provisions, this final rule implements the following data exchange standards:

- Under section 911(a), SSA, the Department designates XML as the data exchange standard for the real-time applications[4] of ICON;
- Under section 911(a), SSA, the Department designates XML as the standard for the SIDES data exchange modules;
- Under section 911(b), SSA, the Department designates XML as the data exchange standard to govern reporting of information shared through SIDES; and
- Under section 911(a), SSA, the Department designates XML as the data exchange standard for real-time applications of ICON and SIDES data exchange modules in association with major IT modernization projects using Federal funds.

By publishing this final rule, the Department does not foreclose the possibility of later establishing additional data exchange standards by regulation, as technological and other advances make it feasible and appropriate. The Department will explore on an ongoing basis other functions where data exchange standards would be valuable to the UI program and as it relates to shared data exchange with other Federal agencies.

ICON

ICON is used to implement sections 3304(a)(9)(A) and (B) of the Federal Unemployment Tax Act (FUTA), providing for interstate and combined-wage claims.[5] ICON enables States to request, submit, and receive much of the information necessary to establish claims (as identified below) and determine eligibility. The requirement to pay UC ''when due'' under section 303(a)(1), SSA, includes the timeliness of these payments. Interstate and combined wage claims are more complex to administer since they require communication and transmission of information between States or between a State and a Federal agency. To ensure that these claims are paid ''when due,'' the Department supports development and maintenance of ICON. ICON is a secure multi-purpose telecommunications network that supports the transfer of data among the SWAs needed for critical program functions, including:

- Interstate Benefits/Combined-Wage Claims;
- Unemployment Compensation for Federal Civilian Employees and Unemployment Compensation for Ex-Servicemembers programs;
- The Wage Record Interchange System, which allows SWAs to obtain wage data for program performance purposes of individuals who have participated in workforce investment programs in SWAs;
- The UI Inquiry data exchange with the Social Security Administration (Social Security) that enables SWAs to validate Social Security Numbers (SSNs) with Social Security; and
- The Health Coverage Tax Credit that enables a SWA to transmit information to the Internal Revenue Service about individuals eligible for help paying for their health insurance coverage.

[2] XML is a nonproprietary, searchable, computer-readable format, and has the capacity to be upgraded continually, as necessary. Interoperability helps information technology systems more readily interface to carry out shared functions and manage communications.

[3] The use of the term ''XML'' means XML and any XML-based markup language(s) that defines a set of rules for encoding documents and/or data in a format that is both human-readable and machine-readable. The term ''XML'' encapsulates the provisions specified in newly added section 911, SSA.

[4] ICON applications are available in real-time and batch mode. States vary in the use of real-time applications versus the batch mode. The batch mode allows for processing of multiple requests at a scheduled time instead of immediate ''real-time'' processing.

[5] Section 3304(a)(9)(A), (FUTA) requires, as a condition of the Secretary's certification of a State law under FUTA, that ''compensation shall not be denied or reduced to an individual solely because he files a claim in another State . . . or because he resides in another State . . . at the time he files a claim for unemployment compensation.'' Section 3304(a)(9)(B), FUTA, also requires as a condition of the Secretary's certification that ''the State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the State law with his wages and employment covered under the State unemployment compensation law of other States. . . . ''

The Department establishes in this final rule that XML be used as the data exchange standard under section 911(a), SSA, for a subset of these functions due to both State and ICON capacity to adopt standards for some of these functions at this time. In relation to these chosen functions, ICON currently supports the following applications in real-time allowing for States to use XML standards for these functions. These are applications currently used by some SWAs to support the processing of all UC claims:

- Interstate Wages and Benefits Inquiries/Responses, which supports online transmission of interstate wages and benefits inquiries and responses between SWAs;
- Withdrawn/Invalid Claims, which allows for the posting and viewing of withdrawn or invalid claim information for SWAs; and
- State Identification Inquiry, which allows SWAs to inquire about wages reported to other SWAs by SSN.

Currently, seven SWAs are involved in modernizing some of their ICON applications and it is not practical to require all States to comply with this standard immediately. In this final rule, the Department requires that all SWAs using real-time ICON applications comply with the XML data exchange standard no later than September 30, 2018. A SWA may request an extension of the September 2018 deadline if it demonstrates that resources are not available to meet this requirement. These requests must be submitted in writing to the Administrator of the Office of Unemployment Insurance no later than 6 months before the deadline; requests will be reviewed and decided within 30 days.

SIDES

SIDES is necessary to effectuate the Standard for Claim Determinations—Separation Information, codified in regulation at 20 CFR Part 625 Appendix B. This standard is based significantly on the ''methods of administration'' requirement in section 303(a)(1), SSA, and includes a requirement that a State promptly obtain information from the worker, employer, or other source that is sufficient to reasonably insure payment of UC when due. For this reason, the Department supports development and maintenance of SIDES, which enables States to exchange information with employers electronically, thereby markedly improving the timeliness and accuracy of the employer-provided information about the reasons individuals separated from employment.

SIDES is an automated information exchange and reporting system to standardize SWAs' delivery of information to employers and collection of information by SWAs from employers and third-party administrators (TPAs). In FY 2010, the first format of SIDES for exchange of employee separation information was implemented. This exchange of information with employers or their TPAs on the circumstances underlying individual UC claimants' job separations will reduce UC payments to ineligible claimants, yield administrative cost savings to both employers and taxpayers, and promote more timely benefit determinations. Currently, 36 SWAs and three TPAs are participating in the SIDES effort. In FY 2011, the SIDES earnings verification module was implemented. The addition of the earnings verification exchange allows SWAs and employers to more quickly and accurately verify when UC claimants return to work, thus reducing the leading cause of UC overpayments: claimants' receipt of UC while employed. In FY 2013, the SIDES module providing information on monetary and potential charges to the employer's account was implemented. This module allows SWAs to inform employers more quickly of potential charges to their accounts so that employers can appeal these charges expeditiously. If an employer appeals the charges, additional fact-finding of the claim can be conducted before additional benefits are paid to claimant thus preventing improper payments.

SIDES is managed by the National Association of State Workforce Agencies (NASWA [6]) which contracts with a vendor for its maintenance, support, and operations. The Department has provided specific funding to State consortia and SWAs for development, maintenance, and operation of SIDES. State consortia are groups of States collaborating to jointly establish a project team to oversee the design, development and implementation of an IT solution that will be shared across the States. The Department recently funded a consortium of States to oversee the development of new SIDES data exchange modules to allow SWAs to notify employers and TPAs of benefits charges to their accounts and of non-monetary determinations. SWAs, participating in the SIDES consortia, identify and help prioritize new SIDES modules to be developed and direct these funds to NASWA for the development of these modules. All SWAs using SIDES modules provide administrative funding to NASWA for the continued operations of SIDES.

The Department continues to facilitate the expansion and enhancement of the functionality and use of SIDES as a vital tool for SWAs for the prevention and detection of improper payments, and has provided supplemental funding to a State consortium for the development of additional data exchange modules. These modules include:

- *UC Benefit Charge Notices.* This enhancement will make it possible for SWAs to provide employers notice of actual (as opposed to potential as discussed above) benefit charges to their accounts electronically rather than by paper and mail. This permits a quicker delivery and review by the employer and the ability to reply electronically if the charges are questionable. This expedited information exchange can detect potential improper payments earlier, particularly those related to identity theft and employees that return to work and continue to collect benefits.
- *Non-Monetary Determinations Exchange.* This enhancement will notify employers electronically, rather than on paper, of SWA decisions on the eligibility of their former employees when issues arise about whether the employees quit or were terminated for cause. This will improve the timeliness of employer appeals and allow for quicker appeal decisions, halting improper payments faster if the employer prevails in the appeal.

Additionally, several other data exchange modules are under consideration for the expansion of SIDES including one for the exchange of Appeals Decisions. The XML standard will apply to these additional data exchange modules as well.

The final rule designates a data exchange standard under section 911(a), SSA, to apply to the SIDES data exchange modules and designates a standard under section 911(b), SSA, to govern reporting of information through SIDES data exchange modules.

Major IT Modernization of UI Benefits and Tax Systems

For the purpose of this regulation, a major IT Modernization of UI Benefits and Tax systems includes conversion, re-engineering, rewriting, or transferring of an existing system to a modernized framework such as transferring a process from mainframe operations to web-based operations, converting to modern computer programming languages, or upgrading software

[6] A definition for NASWA was included in the NPRM as part of the proposed rule. Since this term is not included in this regulation, the proposed definition has been deleted in this final rule. This deletion of the definition of NASWA is the only change made to the final rule when compared to the proposed rule in the NPRM.

libraries, protocols, or hardware platform and infrastructure. As the Department provides funding to States to modernize their IT systems, the opportunity exists to use new data exchange standards that improve operations of the UI system as a whole and may further enable improved data exchanges with other States and Federal agencies.

The Department facilitates SWAs' efforts to modernize IT systems supporting their UI programs by providing funding for administration and operations, and appropriate technical assistance. While the Federal-State structure of the UI program places primary responsibility for its administration on the States, the Department provides periodic supplemental funding opportunities for IT modernization activities. In addition, Congress periodically provides special distributions of administrative UI funding to States.

Federal funds for UI modernization efforts come primarily from three sources: (1) supplemental budget funds that are designated by the Department for State IT modernization efforts, (2) State UI administration funding, and (3) special distributions. State administration funding primarily consists of State UI operations funds (an administrative grant awarded by the Department at the beginning of each fiscal year). Recent special distributions to States, under section 903, SSA, include those provided under the Job Creation and Worker Assistance Act of 2002 funds (distributed under the Reed Act, a mechanism by which the Federal government transfers surplus UI funds to States) and American Recovery and Reinvestment Act funds (an economic stimulus package enacted in February 2009). Also, since 2009, the Department has provided supplemental funding to State consortia to develop jointly functional requirements and development of modernized UI IT Benefits and/or Tax systems. One of the requirements was that the technology tools developed use open source components to the extent feasible, be transferable, and be capable of being shared by multiple SWAs. The goal is for multiple SWAs to share common systems/tools that accommodate each SWA's specific needs. Each of the consortia has its State leadership engaged in the process and soliciting vendors to assist with the system design and development efforts.

This final rule requires that SWAs, when using Federal funds to modernize their UI systems, use XML as a data exchange standard when developing the functionality to interface with ICON, to implement SIDES and the reporting of information through SIDES. This requirement will potentially further accelerate State adoption of this standard for both functions. The Department strongly encourages SWAs, to the extent feasible, to begin conforming to the XML standard for any major UI IT modernization projects already underway.

Effective Date

Section 2104(b)(1) of the Act requires that a final rule to be issued ''after public comment, within 24 months after such date of enactment.'' Section 2104(b)(2) of the Act requires that a proposed rule under section 911(b), SSA, will ''become effective with respect to reports required in the first reporting period, after the effective date of the final rule referred to in paragraph (1) of this subsection.''

Accordingly, this final rule requires that the data exchange standard for SIDES, under both sections 911(a) and (b), SSA, become effective 30 days after publication of this final rule. States implementing new data exchange modules after that date will use XML as the data exchange standard.

Additionally, this final rule establishes September 30, 2018, as the date by which SWAs must comply with the data exchange standard for ICON, in accordance with section 911(a), SSA. This will allow States to begin implementing the standard as soon as practicable, while still providing enough advance time to account for the current technology capacity of States and the fact that many States will need to make substantial changes to their technology systems to implement XML for their ICON exchanges.

Finally, the effective date of designation of XML as the data exchange standard for SIDES data exchange modules and for the real-time ICON applications, in accordance section 911(a), SSA, is 30 days after publication of this final rule.

II. Summary of the Comments

The Department received only one comment in response to the NPRM, which was from the Chairman and six Members of the Subcommittee on Human Resources, U.S. House of Representatives, Committee on Ways and Means. This comment generally supported the rulemaking; however, it also detailed two particular concerns about the NPRM. First, the comment encouraged the Department to continue to review program data beyond the specific data exchanges identified in this rule for standardization including data exchanges under Titles IX and XII. Second, the comment specifically indicated that the Department should explore the standardization of weekly UI claims data. Finally, the comment recognized the Department's commitment to working with other Federal agencies to identify standards that could improve interagency data exchanges. The Department addresses these concerns in the following paragraphs.

First, the commenters state that ''as authors of this provision [the Act], we intended 'any' to cover *all* categories of information.'' In other words, the commenters asserted the Department should interpret data exchange standardization to cover all categories of information. The comment states ''we recognize that the effort to move a standardized system will require upfront investment of time and effort.'' The comment also noted that ''[t]his is an iterative process and we look forward to working together to achieve success.''

The Department appreciates that the commenters recognize that extending data exchange standardization to all types of reporting and information data exchanges is an enormous effort that takes time; it is an iterative and evolutionary process. The Department recognizes that the statutory language regarding ''any'' category of information could be interpreted as the commenters assert. The language is ambiguous and therefore the Department interpreted it in a manner to make the implementation of the statute feasible. The Department will continue to review all UI reporting and determine the application of appropriate data exchange standards, where feasible. In the UI program, this process must be accompanied by considerable consultation and partnership from the States. As we noted in the NPRM, 78 FR 12656, Feb. 25, 2013, States vary widely in their IT infrastructure, with many States continuing to operate antiquated and inflexible systems. In addition, the IT infrastructure in States has been significantly challenged over the past several years due to the complexity of new Federal UI programs such as the Emergency Unemployment Compensation program, and more recently as a result of sequestration. The fact of this varying State IT capacity requires consideration of priorities, funding availability, and timing constraints when it comes to data exchange standardization.

The Department addresses, in this rule the data exchanges that are most immediately well-positioned to facilitate implementation of new data exchange standardization. For example, the ICON network has completed the

implementation of the XML data exchange for the ''real time'' applications that are used by SWAs. The Department wants to encourage SWAs to transition to the XML data exchange standards for these ''real time'' applications and these regulations provide such an opportunity. In addition, the SIDES data exchange tool is a recent development and SWAs are in the process of adopting this tool to facilitate the exchange of information between SWAs and employers and third party administrators. Although the designation of a XML standard has started with these specific data exchanges, the Department will continue to review other data exchanges, and reporting requirements for designation of data exchange standards, where feasible. In a May 10, 2013, meeting between the Department and staff members of the House Subcommittee on Human Resources, the committee staff indicated that they were not requesting any specific change to the rule based on this explanation. They asked, and the Department agreed, that it would continue to keep the Committee informed of new opportunities to develop data exchange standards between SWAs and the Department and also between the Department and other Federal agencies.

The comment also noted that the exchanges that deal with the issue of Unemployment Trust Fund reporting under Titles IX and XII could also benefit from data exchange standardization. Most of the data systems on Unemployment Trust Fund reporting are operated by the U.S. Department of Treasury (Treasury). The Department will work with Treasury to explore opportunities for standardizing these data exchanges and reporting under Titles IX and XII.

While developing this rule for data exchange standards, the Department determined that it is neither feasible nor practicable to immediately set standards for all reports under the three titles listed in Section 911(b), SSA. In the NPRM, the Department indicated that imposing data exchange standards for certain reporting for the UI program would be counter-productive and would interfere with the Department's ability to use and analyze the data. For example, State UI agencies currently send data, such as weekly UI claims data, to the Department in a format that enables the Department to store the data in a relational database for purposes of analysis and performance management. The Department noted that if the data were instead required to be received in XML format, pre-processing of the data would be required to store this information within a relational database, thus adding a layer of complexity for the analytical software. That approach would result in unnecessary inefficiency and there would be no benefit to any user of the data.

The comment further stated that while the commenters agreed with the Department's effort to ''avoid unnecessary inefficiencies,'' they do not agree with the Department's ''assertion that there would be no long term benefit gained from including weekly UI claims data in the data exchange standardization effort.''

The Department acknowledges that presenting the data with consistent identification codes and formatting is desirable. The Department plans to conduct a feasibility study on consolidating the State UI reporting infrastructure within the Department's National Office. This process will provide opportunities for updating the format and standards by which these reports are presented to users of the data. With this pending consolidation project, the Department will continue to explore how best to present the data to facilitate greater usability, transferability and transparency. As an interim measure, the Department, where feasible, intends to prioritize the translation and publication of data, including weekly claims data, in an XML format to enable users to better understand the data elements and definitions. These are actions that the Department can take without any further rule making because it does not need involvement by external entities.

Finally, the comment supported the Department's commitment to interagency coordination ''to identify standards that could be applied to improve interagency data exchanges and issue additional regulations.''

The comment also stated that ''[the Subcommittee] look[s] forward to working together to achieve success'' in this respect. The Department appreciates the interest shown by the Committee and intends to continue to work closely with all stakeholders, including the Committee and all Members of Congress, as well as the States, OMB, and other Federal agencies in pursuing opportunities for data exchange standardization. The Department agrees with the Committee on the potential benefits for data exchange standardization.

The Department also notes that if the goal for the UI program and other Federal programs is to advance data exchange standardization as quickly as feasible, it is critical that agencies have flexibility to determine the data exchanges that will produce the best results and the timing for implementation based on issues such as capacity and cost. In addition, the Department also notes that requiring agencies to implement data exchange standards through regulations is extremely cumbersome and may actually inhibit agencies' agility to respond to advances in technology concerning standardization. The Department is willing to work with the Committee to identify alternatives to accelerate data exchange standardization in other areas.

Based on the conversation with Committee staff on May 10, 2013, the Department is making no changes to the regulation as a result of this comment.

III. Section-by-Section Review

Definitions (§ 619.1)

This section establishes definitions of terms used in this rule. Most are self-explanatory; however, of particular note is paragraph (c), which defines XML, the standard designated in this rule to use for data exchange. XML data are stored in plain text format that is both human-readable and machine-readable and provides for a software- and hardware-independent method of exchanging data over incompatible applications or systems over the internet. This definition includes any future upgrades, iterations, or releases of XML-based language. A definition for the NASWA was included in the NPRM as part of the proposed rule. Since this term is not included in this regulation, the proposed definition has been deleted in this final rule. This deletion of the definition of NASWA is the only change made to the final rule when compared to the proposed rule in the NPRM.

Data Exchange Standardization for ICON (§ 619.2)

Paragraph (a) designates XML as the data exchange standard for the real-time ICON applications. These applications are: Interstate Wages and Benefits Inquiries/Responses; Withdrawn/Invalid Claims; and State Identification Inquiry. These applications, used by States, are currently supported by ICON in real-time using two data exchange formats—Extended Binary Coded Decimal Interchange Code (EBCDIC) and Web Services Description Language (WSDL), which is a XML-based language. As stated previously, the Department has selected this sub-set of the applications supported on ICON for applying a data exchange standard because they represent the applications which both ICON and States currently

have capacity to implement. The Department will continue to consider ways to apply data exchange standards to the other ICON functions, but the technology solutions are currently not available. It may be over five years before these new technology solutions can be effectively applied in the ICON environment.

Paragraph (b) requires that all SWAs using real-time ICON applications conform to the XML data exchange standard no later than September 30, 2018. The rule provides that a SWA may request an extension of this deadline if it demonstrates that resources are not available to meet the requirements. The request must be submitted to the Administrator of the Office of Unemployment Insurance no later than 6 months before the deadline, and the request will be approved or denied within 30 days.

ICON is funded by a cooperative agreement between the Department and the State of Maryland. The Maryland Department of Labor, Licensing and Regulation acts as the Department's agent to contract with a vendor for the maintenance, support, and operation of ICON. Beginning in FY 2007, the Department facilitated and later provided funding for the conversion of data exchange formats from EBCDIC to WSDL. EBCDIC is a format specifically used for mainframes and is not an interoperable standard. However, the migration of SWAs from EBCDIC to WSDL is still in its infancy requiring ICON to support a dual environment (Web Services and Mainframe).

A few SWAs currently are in the process of implementing some of the modernized, XML-based real-time applications in conjunction with their efforts to modernize their IT systems or replace outdated systems. The goal of this paragraph is to accelerate State adoption of XML-based real time applications in order to eventually eliminate the need for ICON to manage mainframe applications in addition to the XML-based applications.

The Department will continue to support SWAs' transition to modernized XML-based real-time ICON applications and expects that the data exchange standard in this regulation will accelerate SWAs' adoption of the XML exchange standard. The development of a single environment will result in improved efficiencies and cost savings and allow the Department to more effectively manage the development of future data exchanges and maintenance of resources.

Data Exchange Standardization for SIDES (§ 619.3)

Paragraph (a) designates XML as the data exchange standard for SIDES. Paragraph (b) requires that this standard apply to any Federally-funded SIDES consortium, and any future agents of the Department providing vendor services for the development, maintenance, support and operations of the SIDES. Paragraph (c) designates XML as the data exchange standard to govern the reporting of information through the SIDES data exchange modules. Paragraph (d) denotes when the standard set in paragraph (c) becomes effective.

SIDES uses Web services and the XML data format for the information exchange between the SWAs and employers. The Department is requiring that all SIDES exchanges (current and future), which are developed in whole or part with Department funds, continue to conform to the XML data exchange standard. Additionally, as States, employers, and TPAs chose to implement SIDES or new data exchange modules of SIDES, they must conform to this data exchange standard by application design.

SIDES offers two options for implementation for SWAs and employers: SIDES web services, and SIDES E-Response. Both systems are designed to meet the unique needs of businesses, large and small. For employers with a limited number of UC claims, the SIDES E-Response Web site provides an easy and efficient way to respond to information requests from SWAs. For employers and TPAs that handle a large volume of UC claims information requests, SIDES web services provides an automated, computer-to-computer interface between employers' and TPAs' IT systems and SWA networks.

Data Exchange Standardization for the UI Benefits and Tax Systems (§ 619.4)

Paragraph (a) designates XML as the data exchange standard for the real-time ICON applications and SIDES data exchange modules associated with major IT modernization projects to upgrade UI Benefits and Tax Systems by SWAs using Federal funds. This standard will improve the interoperability of State, Federal, and employer systems that collect and exchange information for UI administrative purposes. Linking data between these systems at the State level will allow for better service delivery and faster eligibility determinations, and should facilitate program integrity efforts.

Paragraph (b) requires that, beginning on the effective date of this regulation, major IT modernization efforts funded by the Department must conform to the XML data exchange standard for the implementation of the real-time ICON applications and the SIDES exchange modules.

IV. Administrative Information

Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' because, although not economically significant under section 3(f) of Executive Order 12866, it raises novel issues of law and policy. The key policy being implemented in this rule is the designation of XML as the data exchange standard for three categories of information: real-time applications on ICON; SIDES; and implementation of the XML standard identified for ICON and SIDES in major IT modernization projects to upgrade UI Benefits and Tax systems by SWAs using Federal funds. Therefore, the Department has submitted this final rule to OMB for review.

Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information. A Federal agency may not conduct or sponsor a collection of information, unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not

display a currently valid OMB control number (44 U.S.C. 3512).

While this final rule imposes no new information collections, §§ 619.2–619.4 would impose formatting requirements for the data exchanges of various UI applications that may impose a burden under the PRA. The Department submitted an information collection request (ICR) to the OMB to obtain PRA approval for the information collection formatting requirements contained in the NPRM. On May 16, 2013, consistent with regulations 5 CFR 1320.11(c), the OMB issued a Notice of Action assigning control number 1205–0510 to the ICR. The OMB did not pre-approve the formatting requirements at that time; instead, the Department was to resubmit the ICR for approval at the final rule stage, after reviewing and responding to any public comments. The substance of the public comment and the Departmental response appears earlier in this preamble. The public comment did not address the PRA burden estimates in the NPRM. Concurrent with publication of this final rule, the Department is resubmitting the request to the OMB for PRA approval. ETA will publish a Notice in the **Federal Register** to announce any final OMB decision on that request.

The burden for the information collection provisions of this final rule can be summarized as follows:

Agency: DOL–ETA.

Title of Collection: Federal-State Unemployment Insurance Program Data Exchange Standardization.

OMB ICR Reference Number Control Number: 1205–0510.

Affected Public: State Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 53.

Total Estimated Annual Burden Hours: 6,360.

Total Estimated Annual Other Costs Burden: $1,057,329.

Executive Order 13132: Federalism

Section 6 of Executive Order 13132 requires Federal agencies to consult with State entities when a regulation or policy may have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order.

Section 3(b) of the Executive Order further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance. This final rule is specifically required by the Middle Class Tax Relief and Job Creation Act of 2012.

This rule does not have a substantial direct effect on the current nature of the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of Government, within the meaning of the Executive Order. The Department is exercising its existing authority to interpret Federal statutes with regard to States' administration of UI programs. In the Federal-State UI system, States have a great deal of flexibility to design their UC laws and operations as long as they comply with the broad Federal requirements in FUTA and the SSA. This rule implements a new statutory requirement for a uniform data exchange and reporting standard and thus is no different from other UC regulations that interpret Federal law as it applies to State requirements. It simply sets a new standard for data exchanges of information used in the administration of the UI program under Title III of the SSA. The Department consulted with NASWA's Information Technology Support Center and NASWA's UI Committee to discuss the impacts of this rule and identify State application interfaces which will benefit by the implementation of the XML data exchange standard. NASWA agreed with the Department's approach to implement uniform data exchange standards in areas already identified as valuable to the UI system and for applications developed collaboratively with the States.

Unfunded Mandates Reform Act of 1995

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995. Under the Act, a Federal agency must determine whether a regulation proposes a Federal mandate that would result in the increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any single year. The Department has determined this rule does not include any Federal mandate that may result in increased expenditure by State, local, and Tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Most if not all of the costs of implementing this regulation will be covered by Federal funding.

Plain Language

The Department drafted this final rule in plain language.

Effect on Family Life

The Department certifies that this final rule has been assessed under section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 12 Stat. 2681) for its effect on family well-being. This provision will not adversely affect the well-being of the nation's families. Therefore, the Department certifies that this rule does not adversely impact family well-being as discussed under section 654 of the Treasury and General Government Appropriations Act of 1999.

Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act

The Department has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification according to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities. Under the RFA, no regulatory flexibility analysis is required where the rule ''will not . . . have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). A small entity is defined as a small business, small not-for-profit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)–(5).

This final rule requires implementation of a data exchange standard that would be used in SIDES and ICON. ICON is used only by States and Federal entities, neither of which qualifies as a small entity under the RFA. SIDES, however, is used by States and by employers, including TPAs, in the private sector. However, because SIDES already uses an XML-based interface, there is no incremental cost to current users. Furthermore, while additional employers and TPAs may adopt SIDES in the future, this rule does not require them to do so, nor does this rule affect their costs if they did. Consequently, this rule will not have a significant economic impact on a substantial number of small entities, and a Regulatory Flexibility Analysis is not required under the RFA.

In addition, this rule does not require review by the Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 because it will not

result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

As discussed above, the most significant effect of this final rule will be to accelerate action (*e.g.,* the adoption of the real-time XML-based ICON applications) that the Department expects to occur even in the absence of this rule. The noteworthy cost of the final rule is the cost of this acceleration. That is, the rule would change the timing—and therefore the present value—of nominal costs that would have been incurred even in the absence of the rule. These costs will be borne by the State and Federal governments, not by small entities.

List of Subjects in 20 CFR Part 619

Labor, Unemployment Compensation.

For the reasons stated in the preamble, the Department amends 20 CFR chapter V to add part 619 as set forth below:

PART 619—UNEMPLOYMENT COMPENSATION DATA EXCHANGE STANDARDIZATION FOR IMPROVED INTEROPERABILITY

Sec.
619.1 Definitions.
619.2 Data exchange standardization for ICON.
619.3 Data exchange standardization for SIDES.
619.4 Data exchange standardization for the UI Benefits and Tax Systems.

Authority: 42 U.S.C. 1111; Section 2104(b) of Pub. L. 112–96; 42 U.S.C. 1302(a).

§ 619.1 Definitions.

As used in this part—

Administrator of the Office of Unemployment Insurance means the Department's Employment and Training Administration's chief administrative officer directly responsible for the operation of the Unemployment Insurance (UI) program and oversight of the Unemployment Compensation (UC) program and UC laws.

Department means the United States Department of Labor.

eXtensible Markup Language or *XML* means a markup language that defines a set of rules for encoding documents in a format designed to structure, store and transport data between applications or systems over the Internet. This term includes any future upgrades, iterations, or releases of XML-based language.

Federal funds or *Federally-funded* means funds that include, but are not limited to:

(1) Supplemental budget funds that are designated by the Department for State IT modernization efforts;

(2) General State UI administration funding for State program operations (an administrative grant issued by the Department at the beginning of each fiscal year); and

(3) Special UI funding distributions.

Interstate Connection Network or *ICON* means a secure multi-purpose telecommunications network that supports the transfer of data among the SWAs.

Interstate Wages and Benefits Inquiries/Responses means the ICON application which supports online transmission of interstate wages and benefits inquiries and responses between SWAs.

Major IT Modernization Project means conversion, re-engineering, rewriting, or transferring of an existing system to a modernized framework such as transferring a process from mainframe operations to Web-based operations, converting to modern computer programming languages, or upgrading software libraries, protocols, or hardware platform and infrastructure. These are projects to upgrade UI Benefits and Tax Systems by SWAs using Federal funds.

State or *States* refers to, individually or collectively, the 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

State Identification Inquiry means the ICON application which allows SWAs to inquire about wages reported to other SWAs by Social Security Number.

State Information Data Exchange System or *SIDES* means an automated response system used by SWAs to collect claim-related information from employers and third-party administrators.

State unemployment compensation law or *UC law* means the law of a State approved under Section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)).

State Workforce Agency or *SWA* means the agency of the State charged with the administration of the State's Unemployment Compensation (UC) law.

Unemployment compensation or *UC* means cash benefits payable to individuals with respect to their unemployment, as defined in 26 U.S.C. 3306(h).

Unemployment Insurance or *UI* means the Federal-State system and operations administering and implementing UC law.

Withdrawn/Invalid Claims means the ICON application which allows for the posting and viewing of withdrawn or invalid claim information for SWAs.

§ 619.2 Data exchange standardization for ICON.

(a) XML is the data exchange standard for the real-time ICON applications. These applications are: Interstate Wages and Benefits Inquiries/Responses; Withdrawn/Invalid Claims; and State Identification Inquiry.

(b) All SWAs using real-time ICON applications must comply with this XML data exchange standard no later than September 30, 2018. A SWA may request an extension of this deadline if it demonstrates that resources are not available to meet this requirement. These requests must be submitted in writing to the Administrator of the Office of Unemployment Insurance no later than 6 months before the deadline; requests will be approved or denied within 30 days.

§ 619.3 Data exchange standardization for SIDES.

(a) XML is the data exchange standard for SIDES.

(b) This standard applies to any Federally-funded SIDES consortium, and any future agents of the Department providing vendor services for the development, maintenance, support, and operations of the SIDES, and for any State that adopts SIDES. A SIDES consortium involves a group of two or more States jointly establishing a project team to oversee the design, development, and implementation of a new SIDES data exchange module. As States implement SIDES or new data exchange modules of SIDES, they must conform to this data exchange standard by application design.

(c) XML is designated as the data exchange standard to govern the reporting of information through SIDES data exchange modules. The regulation applies to current SIDES data exchange modules and any future SIDES data exchange modules developed with Federal funds.

(d) The standard designated in paragraphs (a), (b), and (c) of this section is effective March 21, 2014.

§ 619.4 Data exchange standardization for the UI Benefits and Tax Systems.

(a) XML is the data exchange standard for the real time ICON applications set out in § 619.2 and for the SIDES exchanges set out in § 619.3 associated with major IT modernization projects, to

upgrade UI Benefits and Tax Systems by SWAs using Federal funds.

(b) The standard designated in paragraph (a) of this section is effective March 21, 2014.

Eric M. Seleznow,

Acting Assistant Secretary, Employment and Training Administration.

[FR Doc. 2014–03496 Filed 2–18–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 106 and 107

[Docket No. FDA–1995–N–0063 (formerly 95N–0309)]

RIN 0910–AF27

Current Good Manufacturing Practices, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports, for Infant Formula; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; request for comments; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of February 10, 2014. The document revised our infant formula regulations to establish requirements for current good manufacturing practices, including audits; to establish requirements for quality factors; and to amend FDA's quality control procedures, notification, and record and reporting requirements for infant formula. FDA took the action to improve the protection of infants who consume infant formula products. The document was published with an incorrect docket number. This document corrects that error.

DATES: *Effective Date:* This correction is effective February 19, 2014.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3208, Silver Spring, MD 20993, 301–796–9148.

SUPPLEMENTARY INFORMATION: In FR Doc. 2014–02148, appearing on page 7934 in the **Federal Register** of February 10, 2014 (79 FR 7934), the following corrections are made:

1. On page 7934, ''FDA–1995–N–0036'' is corrected to read ''FDA–1995–N–0063'' each time it appears.

2. On page 8055, in the second column, ''FDA–1995–N–0036'' is corrected to read ''FDA–1995–N–0063''.

3. On page 8058, in the third column, ''FDA–1995–N–0036'' is corrected to read ''FDA–1995–N–0063''.

Dated: February 13, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–03588 Filed 2–18–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 800

[Docket No. FDA–1977–N–0222]

Administrative Detention; Corrections

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correcting amendment.

SUMMARY: The Food and Drug Administration (FDA) published a document in the **Federal Register** on Friday, March 9, 1979 (44 FR 13239). The document established administrative detention procedures for devices intended for human use believed to be adulterated or misbranded. The document was published with a citation in the first column on page 13240 that subsequently was changed by the Nutrition Labeling and Education Act Amendments of 1993. In addition, the document was published with one typographical error in the first column on page 13241. This document corrects these errors.

DATES: This correction is effective February 19, 2014.

FOR FURTHER INFORMATION CONTACT: Jan B. Welch, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3412, 301–796–5776, FAX: 301–847–8136, *jan.welch@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is correcting a final rule that appeared in the **Federal Register** on Friday, March 9, 1979 (44 FR 13239). The final rule established administrative detention procedures for devices intended for human use believed to be adulterated or misbranded. The document was published with a citation to section 201(y) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(y)) (the FD&C Act) in the first column on page 13240 (§ 800.55(g)(1) (21 CFR 800.55(g)(1)) that subsequently was changed to section 201(x) of the FD&C Act by section 3(b) of the Nutrition Labeling and Education Act Amendments of 1993 (Pub. L. 103–80). In addition, the document was published with one typographical error in the first column on page 13241 (§ 800.55(k)(1)) in which the word ''is'' should have been the word ''in''. This document updates the statutory reference in § 800.55(g)(1) and corrects the typographical error in § 800.55(k)(1).

Publication of this rule constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). This amendment to the regulations provides only a technical change and corrects a nonsubstantive error. FDA therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) that notice and public comment are unnecessary, and under 5 U.S.C. 553(d)(3) that the rule can become effective upon publication.

FDA has determined under 21 CFR 25.30(i) that this final rule is of a type that, as a class, does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This final rule contains 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 § 800.55 have been approved under OMB control number 0910–0114, which expires April 30, 2016.

List of Subjects in 21 CFR Part 800

Administrative practice and procedure; Medical devices; Ophthalmic goods and services; 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 800 is amended as follows:

PART 800—GENERAL

■ 1. The authority citation for 21 CFR Part 800 continues to read as follows:

Authority: 21 U.S.C. 321, 334, 351, 352, 355, 360e, 360i, 360k, 361, 362, 371.

■ 2. In § 800.55, revise paragraph (g)(1) and the first sentence of paragraph (k) to read as follows:

§ 800.55 Administrative detention.

* * * * *

(g) *Appeal of a detention order.* (1) A person who would be entitled to claim

the devices, if seized, may appeal a detention order. Any appeal shall be submitted in writing to the FDA District Director in whose district the devices are located within 5 working days of receipt of a detention order. If the appeal includes a request for an informal hearing, as defined in section 201(x) of the act, the appellant shall request either that a hearing be held within 5 working days after the appeal is filed or that the hearing be held at a later date, which shall not be later than 20 calendar days after receipt of a detention order.

* * * * *

(k) *Recordkeeping requirements.* (1) After issuance of a detention order under paragraph (d) of this section, the owner, operator, or agent in charge of any factory, warehouse, other establishment, or consulting laboratory where detained devices are manufactured, processed, packed, or held shall have, or establish, and maintain adequate records relating to how the detained devices may have become adulterated or misbranded, records on any distribution of the devices before and after the detention period, records on the correlation of any in-process detained devices that are put in final form under paragraph (h) of this section to the completed devices, records of any changes in, or processing of, the devices permitted under the detention order, and records of any other movement under paragraph (h) of this section. * * *

* * * * *

Dated: February 12, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–03582 Filed 2–18–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 806

[Docket No. FDA–2014–N–0011]

Medical Devices; Reports of Corrections and Removals; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulation regarding reports of corrections to and removals of medical devices to address a minor change as a result of the enactment of the Food and Drug Administration Amendments Act of 2007 (FDAAA). This action is technical in nature and is intended to provide accuracy to the Agency's regulation.

DATES: This rule is effective February 19, 2014.

FOR FURTHER INFORMATION CONTACT: Deborah Yoder, Office of Compliance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2676, Silver Spring, MD 20993–0002, 301–796–6109, *Deborah.Yoder@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Section 806.1(a) (21 CFR 806.1(a)) refers to a subsection of the Federal Food, Drug, and Cosmetic Act that was redesignated as a result of FDAAA (Pub. L. 110–85). FDA is amending § 806.1(a) to update the obsolete reference.

FDA is publishing the document as a final rule under the Administrative Procedures Act (5 U.S.C. 551, *et seq.*). FDA has determined that good cause exists to dispense with prior notice and public comment under 5 U.S.C. 553(b)(3)(B) and 21 CFR 10.40(e)(1) since such notice and comment are unnecessary because this amendment to the regulation provides only a technical change to update an obsolete citation. In addition, FDA finds good cause to provide for this regulation to be effective immediately upon publication under 5 U.S.C. 553(d)(3).

FDA has determined under 21 CFR 25.30(i) that this final rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This final rule contains 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 21 CFR part 806 have been approved under OMB control number 0910–0359, which expires May 31, 2014.

List of Subjects in 21 CFR Part 806

Imports, Medical devices, 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 806 is amended as follows:

PART 806—MEDICAL DEVICES; REPORTS OF CORRECTIONS AND REMOVALS

■ 1. The authority citation for 21 CFR part 806 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

§ 806.1 [Amended]

■ 2. Amend § 806.1(a) by removing ''section 519(f)'' and adding in its place ''section 519(g)''.

Dated: February 12, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–03581 Filed 2–18–14; 8:45 am]

BILLING CODE 4160–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Part 1171

RIN 3136–AA32

Public Access to NEH Records Under the Freedom of Information Act

AGENCY: National Endowment for the Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Humanities (NEH) is unilaterally rescinding its joint Freedom of Information Act (FOIA) regulations with the National Endowment for the Arts (NEA) and the Institute of Museum and Library Services (IMLS), and issuing its own FOIA regulations. This final rule provides the NEH's procedures for disclosure of its records, as required by the FOIA, 5 U.S.C. 552, as amended. These regulations also provide the procedures for disclosing records of the Federal Council on the Arts and the Humanities (FCAH), an agency for which NEH provides legal counsel.

DATES: The final rule will be effective March 21, 2014.

FOR FURTHER INFORMATION CONTACT: Mara Campbell, Office of the General Counsel, National Endowment for the Humanities, at 202–606–8322, or *mcampbell@neh.gov*.

SUPPLEMENTARY INFORMATION: The NEH along with the NEA, the IMLS, and the FCAH make up the National Foundation on the Arts and Humanities (Foundation). The Foundation was established by the National Foundation on the Arts and Humanities Act of 1965, 20 U.S.C. 951 *et seq*. The NEH along

with the NEA and the former Institute of Museum Services (now, the IMLS) last issued joint FOIA regulations, 45 CFR part 1100, on December 21, 1987. Each agency has decided to issue its own separate FOIA regulations. The NEH's regulations incorporate changes brought by the amendments to the FOIA under the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524. These regulations also include changes to the NEH's fee schedule for processing FOIA requests, provide procedures under which the agency will process requests for the NEH Office of the Inspector General records, and reflect developments in FOIA case law.

These regulations were published for public comment in the **Federal Register** on February 11, 2013 (78 FR 9654), the comment period ended on April 12, 2013, and three commenters provided input. The NEH carefully considered these comments and has made some changes to the final rule in response. The comments and NEH's responses are discussed below.

The first commenter was a federal agency and it offered suggestions to clarify the rule. First, the commenter suggested adding language clarifying the intersection between FOIA and the Privacy Act. We agree and in response have added language into section 1171.2.

The commenter applauded the NEH for incorporating a foreseeable harm standard in its policy and for stating it will make discretionary disclosures of records and information. The commenter was also pleased to see a listing of the types of information available on the agency's Web site as well as our definition of ''submitter in section 1171.9.

In response to section 1171.5, addressing requests for records, the commenter suggested changing ''must'' to ''should'' in subpart (a)(4). We agree and have updated this section.

In section 1171.6, the commenter suggested that referrals include information on the portion of the request referred and the receiving agency's FOIA contact information. We agree and have added this language into subsection (d).

In section 1171.7, the commenter suggested that NEH's acknowledgement letters provide requesters with an individualized tracking number and a brief description of the request if it takes NEH longer than twenty working days to respond. After considering the suggestion, we have decided to retain the proposed language. We believe section 1171.8(a) adequately addresses the commenter's concern (to assign a tracking number to requests taking twenty days), because it already requires NEH to provide an individual tracking number for requests that will take longer than ten days. With respect to the suggestion to include a brief description, NEH acknowledgement letters typically provide requesters with a verbatim description of the requested records and the contact information for the FOIA office. Thus, a requester can always contact the FOIA office if he/she needs further clarification.

In section 1171.8, the commenter suggested that when marking on released documents, NEH indicate the precise amount of information deleted, if technically feasible. After considering the suggestion, NEH has decided to retain the proposed language. As a matter of practice, NEH routinely indicates the amount of information redacted, if doing so is feasible and does not create an undue burden on FOIA staff and the efficiency of the agency's FOIA program.

The commenter also had comments on section 1171.10, concerning administrative appeals. The commenter's first suggestion was to change ''must'' to ''should'' in section 1171.10(a), particularly in light of section 1171.8(a) which does not require NEH to assign tracking numbers to all requests. In order to clarify this section we have modified section 117.10(a) in part. The commenter also suggested the rule provide information on the National Archives and Records Administration, Office of Government Information Services. We agree and have updated section 1171.10(b).

The commenter provided various comments on section 1171.11, addressing fees. First the commenter suggested that NEH provide requesters with an estimate amount of fees, including a breakdown of fees for search, review and/or duplication. While we appreciate the commenter's suggestion, we have decided to keep the proposed language as it follows best practice language used in other agency FOIA regulations. The commenter also suggested that NEH state it would not charge a requester the operator/programmer salary while a computer is running a query or automatic search in response to a request. In order to clarify this section we have modified section 1171.11(c)(1)(ii) in part. The commenter further suggested that NEH define ''fee waiver'' and recommended striking the word ''attenuated'' from section 1171.11(f)(2)(i) in the ''interest of plain language.'' After considering the suggestion, we have decided to retain the proposed language. The commenter applauded NEH for including a provision that non-commercial FOIA requesters are entitled to two hours of search time and 100 pages of duplication free of charge in 1171.11(d)(1). In light of this section, the commenter suggested revising section 1171.11(g)(2) for consistency. We agree and have modified this section accordingly.

The commenter recommended that NEH release all documents without any charge or at reduced charge if the information is in the public interest. NEH regularly releases information that would likely be of public interest on its Web site and notes that the majority of its FOIA requests come from educational institutions that are not charged for the information received. NEH will continue to assess what information it may proactively release while complying with FOIA.

Finally, the commenter suggested that the rule include a section on the preservation of records and records management. We agree and have added a new section.

The second commenter was a public interest research center. The comments offered improvements to the rule. Some of the commenter's suggestions mirrored other comments, many of which were accepted.

The commenter had various suggestions regarding document disclosure. The commenter suggested that NEH post all released records online and that it consider joining the multi-agency FOIAonline portal. While NEH appreciates the suggestion, posting all released records would be impractical and a heavy administrative burden for the small team that administers the NEH FOIA program. Additionally, NEH routinely proactively releases documents that are likely to have a significant public interest, and posts these documents in its electronic FOIA Library. Regarding the portal, NEH may assess joining in the future. The commenter further suggested that the rule explicitly state that NEH will proactively identify records of public interest, post these records online and establish categories of records that can be disclosed regularly and posted online. We agree and have modified section 1171.4(c) in part. The commenter also suggested that NEH publish indexes of disclosed records online. NEH appreciates the comment but has previously determined that publication and distribution of these indexes is impracticable, and in any event NEH routinely releases these indexes under FOIA upon request. The commenter also suggested, in the case of FOIA referrals, the rule provide the FOIA contact at the receiving agency.

We agree and have modified section 1171.6(d).

The commenter had a number of suggestions regarding notifying requesters of dispute resolution services. The commenter suggested that all acknowledgment letters include the FOIA Public Liaison's contact information and that the rule include a new ''Dispute Resolution'' section to provide instructions on how to access the Public Liaison. Although we appreciate both comments, we believe that by posting the Public Liaison's contact information on the NEH's Web site and in its annual FOIA documents the public is sufficiently informed about how to contact this individual.

The commenter also had comments regarding the Office of Government Information Services (OGIS). Specifically, the commenter suggested that (1) all NEH decision and appeal letters include information on the role of OGIS and its contact information (2) the rule include a new ''Dispute Resolution'' section that describes how requesters may access OGIS services, and (3) the NEH Web site include information on OGIS. With respect to the first suggestion, while we agree that appeal letters would be improved by providing information on OGIS, we do not believe this information is appropriate in decision letters. Regarding the second suggestion, we do not believe it is necessary to create a new ''Dispute Resolution'' section of the rule, particularly now that the rule will include the contact information for OGIS. Regarding the third suggestion, we agree and will add information on OGIS to the NEH FOIA Web site.

The commenter also suggested revising the rule to allow requesters to submit administrative appeals by email and fax. We agree and have revised section 1171.10(a). The commenter further suggested allowing a minimum of sixty days for administrative appeal submissions. We agree more time could be helpful and have increased the timeframe to thirty days. The commenter also recommended increasing the threshold of the minimum fee charge. We agree and have increased the threshold from $14 to $25. Finally, the commenter suggested that section 1171.11 include information on possible fee waivers if NEH fails to comply with statutory time limits. We agree and have added new language to this section.

The third commenter was a private citizen and provided comments to improve the rule. First, the commenter thought section 1171.7(d)(2) was generally duplicative of section 1171.11(k). Although we appreciate the commenter's perspective, NEH believes both sections are useful. One section serves the purpose of informing the public that NEH may aggregate requests in certain circumstances, and the other is about fees related to aggregated requests. The commenter also suggested the regulation include information on possible fee waivers if NEH fails to comply with statutory time limits. As noted above, we agree and have added new language to 1171.11(d). Finally, the commenter believed that portions of section 1171.11(c)(1)(ii) reflected an outdated and antiquated practice. We agree and have modified this section.

NEH will comply with all applicable laws in its FOIA administration, including Presidential memoranda and Attorney General guidance. We thank all commenters for their thoughtful input.

E.O. 12866, Regulatory Review

This rule is not a ''significant regulatory action'' under Executive Order 12866 and therefore is not subject to Office of Management and Budget (OMB) review.

Regulatory Flexibility Act

The NEH Chairman, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has certified that this rule will not have a significant economic impact on a substantial number of small entities. Under the FOIA, NEH may recover only the direct costs of searching for, reviewing, and duplicating the records that agencies process for requesters. NEH's fee schedules for such costs are consistent with OMB guidelines on FOIA fees, and provide criteria by which requesters may receive a fee waiver or reduction of fees. Furthermore, the rule will only affect persons and organizations who file FOIA requests with NEH, which receives relatively few requests each year (generally fewer than fifty (50) per year) in comparison to other Federal departments and agencies.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, the rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 million or more in any one year, and it will not significantly or uniquely affect small governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804, as amended. This rule will not result in an annual effect on the economy of $100,000,000 million 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 companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

The NEH has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply to the rule because the rule does not contain information collection requirements that require OMB approval.

List of Subjects in 45 CFR Part 1171

Administrative practice and procedure, Freedom of Information.

For the reasons stated in the preamble, the National Endowment for the Humanities amends 45 CFR chapter XI, subchapter D, to add part 1171 as follows:

PART 1171—PUBLIC ACCESS TO NEH RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.

1171.1 About the National Endowment for the Humanities.
1171.2 General provisions.
1171.3 Information policy.
1171.4 Public availability of records.
1171.5 Requests for records.
1171.6 Responsibilities for processing and responding to requests.
1171.7 Timing of responses to requests.
1171.8 Responses to requests.
1171.9 Confidential commercial information.
1171.10 Administrative appeals.
1171.11 Fees.
1171.12 Preservation of records.
1171.13 Other rights and services.

Authority: 5 U.S.C. 552, 31 U.S.C. 3717, E.O. 12600.

§ 1171.1 About the National Endowment for the Humanities.

The National Endowment for the Humanities (NEH) was established by the National Foundation on the Arts and Humanities Act of 1965, 20 U.S.C. 951 *et seq.,* and is an independent grant-making agency of the United States government dedicated to supporting research, education, preservation, and public programs in the humanities. The NEH is directed by a Chairman and has an advisory council composed of twenty-six presidentially-appointed and Senate-confirmed members.

§ 1171.2 General provisions.

This part contains the regulations the NEH follows in processing requests for NEH records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. The NEH also follows these regulations to process all FOIA requests made to the Federal Council on the Arts and the Humanities (FCAH), an organization established by the National Foundation on the Arts and Humanities Act of 1965 for which the NEH provides legal counsel. These regulations should be read together with the FOIA and OMB's Free Guidelines, which provides additional information about access to NEH and FCAH records. FOIA applies to requests for records concerning the general activities of the government and of the NEH in particular. When individuals seek records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, NEH processes those requests under both NEH's Privacy regulations at part 1115 of this chapter, and this part. Although requests are considered either FOIA requests or Privacy Act requests, agencies process requests in accordance with both laws, which provides the greatest degree of lawful access while safeguarding an individual's personal privacy.

§ 1171.3 Information policy.

The NEH may provide information the agency routinely makes available to the public through its regular activities (for example, program announcements and solicitations, press releases, and summaries of awarded grant applications) without following this part. As a matter of policy, the NEH makes discretionary disclosures of records or information otherwise exempt under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. This policy, however, does not create any right enforceable in court.

§ 1171.4 Public availability of records.

(a) In accordance with 5 U.S.C. 552(a)(2), the NEH will make the following records available for public inspection and copying (unless they are published and copies are offered for sale) without a FOIA request:

(1) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases,

(2) Statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**,

(3) Administrative staff manuals and instructions to staff that affect a member of the public,

(4) Copies of all records, regardless of format, which have been released to any person under 5 U.S.C. 552(a)(3) and which, because of the nature of their subject matter, the NEH determines have become or are likely to become the subject of subsequent requests for substantially the same records, and

(5) A general index of the records referred to in paragraph (b) of this section.

(b) The NEH will also maintain and make available for public inspection and copying current indexes as required by 5 U.S.C. 552(a)(2) of the FOIA. However, since the NEH has determined that publication and distribution of these indexes is unnecessary and impracticable, the NEH will provide these indexes upon request at a cost not to exceed the direct cost of the duplication.

(c) NEH proactively identifies records of interest to the public, such as past awards, press releases, grant guidelines, and grant terms and conditions, and makes these records available on the NEH's Web site at *www.neh.gov.* In addition, copies of the NEH's policy statements, information about the NEH's FOIA program, sample grant narratives, and other frequently requested records are available in the NEH's Electronic Library.

§ 1171.5 Requests for records.

(a) *How to make a request.* Your FOIA request need not be in any particular format, but it must be in writing, include your full name, mailing address, daytime telephone number. If you choose to submit your request on the NEH Web site, the request must also include your email address. Your request should be clearly identified as a FOIA request in both the text of the request and on the envelope (or on the facsimile or in the subject heading of an email message) and must describe the requested records in enough detail to enable NEH staff to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. The NEH has no obligation to answer questions posed as FOIA requests or to create records to satisfy a FOIA request.

(b) *Agreement to pay fees.* If you make a FOIA request, the NEH will consider it an agreement by you to pay all applicable fees charged under this part, subject to the fee limitations of § 1171.11(d). When making a request, you may specify a willingness to pay a greater or lesser amount.

(c) *Where to send a request.* (1) For NEH records (except NEH Office of the Inspector General records) and/or FCAH records, write to: The General Counsel, Office of the General Counsel, National Endowment for the Humanities, 1100 Pennsylvania Ave. NW., Room 529, Washington, DC 20506. You may also send your request to the NEH General Counsel by facsimile at 202–606–8600, by email at *gencounsel@neh.gov,* or through the NEH's electronic FOIA request system, which is available on the NEH Web site at *www.neh.gov.*

(2) For NEH Office of the Inspector General records, write to: The Inspector General, Office of the Inspector General, National Endowment for the Humanities, 1100 Pennsylvania Ave. NW., Room 419, Washington, DC 20506. You may also send your request to the Inspector General by facsimile at 202–606–8329 or by email at *oig@neh.gov.*

§ 1171.6 Responsibilities for processing and responding to requests.

(a) *Processing requests.* The NEH Office of the General Counsel (OGC) is the central office for processing requests for records, except when it's necessary for the NEH Office of Inspector General (OIG) to process a request to maintain the OIG's independence or ability to carry out its statutorily mandated duties. If the request is for OIG records, the NEH will inform the requester which office will be processing the request.

(b) *Authority to grant or deny requests.* The NEH General Counsel (or designee) is authorized to grant or deny requests for NEH records (excluding requests for OIG records), and/or FCAH records. The NEH Deputy Inspector General (or designee) is authorized to grant or deny requests for OIG records. The NEH General Counsel (or designee) is authorized to grant or deny requests on any fee matters and requests for expedited treatment, including OIG-related requests.

(c) *Consultations and referrals.* When the NEH receives a request for a record in its possession, the agency will determine whether another Federal government agency is better able to decide whether the record should or should not be disclosed under the FOIA. Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(1) If the NEH determines that it is the agency best able to process the record in response to the request, then it will do so, after consultation with the other agency that has a substantial interest in the requested records.

(2) If the NEH determines that it is not the agency best able to process the

record, then it will refer the record (or portion thereof) to the other Federal agency, but only if that agency is subject to the FOIA.

(d) *Notice of referral.* Whenever the NEH refers all or any part of the responsibility for responding to a request to another agency, the NEH will notify the requester of the referral, provide the name of the agency to which the referral was directed, and include that agency's FOIA contact information. NEH will notify the requester of the part of the request that has been referred, unless such notification would disclose information otherwise exempt. If notification to the requester about the referral would cause a harm meant to be protected against by the FOIA, NEH will coordinate with the agency rather than referring the records to it.

§ 1171.7 Timing of responses to requests.

(a) *In general.* The NEH customarily will respond to requests according to their order of receipt. In determining which records are responsive to a request, the NEH will include only those records in its possession as of the date it begins its search for records. If any other date is used, the NEH will inform the requester of that date.

(b) *Timing for initial response.* Ordinarily, the NEH will determine whether to grant or deny a request for records within twenty (20) days (weekends and Federal holidays excluded) of when the NEH receives a request.

(c) *Tolling of time limits.* The NEH may toll the 20-day time period to:

(1) Make one request for information it reasonably requests from the requester; or

(2) Clarify the applicability or amount of any fees, if necessary, with the requester.

(3) Under paragraphs (c)(1) or (2) of this section, the tolling period ends upon the NEH's receipt of the information or clarification from the requester.

(d) *Unusual circumstances.* (1) When the NEH cannot meet the statutory time limits for processing a request because of unusual circumstances as defined in the FOIA, the NEH may extend the response time as follows:

(i) If the extension will be for ten (10) or fewer working days (i.e., weekends and Federal holidays excluded), the NEH will notify the requester as soon as practicable in writing of the unusual circumstances and the expected response date; and

(ii) If the extension will be for more than ten (10) working days, the NEH will provide the requester with an opportunity either to modify the request so that it may be processed within the time limit or to arrange an alternative time period to process the request or a modified request.

(2) If the NEH reasonably believes that multiple requests submitted by a requester, or a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, the NEH may aggregate the requests. The NEH will not aggregate multiple requests involving unrelated matters.

(e) *Expedited processing.* (1) The NEH will process requests and appeals on an expedited basis whenever it determines that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about actual or alleged Federal government activity if the expedited processing request is made by a person primarily engaged in disseminating information.

(2) A requester may seek expedited processing at the time of the requester's initial request for records or at any later time.

(3) To request expedited processing, a requester must submit a statement, certified to be true and correct to the requester's best knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within ten (10) calendar days of receipt of a request for expedited processing, the NEH will decide whether to grant it and will notify the requester of the decision. If the NEH grants a request for expedited processing, the NEH will place the request in the expedited processing track and then process the request as soon as practicable. If the NEH denies a request for expedited processing, the NEH will act upon any appeal of that decision expeditiously.

§ 1171.8 Responses to requests.

(a) *Acknowledgment of requests.* Upon receipt of a request that will take longer than ten (10) days to process, the NEH will send the requester an acknowledgment letter that assigns the request an individualized tracking number.

(b) *Grants of requests.* If the NEH makes a determination to grant a request in whole or in part, it will notify the requester in writing. The NEH will inform the requester of any applicable fees and will disclose records to the requester promptly on payment of any applicable fees. The NEH will mark or annotate records disclosed in part to show the amount of information deleted pursuant to a FOIA exemption, unless doing so would harm an interest protected by an applicable FOIA exemption. If technically feasible, the NEH will also indicate, on the agency record(s) it provides, the location of the information deleted.

(c) *Denials of requests.* If the NEH makes a determination to deny a request in any respect, the NEH will also notify the requester in writing of: (1) The name and title or position of the person responsible for the denial; (2) a brief statement of the reason(s) for the denial, including any FOIA exemption applied by the NEH in denying the request; (3) an estimate of the volume of records or information withheld, if applicable. This estimate need not be provided if the volume is otherwise indicated through deletion on the records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; (4) a statement that the requester may appeal the denial under § 1171.10 and a description of the requirements to appeal.

§ 1171.9 Confidential commercial information.

(a) *In general.* The NEH will not disclose confidential commercial information in response to a FOIA request, except as described in this section.

(b) *Definitions.* For purposes of this section:

(1) *Confidential commercial information* means commercial or financial information obtained by the NEH from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from whom the NEH obtains confidential commercial information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of confidential commercial information.* A submitter of confidential commercial information will use good-faith efforts to designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *When notice to submitters is required.* (1) The NEH will give notice to a submitter whenever:

(i) The submitter, in good faith, has designated the requested information as information considered protected from disclosure under Exemption 4; or

(ii) The NEH has reason to believe that the information may be protected from disclosure under Exemption 4.

(2) The notice will either describe the confidential commercial information requested or include copies of the requested records or record portions containing the information. In cases involving a voluminous number of submitters, the NEH may make notice by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Exceptions to submitter notice requirements.* The notice requirements of this section will not apply if:

(1) The NEH determines that the requested information is exempt under the FOIA;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, except that, in such a case, the NEH will give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

(f) *Opportunity to object to disclosure.* (1) The NEH will specify a reasonable time period within which the submitter must respond to the notice described in paragraph (d)(2) of this section. If a submitter has any objection to disclosure, it must submit a detailed written statement to the NEH specifying all grounds for withholding any portion of the information under any exemption of the FOIA. If the submitter relies on Exemption 4 as a basis of nondisclosure, the submitter must explain why the information constitutes a trade secret, or commercial or financial information that is privileged or confidential.

(2) The NEH will consider a submitter who fails to respond with the time period specified on the notice to have no objection to disclosure of the information. The NEH will not consider information it receives from a submitter after the date of any disclosure decision. Any information provided by a submitter under this section may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The NEH will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose confidential commercial information. Whenever the NEH decides to disclose confidential commercial information over the objection of a submitter, the NEH will provide the submitter written notice, which will include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which will be a reasonable time after the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the NEH will promptly notify the submitter.

(i) *Requester notification.* The NEH will notify the requester whenever the NEH provides the submitter with notice and an opportunity to object to disclosure; whenever the NEH notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 1171.10 Administrative appeals.

(a) *Appeals of denials.* You may appeal a denial of your request for NEH records (except NEH OIG records) and/or FCAH records to The Deputy Chairman, National Endowment for the Humanities, 1100 Pennsylvania Ave. NW., Room 503, Washington, DC 20506. You may also send your appeal to the NEH General Counsel by facsimile at 202–606–8600, by email at *gencounsel@neh.gov,* or through the NEH's electronic FOIA request system, which is available on the NEH Web site at *www.neh.gov.* For a denial of your request for OIG records, you may appeal by facsimile at 202–606–8329, by email at *oig@neh.gov* or by mail to The Inspector General, National Endowment for the Humanities, 1100 Pennsylvania Ave. NW., Room 419, Washington, DC 20506. Your appeal must be in writing and received by NEH within thirty (30) days of the date of the letter denying your request, in whole or in part (weekends and Federal holidays excluded). Your appeal letter must clearly identify the NEH decision that you are appealing and contain the tracking number, if assigned. You should clearly mark your appeal letter and envelope ''Freedom of Information Act Appeal.''

(b) *Responses to appeals.* The Deputy Chairman (or designee) or the Inspector General (or designee) will make a written determination on your appeal within twenty (20) days (weekends and Federal holidays excluded) after the agency receives your appeal, except as provided by 1171.7(d). If the appeal decision affirms the denial of your request, the NEH will notify you in writing of the reason(s) for the decision, including the applicable FOIA exemption(s), and inform you of the FOIA provisions for court review of the decision. If the denial of your request is reversed or modified, in whole or in part, the NEH will reprocess your request in accordance with that appeal decision and notify you of that decision in writing. A response to an appeal will advise the requester that the 2007 amendments to FOIA created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS in any of the following ways: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, MD 20740; *https://ogis.archives.gov;* email: *ogis@nara.gov;* telephone: 202–741–5770; facsimile: 202–741–5769; toll-free: 1–877–684–6448.

(c) *When appeal is required.* If you wish to seek review by a court of any denial by the NEH, you must first submit a timely administrative appeal to the NEH.

§ 1171.11 Fees.

(a) *In general.* The NEH will assess fees for processing FOIA requests in accordance with this section and with the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (Mar. 27, 1987). In order to resolve any fee issues that arise under this section, the NEH may contact a requester for additional information. The NEH ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interest, which can include furthering those interests through litigation. When it appears that the requester will put the records to a commercial use, either because of the nature of the request

itself or because the NEH has reasonable cause to doubt a requester's stated use, the NEH will provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses that an agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records among others.

(4) *Educational institution* means any school that operates a program of scholarly research. A requester in this category must show that the request is authorized by and made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(5) *Noncommercial scientific institution* means an institution that is not operated on a ''commercial'' basis, as defined in paragraph (b)(1) above, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and made under the auspices of a qualifying institution and that the records are not sought for a commercial use or to promote any particular product or industry, but are sought to further scientific research.

(6) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news-media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only if such entities qualify as disseminators of ''news'') who make their products available for purchase or by subscription or by free distribution to the general public. The NEH will regard ''freelance'' journalists as working for a news-media organization if they demonstrate a solid basis for expecting publication though that organization. A publication contract would provide the clearest evidence, but the NEH will also consider a requester's past publication record in making this determination.

(7) *Review* means the process of examining a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review includes processing any record for disclosure, such as doing all that is necessary to redact it and prepare it for disclosure. It also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 1171.9, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review costs are recoverable even if the NEH ultimately does not disclose a record.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records. The NEH will ensure that searches are done in the most efficient and least expensive manner reasonably possible.

(c) *Fee schedule.* In responding to FOIA requests, the NEH will charge the following fees for requests, subject to paragraphs (d), (e), and (f) of this section:

(1) *Search.* (i) The NEH will charge $4.00 for each quarter hour spent by clerical personnel in searching for and retrieving a requested record. When clerical personnel cannot perform the search and retrieval (e.g. identification of records within scope of request requires professional personnel), the NEH will charge $7.00 for each quarter hour of search time spent by professional personnel. Where the time of managerial personnel is required, the fee will be $10.00 for each quarter hour of time spent by those personnel. The NEH may charge for time spent searching even if it does not locate any responsive records or if it determines that the records are entirely exempt from disclosure.

(ii) For computer searches of records, the NEH will charge the actual direct cost of conducting the search.

(2) *Duplication.* The fee for a photocopy of a record on one-side of an 8½ x 11 inch sheet of paper is ten cents per page. For copies of records produced on tapes, disks, or other electronic media, the NEH will charge the direct costs of producing the copy, including operator time. For other forms of duplication, the NEH will charge the direct costs of that duplication. The NEH will honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the NEH in the form or format requested.

(3) *Review.* The NEH will charge review fees to requesters who make a commercial use request. Review fees will be charged only for the initial record review (i.e., the review the NEH conducted to determine whether an exemption applies to a particular record or record portion at the initial request stage). No charge will be made for review at the administrative appeal stage for exemptions applied at the initial review stage. However, if the NEH re-reviews the records for the applicability of other exemptions that it did not previously consider, then the costs for the subsequent review are assessable. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(i). The NEH may charge for review even if it ultimately decides not to disclose a record.

(d) *Limitations on charging requesters.* (1) Except for requesters seeking records for commercial use, the NEH will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(2) When, after first deducting the 100 pages (or its cost equivalent) and the first two hours of search, the total fee is $25.00 or less for any request, the NEH will not charge a fee.

(3) When the NEH fails to comply with the time limits to which to respond to a request, and if no unusual or exceptional circumstances, as those terms are defined by FOIA, apply to the processing of the request, it may not charge search fees, or, in the instance of requests from requesters defined in paragraphs (b)(4), (b)(5) and (b)(6) of this section, may not charge duplication fees.

(e) *Categories of requesters.* There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The NEH will assess fees for these categories of requesters as follows:

(1) *Commercial use requesters.* The NEH will charge the full direct costs for searching for, reviewing, and duplicating requested records.

(2) *Educational and non-commercial scientific institution requesters.* The NEH will charge for duplication only, excluding costs for the first 100 pages.

(3) *News media requesters.* The NEH will charge for duplication only, excluding costs for the first 100 pages.

(4) *All other requesters.* The NEH will charge requesters who do not fit into any of the categories above the full reasonable direct cost of searching for and reproducing records, excluding costs for the first 100 pages and the first two hours of search time.

(f) *Requirements for fee waivers or reduction of fees.* (1) The NEH will furnish responsive records without charge or at a reduced charge if it determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee requirement is met, the NEH will consider the following factors:

(i) The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. Disclosure of information already in the public domain, in either duplicative or substantially identical form, is unlikely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as his or her ability and intention to effectively convey information to the public will be considered. It will ordinarily be presumed that a representative of the news media satisfies this consideration.

(iv) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent. The NEH will make no value judgments about whether the information at issue is ''important'' enough to be made public.

(3) To determine whether the second fee waiver requirement is met, the NEH will consider the following factors:

(i) The NEH will identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. Requesters will be given an opportunity to provide explanatory information regarding this consideration.

(ii) A fee waiver or reduction is justified where the public interest is greater than any identified commercial interest in disclosure.

(4) Where only some of the requested records satisfy the requirements for a fee waiver, a waiver will be granted for those records.

(5) Requesters should make fee waiver or reduction requests when they first submit a FOIA request to the NEH. Fee waiver or reduction requests should address the factors listed in paragraphs (f)(2) and (3) of this section. Fee waiver or reduction requests may be submitted at a later time so long as the underlying record request is pending or on administrative appeal.

(g) *Notice of anticipated fees in excess of $25.00.* (1) When the NEH determines or estimates that the fees to be charged under this section will exceed $25.00, it will notify the requester of the actual or estimated fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If the NEH can only readily estimate a portion of the fees, it will advise the requester that the estimated fee may be only a portion of the total fee.

(2) The notice will offer the requester an opportunity to confer with NEH personnel in order to reformulate the request to meet the requester's needs at a lower cost and inform the requester of paragraph (d)(1) of this section, if applicable. A commitment by the requester to pay the anticipated fee must be in writing and must be received by the NEH within thirty (30) calendar days from the date of notification of the fee estimate. Until the requester agrees to pay the anticipated fee, the NEH will not consider the request as received by the agency and no further work will be done on the request. If a requester fails to respond within this timeframe, the NEH will administratively close the request.

(h) *Charges for other services.* When the NEH chooses, in its sole discretion, to provide a requested special service (e.g. certifying that records are true copies or sending them by other than ordinary mail), it will charge the direct costs of providing the service to the requester.

(i) *Charging interest.* The NEH may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. The NEH will assess interest charges at the rate provided in 31 U.S.C. 3717 and such charges will accrue from the billing date until the NEH receives payment from the requester. The NEH will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(j) *Advance payment.* (1) For requests other than those described in paragraphs (j)(2) and (3) of this section, the NEH will not require the requester to make an advance payment before it commences or continues work on a request. Payment owed for work already completed (i.e., payment before copies are sent to a requester) is not an advance payment.

(2) When the NEH determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) When a requester has previously failed to pay a properly charged fee to the NEH within thirty (30) days of the billing date, the NEH may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the NEH begins to process a new request or continues to process a pending request from that requester.

(4) When there is an advance payment request, the NEH will not consider the request as received by the agency and no further work will be done on the request until the required payment is received. If the requester fails to respond within thirty (30) calendar days after the date of the advance payment request, the NEH will administratively close the request.

(k) *Aggregating requests.* When the NEH reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the NEH may aggregate those requests and charge accordingly. The NEH may presume that multiple requests of this type made within a 30-day period have been made

in order to avoid fees. For requests separated by a longer period, the NEH will aggregate them only when there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. The NEH will not aggregate multiple requests involving unrelated matters.

§ 1171.12 Preservation of records.

NEH will preserve all correspondence pertaining to the requests that it receives as well as copies of all requested records, until disposition or destruction is authorized by the agency's General Records Schedule of the National Archives and Records Administration (NARA) or other NARA-approved records schedule. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the Act.

§ 1171.13 Other rights and services.

Nothing in this part will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Michael P. McDonald,

General Counsel.

[FR Doc. 2014–03549 Filed 2–18–14; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

45 CFR Part 1184

RIN 3137–AA22

Implementing the Freedom of Information Act

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Final rule.

SUMMARY: IMLS issues this final rule to implement the Freedom of Information Act (FOIA), as amended. The regulations both describe how IMLS processes requests for records under FOIA and reaffirm the agency's commitment to providing the fullest possible disclosure of records to the public. The agency is implementing the regulations to replace its existing joint regulations as part of the National Foundation on the Arts and the Humanities, and to update, clarify, and streamline the language of several procedural provisions, while incorporating changes brought about by amendments to the FOIA.

DATES: *Effective Date:* March 21, 2014.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Email: *nweiss@imls.gov*. Telephone: (202) 653–4787. Facsimile: (202) 653–4625.

SUPPLEMENTARY INFORMATION: IMLS operates as part of the National Foundation on the Arts and the Humanities under the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*). The corresponding regulations published at 45 CFR Chapter XI, Subchapter A apply to the entire Foundation, while the regulations published at 45 CFR Chapter XI, Subchapter E apply only to the institute.

This final rule implements IMLS' FOIA regulations in Subchapter E (45 CFR part 1184), replacing the existing regulations in Subchapter A (45 CFR part 1100) with regard to IMLS. The final rule provides additional detail concerning several provisions of the Freedom of Information Act, and is intended to increase understanding of IMLS' FOIA policies. IMLS is authorized to issue these regulations under 5 U.S.C. 552.

I. Why We're Publishing This Rule and What It Does

A. Introduction

The Institute of Museum and Library Services (IMLS) is adopting regulations to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. FOIA requires Federal agencies to make official documents and other records available to the public upon request, unless the material requested falls under one of several statutorily prescribed exemptions. FOIA also requires agencies to publish rules stating the time, place, fees, and procedures to apply in making such records available. Further, Section 1803 of the Freedom of Information Reform Act of 1986 requires each agency to establish a system for recovering costs associated with responding to requests for information under FOIA. The Office of Management and Budget (OMB) has issued guidelines that set standard government-wide definitions for assessing and collecting FOIA fees (OMB Fee Guidelines). These regulations describe the ways in which records may be requested by the public, and explain how IMLS will respond to such requests and assess fees in connection with the agency's response.

The regulations also incorporate the policies expressed in the President's January 21, 2009, Executive Memorandum on the Freedom of Information Act, and the Attorney General's March 19, 2009, Memorandum for Heads of Executive Departments and Agencies. These policies, however, do not create any legally enforceable rights.

By implementing the provisions of the January 21, 2009, Executive Memorandum and Attorney General Holder's March 19, 2009, Memorandum to the Heads of Executive Departments and Agencies, these regulations will improve IMLS's FOIA-related service and performance, thereby strengthening the agency's compliance with the law. On April 16, 2013, IMLS published a proposed rule in the **Federal Register** (78 FR 22501) and requested public comments on the proposed rule.

B. Discussion of Comments

The comment period ended on May 16, 2013, and IMLS received comments from one commenter. This section of the preamble discusses issues raised in the comments.

Expand Online Disclosures

The commenter suggested that IMLS revise the regulations to more fully embrace the use of online disclosure for public information under FOIA, including recommendations to: (1) Adopt a policy to establish categories of records that can be disclosed regularly and posted on the IMLS Web site; (2) to proactively identify and disclose additional records of interest to the public; (3) to publish all records released in response to FOIA requests; and (4) to publish online indexes of information made available under FOIA. IMLS has carefully considered these suggestions, and adopts the recommendations to adopt a policy to establish categories of records that can be disclosed regularly and to proactively identify and disclose additional records of interest to the public. IMLS is committed to continuing to find new ways of proactively disclosing records to the public, the agency declines to adopt the other recommendations into its regulations, because it believes the final rule provides the agency with the necessary flexibility to adopt innovative ways of providing useful information.

Improve the Acknowledgment of Requests

The commenter suggested that IMLS revise the regulations to adopt a policy to acknowledge requests as soon as practicable, and to provide information about the agency's FOIA Public Liaison. IMLS agrees and adopts these recommendations in the final rule.

Clarify Fees and Fee Waivers

The commenter suggested that IMLS maintain a database of fee waivers granted by the agency to consult for future waiver requests, and revise the regulations to provide that it will not charge a fee if the total fee is $50 or less. IMLS has carefully considered these suggestions, but declines to adopt them. IMLS declines to adopt the first suggestion into its regulations, because the agency believes the final rule ensures consistent agency practice with regard to fee waivers. With regard to the second suggestion, both the proposed and final rule reflect IMLS's policy decision to not charge a fee if the total fee is $25 or less.

Improve Communication With the Requester

The commenter suggested that IMLS improve communication with FOIA requesters by: (1) Adopting a policy that the agency will contact the requester to seek clarification if the agency is unclear as to the scope of the request; (2) providing an estimated time to complete the request and opportunities to reformulate; (3) informing requesters of status updates; (4) communicating with requesters by email where appropriate; (5) using plain language in all communications with requesters; and (6) notifying requesters when requests are referred. After careful consideration of these suggestions, IMLS has revised the final rule to clarify that IMLS will provide requesters with a tracking number and as appropriate, a brief description of the request, and relevant IMLS contact information. The final rule also has been revised to reflect that IMLS will communicate with requesters to clarify the scope of the request in the event of uncertainty and that the agency will notify requesters when a request is referred to another agency. IMLS notes that the final rule allows for the agency to communicate, where appropriate, with requesters by email, and that the agency is governed by the Plain Writing Act of 2010, which directs agencies to use plain language when communicating.

Apply the Presumption of Openness

The commenter suggested that the agency revise the rule to reflect a presumption of openness. IMLS agrees and the final rule has been revised to adopt this suggestion.

Improve Administrative Appeals

The commenter suggested that IMLS revise the proposed rule to: (1) Clarify that requesters may submit administrative appeals electronically; (2) notify requesters of dispute resolution services in appeal determinations; and (3) provide a minimum of 60 days for requesters to submit administrative appeals.

IMLS has carefully considered these suggestions, and adopts the recommendations that the rule be revised to: (1) Clarify that requesters may submit appeals electronically; and (2) notify requesters of dispute resolution services in appeal determinations. IMLS declines to adopt the recommendation to extend the period of time available for a requester to submit an appeal to 60 days. The agency believes the final rule, which provides the requester with 30 days to file an administrative appeal, allows for sufficient time for a requester to gather all the facts relevant to the request and prepare any arguments they may wish to make in their appeal.

Provide Information About Dispute Resolution Services

The commenter suggested that IMLS revise the proposed rule to add a new subsection describing how requesters can resolve disputes with regard to their request. IMLS agrees and the final rule has been revised to adopt this suggestion.

Consultation With the National Archives and Records Administration

The National Archives and Records Administration's Office of Government Information Services (OGIS) reviewed IMLS's proposed regulations and made recommendations, which IMLS took into account in drafting this final rule.

II. Compliance With Laws and Executive Orders

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Paperwork Reduction Act

IMLS has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply because these regulations do not contain any information collection requirements subject to approval by OMB.

Civil Justice Reform (Executive Order 12988)

These regulations meet the applicable standards set forth in Executive Order 12988, Civil Justice Reform.

Federalism (Executive Order 13132)

These regulations will not 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. Therefore, in accordance with Executive Order 13132, IMLS has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulatory Flexibility Act

IMLS, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed these regulations and certifies that they will not have a significant economic impact on a substantial number of small entities because they pertain to administrative matters affecting the agency.

Unfunded Mandates Reform Act of 1995

These regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

These regulations are not major regulations as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. They will not result in an annual effect on the economy of $100 million 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.

National Environmental Policy Act of 1969

IMLS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and has determined that this action will not have a significant effect on the human environment.

Takings (E.O. 21630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This rule does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments.

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This rule will not have a significant effect on the nation's energy supply, distribution, or use.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) use the active voice to address readers directly; (c) use clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible.

List of Subjects in 45 CFR Part 1184

Administrative practice and procedure, Freedom of Information.

For the reasons stated in the preamble, IMLS amends 45 CFR chapter XI, subchapter E to add part 1184 as follows:

PART 1184—IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT

Sec.

1184.1 What is the purpose and scope of these regulations?
1184.2 What are IMLS's general policies with respect to FOIA?
1184.3 How do I request records?
1184.4 When will I receive a response to my request?
1184.5 How will my request be processed?
1184.6 How can I appeal a denial of my request?
1184.7 How will fees be charged?
1184.8 How can I address concerns regarding my request?
1184.9 What are IMLS' policies regarding disclosure of confidential business information?
1184.10 Disclaimer

Authority: 5 U.S.C. 552.

§ 1184.1 What is the purpose and scope of these regulations?

(a) The regulations in this part describe how the Institute of Museum and Library Services (IMLS) processes requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552 as amended. The regulations in this part apply only to records that are both:

(1) Created or obtained by IMLS; and

(2) Under the agency's control at the time of the FOIA request.

(b) The rules in this part should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Act Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (Mar. 27, 1987) (the ''OMB Guidelines''). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under 45 CFR part 1182 as well as under this part.

§ 1184.2 What are IMLS's general policies with respect to FOIA?

(a) *Non-exempt records available to the public.* Except for records exempt or excluded from disclosure by 5 U.S.C. 552 or published in the **Federal Register** under 5 U.S.C. 552(a)(1), IMLS records subject to the FOIA are available to any person who requests them in accordance with these regulations.

(b) *Records available at the IMLS FOIA Electronic Reading Room.* IMLS makes records available on its Web site in accordance with 5 U.S.C. 552(a)(2), as amended, and other documents that, because of the nature of their subject matter, are likely to be the subject of FOIA requests. IMLS establishes categories of records that can be disclosed regularly and proactively identifies and discloses additional records of interest to the public. To save time and money, IMLS strongly urges you to review documents available at the IMLS FOIA Electronic Reading Room before submitting a FOIA request.

(c) *Definitions.* For purposes of this part, all of the terms defined in the Freedom of Information Act, and the OMB Guidelines apply, unless otherwise defined in this part.

(1) *Commercial use request.* A request by or on behalf of anyone who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation.

(2) *Direct costs.* Those expenses that IMLS actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16.1 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication.* The making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others.

(4) *Educational institution.* Any school that operates a program of scholarly research. A requester in this category must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research.

(5) *Fee waiver.* The waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest.

(6) *FOIA Public Liaison.* An IMLS official who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of FOIA requests, and assisting in the resolution of disputes.

(7) *Non-commercial scientific institution.* An institution that is not operated on a ''commercial'' basis, as defined in paragraph (c)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(8) *Representative of news media.* Any person or entity organized and operated to publish or broadcast news to the

public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public. A request for records that supports the news-dissemination function of the requester will not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as working for that entity. A publishing contract would provide the clearest evidence that publication is expected; however, IMLS will also consider a requester's past publication record in making this determination.

(9) *Requester Category.* One of the three categories that IMLS places requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication, and include commercial requesters; non-commercial scientific or educational institutions or news media requesters, and all other requesters.

(10) *Review.* The examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential business information submitter under § 1184.8 but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(11) *Search.* The process of looking for and retrieving records or information responsive to a FOIA request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from electronic records.

(12) *Working day.* A regular Federal working day. It does not include Saturdays, Sundays, or legal Federal holidays.

§ 1184.3 How do I request records?

(a) *Where to send a request.* You may make a FOIA request for IMLS records by writing directly to the FOIA Officer, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036–5802. Requests may also be sent by facsimile to the FOIA Officer at (202) 653–4625 or by email to *foia@imls.gov*. You may also submit your FOIA request online through the IMLS FOIA Request Form located at: *http://www.imls.gov/about/foia_request_form.aspx.*

(b) *Form of request.* Your FOIA request need not be in any particular format, but it must be in writing, include your name and mailing address, and should be clearly identified as a Freedom of Information Act or ''FOIA'' request. You must describe the records sought with sufficient specificity to enable the agency to identify and locate the records, including, if possible, dates, subjects, titles, or authors of the records requested. If IMLS determines that your request does not reasonably describe the requested records, the agency will advise you what additional information is required to perfect your request, or why your request is otherwise insufficient. You should also indicate if you have a preferred form or format in which you would like to receive the requested records.

(c) *Electronic format records.* IMLS will provide the responsive records in the form or format you request if the records are readily reproducible by IMLS in that form or format. IMLS will make reasonable efforts to maintain its records in forms or formats that are reproducible for the purpose of disclosure. IMLS may disclose records in electronic format if the records can be downloaded or transferred intact through electronic media currently in use by the agency. In responding to a request for records, IMLS will make reasonable efforts to search for the records in electronic form or format, except where such efforts would significantly interfere with the operation of the agency's automated information system(s).

(d) *Date of receipt.* IMLS considers a request that complies with paragraphs (a) and (b) of this section to be a perfected request. The agency considers a request to be received on the date that the request is perfected.

§ 1184.4 When will I receive a response to my request?

(a) *Responses within 20 working days.* IMLS will ordinarily grant, partially grant, or deny your request for records within 20 working days after receiving a perfected request.

(b) *Extensions of response time in ''unusual circumstances''.* (1) Where the time limits for processing a request cannot be met because of ''unusual circumstances,'' as defined in the FOIA, the FOIA Officer will notify you as soon as practicable in writing of the unusual circumstances and may extend the response period for up to ten (10) working days. (2) Where the extension is for more than ten (10) working days, the FOIA Officer will provide you with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an agreed upon alternative time period for processing the request or a modified request.

§ 1184.5 How will my request be processed?

(a) *Acknowledgment of requests.* IMLS will assign a tracking number to your request and will, as soon as practicable, advise you in writing of this tracking number, and, as appropriate, a brief description of the request, and relevant IMLS contact information, including the name and contact information of the FOIA Public Liaison.

(b) *Clarifications.* If there is any uncertainty, IMLS will attempt to communicate with you to clarify the scope of your request.

(c) *Referrals of requests.* Whenever IMLS refers all or any part of the responsibility for responding to a request to another agency, IMLS will notify you of the name of the agency to which the request has been referred.

(d) *Grants of requests.* When responsive records are located, IMLS will apply a presumption of disclosure and openness. If IMLS decides to grant your request in whole or in part, the agency will notify you in writing. The notice will include any applicable fee and the agency will disclose records to you promptly upon payment of applicable fees. IMLS will mark or annotate any records disclosed in part to show the amount, the location, and the FOIA exemptions under which the redaction is made, unless doing so would harm an interest protected by an applicable exemption.

(e) *Denials of requests.* Denials of your FOIA request, either whole or in part, will be made in writing by the FOIA Officer. IMLS will inform you of the reasons for the denial, including any FOIA exemption(s) applied by the agency in denying the request, and notify you of your right to appeal the determination as described in § 1184.6. IMLS will, as appropriate, provide a brief description of the information being withheld.

§ 1184.6 How can I appeal a denial of my request?

(a) *Submission of an appeal.* If your FOIA request has been denied in whole or in part, or if the agency has not found any records in response to your request, you may file an appeal no later than thirty (30) calendar days following the date of the notification of denial. Your appeal must include a description of the initial request, the reason for the appeal, and why you believe the agency's response was incorrect. Your appeal must be in writing, signed, and filed with the IMLS Director, c/o Office of the General Counsel, 1800 M Street NW., 9th Floor, Washington, DC 20036–5802. Appeals may also be sent by email to *foia@imls.gov,* or by facsimile to (202) 653–4625.

(b) *Decisions on appeal.* The Director of IMLS will make a determination with respect to your appeal within twenty (20) working days after the agency has received the appeal, except as provided in § 1184.4(b). If the decision on appeal is favorable to you, the Director of IMLS will take action to assure prompt dispatch of the records to you. If the decision on appeal is adverse to you, in whole or in part, you will be informed by the Director of IMLS of the reasons for the decision and of the provisions for judicial review set forth in the FOIA. As appropriate, IMLS will advise you in a response to an appeal that the 2007 FOIA amendments created the Office of Government Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation.

§ 1184.7 How will fees be charged?

(a) *In general.* IMLS will use the most efficient and least costly methods to comply with FOIA requests. IMLS will charge fees to recover all allowable direct costs incurred, and may charge fees for searching for and reviewing requested records even if the records are determined to be exempt from disclosure or cannot be located. IMLS will charge fees in accordance with the category of the FOIA requester.

(1) *Commercial use requests.* IMLS will assess charges to recover the full direct cost of searching for, reviewing and duplicating the requested records. IMLS may recover the cost of searching for and reviewing records even if there is ultimately no disclosure.

(2) *Requests from educational and non-commercial scientific institutions.* IMLS will charge for duplication costs.

(3) *Requests by representatives of the news media.* IMLS will charge for duplication costs.

(4) *All other requests.* IMLS will assess charges to recover the full direct cost for searching for and duplicating the requested records.

(5) *Status of Requester.* IMLS' decision regarding the categorization of a requester will be made on a case-by-case basis based upon the requester's intended use of the requested records.

(b) *General fee schedule.* The following fees will be charged in accordance with paragraph (a) of this section.

(1) *Manual search fee.* The fee charged will be the salary rate(s) (i.e., basic pay plus 16.1 percent) of the employee(s) conducting the search.

(2) *Computer search fee.* The fee charged will be the actual direct cost of providing the service including the cost of operating the central processing unit for the operating time that is directly attributed to searching for records responsive to a request and the operator/programmer salary apportionable to the search.

(3) *Review fee.* The fee charged will equal the salary rate(s) (i.e., basic pay plus 16.1 percent) of the employee(s) conducting the review.

(4) *Duplication fee.* Copies of records photocopied on an 8½ x 11 inch sheet of paper will be provided at $.10 per page. For duplication of other materials, the charge will be the direct cost of duplication.

(c) *Restrictions on charging fees.* (1) Except for records provided in response to a commercial use request, the first 100 pages of duplication and the first two (2) hours of search time will be provided at no charge.

(2) Fees will not be charged to any requester, including commercial use requesters, if the total amount calculated under this section is less than $25.

(d) *Fees likely to exceed $25.* If the total fee charges are likely to exceed $25, IMLS will notify you of the estimated amount of the charges, including a breakdown of the fees for search, review and/or duplication, unless you have indicated in advance that you are willing to pay higher fees and will offer you an opportunity to confer with the FOIA Public Liaison to revise the request to meet your needs at a lower cost.

(e) *Waiver or reduction of fees.* (1) IMLS will disclose records without charge or at a reduced charge if the agency determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) IMLS will use the following factors to determine whether a fee will be waived or reduced:

(i) *The subject of the request.* Whether the subject of the requested records concerns the ''operations or activities of the government'';

(ii) *The informative value of the information to be disclosed.* Whether the disclosure is ''likely to contribute'' to an understanding of government operations or activities;

(iii) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to ''public understanding'';

(iv) *The significance of the contribution to public understanding.* Whether disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities;

(v) *The existence and magnitude of a commercial interest.* Whether you have a commercial interest that would be furthered by the disclosure; and if so

(vi) *The primary interest in disclosure.* Whether the magnitude of your commercial interest is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the your commercial interest.

(f) *Assessment and collection of fees.* (1) If you fail to pay your bill within thirty (30) days, interest will accrue from the date the bill was mailed, and will be assessed at the rate prescribed in 31 U.S.C. 3717.

(2) If IMLS reasonably believes that you are attempting to divide a request into a series of requests to avoid the assessment of fees, the agency may aggregate such requests and charge accordingly.

(3) *Advance payment.* (i) Advance payment of fees will generally not be required. IMLS may request an advance payment of the fee, however, if:

(A) The charges are likely to exceed $250; or

(B) You have failed previously to pay a fee in a timely fashion.

(ii) When IMLS requests an advance payment, the time limits described in section (a)(6) of the FOIA will begin only after IMLS has received full payment.

(g) *Failure to comply.* In the absence of unusual or exceptional circumstances, IMLS will not assess fees if the agency fails to comply with any time limit set forth in these regulations.

(h) *Waivers.* IMLS may waive fees in other circumstances solely at its discretion, consistent with 5 U.S.C. 552.

§ 1184.8 How can I address concerns regarding my request?

(a) *FOIA Public Liaison.* If you have questions or concerns regarding your request, your first point of contact should be the FOIA Public Liaison, who is responsible for reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(b) *Additional resource.* The National Archives and Records Administration (NARA), Office of Government Information Services (OGIS) offers non-compulsory, non-binding mediation services to help resolve FOIA disputes. If you seek information regarding OGIS and/or the services it offers, please contact OGIS directly at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740–6001, Email: *ogis@nara.gov,* Phone: (301) 837–1996, Fax: (301) 837–0348. This information is provided as a public service only. By providing this information, IMLS does not commit to refer disputes to OGIS, or to defer to OGIS' mediation decision in particular cases.

§ 1184.9 What are IMLS' policies regarding disclosure of confidential business information?

(a) *In general.* Confidential business information obtained by IMLS from a submitter will be disclosed under FOIA only under this section.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Confidential business information.* Commercial or financial information obtained by IMLS from a submitter that may be protected from disclosure under Exemption 4 of FOIA.

(2) *Submitter.* Any person or entity from whom IMLS obtains confidential business information, directly or indirectly. The term includes corporations; state, local and tribal governments; and foreign governments.

(c) *Designation of confidential business information.* A submitter of confidential business information will use good-faith efforts to designate, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* When required under paragraph (e) of this section, subject to the exceptions in paragraph (h) of this section, IMLS will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its confidential business information, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information. The notice will either describe the confidential business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* IMLS will give notice to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) IMLS has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* IMLS will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it must submit a detailed written statement to IMLS. The statement must specify all grounds for withholding any portion of the information under any exemption of FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by IMLS until after the agency's disclosure decision has been made will not be considered by IMLS. Information provided by a submitter under this paragraph may itself be subject to disclosure under FOIA.

(g) *Notice of intent to disclose.* IMLS will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose confidential business information. If IMLS decides to disclose confidential business information over the objection of a submitter, IMLS will give the submitter written notice, which will include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the confidential business information to be disclosed; and

(3) A specified disclosure date, which will be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section will not apply if:

(1) IMLS determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, IMLS will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* If a requester files a lawsuit seeking to compel the disclosure of confidential business information, IMLS will promptly notify the submitter of the filing of the lawsuit.

(j) *Corresponding notice to requesters.* If IMLS provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, IMLS will also notify the requester(s). If IMLS notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, IMLS will also notify the requester(s). If a submitter files a lawsuit seeking to prevent the disclosure of confidential business information, IMLS will notify the requester(s) of the filing of the lawsuit.

§ 1184.10 Disclaimer.

Nothing in the regulations in this part will be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under FOIA.

Signed: February 12, 2014.

Nancy E. Weiss.

General Counsel.

[FR Doc. 2014–03545 Filed 2–18–14; 8:45 am]

BILLING CODE 7036–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[WT Docket No. 12–357; FCC 13–88]

Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915–1920 MHz and 1995–2000 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission published a document in the **Federal Register** of January 17, 2014, announcing that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's Report and Order (*R&O*), §§ 1.946, 27.10, 27.12, and 27.17, Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 related to the 1915–1920 MHz and 1995–2000 MHz Bands. Additionally, the Commission announced that OMB approved, for a period of three years, the revisions to the existing collection on FCC Form 601, which are also associated with the Commission's *R&O,* and that those revisions are also effective with publication of this document. This document corrects the erroneously listing of the subsections of two rules that were approved by OMB.

DATES: Effective February 19, 2014.

FOR FURTHER INFORMATION CONTACT: Matthew Pearl, Wireless Telecommunications Bureau, Broadband Division, at (202) 418–BITS or by email at *Matthew.Pearl@fcc.gov*.

SUPPLEMENTARY INFORMATION: This rule published January 17, 2014, erroneously listed the subsections of two rules that were approved by OMB: on pages 3133 (column 2, line 17; column 3, lines 38–39) and 3134 (column 1, line 26; column 1, line 32), the document listed rules ''§§ 1.946(d), 27.10(d),'' when it should have listed merely ''§§ 1.946, 27.10.''

Correction

In the **Federal Register** of January 17, 2014, in FR Doc. 2014–01055:

1. On page 3133, in the second column, on line 17, correct ''§§ 1.946(d), 27.10(d)'' to read: ''§§ 1.946, 27.10''.

2. On page 3133, in the third column, on lines 38–39, correct ''§§ 1.946(d), 27.10(d)'' to read: ''§§ 1.946, 27.10''.

3. On page 3134, in the first column, on line 26, correct ''§§ 1.946(d), 27.10(d)'' to read: ''§§ 1.946, 27.10''.

4. On page 3134, in the first column, on line 32, correct ''§§ 1.946(d), 27.10(d)'' to read: ''§§ 1.946, 27.10''.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary.

[FR Doc. 2014–03476 Filed 2–18–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XD134

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the trip limit in the hook-and-line component of the commercial sector for king mackerel in the southern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, February 16, 2014, through June 30, 2014, unless changed by further notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, email: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the Gulf of Mexico eastern zone into northern and southern subzones, and established their separate quotas. The 2013 to 2014 fishing year quota for the hook-and-line component of the commercial sector in the southern Florida west coast subzone is 551,448 lb (250,133 kg) (50 CFR 622.384(b)(1)(i)(B)(*1*)).

In accordance with 50 CFR 622.385(a)(2)(ii)(B)(*2*), from the date that 75 percent of the southern Florida west coast subzone's hook-and-line gear quota has been harvested until a closure of the subzone's commercial sector of the hook-and-line component has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has projected that 75 percent of the hook-and-line gear quota for Gulf group king mackerel from the southern Florida west coast subzone will be harvested by February 16, 2014. Accordingly, a 500-lb (227-kg) trip limit applies to vessels in the hook-and-line component of the commercial sector for king mackerel in or from the EEZ in the southern Florida west coast subzone effective 12:01 a.m., local time, February 16, 2014. The 500-lb (227-kg) trip limit will remain in effect until the component closes or until the end of the current fishing year (June 30, 2014), whichever occurs first.

From November 1 through March 31, the southern subzone encompasses an area of the EEZ south of a line extending due west of the Lee/Collier County, FL, boundary on the Florida west coast, and south of a line extending due east of the Monroe/Dade County, FL, boundary on the Florida east coast, which includes the EEZ off Collier and Monroe Counties, FL. From April 1 through October 31, the southern subzone is reduced to the EEZ off Collier County, and the EEZ off Monroe County becomes part of the Atlantic migratory group area.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the Gulf king mackerel resource and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.385(a)(2)(iii) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued

without opportunity for prior notice and comment.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this trip limit reduction for the hook-and-line component of the commercial sector constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction.

Allowing prior notice and opportunity for public comment is contrary to the public interest because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment could result in a harvest well in excess of the established quota. Immediate implementation of this action is needed to protect the Gulf king mackerel resource.

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

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

Dated: February 12, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–03517 Filed 2–13–14; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XD133

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Pot Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2014 Pacific cod total allowable catch apportioned to vessels using pot gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), February 13, 2014, through 1200 hours, A.l.t., June 10, 2014.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

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

The A season allowance of the 2014 Pacific cod total allowable catch (TAC) apportioned to vessels using pot gear in the Central Regulatory Area of the GOA is 6,959 metric tons (mt), as established by the final 2013 and 2014 harvest specifications for groundfish of the GOA (78 FR 13162, February 26, 2013) and inseason adjustment (79 FR 601, January 6, 2014).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2014 Pacific cod TAC apportioned to vessels using pot gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,949 mt and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod for vessels using pot gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 11, 2014.

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

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

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

Dated: February 12, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–03524 Filed 2–13–14; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563–3148–02]

RIN 0648–XD125

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian district (CAI) of the Bering Sea and Aleutian Island management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the A season allowance of the 2014 Atka

mackerel total allowable catch (TAC) in the CAI allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 13, 2014, through 1200 hrs, A.l.t., June 10, 2014. Enforcement of the closure began at 1200 hrs, Alaska local time (A.l.t.), February 12, 2014.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The A season allowance of the 2014 Atka mackerel TAC, in the CAI, allocated to vessels participating in the BSAI trawl limited access fishery was established as a directed fishing allowance of 428 metric tons by the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013), and as modified by inseason adjustments (79 FR 758, January 7, 2014).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the CAI by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of the Atka mackerel fishery in the CAI for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 11, 2014. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: February 12, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–03519 Filed 2–13–14; 11:15 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 79, No. 33

Wednesday, February 19, 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.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1206

[Docket No. NASA–2700–0006]

RIN 2700–AE04

Procedures for Disclosure of Records Freedom of Information Act Regulations

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Aeronautics and Space Administration (NASA) is proposing to amend its regulations implementing the Freedom of Information Act (FOIA). The regulations are being revised to update and streamline the language of several procedural provisions and to incorporate certain changes brought about by the amendments to the FOIA under the Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007. Additionally, the regulations are being updated to reflect developments in case law and to include current cost figures to be used in calculating and charging fees.

DATES: Submit comments on or before March 21, 2014.

ADDRESSES: Comments must be identified with RIN 2700–AE04 and may be sent to NASA via the Federal E-Rulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments. Please note that NASA will post all comments on the internet with changes, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Miriam Brown-Lam, (202) 358–0718.

SUPPLEMENTARY INFORMATION:

Background

The FOIA provides that any person has a right, enforceable in court, to obtain access to Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. The FOIA thus established a statutory right of public access to Executive Branch information in the Federal Government.

Part 1206 establishes the policies, responsibilities, and procedures for the release of Agency records, which are under the jurisdiction of NASA to members of the public. These regulations apply to information found in Agency records located at NASA Headquarters and NASA Centers, including Component Facilities and Technical and Service Support Centers (herein Centers).

This rule proposes revisions to the Agency's regulations under the FOIA to update and streamline the language of several procedural provisions and to incorporate certain of the changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524. Additionally, the regulations are being updated to reflect developments in case law and to include current cost figures to be used in calculating and charging fees. The revisions to the FOIA regulations incorporate changes to the language and structure of the regulations. Revised provisions include restructuring and renumbering of the current regulations: § 1206.101 (Definitions), § 1206.102 (General Policy), § 1206.200 (Types of records to be made available), § 1206.300 (Exemptions) (Requirements for making requests), § 1206.5 (Timing of responses to requests), § 1206.6 (Responses to requests), § 1206.7 (Confidential commercial information), and § 1206.8 (Administrative appeals). The current § 1206.101 (Definitions) and § 1206.7 (Classified Information) will be deleted and subsequent sections renumbered accordingly. Proposed revisions of the Administration's fee schedule can be found in Subpart 5. The duplication charge for photocopying will increase to .15 cents a page (.30 for double-sided copying), while document search and review charges will increase in accordance with Subpart 5. Fee rates will be effective upon final publication of this regulation.

Regulatory Analysis

Executive Order 12866 and Executive Order 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Fees assessed by the Administration are nominal. Further, the ''small entities'' that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

Paperwork Reduction Act Statement

This rule does not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. 804. This

rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 14 CFR Part 1206

Administrative practice and procedure, Freedom of Information Act, Privacy Act.

For the reasons stated in the preamble, NASA is proposing to revise 14 CFR Part 1206 as follows:

PART 1206—PROCEDURES FOR DISCLOSURE OF RECORDS FREEDOM OF INFORMATION ACT REGULATIONS

Sec.

Subpart 1—Basic Policy

1206.100 Scope of part.
1206.101 General policy.

Subpart 2—Types of Records To Be Made Available

1206.200 Publishing of records.
1206.201 Proactive disclosure of Agency records.
1206.202 Records that have been published.
1206.203 Incorporation by reference.

Subpart 3—Procedures

1206.300 How to make a request for Agency records.
1206.301 Describing records sought.
1206.302 Fee agreements.
1206.303 Format of records disclosed.
1206.304 Expedited processing.
1206.305 Responding to requests.
1206.306 Granting a request.
1206.307 Denying a request.
1206.308 Referrals and consultations within NASA or other Federal agencies.

Subpart 4—Procedures and Time Limits for Responding to Requests

1206.400 Procedures for processing queues and expedited processing.
1206.401 Procedures and time limits for acknowledgement letters and initial determinations.
1206.402 Suspending the basic time limit.
1206.403 Time extensions.

Subpart 5—Fees Associated With Processing Requests

1206.500 Search.
1206.501 Review.
1206.502 Duplication.
1206.503 Restrictions on charging fees.
1206.504 Charging fees.
1206.505 Advance payments.
1206.506 Requirements for a waiver or reduction of fees.
1206.507 Categories of requesters.
1206.508 Aggregation of requests.
1206.509 Form of payment.
1206.510 Nonpayment of fees.
1206.511 Other rights and services.

Subpart 6—Commercial Information

1206.600 General policy.
1206.601 Notice to submitters.
1206.602 Opportunity to object to disclosure.
1206.603 Notice of intent to disclose.

Subpart 7—Appeals

1206.700 How to submit an appeal.
1206.701 Actions on appeals.
1206.702 Litigation.

Subpart 8—Responsibilities

1206.800 Delegation of authority.
1206.801 Chief FOIA Officer.
1206.802 General Counsel.
1206.803 NASA Headquarters.
1206.804 NASA Centers and Components.
1206.805 Inspector General.

Subpart 9—Location for Inspection and Request of Agency Records

1206.900 FOIA offices and electronic libraries.

Authority: 5 U.S.C. 552, 552a; 51 U.S.C. 20113(a).

Subpart 1—Basic Policy

§ 1206.100 Scope of the part.

This Part 1206 establishes the policies, responsibilities, and procedures for the release of Agency records which are under the jurisdiction of the National Aeronautics and Space Administration, hereinafter NASA, to members of the public. This part applies to information and Agency records located at NASA Headquarters and NASA Centers, including Component Facilities and Technical and Service Support Center, herein NASA Headquarters and Centers, as defined in this part.

§ 1206.101 General policy.

(a) In compliance with the Freedom of Information Act (FOIA), as amended 5 U.S.C. 552, a positive and continuing obligation exists for NASA, herein Agency, to make available to the fullest extent practicable upon request by members of the public, all Agency records under its jurisdiction, as described in this regulation.

(b) Part 1206 does not entitle any person to any service or to the disclosure of any record that is not required under the FOIA.

Subpart 2—Types of Records To Be Made Available

§ 1206.200 Publishing of records.

(a) Records required to be published in the **Federal Register**. The following records are required to be published in the **Federal Register**, for codification in Title 14, Chapter V, of the CFR.

(1) Description of NASA Headquarters and NASA Centers and the established places at which, the employees from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which NASA's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions regarding the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by NASA;

(5) Each amendment, revision, or repeal of the foregoing.

(b) Agency opinions, orders, statements, and manuals.

(1) Unless they are exempt from disclosure in accordance with the FOIA, or unless they are promptly published and copies offered for sale, NASA shall make available the following records for public inspection and copying or purchase:

(i) All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases;

(ii) Those statements of NASA policy and interpretations which have been adopted by NASA and are not published in the **Federal Register**;

(iii) Administrative staff manuals (or similar issuances) and instructions to staff that affect a member of the public;

(iv) Copies of all records, regardless of form or format, that have been released to any person under Subpart 3 herein and which, because of the nature of their subject matter, the Agency determines have become or are likely to become the subject of subsequent requests for substantially the same records (frequently requested documents).

(2) A general index of records referred to under (b)(1)(iv).

(i) For records created after November 1, 1997, which are covered by paragraph (b)(l)(i) through (b)(l)(v) of this section, such records shall be available electronically, through an electronic library and in electronic forms or formats.

(ii) In connection with all records required to be made available or published under this paragraph (b), identifying details shall be deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. However, in each case the

justification for the deletion shall be explained fully in writing. The extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by an exemption in Subpart 3. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion is made.

(c) Other Agency records.

(1) In addition to the records made available or published under paragraphs (a) and (b) of this section, NASA shall, upon request for other records made in accordance with this part, make such records promptly available to any person, unless they are exempt from disclosure, or unless they may be purchased by the public from other readily available sources, i.e., books.

(2) Furthermore, at a minimum, NASA will maintain in its electronic library records created after November 1, 1997, under paragraphs (b)(1)(iv) and a guide for requesting records or information from NASA.

§ 1206.201 Proactive disclosure of Agency records.

Records that are required by the FOIA to be made available for public inspection and copying are accessible on the Agency's Web site, *http://www.nasa.gov.* Each Center is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting such records. Each Center has a FOIA Public Liaison who can assist individuals in locating records particular to a Center. A list of the Agency's FOIA Public Liaisons is available at *http://www.hq.nasa.gov/office/pao/FOIA/agency/.*

§ 1206.202 Records that have been published.

Publication in the **Federal Register** is a means of making certain Agency records are available to the public in accordance with 5 U.S.C. 552(a)(2) without requiring the filing of a FOIA request. NASA has a FOIA Electronic Library Web site at NASA Headquarters and each of its Centers. Also, the FedBizOpps (FBO) (formerly Commerce Business Daily), is a source of information concerning Agency records or actions. Various other NASA publications and documents, and indexes thereto, are available from other sources, such as the U.S. Superintendent of Documents, and the Earth Resources Observation and Science Center (Department of the Interior). Such publications and documents are not required to be made available or reproduced in response to a request unless they cannot be purchased readily from available sources.

§ 1206.203 Incorporation by reference.

Records reasonably available to the members of the public affected thereby shall be deemed published in the **Federal Register** when incorporated by reference in material published in the **Federal Register** (pursuant to the **Federal Register** regulation on incorporation by reference, 1 CFR Part 51).

Subpart 3—Procedures

§ 1206.300 How to make a request for Agency records.

(a) A requester submitting a request for records must include his/her name and mailing address, a description of the record(s) sought (see § 1206.301), and must address fees or provide justification for a fee waiver (see § 1206.302) as well as address the fee category in accordance with § 1206.507. It is also helpful to provide a telephone number and email address in case the FOIA office needs to contact you regarding your request; however, this information is optional when submitting a written request. If a requester chooses to submit a request online via the NASA FOIA Web site, the required information must be completed. Do not include a social security number on any correspondence with the FOIA office.

(b) NASA does not have a central location for submitting FOIA requests and it does not maintain a central index or database of records in its possession. Instead, Agency records are decentralized and maintained by various Centers and Offices throughout the country.

(c) In accordance with the Agency Records Management procedures NASA has not yet implemented a records management application for automated capture and control of e-records; therefore, official files are primarily paper files.

(d) A member of the public may request an Agency record by mail, facsimile (FAX), electronic-mail (email), or by submitting a written request in person to the FOIA office having responsibility over the record requested or to the NASA Headquarters (HQ) FOIA Office.

(e) When a requester is unable to determine the proper NASA FOIA Office to direct a request to, the requester may send the request to the NASA HQ FOIA Office, 300 E Street SW., Washington, DC 20546–0001. The HQ FOIA Office will forward the request to the Center(s) that it determines to be most likely to maintain the records that are sought.

(1) It is in the interest of the requester to send the request to the office they believe has responsibility over the records being sought. (See Appendix A for NASA FOIA Office locations and addresses.)

(2) A misdirected request may take up to ten (10) additional working days to re-route to the proper FOIA office.

(f) A requester who is making a request for records about himself or herself (a Privacy Act request) must comply with the verification of identity provisions set forth in 14 CFR 1212.202.

(g) Where a request pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by the individual who is the subject of the record requested, or a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746, authorizing disclosure of the records to the requester, or submit proof that the individual is deceased (e.g., a copy of a death certificate or a verifiable obituary).

(h) As an exercise of its administrative discretion, each Center FOIA office may require a requester to supply additional information if necessary, i.e., a notarized statement from the subject of the file, in order to verify that a particular individual has consented to a third party disclosure. Information will only be released on a case-by-case to third party requesters if they have independently provided authorization from the individual who is the subject of the request.

§ 1206.301 Describing records sought.

In view of the time limits under 5 U.S.C. 552(a)(6) for an initial determination on a request for an Agency record, a request must meet the following requirements:

(a) The request must be addressed to an appropriate FOIA office or otherwise be clearly identified in the letter as a request for an Agency record under the ''Freedom of Information Act.''

(b) Requesters must describe the records sought in sufficient detail to enable Agency personnel who are familiar with the subject area of the request to identify and locate the record with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist a FOIA office in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file

designation, or reference number. In general, requesters should include as much detail as possible about the specific records or the types of records sought.

(c) If the requester fails to reasonably describe the records sought, the FOIA office shall inform the requester of what additional information is needed or why the request is deficient. The FOIA office will also notify the requester that it will not be able to comply with the FOIA request unless the additional information requested is provided within 20 working days from the date of the letter. If the additional information is not provided within that timeframe, the request will be closed without further notification.

(d) If after being asked to clarify a request, the requester provides additional information to the FOIA office but fails to provide sufficient details or information to allow the FOIA office to ascertain exactly what records are being requested and locate them, or in general to process the request, the FOIA office will notify the requester that the request has not been properly made and the request will be closed. The FOIA office will advise him/her that they may submit a new request for the information; however, they will need to provide more information to allow processing of the request.

(e) NASA need not comply with a blanket or categorical request (such as ''all matters relating to'' a general subject) where it is not reasonably feasible to determine what record is sought.

(f) NASA will in good faith attempt to identify and locate the record(s) sought and will consult with the requester when necessary and appropriate for that purpose in accordance with these regulations.

(g) NASA is not required to create or compile records in response to a FOIA request.

§ 1206.302 Fee agreements.

(a) A request must explicitly state a willingness to pay all fees associated with processing the request, fees up to a specified amount, or a request for a fee waiver.

(b) If the FOIA office determines that fees for processing the request will exceed the agreed upon amount or the statutory entitlements, the FOIA office will notify the requester that:

(1) He/she must provide assurance of payment for all anticipated fees or provide an advance payment if estimated fees are expected to exceed $250.00, or

(2) The FOIA office will not be able to fully comply with the FOIA request unless an assurance or advance payment as requested has been provided.

(3) He/she may wish to limit the scope of the request to reduce the processing fees.

(c) If the FOIA office does not receive a written response within 20 working days (meaning all days except Saturdays, Sundays and all Federal legal holidays) after requesting the information, it will presume the requester is no longer interested in the records requested and will close the file on the request without further notification.

(d) A commercial-use requester must:

(1) State a willingness to pay all fess associated with processing a request; or

(2) State a willingness to pay fees to cover the costs of conducting an initial search for responsive records to determine a fee estimate.

(e) If a requester is only willing to pay a limited amount for processing a request and it is for more than one document, the requester must state the order in which he/she would like the request for records to be processed.

(f) If a requester is seeking a fee waiver, the request must include sufficient justification to substantiate a waiver. (See Subpart 5 for information on fee waivers.) Failure to provide sufficient justification will result in a denial of the fee waiver request.

(g) If a requester is seeking a fee waiver, he/she may also choose to state a willingness to pay fees in case the fee waiver request is denied in order to allow the FOIA office to begin processing the request while considering the fee waiver.

(h) If a fee is chargeable for search, review, duplication, or other costs incurred in connection with a request for an Agency record, the requester will be billed prior to releasing Agency documents. If the total amount of processing fees is under $50.00, the Agency will release the records and bill the requester when final processing is complete.

(1) If the exact amount of the fee chargeable is not known at the time of the request, the requester will be notified in the initial determination (or in a final determination in the case of an appeal) of the amount of fees chargeable.

(2) For circumstances in which advance payment of fees is required, the requester will be notified after the FOIA office has obtained an estimate of associated fees.

(i) The FOIA office will begin processing a request only after the request has been properly described in accordance with these regulations and fees have been resolved.

(j) If the requester is required to pay a fee and it is later determined on appeal that he/she was entitled to a full or partial fee waiver, a refund will be sent as appropriate.

(k) NASA may refuse to consider a waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain owed to the Agency for another information access request.

§ 1206.303 Format of records disclosed.

(a) The FOIA office will provide the records in the requested format if the records can readily be reproduced from the original file to that specific format.

(b) The FOIA office may charge direct costs associated with converting the records or files into the requested format if they are not maintained in that format. If the costs to convert the records exceed the amount the requester has agreed to pay, the FOIA office will notify the requester in writing. If the requester does not agree to pay the additional fees for converting the records, the records may not be provided in the requested format.

§ 1206.304 Expedited processing.

A requester may ask for expedited processing of a request. However, information to substantiate the request must be included in accordance with § 1206.400, Criteria for Expedited Processing, otherwise, the request for expedited processing will be denied and processed in the simple or complex queue.

§ 1206.305 Responding to requests.

(a) Except in the instances described in paragraphs (e) and (f) of this section, the FOIA office that first receives a request for a record and maintains that record, is the FOIA office responsible for responding to the request.

(b) In determining what records are responsive to a request, a FOIA office ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the FOIA office shall inform the requester of that date.

(c) A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), shall not be considered responsive to a request.

(d) The Head of a Center, or designee, is authorized to grant or to deny any requests for records that are maintained by that Center.

(e) The FOIA office may refer a request to or consult with another Center FOIA office or Federal agency in accordance with § 1206.308, if the FOIA office receives a request for records that are in its possession that were not

created at that Center. If another Center within NASA or another Federal agency has substantial interest in or created the records, the request will either be referred or they will consult with that FOIA office/agency.

(f) If a request for an Agency record is received by a FOIA office not having responsibility of the record (for example, when a request is submitted to one NASA Center or Headquarters and another NASA Center has responsibility of the record), the FOIA office receiving the request shall promptly forward it to that FOIA office within 10 working days from the date of receipt. The receiving FOIA office shall acknowledge the request and provide the requester with a tracking number.

§ 1206.306 Granting a request.

(a) The FOIA office will not begin processing a request until all issues regarding scope and fees have been resolved.

(b) If fees are not expected to exceed the minimum threshold of $25.00, and the scope of the request is in accordance with § 1206.301, the FOIA office will begin processing the request.

(c) If the FOIA office contacts the requester regarding fees or clarification and the requester has provided a response, the FOIA office will notify the requester in writing of the decision to either grant or deny the request.

§ 1206.307 Denying a request.

(a) If the FOIA office denies records in response to a request either in full or in part, it will advise the requester in writing that:

(1) The requested record(s) is exempt in full or in part; or

(2) Records do not exist, cannot be located, or are not in the Agency's possession; or

(3) A record is not readily reproducible in the form or format requested; or

(4) Denial is based on a procedural issue only and not access to the underlying records when it makes a decision that:

(i) A fee waiver or another fee-related issue will not be granted; or

(ii) Expedited processing will not be provided.

(b) The denial notification must include:

(1) The name, title, or position of the person(s) responsible for the denial;

(2) A brief statement of the reasons for the denial, including a reference to any FOIA exemption(s) applied by the FOIA office to withhold records in full or in part;

(3) An estimate of the volume of any records or information withheld, i.e., the number of pages or a reasonable form of estimation, unless such an estimate would harm an interest protected by the exemption(s) used to withhold the records or information;

(4) A statement that the denial may be appealed under Subpart 7 of this part and a description of the requirements set forth therein.

(c) If the requested records contain both exempt and non-exempt material, the FOIA office will:

(1) Segregate and release the non-exempt material unless the non-exempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases;

(2) Indicate on the released portion(s) of the records the amount of information redacted and the FOIA exemption(s) under which the redaction was made, unless doing so would harm an interest protected by the FOIA exemption used to withhold the information; and

(3) If technically feasible, place the exemption at the place of excision.

§ 1206.308 Referrals and consultations within NASA or other Federal Agencies.

(a) Referrals and consultations can occur within the Agency or outside the Agency.

(b) If a FOIA office (other than the Office of Inspector General) receives a request for records in its possession that another NASA FOIA office has responsibility over or is substantially concerned with, it will either:

(1) Consult with the other FOIA office before deciding whether to release or withhold the records; or

(2) Refer the request, along with the records, to that FOIA office for direct response.

(c) If the FOIA office that originally received the request refers all or part of the request to another FOIA office within the Agency for further processing, they will notify the requester of the partial referral and provide that FOIA contact information.

(d) If while responding to a request, the FOIA office locates records that originated with another Federal agency, it will generally refer the request and any responsive records to that other agency for a release determination and direct response.

(e) If the FOIA office refers all the records to another agency, it will document the referral and maintain a copy of the records that it refers; notify the requester of the referral in writing, unless that identification will itself disclose a sensitive, exempt fact; and may provide the name of a contact at the other agency.

(f) If the FOIA office locates records that originated with another Federal agency while responding to a request, the office will make the release determination itself (after consulting with the originating agency) when:

(1) The record is of primary interest to NASA (for example, a record may be of primary interest to NASA if it was developed or prepared according to Agency regulations or directives, or in response to an Agency request); or

(2) NASA is in a better position than the originating agency to assess whether the record is exempt from disclosure; or

(3) The originating agency is not subject to the FOIA; or

(4) It is more efficient or practical depending on the circumstances.

(g) If the FOIA office receives a request for records that another Federal agency has classified under any applicable executive order concerning record classification, it must refer the request to that agency for response.

(h) If the FOIA office receives a request for records that are under the purview of another Federal agency, the office will return the request to the requester and may advise the requester to submit it directly to another agency. The FOIA office will then close the request.

(i) All consultations and referrals received by the Agency will be handled according to the date that the FOIA request initially was received by the first FOIA office.

Subpart 4—Procedures and Time Limits for Responding to Requests

§ 1206.400 Procedures for processing queues and expedited processing.

(a) The FOIA office will normally process requests in the order in which they are received in each of the processing tracks.

(b) FOIA offices use three queues for multi-track processing depending on the complexity of the request. Once it has been determined the request meets the criteria in accordance with Subpart 3 of this regulation, the FOIA office will place the request in one of the following tracks:

(1) Simple—A request that can be processed within 20 working days.

(2) Complex—A request that will take over 20 working days to process. (A complex request will generally require coordination with more than one office and a legal 10 working day extension for unusual circumstances (see § 1206.403) may be taken either up front or during the first 20 days of processing the request.)

(3) Expedited processing—A request for expedited processing will be processed in this track if the requester can show exceptional need or urgency

that their request should be processed out of turn in accordance with § 1206.400(c).

(c) Requests and appeals will be processed on an expedited basis whenever it is determined that they involve one or more of the following:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) Circumstances in which there is an urgency to inform the public about an actual or alleged Federal Government activity if the FOIA request is made by a person primarily engaged in disseminating information; or

(i) In most situations, a person primarily engaged in disseminating information will be a representative of the news media and therefore, will qualify as a person primarily engaged in disseminating information.

(ii) If the requester is not a full-time member of the news media, to qualify for expediting processing with regard to item § 1206.400(c)(1)(ii), he/she must establish that their main professional activity or occupation is information dissemination, although it need not be their sole occupation.

(iii) To substantiate § 1206.400(c)(1)(ii), the requested information must be the type of information which has particular value that will be lost if not disseminated quickly; this ordinarily refers to a breaking news story of general public interest. Information of historical interest only or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news.

(3) The loss of substantial due process rights.

(d) A request for expedited processing must contain a statement that:

(1) Explains in detail how the request meets one or more of the criteria in paragraph (c) of this section; and

(2) Certifies that the explanation is true and correct to the best of the requester's knowledge and belief.

(3) If the request is made referencing (c)(ii), the requester must substantiate the public interest.

(e) A request for expedited processing may be made at any time. Requests must be submitted to the FOIA office responsible for processing the requested records.

(f) The FOIA office must notify the requester of its decision to grant or deny expedited processing within 10 calendar days from the date of receipt.

(g) If expedited processing is granted, the request will be processed on a first-in, first-out basis in that queue.

(h) If expedited processing is denied, the FOIA office will notify the requester and provide information on appealing this decision in accordance with Subpart 7 of this part and place the request in the appropriate processing queue.

(i) If the FOIA office processing the request does not provide notification of either granting or denying the request for expedited processing within 10 calendar days from the date of receipt, the requester may file an appeal for non-response in accordance with Subpart 7 of this part.

§ 1206.401 Procedures and time limits for acknowledgement letters and initial determinations.

(a) Following receipt of a request submitted under the FOIA, the FOIA staff will send an acknowledgement letter providing the case tracking number and processing track within ten (10) working days from date of receipt to the requester.

(b) An initial determination is a decision by a NASA official, in response to a request by a member of the public for an Agency record, on whether the record described in the request can be identified and located after a reasonable search and, if so, whether the record (or portions thereof) will be made available under this part or will be withheld from disclosure under Subpart 3 of this part.

(c) An initial determination on a request for an Agency record addressed in accordance with this regulation (to include one made in person at a FOIA office) shall be made, and the requester shall be sent an initial determination letter within 20 working days after receipt of the request, as required by 5 U.S.C. 552(a)(6) (unless unusual circumstances exist as defined in § 1206.403).

(d) The basic time limit for a misdirected FOIA request begins on the date on which the request is first received by the appropriate FOIA office within the Agency, but in any event no later than ten (10) working days after the date the request is first received by a FOIA office designated to receive FOIA requests.

(e) Any notification of an initial determination that does not comply fully with the request for an Agency record, including those searches that produce no responsive documents, shall include a statement of the reasons for the adverse determination, include the name and title of the person making the initial determination, and notify the requester of the right to appeal to the Administrator or the Inspector General, as appropriate, pursuant to Subpart 7.

§ 1206.402 Suspending the basic time limit.

(a) In accordance with 5 U.S.C. 552(a)(6)(A)(ii)(I), the FOIA office may make one request to the requester for information to clarify a request and temporarily suspend (toll) the time (the 20-day period) while it is awaiting such information that it has reasonably requested from the requester. Receipt of the requester's response by the FOIA office to the Agency's request for additional information or clarification ends the temporary time suspension.

(b) In accordance with 5 U.S.C. 552(a)(6)(A)(ii)(II), the FOIA office may temporarily suspend (toll) the 20-day period as many times as is necessary to clarify with the requester issues regarding fees. Receipt of the requester's response by the FOIA office to the Agency's request for information regarding fees ends the temporary time suspension.

§ 1206.403 Time extensions.

(a) In ''unusual circumstances'' as defined in this section, the time limits for an initial determination and for a final determination may be extended, but not to exceed a total of 10 working days in the aggregate in the processing of any specific request for an Agency record. The extension must be taken before the expiration of the 20 working day time limits. The requester will be notified in writing of:

(1) The unusual circumstances surrounding the extension of the time limit;

(2) The date by which the FOIA office expects to complete the processing of the request.

(b) Unusual circumstances are defined as:

(1) The need to search for and collect the requested records from offices other than the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of documents;

(3) The need to coordinate and/or consult with another NASA office or Agency having a substantial subject-matter interest in the determination of the request.

(c) If initial processing time will exceed or is expected to exceed 30 working days, the FOIA office will notify the requester of the delay in processing and:

(1) Provide an opportunity to modify or limit the scope of the request to reduce processing time; and

(2) Provide appeal rights, since the FOIA office has exceeded the 30 working day time period.

(3) Shall make available its designated FOIA contact and its FOIA Public Liaison for this purpose.

(d) The requester's refusal to reasonably modify the scope of a request or arrange an alternative timeframe for processing a request after being given the opportunity to do so may be considered a factor when determining whether exceptional circumstances exist. Exceptional circumstances means a delay that does not result from a predictable workload of requests, unless the Agency demonstrates reasonable progress in reducing its backlog of pending requests.

Subpart 5—Fees Associated With Processing Requests

Fees such as search, review, and duplication will be charged in accordance with the requester's fee category as defined in § 1206.507 of this subpart.

§ 1206.500 Search.

(a) Search includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. A search will determine what specific documents, if any, are responsive to a request. A search for Agency records responsive to a request may be accomplished by manual or automated means.

(b) Search charges, as set forth in this part may be billed even when an Agency record, which has been requested, cannot be identified or located after a diligent search and consultation with a professional NASA employee familiar with the subject area of the request has been conducted or if located, cannot be made available under § 1206.308.

(c) In responding to FOIA requests, FOIA offices shall charge the following fees based on the date the request is received in the NASA FOIA Office unless a waiver or reduction of fees has been granted under § 1206.506. Fees will be determined on October 1st of each year based on the appropriate General Schedule (GS) base salary, plus the District of Columbia locality payment, plus 16 percent for benefits of employees.

(d) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be the average hourly General Schedule (GS) base salary, plus the District of Columbia locality payment, plus 16 percent for benefits of employees in the following three categories, as applicable:

(1) Clerical—Based on a GS–6, Step 5 (all employees at a GS–7 and below are classified as clerical for this purpose).

(2) Professional—Based on a GS–11, Step 7 pay (all employees at a GS–8 through GS–12 are classified as professional for this purpose);

(3) Managerial—Based on GS–14, Step 2, pay (all employees at a GS–13 and above are classified as managerial for this purpose).

(e) Requesters will be charged the direct costs associated with conducting any search that requires the creation of a new program to locate the requested records.

(f) For requests that require the retrieval of records stored by an agency at a Federal records center operated by the National Archives and Records Administration (NARA), additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

§ 1206.501 Review.

(a) Review means the process of examining a document(s) located in response to a request to determine whether the document(s) or any portion thereof is disclosable. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(b) Review fees will be assessed in connection with the initial review of the record, i.e., the review conducted by Agency staff to determine whether an exemption applies to a particular record or portion of a record.

(c) Review fees will be charged to commercial use requesters.

(d) No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, when the appellate authority determines that a particular exemption no longer applies, any costs associated with an additional review of the records in order to consider the use of other exemptions may be assessed as review fees.

(e) Review fees will be charged at the same rates as those charged for a search under § 1206.500.

(f) Review fees can be charged even if the record(s) reviewed ultimately is not disclosed.

(g) Review fees will not include costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section.

§ 1206.502 Duplication.

(a) Duplication is reproducing a copy of a record or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(b) FOIA offices shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the FOIA office in the form or format requested. If the records are not readily reproducible in the requested form or format, the Agency will so inform the requester. The requester may specify an alternative form or format that is available. If in this situation the requester refuses to specify an alternative form or format, the Agency will not process the request any further.

(c) Where standard-sized photocopies or scans are supplied, the FOIA office will provide one copy per request at the regular copy rate per page.

(d) For copies of records produced on tapes, disks, or other electronic media, FOIA offices will charge the direct costs of producing the copy, including the time spent by personnel duplicating the requested records. For each quarter hour spent by personnel duplicating the requested records, the fees will be the same as those charged for a search under this subpart.

(e) If NASA staff must scan paper documents in order to accommodate a requester's preference to receive the records in an electronic format, the requester shall pay the appropriate copy fee charge per page as well as each quarter hour spent by personnel scanning the requested records. Fees will be the same as those charged for search under this subpart for each quarter hour spent by personnel scanning the requested records.

(f) For other forms of duplication, FOIA offices will charge the direct costs as well as any associated personnel costs. For standard-sized copies of documents such as letters, memoranda, statements, reports, contracts, etc., $0.15 per copy of each page; charges for double-sided copies will be $0.30. For copies of oversized documents, such as maps, charts, etc., fees will be assessed as direct costs. Charges for copies (and scanning) include the time spent in duplicating the documents. For copies of computer disks, still photographs, blueprints, videotapes, engineering drawings, hard copies of aperture cards, etc., the fee charged will reflect the direct cost to NASA of reproducing, copying, or scanning the record.

(g) If the request for an Agency record required to be made available under this part requires a computerized search or printout, the charge for the time of personnel involved shall be at the rates specified in this part or the direct costs assessed to the Agency. The charge for computer time involved and for any

special supplies or materials used shall not exceed the direct cost to NASA.

(h) Reasonable standard fees may be charged for additional direct costs incurred in searching for or duplicating an Agency record in response to a request under this part. Charges made under this paragraph include, but are not limited to, the transportation of NASA personnel to places of record storage for search purposes or freight charges for transporting records to the personnel searching for or duplicating a requested record.

(i) Complying with requests for special services such as those listed in (h)(1), (2) and (3) of this section is entirely at the discretion of NASA. To the extent that NASA elects to provide the following services, it will levy a charge equivalent to the full cost of the service provided:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail.

(3) Packaging and mailing bulky records that will not fit into the largest envelope carried in the supply inventory.

§ 1206.503 Restrictions on charging fees.

(a) No search fees will be charged when the FOIA office fails to comply with the statutory time limits in response to a request if no unusual or exceptional circumstances apply to the processing of the request, as those terms are defined in Subpart 4 of this regulation.

(b) In the case of a requester as defined in § 1206.507(c)(2) (education and noncommercial scientific institution) and (c)(3) (representative of the news media), no duplication fees will be charged when the FOIA office fails to comply with the statutory time limits in response to a request if no unusual or exceptional circumstances apply to the processing of the request, as those terms are defined in Subpart 4 of this regulation.

(c) Fees will not be charged unless they are over $25.00.

(d) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required to fulfill processing of the request.

§ 1206.504 Charging fees.

(a) When a FOIA office determines or estimates the fees to be assessed in accordance with this section will exceed $25.00, the FOIA office shall notify the requester unless the requester has indicated a willingness to pay fees as high as those anticipated. If a portion of the fees can be readily estimated, the FOIA office shall advise the requester accordingly.

(b) In cases in which a requester has been notified that actual or estimated fees are in excess of $25.00, the request shall be placed on hold and further work will not be completed until the requester commits in writing to pay the actual or estimated fees. Such a commitment must be made by the requester in writing, must indicate a given dollar amount or a willingness to pay all processing fees, and must be received by the FOIA office within 20 working day days from the date of the letter providing notification of the fee estimate. If a commitment is not received within this period, the request shall be closed without further notification.

(c) After the FOIA office begins processing a request, if it finds that the actual cost will exceed the amount the requester previously agreed to pay, the FOIA office will: (1) Stop processing the request; and (2) promptly notify the requester of the higher amount. The request will be placed on hold until the fee issue has been resolved. If the issue is not resolved within 20 working days from the date of the notification letter, the request shall be closed without further notification.

(d) Direct costs, meaning those expenditures that NASA actually incurs in searching for, duplicating, and downloading computer files and documents in response to a FOIA request will be included on the invoice as appropriate. Direct costs include, for example, the salary of the employee who would ordinarily perform the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), the cost of operating computers and other electronic equipment, such as photocopiers and scanners, the costs associated with retrieving records stored at a Federal records center operated by the National Archives and Records Administration (NARA).

(e) NASA may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the FOIA office. NASA will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(f) If processing fees are less than $50.00, NASA will send all releaseable documents (or portions thereof) along with a copy of the billing invoice following the completion of the initial determination. If fees are greater than $50.00, the documents will not be released until the invoice has been paid and verified by the FOIA office.

(g) Final billing will be sent when the initial determination has been completed. At that time the case will be closed.

§ 1206.505 Advance payments.

(a) For requests other than those described in paragraphs (b), (c) and (f) of this section, a FOIA office shall not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (i.e., payment for search, review and/or before records are released to a requester) is not an advance payment.

(b) When a FOIA office determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. A FOIA office may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester.

(c) Where a requester has previously failed to pay a properly charged FOIA fee assessed by any FOIA office in the agency within 30 calendar days of the billing date, a FOIA office may require the requester to pay the full amount due, plus any applicable interest due on the outstanding debt, before the FOIA office begins to process a new request or continues to process a pending request or any pending remand of an appeal. Once the outstanding bill has been paid, the FOIA office may also require the requester to make an advance payment of the full amount of any anticipated fee before processing the new request.

(d) Where a FOIA office has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide further proof of identity.

(e) In cases in which a FOIA office requires advance payment, the request shall be placed on hold and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 20 working days after the date of the FOIA office's letter, the request will be closed without further notification.

(f) When advance payment is required in order to initiate processing, after a fee

estimate has been determined, the FOIA office will require payment before continuing to process the request.

(g) The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the FOIA office will inform the requester of the contact information for that source.

§ 1206.506 Requirements for a waiver or reduction of fees.

(a) The burden is on the requester to justify an entitlement to a fee waiver.

(b) Requests for a waiver or reduction of fees shall be considered on a case-by-case basis using the criteria in this section. These statutory requirements must be satisfied by the requester before properly assessable fees are waived or reduced under the statutory standard.

(c) Records shall be furnished without charge or at a reduced rate if the requester has demonstrated, based on all available information, that disclosure of the information is in the public interest because it:

(1) Is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(2) Is not primarily in the commercial interest of the requester.

(d) In deciding whether a request for a fee waiver meets the requirements in § 1206.506(c)(1), of this subpart, the FOIA office will use the following factors, which must be addressed by the requester:

(1) Does the subject of the request specifically concern identifiable operations or activities of the Agency with a connection that is direct and clear, not remote or attenuated? For example, is the information requested clearly associated to current events?

(2) If the record(s) concern the operations or activities of the Government, is disclosure likely to contribute to an increased public understanding of those operations or activities? For example, are the disclosable contents of the record(s) meaningfully informative in relation to the subject matter of the request?

(3) Is the focus of the requester on contributing to public understanding, rather than on the individual understanding of the requester or a narrow segment of interested persons? The requester must demonstrate how he/she plans to disseminate the information. The dissemination of information must be to the general public or a reasonably broad audience. (Dissemination to a wide audience is not merely posting the documents on a Web site, but providing an informative analysis of the information.)

(4) If there is likely to be a contribution to public understanding, will that contribution be significant? A contribution to public understanding will be significant if the information disclosed is new, clearly supports public oversight of Agency operations, including the quality of Agency activities and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of the Agency.

(e) In deciding whether the fee waiver meets the requirements in § 1206.506 (c)(2) of this subpart, the FOIA office will consider any commercial interest of the requester that would be furthered by the requested disclosure.

(1) Requesters are encouraged to provide explanatory information regarding this consideration.

(2) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure.

(3) If the requester is a representative of a news media organization seeking information as part of a news gathering process, the FOIA office will presume that the public interest outweighs the requester's commercial interest.

(4) If the requester represents a business, corporation, or is an attorney representing such an organization, the FOIA office will presume that the commercial interest outweighs the public interest unless otherwise demonstrated.

(f) Where only some of the records to be released satisfy the requirements for a waiver of fees, a partial waiver shall be granted for those records.

(g) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Agency and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal.

(h) When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received by the office processing the original request.

(i) When deciding whether to waive or reduce fees, the FOIA office will rely on the fee waiver justification submitted in the request letter. If the request letter does not include sufficient justification, the FOIA office will either deny the fee waiver request or at its discretion, ask for additional justification from the requester.

(j) FOIA offices may make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request in an effort to reduce fees; however, the FOIA staff may not assist a requester in composing a request, advising what specific records to request, or how to write a request to qualify for a fee waiver.

§ 1206.507 Categories of requesters.

(a) A request should indicate the fee category. If the requester does not indicate a fee category, or it is unclear to the FOIA office, they will make a determination of the fee category based on the request. If the requester does not agree with their determination, he/she will be afforded the opportunity to provide information to support a different fee category.

(b) If the request is submitted on behalf of another person or organization (e.g., if an attorney is submitting a request on behalf of a client), the fee category will be determined by considering the underlying requester's identity and intended use of the information.

The following table outlines the basic fee categories and applicable fees:

Requester category	Search fees	Review fees	Duplication fees
Commercial use requester	Yes	Yes	Yes.
Educational and non-commercial scientific institutions.	No	No	Yes (first 100 pages, or equivalent volume, without charge).
Representative of news media requester.	No	No	Yes (first 100 pages, or equivalent volume, without charge).
All other requesters	Yes (first 2 hours without charge).	No	Yes (first 100 pages, or equivalent volume, without charge).

(c) The FOIA provides for three categories of requesters. However, for clarity purposes, NASA has broken them down to four for the purposes of determining fees. These four categories of FOIA requesters are: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories, which is indicated in the FOIA fee table above.

(1) Commercial use requesters. When NASA receives a request for documents appearing to be for commercial use, meaning a request from or on behalf of one whom seeks information for a use or purpose that furthers the commercial, trade, or profit interests of either the requester or the person on whose behalf the request is made, it will assess charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. NASA will not consider a commercial-use request for a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. A request from a corporation (not a news media corporation) may be presumed to be for commercial use unless the requester demonstrates that it qualifies for a different fee category. Commercial use requesters are not entitled to two (2) hours of search time or to 100 pages of duplication of documents without charge.

(2) Education and non-commercial scientific institution requesters. To be eligible for inclusion in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use (not operated for commerce, trade or profit), but are being sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research. A request for educational purposes must be sent on the Institution's letterhead and signed by the Dean of the School or Department. Records requested for the intention of fulfilling credit requirements are not considered to be sought for a scholarly purpose.

For the purposes of a non-commercial scientific institution, it must be solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. Requests must be sent on the letterhead of the scientific institution and signed by the responsible official in charge of the project/program associated with the subject of the documents that are being requested.

(3) Representative of the news media. NASA shall provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages when the requester demonstrates the following:

(a) The requester's intended dissemination,

(b) Whether the information is current news and/or of public interest, and

(c) Whether the information sought will shed new light on agency statutory operations.

A representative of the news media is any person or entity organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. Examples of news media entities include television or radio stations that broadcast ''news'' to the public at large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as working for that entity. A publishing contract would provide the clearest evidence that publication is expected; however, NASA shall also consider a requester's past publication record in making this determination. NASA's decision to grant a requester news media status for the purposes of assessing fees will be made on a case-by-case basis based upon the requesters intended use.

Requesters seeking this fee category who do not articulate sufficient information to support their request will not be included in this fee category. Additionally, FOIA staff may grant a partial fee waiver if the requester can articulate the information above for some of the documents.

(4) All other requesters. NASA shall charge requesters who do not fit into any of the categories mentioned in this section fees in accordance with the fee table above.

§ 1206.508 Aggregation of requests.

(a) A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees.

(b) When NASA has reason to believe that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests on a single subject or related subjects for the purpose of avoiding the assessment of fees, NASA will aggregate any such requests and charge accordingly.

(c) NASA will consider that multiple requests made within a 30-day period were so intended submitted as such to avoid fees, unless there is evidence to the contrary.

(d) NASA will aggregate requests separated by a longer period of time only when there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved.

(e) NASA will not aggregate multiple requests on unrelated subjects from one requester or organization.

§ 1206.509 Form of payment.

Payment shall be made by check or money order payable to the ''Treasury of the United States,'' or by credit card per instructions in the initial determination or billing invoice and sent to NASA.

§ 1206.510 Nonpayment of fees.

(a) Requesters are advised that should they fail to pay the fees assessed, they may be charged interest on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in § 3717 of Title 31 U.S.C.

(b) Applicability of Debt Collection Act of 1982 (Pub. L. 97–365). Requesters are advised that if full payment is not received within 60 days after the billing was sent, the procedures of the Debt Collection Act may be invoked (14 CFR 1261.407–1261.409). These procedures include three written demand letters at not more than 30-day intervals, disclosure to a consumer reporting agency, and the use of a collection agency, where appropriate.

§ 1206.511 Other rights and services.

Nothing in this subpart shall be construed to entitle any person to any service or to the disclosure of any record that is not required under the FOIA.

Subpart 6—Commercial Information

§ 1206.600 General policy.

(a) Notice shall be given to a submitter whenever the information requested is commercial information and has been designated by the submitter as information deemed protected from disclosure under Exemption 4 of the Act, or the Agency otherwise has reason to believe that the information may be protected from disclosure under Exemption 4. For the purpose of applying the notice requirements, commercial information is information

provided by a submitter and in the possession of NASA, that may arguably be exempt from disclosure under the provisions of Exemption 4 of the FOIA (5 U.S.C. 552(b)(4)). The meaning ascribed to this term for the purpose of this notice requirement is separate and should not be confused with use of this or similar terms in determining whether information satisfies one of the elements of Exemption 4.

(b) A submitter is a person or entity outside the Federal Government from whom the Agency directly or indirectly obtains commercial or financial information. The term submitter includes, but is not limited to corporations, state governments, individuals, and foreign governments.

(c) The notice requirements of § 1206.601 of this subpart will not apply if:

(1) The information has been lawfully published or officially made available to the public; or

(2) Disclosure of the information is required by a statute (other than this part); or

(3) The submitter has received notice of a previous FOIA request which encompassed information requested in the later request, and the Agency intends to withhold and/or release information in the same manner as in the previous FOIA request.

(d) An additional limited exception to the notice requirements of § 1206.601 of this subpart, to be used only when all of the following exceptional circumstances are found to be present, authorizes the Agency to withhold information that is the subject of a FOIA request, based on Exemption 4 (5 U.S.C. 552(b)(4)), without providing the submitter individual notice when:

(1) The Agency would be required to provide notice to over 10 submitters, in which case, notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(2) Absent any response to the published notice, the Agency determines that if it provided notice as is otherwise required by § 1206.601 of this subpart, it is reasonable to assume that the submitter would object to disclosure of the information based on Exemption 4; and,

(3) If the submitter expressed the anticipated objections, the Agency would uphold those objections.

(e) The exception shall be used only with the approval of the Chief Counsel of the Center, the Counsel to the Inspector General, or the Associate General Counsel responsible for providing advice on the request. This exception shall not be used for a class of documents or requests, but only as warranted by an individual FOIA request.

§ 1206.601 Notice to submitters.

(a) Except as provided in § 1206.603(b) and § 1206.603(c) of this subpart, the Agency shall provide a submitter with prompt written notice of a FOIA request that seeks its commercial information whenever required under § 1206.600(a) of this subpart.

(b) A notice to a submitter must include:

(1) The exact language of the request or an accurate description of the request;

(2) Access to or a description of the responsive records or portions thereof containing the commercial information to the submitter;

(3) A description of the procedures for objecting to the release of the possibly confidential information under § 1206.602 of this subpart;

(4) A time limit for responding to the Agency that shall not exceed 10 working days from receipt or publication of the notice (as set forth in § 1206.603(b) of this subpart) to object to the release and to explain the basis for the objection;

(5) Notice that the information contained in the submitter's objections may itself be subject to disclosure under the FOIA;

(6) Notice that the Agency, not the submitter, is responsible for deciding whether the information shall be released or withheld;

(7) Notice that failing to respond within the timeframe specified under § 1206.601(b)(4) of this subpart will create a presumption that the submitter has no objection to the disclosure of the information in question.

(c) Whenever the Agency provides notice pursuant to this section, the Agency shall advise the requester that notice and opportunity to comment are being provided to the submitter.

§ 1206.602 Opportunity to object to disclosure.

(a) If a submitter has any objections to the disclosure of commercial information, the submitter must provide a detailed written statement to the FOIA office that specifies all factual and/or legal grounds for withholding the particular information under any FOIA exemptions.

(b) The submitter must include a daytime telephone number, an email and mailing address and a fax number if available on a response to the FOIA office.

(c) A submitter who does not respond within the time period specified under this subpart will be considered to have no objection to disclosure of the information.

(d) Responses received by the FOIA office after this time period will not be considered by the FOIA office unless the submitter provides an explanation justifying additional time to respond, which the FOIA office determines to be reasonable, before the end of the 10 working day notification.

§ 1206.603 Notice of intent to disclose.

(a) The Agency shall carefully consider any objections of the submitter in the course of determining whether to disclose commercial information. The Agency, not the submitter, is responsible for deciding whether the information will be released or withheld.

(b) Whenever the Agency decides to disclose commercial information over the objection of a submitter, the Agency shall forward to the submitter a written statement which shall include the following:

(1) A brief explanation as to why the Agency did not agree with any objections;

(2) A description of the commercial information to be disclosed, sufficient to identify information to the submitter; and

(3) A date after which disclosure is expected, no less than 10 working days after notification to the submitter.

(c) The FOIA office will provide notification regarding a FOIA lawsuit:

(1) To a submitter, when a requester brings suit seeking to compel disclosure of commercial information; or

(2) To a requester, when a submitter brings suit against the Agency in order to prevent disclosure of commercial information.

Subpart 7—Appeals

§ 1206.700 How to submit an appeal.

(a) A member of the public who has requested an Agency record in accordance with § 1206.601 or § 1206.602, and who has received an initial determination which does not comply fully with the request, may appeal such an adverse initial determination to the Administrator, or, for records as specified in § 1206.805, to the Inspector General under the procedures of this section for reversal of any adverse initial determination received in response to the request for an Agency record within 30 days from the date of the initial determination letter.

(b) The Appeal must:

(1) Be in writing;

(2) Be addressed to the Administrator, NASA Headquarters, Executive

Secretariat, Washington, DC 20546, or, for records as specified in § 1206.805, to the Inspector General, NASA Headquarters, Washington, DC 20546;

(3) Be identified clearly on the envelope and in the letter as an ''Appeal under the Freedom of Information Act;''

(4) Include a copy of the initial request for the Agency record and a copy of the adverse initial determination along with any other correspondence with the FOIA office;

(5) To the extent possible, state the reasons the adverse initial determination should be reversed; and

(6) Be sent to the Administrator or the Inspector General, as appropriate, within 30 days of the date of the initial determination.

(c) An official authorized to make a final determination may waive any of the requirements of paragraph (b) of this section, in which case the time limit for the final determination (see § 1206.607(a)) shall run from the date of such waiver.

§ 1206.701 Actions on appeals.

(a) Except as provided in § 1206.608, the Administrator or designee, or in the case of records as specified in § 1206.805, the Inspector General or designee, shall make a final determination on an appeal and notify the appellant thereof, within 20 working days after the receipt of the appeal by the Administrator's Office.

(b) In ''unusual circumstances'' as defined in § 1206.403, the time limit for a final determination may be extended, but not to exceed a total of 10 working days in the aggregate in the processing of any specific appeal for an Agency record. The extension must be taken before the expiration of the 20 working day time limit. The appellant will be notified in writing in accordance with § 1206.403.

(c) If processing time will exceed or is expected to exceed 30 working days, the appellant will be notified of the delay in processing and the reason for the delay.

(d) If the final determination reverses in whole or in part the initial determination, the record requested (or portions thereof) shall be made available promptly to the requester, as provided in the final determination.

(e) If a reversal in whole or in part of the initial determination requires additional document search or production, associated fees will be applicable in accordance with fee guidance in this regulation.

(f) If the final determination sustains in whole or in part an adverse initial determination, the notification of the final determination shall:

(1) Explain the basis on which the record (or portions thereof) will not be made available;

(2) Include the name and title of the person making the final determination;

(3) Include a statement that the final determination is subject to judicial review under 5 U.S.C. 552(a)(4); and

(4) Enclose a copy of 5 U.S.C. 552(a)(4).

(g) Before seeking a review by a court of a FOIA office's adverse initial determination, a requester must generally submit a timely administrative appeal in accordance with this regulation.

§ 1206.702 Litigation.

In any instance in which a requester brings suit concerning a request for an Agency record under this part, the matter shall promptly be referred to the General Counsel with a report on the details and status of the request. In such a case, if a determination with respect to the initial FOIA request has not been made, an initial determination shall be made as soon as possible by the FOIA office processing the request after coordinating a release strategy with the General Counsel in each case.

Subpart 8—Responsibilities

§ 1206.800 Delegation of authority.

Authority necessary to carry out the responsibilities specified in this subpart is delegated from the Administrator to the officials named in this subpart.

§ 1206.801 Chief FOIA Officer.

(a) The Associate Administrator, Office of Communications, is designated as the Chief FOIA Officer for the Agency. The Chief FOIA Officer is delegated authority for administering the FOIA and all related laws and regulations within the Agency. The Associate Administrator has delegated the day-to-day oversight of the Agency FOIA Program to the Deputy Associate Administrator for Communications.

(b) The Deputy Associate Administrator for Communications has delegated the overall responsibility for developing and administering the FOIA program within NASA to the Principal Agency FOIA Officer, located in the Office of Communications. This includes:

(1) Developing regulations, guidelines, procedures, and standards for the Agency's FOIA program;

(2) Oversight of all FOIA offices and programs and ensuring they are in compliance with FOIA laws and regulations;

(3) Ensuring implementation of the FOIA Programs throughout the Agency and keeping the Chief FOIA Officer and the Deputy Associate Administrator for Communications informed of the Agency's FOIA performance;

(4) Providing program oversight, technical assistance, and training to employees to ensure compliance with the Act;

(5) Preparing the Agency's FOIA Annual Report to the Department of Justice and Congress, as well as the Chief FOIA Officer's Report;

(6) Preparing all other reports as required to DOJ/Congress or within the Agency;

(7) The Principal Agency FOIA Officer has primary responsibility for developing, conducting and reviewing all internal Agency FOIA training for NASA FOIA staff;

(8) Direct supervision of the Headquarters FOIA Office.

§ 1206.802 General Counsel.

The General Counsel is responsible for the interpretation of 5 U.S.C. 552 and of this part, as well as providing legal guidance with regard to disclosure of Agency records. The General Counsel is also responsible for the handling of appeals and litigation in connection with a request for an Agency record under this part.

§ 1206.803 NASA Headquarters.

Except as otherwise provided under this subpart, the Deputy Associate Administrator for Communications is responsible for the following:

(a) Delegating the authority for direct oversight of the Headquarters FOIA Office to the Principal Agency FOIA Officer.

(b) When denying records in whole or in part, ensuring the Headquarters FOIA Office consults with the General Counsel charged with providing legal advice to Headquarters before releasing an initial determination under § 1206.308.

§ 1206.804 NASA Centers and Components.

Except as otherwise provided in this subpart, in coordination with the Deputy Associate Administrator for Communications, the Director of each NASA Center or the Official-in-Charge of each Center, is responsible for ensuring the following:

(a) The Director of Public Affairs or the Head of the Public Affairs Office at the Center has delegated authority to process all FOIA requests at their respective Center.

(b) This delegated authority has further been delegated to the FOIA Officer at their Center or in the absence of a FOIA Officer, the FOIA Specialist,

who must report to and be supervised by their Director of Public Affairs or the Head of the Public Affairs Office.

(c) When denying records in whole or in part, the FOIA Officer at the Center will consult with the Chief Counsel or the Counsel charged with providing legal advice to that FOIA office before releasing an initial determination under § 1206.308.

§ 1206.805 Inspector General.

(a) The Inspector General or designee is responsible for making final determinations under § 1206.701, within the time limits specified in Subpart 7 of this part, concerning audit inspection and investigative records originating in the Office of the Inspector General records from outside the Government related to an audit inspection or investigation, records prepared in response to a request from or addressed to the Office of the Inspector General, or other records originating within the Office of the Inspector General, after consultation with the General Counsel or designee on an appeal of an initial determination to the Inspector General.

(b) The Assistant Inspectors General or their designees are responsible for making initial determinations under Subpart 4 concerning Office of Inspector General records originating in the Office of the Inspector General, records from outside the Government related to Office of Inspector General records prepared in response to a request from or addressed to the Office of the Inspector General, or other records originating with the Office of the Inspector General, after consultation with the Counsel to the Inspector General or designee.

(c) The Inspector General or designee is responsible for ensuring that requests for Agency records as specified in paragraphs (a) and (b) of this section are processed and initial determinations are made within the time limits specified in Subpart 4 of this part.

(d) The Inspector General or designee is responsible for determining whether unusual circumstances exist under § 1206.403 that would justify extending the time limit for an initial or final determination, for records as specified in paragraphs (a) and (b) of this section.

(e) Records as specified in paragraphs (a) and (b) of this section include any records located at Regional and field Inspector General Offices, as well as records located at the Headquarters Office of the Inspector General.

Subpart 9—Location for Inspection and Request of Agency Records

§ 1206.900 FOIA offices and electronic libraries.

(a) NASA Headquarters and each NASA Center have a FOIA Electronic Library on the Internet. The Electronic library addresses are located on the NASA FOIA homepage *http://www.hq.nasa.gov/office/pao/FOIA/agency/*

(b) In addition a requester may submit a FOIA request electronically. The addresses are located on the NASA FOIA homepage under each Center link.

Appendix A

NASA FOIA Requester Service Center Addresses

NASA Ames Research Center, FOIA Requester Service Center, Mail Stop 943–4, Moffett Field, CA 94035

NASA Dryden Flight Research Center, FOIA Requester Service Center, Post Office Box 273, Edwards, CA 93523

NASA Glenn Research Center, FOIA Requester Service Center, 21000 Brookpark Road, Cleveland, OH 44135

NASA Goddard Space Flight Center, FOIA Requester Service Center, Greenbelt, MD 20771

NASA Headquarters, FOIA Requester Service Center, Mail Stop 5–L19, 300 E Street SW., Washington, DC 20546

NASA Office of the Inspector General, FOIA Requester Service Center, Mail Stop, 300 E Street SW., Washington, DC 20546

NASA Management Office—Jet Propulsion Laboratory, FOIA Requester Service Center, 4800 Oak Grove Drive, Pasadena, CA 91109

NASA Johnson Space Center, FOIA Requester Service Center, Houston, TX 77058

NASA Kennedy Space Center, FOIA Requester Service Center, Kennedy Space Center, FL 32899

NASA Langley Research Center, FOIA Requester Service Center, Hampton, VA 23681

NASA Marshall Space Flight Center, FOIA Requester Service Center, Huntsville, AL 35812

NASA Stennis Space Center, FOIA Requester Service Center, Stennis Space Center, MS 39529

NASA Shared Services Center, FOIA Requester Service Center, Bldg 5100, Stennis Space Center, MS 39529

Charles F. Bolden, Jr.,

Administrator.

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BILLING CODE P

FEDERAL TRADE COMMISSION

16 CFR Part 423

Public Roundtable Analyzing Proposed Changes to the Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods as Amended

AGENCY: Federal Trade Commission.

ACTION: Notice announcing public roundtable and request for public comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is holding a public roundtable relating to its September 20, 2012 proposed changes to the Care Labeling Rule. The roundtable will explore issues relating to professional wetcleaning, care symbols, the Rule's reasonable basis requirements, and other issues raised in comments received in response to the Notice of Proposed Rulemaking (''NPRM''). The roundtable originally scheduled on October 1, 2013 was cancelled due to the government shutdown.

DATES: The public roundtable will be held on March 28, 2014, from 9:15 a.m. until 3:45 p.m., at the FTC's Satellite Building Conference Center, located at 601 New Jersey Avenue NW., Washington, DC. Requests to participate as a panelist must be received by February 28, 2014. Any written comments related to the agenda topics, the issues discussed by the panelists at the roundtable, or the issues raised in comments received in response to the NPRM must be received by April 11, 2014.

ADDRESSES: Interested parties may file a comment or a request to participate as a panelist electronically or on paper by following the instructions in the Filing Comments and Requests to Participate as a Panelist part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Care Labeling Rule, 16 CFR part 423, Comment, Project No. R511915'' on your comment and ''Care Labeling Rule, 16 CFR part 423, Request to Participate, Project No. R511915'' on your request to participate as a panelist. File your comment online at *https://ftcpublic.commentworks.com/ftc/carelabelingruleroundtable* by following the instructions on the web-based form. File your request to participate as a panelist by email to: *carelabelingroundtable@ftc.gov.* If you prefer to file your comment or request on paper, mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex M), 600

Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert M. Frisby, Attorney, 202–326–2098, or Amanda B. Kostner, Attorney, 202–326–2880, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Rule prohibits manufacturers and importers from selling textile wearing apparel and certain piece goods without attaching labels stating the care needed for their ordinary use.[1] Manufacturers and importers must possess, prior to sale, a reasonable basis for these care instructions [2] and can use approved care symbols to disclose those instructions.[3]

As part of its ongoing regulatory review program, the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') in July 2011 seeking comment on: The economic impact of, and the continuing need for, the Rule; the benefits of the Rule to consumers; and the burdens the Rule places on businesses.[4] The ANPR also sought comment on whether and how the Rule should address professional wetcleaning and updated industry standards regarding the use of care symbols. The Commission received 120 comments in response.[5]

After reviewing these comments, the Commission published a Notice of Proposed Rulemaking (''NPRM'') proposing four amendments.[6] The Commission proposed to: (1) Permit manufacturers and importers to provide a care instruction for professional wetcleaning on labels if the garment can be professionally wetcleaned; (2) Permit manufacturers and importers to use the symbol system set forth in either ASTM Standard D5489–07, ''Standard Guide for Care Symbols for Care Instructions on Textile Products,'' or ISO 3758:2005(E), ''Textiles—Care labelling code using symbols''; (3) Clarify what constitutes a reasonable basis for care instructions; and (4) Update the definition of ''dryclean'' to reflect current practices and technology. The Commission received 87 comments in response,[7] including one requesting an opportunity to present views orally at a workshop or hearing [8] and several urging the Commission to hold a hearing or workshop [9] or requesting more time to file comments on the proposed amendments.[10] Most of the comments favoring a workshop or hearing or more time to comment also urged the Commission to amend the Rule to require a wetcleaning instruction rather than merely permit one. Accordingly, the Commission will conduct a roundtable [11] to provide interested parties with an opportunity to present their views orally pursuant to the procedures set forth in the NPRM.[12]

The Commission originally scheduled this roundtable on October 1, 2013; [13] however, it was cancelled due to the government shutdown. Persons selected to participate as panelists in the cancelled roundtable should submit a new request if they wish to participate in the March 28 roundtable. Similarly, the Commission requests that persons who preregistered for the cancelled roundtable register or the March 28 roundtable if they plan to attend. You van find more information about the roundtable at *http://www.ftc.gov/news-events/event-calendar/2014/03/care-labeling-rule-ftc-roundtable.*

II. Issues for Discussion at the Roundtable

The roundtable will focus on the proposed amendment permitting a wetcleaning instruction and comments urging the Commission to require a wetcleaning instruction. The wetcleaning discussion also will address: (1) The cost of substantiating wetcleaning instructions; (2) The availability of wetcleaning services; (3) Consumer awareness of wetcleaning; and (4) The content of labels providing a wetcleaning instruction (*e.g.,* instructing ''professionally wetclean'' versus ''wetclean'').

The roundtable also will explore issues relating to the use of care symbols and the Commission's proposal to clarify the Rule's reasonable basis requirements. These discussions will address: (1) The differences between ASTM and ISO symbols and between the 2005 and 2012 ISO symbols; (2) Whether to require that labels identify ISO symbols if used to comply with the Rule; (3) The change in the meaning of the circle P symbol in the ASTM system; (4) The absence of ASTM and ISO symbols for solvents other than perchloroethylene (''perc'') and petroleum; (5) Consumer understanding of symbols; and (6) How to clarify the Rule's reasonable basis requirements.[14] In addition, the roundtable will provide participants with an opportunity to discuss other issues raised by comments. A more detailed agenda will be published at a later date, in advance of the scheduled roundtable. In the interim, the Commission is particularly interested in receiving relevant consumer perception evidence.

III. Public Participation Information

A. Registration Information

The roundtable is open to the public, and there is no fee for attendance. For admittance to the Conference Center, all attendees must show valid government-issued photo identification, such as a driver's license. Pre-registration is not necessary to attend, but is encouraged so that staff may better plan this event. To pre-register, please email your name and affiliation to *carelabelingroundtable@ftc.gov.* When you pre-register, the FTC collects your name, affiliation, and email address. We will use this information to estimate how many people will attend and better understand the likely audience for the roundtable, and will dispose of it following the roundtable. We may use your email address to contact you with information about the roundtable. The FTC Act and other laws the Commission administers permit the collection of this contact information to consider and use for the above purposes. Under the Freedom of Information Act or other laws, we may be required to disclose the information you provide to outside organizations. For additional information, including routine uses permitted by the Privacy Act, see the Commission's privacy policy at *http://www.ftc.gov/site-information/privacy-policy.*

[1] 16 CFR 423.5 and 423.6(a) and (b).

[2] 16 CFR 423.6(c).

[3] The Rule provides that the symbol system developed by ASTM International, formerly the American Society for Testing and Materials, and designated as ASTM Standard D5489–96c ''Guide to Care Symbols for Care Instructions on Consumer Textile Products'' may be used on care labels or care instructions in lieu of terms so long as the symbols fulfill the requirements of Part 423. 16 CFR 423.8(g).

[4] 76 FR 41148 (July 13, 2011).

[5] The comments are posted at *http://www.ftc.gov/policy/public-comments/initiative-384.*

[6] 77 FR 58338 (September 20, 2012).

[7] The comments are posted at *http://www.ftc.gov/policy/public-comments/initiative-451.* The Commission has assigned each comment a number appearing after the name of the commenter and the date of submission. This notice cites comments using the last name of the individual submitter or the name of the organization, followed by the number assigned by the Commission.

[8] Sinsheimer, UCLA Sustainable Technology & Policy Program (87).

[9] Huie (80); Miele (72 and 76); Professional Wet Cleaners Association (59); Sung (74); and Toxic Use Reduction Institute (54).

[10] European Union (67); Huie (80); and Professional Wet Cleaners Association (59).

[11] The NPRM noted the possibility of holding a workshop; however, the Commission has decided to describe this event as a roundtable to encourage discussion.

[12] 77 FR at 58338–339.

[13] 78 FR 45901 (July 30, 2013).

[14] *See, e.g.,* GreenEarth Cleaning (41).

B. Requests To Participate as a Panelist

The roundtable will consist of roundtable discussions by panelists selected by the FTC staff. Other attendees will have an opportunity to comment and ask questions. The Commission will place a transcript of the proceeding on the public record. Requests to participate as a panelist must be received on or before February 28, 2014, as explained in Section IV below. Persons selected as panelists will be notified on or before March 14, 2014.

C. Electronic and Paper Comments

The submission of comments is not required for participation in the roundtable. If a person wishes to submit paper or electronic comments about the topics to be discussed at the roundtable or issues raised in the comments filed in response to the NPRM, such comments should be filed as prescribed in Section IV, and must be received on or before April 11, 2014.

IV. Filing Comments and Requests To Participate as a Panelist

You can file a comment or request to participate in the roundtable as a panelist online or on paper. For the Commission to consider your comment, we must receive it on or before April 11, 2014. Write ''Care Labeling Rule, 16 CFR part 423, Comment, Project No. R511915'' on your comment and ''Care Labeling Rule, 16 CFR part 423, Request to Participate, Project No. R511915'' on your request to participate. 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, such as 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, such as 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 . . . 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).[15] 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/carelabelingruleroundtable,* by following the instruction 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.

Requests to participate as a panelist at the roundtable should be submitted electronically to *carelabelingroundtable@ftc.gov,* or, if mailed, should be submitted in the manner detailed below. Parties are asked to include in their requests a brief statement setting forth their expertise in or knowledge of the issues on which the roundtable will focus as well as their contact information, including a phone number, facsimile number, and email address (if available), to enable the FTC to notify them if they are selected.

If you file your comment or request on paper, write ''Care Labeling Rule, 16 CFR part 423, Comment, Project No. R511915'' on your comment and on the envelope and ''Care Labeling Rule, 16 CFR part 423, Request to Participate, Project No. R511915,'' on your request and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex M), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment or request 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 April 11, 2014. The Commission will consider all timely requests to participate as a panelist in the roundtable that it receives by February 28, 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/site-information/privacy-policy.* The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to the Care Labeling Rule or the roundtable agenda. The Commission requests that comments provide factual data, such as consumer perception evidence, upon which the commenters' proposals or views are based.

V. Communications to Commissioners and Commissioner Advisors by Outside Parties

Pursuant to Commission Rule 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the staff report comment period. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of ''Sunshine'' Meetings.[16]

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–03531 Filed 2–18–14; 8:45 am]

BILLING CODE 6750–01–P

[15] 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).

[16] *See* 15 U.S.C. 57a(i)(2)(A); 16 CFR 1.18(c).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 13–213; FCC 13–147]

Proposal To Enable Operation of a Terrestrial Broadband Network in Certain Mobile Satellite Service Spectrum

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposed to modify its rules for operation of the Ancillary Terrestrial Component (ATC) of the single Mobile-Satellite Service (MSS) system operating in the 2483.5–2495 MHz band. The proposed rule changes would allow the MSS operator to deploy a low-power terrestrial broadband network that would operate in both Globalstar's licensed spectrum at 2483.5–2495 GHz, and, with the same equipment, spectrum in the adjacent 2473–2483.5 MHz band used by unlicensed devices. This action could potentially increase the amount of spectrum available for broadband access in the United States. The Commission seeks comment on the potential impacts this proposal could have on unlicensed devices, which operate in the 2400–2483.5 MHz band, licensed Broadcast Auxiliary Service (BAS) stations, which operate in the 2483.5–2500 MHz band, and licensed Broadband Radio Service/Educational Broadband Service (BRS/EBS) stations, which operate in the 2496–2690 MHz band, along with the costs and benefits of the proposed approach.

DATES: Comments are due on or before May 5, 2014 and reply comments are due on or before June 4, 2014. Written comments on the proposed information collection requirements, subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, should be submitted on or before April 21, 2014.

ADDRESSES: You may submit comments, identified by IB Docket No. 13–213, by any of the following methods:

▪ *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/*. Follow the instructions for submitting comments.

▪ *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov*. or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lynne Montgomery at 202–418–2229, Satellite Division, International Bureau, Federal Communications Commission, Washington, DC 20554. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via email *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in IB Docket No. 13–213, adopted November 1, 2013 and released on November 1, 2013. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via email at *FCC@BCPIWEB.com*. It is also available via the Internet in the Commission's Electronic Document System (EDOCS) at *http://www.fcc.gov/documents* under IB Docket No. 13–213.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

Pursuant to 47 CFR 1.1200 *et seq.,* this matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due April 21, 2014. Comments should address: (a) 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; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (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; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0994.

Title: Flexibility for Delivery of Communications By Mobile Satellite Service Providers in the 2 GHz Band, the L Band, and the 1.6/2.4 GHz Band.

Form No.: Not applicable.

Type of Review: Revision of an Existing Collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 124 respondents; 124 responses.

Estimated Time per Response: 0.50–50 hours per response.

Frequency of Response: On occasion reporting requirement; one time and annual reporting requirements; third party disclosure and recordkeeping requirements.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for these proposed information collections is found at sections is contained in the 47 U.S.C. 154(i), 157, 302, 303(c), 303(e), 303(f), and 303(r).

Total Annual Burden: 517 hours.

Total Annual Costs: $511,440.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The purposes of the existing information collection is to obtain information necessary for licensing operators of Mobile-Satellite Service (MSS) networks to provide ancillary services in the U.S. via terrestrial base stations (Ancillary Terrestrial Components, or ATCs); obtain the legal and technical information required to facilitate the integration of ATCs into MSS networks in the L-Band and the 1.6/2.4 GHz Bands; and to ensure that ATC licensees meet the Commission's legal and technical requirements to develop and maintain their MSS networks and operate their ATC systems without causing harmful interference to other radio systems.

The purpose of the proposed revision would be to remove a portion of the information collection with respect to a low power broadband network, as proposed in document FCC 13–147. These proposed revisions would enable provision of low-power ATC using licensed spectrum at 2483.5–2495 MHz and spectrum in the adjacent 2473–2483.5 MHz band.

The proposed revision would provide an exception for low-power ATC from the requirements contained in § 25.149(b) of the Commission's rules. These rules require detailed showings concerning satellite system coverage and replacement satellites. The proposed rules would also provide an exception from a rule requiring integrated service, for example service to handsets capable of operation with both satellites and terrestrial base stations. In this sense, the provider of low-power ATC would be relieved from certain burdens that are currently in place in the existing information collection. We also propose revising this information collection to reflect the elimination of the elements of this information collection for 2 GHz MSS. *See* 78 FR 48621, August 9, 2013.

Synopsis

Introduction

1. In response to a petition for rulemaking filed by MSS operator Globalstar, the Commission proposes modified rules for operation in the 2483.5–2495 MHz band. Globalstar is the operator of the single MSS system operating in that band. The current rules specify the licensing and operating conditions for terrestrial base stations and mobile terminals licensed to the operator of an MSS system for provision of radio communication services offered together with MSS. The Commission proposes rules that would permit Globalstar to provide low-power ATC using its licensed spectrum at 2483.5–2495 MHz under certain limited technical criteria and, with the same equipment, to utilize spectrum in the adjacent 2473–2483.5 MHz band pursuant to the applicable technical rules for unlicensed operations in that band. The Commission seeks comment on this possible deployment of broadband access equipment, on whether it is thereby possible to enable more efficient use of spectrum in the 2483.5–2495 MHz band and the adjacent 2473–2483.5 MHz band and to increase the amount of spectrum available for broadband access in the United States. However, significant concerns have been raised about potential detrimental impacts on licensed services that operate in the 2483.5–2500 MHz and 2496–2690 MHz bands and unlicensed devices that operate in the 2400–2483.5 MHz band. The Commission seeks comment on the costs and benefits of the proposed approach, and on changes to its rules which may facilitate such deployment and minimize any negative impacts on licensed services that operate in the 2483.5–2500 MHz and 2496–2690 MHz bands and unlicensed devices that operate in the 2400–2483.5 MHz band.

2. Globalstar also requested that the Commission initiate a rulemaking to permit it to deploy a higher power terrestrial service using LTE technology in both the S band (2483.5–2495 MHz) and L band (1610–1617.775 MHz) over the longer term. The Commission will address Globalstar's L-band proposal separately from this proceeding, although it reserves the right, should it find it appropriate, to consolidate this proceeding with any proceeding addressing Globalstar's L-band proposal and a petition for rulemaking filed by Iridium Constellation LLC regarding L-band MSS frequencies (1610–1626.5 MHz).

Proposed Rules

A. Part 25 Rule Proposals

3. The Commission concludes that Globalstar's proposal to deploy a low-power terrestrial system in the 2473–2495 MHz band should be examined to determine whether it is possible to increase the use of this spectrum terrestrially in the near term for its subscribers, without causing harmful interference to other users of this band and adjacent bands, and without compromising Globalstar's ability to provide substantial MSS to the public under its existing MSS authorization. If supported by the record, adoption of Globalstar's proposals could potentially increase the usefulness for terrestrial mobile broadband purposes of 11.5 megahertz of licensed spectrum. As a result, these changes may induce increased investment and innovation throughout the industry and ultimately improve competition and consumer choice. Therefore, the Commission proposes to make the changes to part 25 of the rules necessary to provide for the operation of low-power ATC in the licensed MSS spectrum in the 2483.5–2495 MHz band. Specifically, the Commission seeks comment on its proposal to add technical and operational provisions to part 25 to align with uses that are compatible with part 15 uses. Part 15 of the Commission's rules governs the operation of low-power radiofrequency devices in the 2400–2483.5 MHz band without an individual license from the Commission. Significant concerns have been raised in response to Globalstar's petition about the potential for harmful interference to licensed BAS stations that operate in the 2483.5–2500 MHz band and BRS/EBS stations that operate in the 2496–2690 MHz band. In addition, concerns have been raised about the potential detrimental impact on unlicensed devices that operate in the 2400–2483.5 MHz band, such as Bluetooth and Wi-Fi devices, that are currently used extensively for various wireless broadband services and applications. The Commission specifically seeks further information and supporting detailed technical analyses regarding concerns with any potential detrimental impact on existing unlicensed devices that operate in the 2400–2483.5 MHz band. The Commission also seeks comment on the results of Globalstar's testing of its proposed low-power terrestrial broadband network.

4. The Commission also tentatively concludes that, due to the proposed managed deployment of this equipment in a unique radiofrequency environment involving both unlicensed and licensed operations, the proposed operations are ancillary to Globalstar's licensed MSS operations and are thus appropriately considered for licensing as ATC.

Globalstar has stated that, ''unlike public 802.11 applications, [its] access points will be carefully controlled by a Network Operating System (''NOS''), [which] will be analogous to that currently deployed by CMRS operators to manage pico- and femto-cellular infrastructure.'' According to Globalstar, the NOS will also create a rapid means of specifically identifying and controlling potential interference. In adopting ATC rules in the 2003 *ATC Report and Order (ATC R&O),* which included provisions for licensing ATC operators in the 2483.5–2495 MHz band, the Commission found that there were spectrum efficiency benefits to ''dynamic allocation'' of frequency use and that those benefits can only be realized by having one licensee control both the MSS and terrestrial rights in bands allocated for MSS. 18 FCC Rcd 1962, 2071–72 (2003), 68 FR 49372, August 18, 2003. Globalstar's proposed NOS-based approach appears to offer benefits consistent with those identified in the *ATC R&O,* particularly given the potential benefits to spectrum efficiency in both the licensed MSS band and the adjacent unlicensed band. Although Globalstar's proposed operations differ in some respects from the types of operations contemplated in the Commission's original *ATC R&O,* the Commission seeks comment on whether analogous technical, policy, and legal bases for restricting ATC licensing to the incumbent MSS licensee adopted in the *ATC R&O* also apply to Globalstar's proposed operations.

B. Overview of Proposed Low-Power Rules

5. The Commission proposes to modify its part 25 rules in order to allow Globalstar to implement its plan of deploying a low-power terrestrial broadband network in its licensed spectrum from 2483.5–2495 MHz and in the adjacent band at 2473–2483.5 MHz used for unlicensed devices. Specifically, it proposes that the part 25 rules will apply to the 2483.5–2495 MHz portion licensed to Globalstar and that a blanket license will cover operations using these frequencies. The Commission does not intend to grant Globalstar any additional or different interference protection rights than those that currently apply to existing unlicensed operations in the 2473–2483.5 MHz band under part 15 or to ATC operations under the part 25 rules, with the exception of the revisions to the ATC rules discussed below. Under this approach, Globalstar would be required to file an application to modify its part 25 license or licenses pursuant to the existing ATC application procedures, and any deployed equipment in the 2473–2495 MHz band would need an equipment certification. The Commission seeks comment on this general approach.

6. Under this approach, Globalstar's managed operations in the 2473–2483.5 MHz band would not be entitled to interference protection from licensed services, other part 15 devices, or part 18 industrial, scientific, and medical (ISM) devices. Part 15 unlicensed devices are not entitled to interference protection from licensed services or other unlicensed devices. Part 18 of the Commission's rules authorizes unlicensed ISM devices to operate in the 2400–2500 MHz band. ISM equipment generally must avoid causing interference to any authorized radio service, unless the interference occurs in an ISM band. Similarly, Globalstar's low-power ATC operations in the 2483.5–2495 MHz band would not be entitled to interference protection from a number of other authorized operations. Globalstar's operations would also need to protect other licensed services from harmful interference to the extent required under current Commission rules. This approach addresses one of the concerns raised by parties that commented on Globalstar's petition for rulemaking. These parties generally were concerned that Globalstar could obtain superior interference protection status over other authorized users.

7. Unlicensed uses of the 2400–2483.5 MHz band include Wi-Fi and Bluetooth hands-free communication devices, as well as Bluetooth Low Energy technology applications such as medical temperature measurement devices and blood glucose, blood pressure, and heart rate monitors. In commenting on Globalstar's petition for rulemaking, the Wi-Fi Alliance noted that in the United States, Wi-Fi devices effectively use three non-overlapping IEEE 802.11 standard channels in the 2400–2473 MHz band, Channels 1 (2401–2423 MHz), 6 (2426–2448 MHz), and 11 (2451–2473 MHz). The Bluetooth Special Interest Group (SIG) noted that the 2473–2483.5 MHz portion of the part 15 unlicensed band is unused by the majority of Wi-Fi devices in the U.S. because of limitations on unwanted emissions in the 2483.5–2500 MHz band, and is thus somewhat of a ''safe haven'' for Bluetooth frequency hopping devices. It also noted that since U.S. Wi-Fi devices generally do not operate in the 2473–2483.5 MHz band, this band is relatively ''quiet'' from a radiofrequency perspective, and thus is particularly useful for its relatively low-power systems and is ''extremely important'' to Bluetooth technology and its operations.

8. Several parties have raised concerns about the effect of Globalstar's proposed low-power terrestrial network on unlicensed operations in and below the 2473–2483.5 MHz band. Bluetooth SIG noted that recent innovations in Bluetooth technology used in connection with health and wellness products may be impacted, and that Globalstar's operations may affect a channel used to facilitate ''discovery'' and interconnection of Bluetooth devices with each other. The Wi-Fi Alliance also expressed concerns that Bluetooth devices would face constraints in spectrum above 2473 MHz, which would generally contribute to congestion in the 2400–2483.5 MHz band with other unlicensed devices. In response, Globalstar argued that since Bluetooth devices are frequency-hopping systems that operate on constantly varying 1 megahertz channels throughout the 2400–2483.5 MHz band, and the 2473–2483.5 MHz band segment represents just one small portion of the unlicensed spectrum that is utilized by Bluetooth technology, its proposed low-power network is no more likely to cause harmful interference to a Bluetooth device than already-existing IEEE 802.11-based Wi-Fi operations elsewhere in the 2400–2483.5 MHz band. Globalstar contended that Bluetooth devices and other unlicensed equipment will be able to coexist with its low-power network and continue to operate in the 2473–2483.5 MHz band, without any loss of spectrum for Bluetooth and other existing and future unlicensed technologies.

9. The Commission seeks comment on any costs, in terms of impacts on unlicensed operations both in the 2473–2483.5 MHz band and below 2473 MHz (*i.e.,* in the 2400–2473 MHz band) that might flow from Globalstar's proposed low-power terrestrial network. To the extent that any party asserts that Globalstar's low-power network may cause interference or substantially constrain other operations, the Commission encourages the party to submit technical analyses detailing their concerns, as well as a detailed assessment of any associated costs.

C. Revisions to § 25.149 of the Commission's Rules

1. Mode of Operations

10. Globalstar's proposed low-power ATC operations would require a rule modification to allow operations by end-user equipment in the 2483.5–2495 MHz band, as such operations are not in the ''forward-band'' mode of operations

required by § 25.149(a)(1) of the rules. Because Globalstar's proposed deployment involves end-user equipment, *i.e.,* ''the mobile terminals'' transmitting in the MSS band allocated for downlink (*i.e.,* (satellite to end-user equipment) transmissions, the end-user equipment would operate in ''non-forward-band'' mode. Therefore, the Commission proposes to modify this rule to permit low-power ATC operations in the non-forward-band mode, and seeks comment on this proposal.

2. ATC Gating Requirements

11. The Commission's current ATC rules include several prerequisites, or ''gating criteria'' that MSS operators must meet in order to be allowed to offer ATC. These gating criteria are set forth in § 25.149 of the Commission's rules. To ensure that the ATC is ancillary to the provision of MSS, there is a requirement that MSS operators must provide substantial satellite service to be eligible for ATC authorization. The Commission has defined substantial satellite service as the capability of providing continuous satellite service over the entire geographic area of satellite coverage required in its rules, (47 CFR 25.149(b)(1)), maintenance of spare satellites to expeditiously replace destroyed or degraded satellites, (47 CFR 25.149(b)(2)), and commercial availability of MSS throughout the mandatory coverage area. (47 CFR 25.149(b)(3)). The rules also require that MSS and ATC services be offered on an integrated basis. (47 CFR 25.149(b)(4)).

12. Relieving Globalstar from certain ATC gating criteria for its low-power network may facilitate spectrum use in both the 2483.5–2495 MHz band as well as the adjacent 2473–2483.5 MHz band, and thus could serve the public interest. Therefore, the Commission proposes to create a limited exception from some provisions of the ATC gating criteria in order to streamline the authorization process and to facilitate deployment of Globalstar's proposed low-power broadband network. Specifically, the Commission proposes to modify the gating criteria that require a demonstration that the MSS licensee is offering commercial MSS. Under this proposal, the Commission would provide an exception for low-power ATC from the rules requiring detailed showings concerning satellite system coverage and replacement satellites. In its rulemaking request, Globalstar indicated it is continuing to develop and pursue MSS operations in the portion of the Big LEO spectrum designated for its use, and has recently announced that it has substantially replenished its satellite constellation by completing a launch campaign, at a cost of more than $1 billion, for 24 new satellites that are now in full commercial service. This substantial capital investment has facilitated re-initiation of voice and other two-way services via MSS satellites. Globalstar continues to be invested in the provision of MSS. Thus, a simplified evidentiary showing may be sufficient to address a fundamental goal of the ATC rules—that the deployment of terrestrial facilities is in fact ancillary to satellite operations. The Commission seeks comment on this approach.

13. The Commission also proposes an exception from the integrated services rule for the proposed low-power deployment. The integrated services rule requires the offering of integrated MSS and ATC, for example, through use of dual-mode handsets that can communicate with both the MSS network and the ATC. It does not appear feasible for Globalstar to meet this requirement with respect to the entire 2473–2495 MHz band because there is no MSS allocation in the 2473–2483.5 MHz band. The ATC rules and the integrated service rule, in particular, focus on ensuring that ATC remains ancillary to satellite services and does not become a stand-alone terrestrial service. Given the potential enhanced use of the 2473–2495 MHz band, the Commission invites comment on whether relaxation of this requirement would serve the public interest while maintaining the terrestrial service as ancillary to MSS. Under this approach, Globalstar's management and oversight of deployment of low-power terrestrial facilities, while continuing to offer and support its MSS offering, would be the critical factors in determining whether the ATC continues to be ancillary. The Commission seeks comment on this approach.

3. Technical Rules

14. *Limits for equipment operating in the 2483.5–2495 MHz band.* The Commission proposes that the total transmit power for low-power ATC equipment operating in the 2483.5–2495 MHz band under new proposed § 25.149(c)(4) of the Commission's rules not exceed 1 Watt with a peak equivalent isotropically radiated power (EIRP) of no more than 6 dBW (4 Watts), a minimum 6 dB bandwidth of 500 kilohertz, and a maximum conducted power spectral density (PSD) limit of 8 dBm/3 kHz. This limit is identical to the limit in § 15.247 of the Commission's rules, which specifies limits for unlicensed operation of digitally modulated communications equipment in the 2400–2483.5 MHz band. The Commission believes it is appropriate to apply the same limits with respect to the 2483.5–2495 MHz band, given the nature of these proposed operations, including the use of digital modulation, and the widespread use of these limits in designing part 15 devices. The Commission seeks comment on this proposal.

15. *Unwanted emissions below 2473 MHz.* In its comments on Globalstar's petition for rulemaking, the Consumer Electronics Association (CEA) asserted that Globalstar's proposed operations on IEEE 802.11 Channel 14 (2473–2495 MHz), immediately adjacent to IEEE 802.11 Channel 11 (2451–2473 MHz), could, without any guard band, result in the loss of use of Channel 11 by Wi-Fi users and contribute to congestion in the remaining Wi-Fi channels below 2473 MHz. The Wireless Internet Service Providers Association (WISPA) also raised this concern. In response, Globalstar asserted that although the two channels are immediately adjacent to one another, a functional IEEE 802.11-based communications link occupies only approximately 18 megahertz of the 22 megahertz of available bandwidth in each of these channels. Globalstar argued that the resulting *de facto* guard band will minimize harmful interference between Wi-Fi systems and its low-power network. Globalstar further argued that its access points and higher powered terminal devices will be equipped with high selectivity passband filters, which will further segregate Channel 14 operations from those on Channel 11. The Commission seeks comment on these concerns and claims.

16. The Commission also seeks comment on the appropriate limit for unwanted emissions below 2473 MHz resulting from Globalstar's proposed low-power operations at 2473–2495 MHz. One possible limit is specified in § 15.247(d) of the Commission's rules. That rule, applicable to spread spectrum or digital modulation systems operating in the 2400–2483.5 MHz band, specifies that in any 100 kilohertz bandwidth outside the frequency band in which a device is operating, the unwanted emissions shall be at least 20 dB below the fundamental power in the 100 kilohertz bandwidth within the band that contains the highest level of desired power. Unlicensed use of IEEE 802.11 Channel 11 (2451–2473 MHz) is directly adjacent to Channel 14 (2473–2495 MHz) with no guard band between these two channels, and as pointed out by Globalstar, the overwhelming majority of IEEE 802.11 access points operate on

non-overlapping Channels 1, 6, and 11. In light of this, the Commission seeks comment on whether the current unwanted emissions limit provided in § 15.247(d) is compatible with systems operating below 2473 MHz. The Commission also seeks comment on an appropriate limit if this limit is not appropriate. Parties proposing such an emission limit should provide technical analyses and/or studies adequate to demonstrate that their proposed limit is appropriate.

17. *Applicability of the unwanted emission limit of § 25.254 at the lower edge of the 2483.5–2495 MHz band.* Section 25.254 of the Commission's rules specifies an out-of-channel emission limit for ATC base stations operating in the 2483.5–2495 MHz band. This limit was created assuming high-powered operations in the 2483.5–2495 MHz band. The Commission proposes to authorize low-power operations across the lower band edge at 2483.5 MHz. Therefore, the Commission seeks comment on whether it should interpret § 25.254 of the rules as not applying, at the lower edge of the 2483.5–2495 MHz band to the low-power network under consideration in this proceeding. Alternatively, the Commission seeks comment on whether it should provide an explicit exception to § 25.254 of the rules with respect to the lower edge of the 2483.5–2495 GHz band for operations involving a signal emitted from such equipment.

18. *Unwanted emissions limits with respect to licensed services operating above 2495 MHz.* Section 25.254(d) of the Commission's rules sets out the unwanted emission limits for ATC base stations in the 2483.5–2495 MHz band in order to avoid interference to Broadcast Radio Service (BRS)/Educational Broadband Service (EBS) adjacent channel licensees operating above 2495 MHz. This rule requires that ATC base stations attenuate unwanted emissions above 2495 MHz by a factor of no less than 43 + 10 log (P) dB, where P is the total transmitter power in Watts. 47 CFR 25.254(d)(1). This rule was developed based on high power base station operations. For its low-power ATC equipment, Globalstar proposes to attenuate the unwanted emission above 2495 MHz by a factor no less than 40 + 10 log (P) dB at the channel edge at 2495 MHz, 43 + 10 log (P) dB at 5 megahertz from the channel edges, and 55 + 10 log (P) dB at X megahertz from the channel edges where X is the greater of 6 megahertz or the actual emission bandwidth. This is a relaxation of the current ATC base station unwanted emissions attenuation rule by 3 dB within the first 5 megahertz above 2495 MHz (*i.e.,* 2495–2500 MHz). In its comments on Globalstar's petition for rulemaking, Clearwire Corporation (Clearwire) argued that Globalstar's proposed power levels, out-of-band emissions, and potential outdoor installations create a high probability for interference to Clearwire's operations above 2496 MHz. The Commission observes, however, that the unwanted emissions limits proposed by Globalstar are similar to those proposed in another proceeding by the Wireless Communications Association International, Inc. (WCAI) and supported by Clearwire for unwanted emissions for its wide bandwidth, low-power mobile devices operating above 2511 MHz. Those wide-bandwidth, low-power mobile devices' operations are similar to the low-power operations proposed by Globalstar. Under § 27.50(h)(2) of the rules, BRS and EBS mobile stations are required to limit their EIRP to 2 Watts. Globalstar proposed to limit the EIRP to 4 Watts for both access points and end-user terminals.

19. Clearwire also argued that Globalstar's proposal lacks mutuality of obligation that fosters an environment of cooperation at the licensees' respective band edges. Under the current rules, BRS/EBS mobile digital stations that operate in the 2496–2690 MHz band are required to limit their unwanted emissions below 2496 MHz by a factor no less than 43 + 10 log (P) dB. 47 CFR 27.53(m)(4). This limit is 3 dB stricter than the limit proposed by Globalstar for its low-power network in the 2496–2500 MHz band. The Commission notes, however, that this stricter limit imposed on BRS/EBS unwanted emissions below 2496 MHz is intended to avoid interference to MSS operations below 2495 MHz, which will continue regardless of whether the rules proposed in this proceeding are adopted. The signal power received from the satellite by an MSS terminal is significantly lower than that received by a BRS terminal. As a result, the potential interference impact of BRS transmissions to an MSS terminal is much higher than that of a low-power ATC transmission into a BRS terminal.

20. The Commission seeks comment on Globalstar's proposed unwanted emissions limits above 2495 MHz and whether these limits would be adequate to avoid interference to licensed services operating above 2495 MHz. If these limits are not adequate, what are appropriate limit(s) to avoid interference to licensed services operating above 2495 MHz? In addition, § 25.254(d)(6) of the Commission's rules specifies a measurement bandwidth of 1 percent of the 26 dB emission bandwidth for determining ATC base stations' compliance with the § 25.254(d) unwanted emissions limits in the 1 megahertz immediately above and adjacent to 2495 MHz while § 15.247(d) of the Commission's rules specifies a measurement bandwidth of 100 kilohertz for determining § 15.247 devices' compliance with the § 15.247(d) unwanted emissions limit outside the band of operation. 47 CFR 15.247(d), 25.254(d)(6). Although the emissions from Globalstar's proposed operations would include a portion that is subject to the measurement bandwidth requirement in § 15.247(d), the Commission proposes to not apply this measurement bandwidth requirement to unwanted emissions from Globalstar's operations above 2495 MHz and seeks comment on whether to apply a 1 megahertz resolution bandwidth as required in § 25.254(d).

D. Broadcast Auxiliary Service Channels A8–A10

21. Comments in response to Globalstar's rulemaking petition filed by Engineers for the Integrity of Broadcast Auxiliary Services Spectrum (EIBASS) raised a number of long-standing concerns related to BAS operations in the 2450–2500 MHz band. By way of background, there are three BAS channels that are authorized for operation in the 2450–2500 MHz band—A8 (2450–2467 MHz), A9 (2467–2483.5 MHz), and A10 (2483.5–2500 MHz). As of July 25, 1985, the Commission ceased accepting applications for new or modified BAS, part 90, and part 101 microwave stations for the 2483.5–2500 MHz band. Existing licensees in the band have been permitted to continue operating on a 'grandfathered' basis. Our records indicate that there are approximately 599 active BAS licensees operating on Channels A8 and A9, categorized as follows: 58 TV Relay (54 Intercity Relay (ICR) and 4 TV Translator Relay (TTR)), 492 TV Pickup (TV PU), 17 TV Studio Transmitter Link (TV STL), and 32 Local Television Transmission Service (LTTS). Our records also indicate there are approximately 186 active grandfathered BAS licensees operating on Channel A10, as follows: 5 TV Relay (4 ICR and 1 TTR) and 181 TV PU.

22. The 2483.5–2500 MHz band has a long history of joint uses and, on many occasions, the Commission has determined that additional services could operate in this band, concluding that coordination could be used to prevent the newly integrated services from causing harmful interference to existing services in the band. In the

1994 *Big LEO Service Rules Order,* which established the licensing and service rules for MSS operations, the Commission affirmed that MSS licensees could coordinate their operations to avoid causing harmful interference to existing operations in the 2483.5–2500 MHz bands and declined to relocate grandfathered operations in this band. In 2003, to enhance MSS licensees' ability to offer mobile services, the Commission adopted the *ATC R&O,* which, *inter alia,* allowed CDMA MSS licensees in the 2483.5–2500 MHz band to add ATC operations. In that decision, the Commission determined that MSS licensees operating ATC facilities could coordinate their operations prior to construction and operation to avoid causing harmful interference to existing BAS, part 90, and part 101 microwave operations in the 2483.5–2500 MHz band. Consequently, these MSS licensees were not required to relocate incumbent BAS operations in the 2483.5–2500 MHz band. Instead, they were required to coordinate their proposed operations to avoid causing harmful interference to those grandfathered operations in the 2483.5–2500 MHz band, and BAS Channels A8 and A9 stations and parts 90 and 101 mobile and fixed stations in the 2450–2483.5 MHz band.

23. Although the Commission has previously concluded that the other services authorized to use the 2483.5–2500 MHz band could coordinate their operations to avoid causing harmful interference to BAS operations in this band, EIBASS has voiced concerns about the potential for harmful interference to BAS Channel A10 operations from Globalstar's terrestrial low-power network operating in the 2483.5–2495 MHz band, and has reiterated an interest in ''refarming'' Channels A8–A10 to resolve long-standing issues with Globalstar and other users in the 2483.5–2500 MHz band, such as BRS/EBS.

24. The Commission seeks comment on Globalstar's ability to effectively coordinate the deployment of its terrestrial low-power network with primary BAS Channel A10 operations in the 2483.5–2500 MHz band. Are there criteria that can be used in deploying low-power network access points that will be effective in avoiding interference to primary BAS operations, and, if so, what are they? Alternatively, is access-point-by-access-point coordination feasible? The Commission seeks input on what specific procedures, rule changes, or policies may be necessary to either continue to protect grandfathered BAS Channel A10 stations from harmful interference or to relocate such stations.

E. Part 15 Rules

25. Section 15.205 of the Commission's rules specifies certain bands in which unlicensed devices are restricted from operation, including the 2483.5–2500 MHz band. The restriction protects MSS operations in that band, and prohibits any emissions in the band by unlicensed operations, other than spurious emissions.

26. Given the unusual circumstances involved here, with Globalstar proposing to transmit a signal that is in part operating under rules for unlicensed operations and in part under rules for licensed operations, the Commission seeks comment on whether it should interpret § 15.205 of the rules to apply to Globalstar's proposed deployment in the 2483.5–2495 MHz band. The rule was not developed with this type of operation in mind and Globalstar's managed deployment of equipment may provide an alternative means of ensuring self-interference protection of MSS operations. We seek comment on, alternatively, providing an explicit exception in § 15.205(d) of the rules for unlicensed operations involving a signal emitted from low-power ATC equipment.

27. The Wi-Fi Alliance requested in comments concerning Globalstar's rulemaking petition that the Commission consider revising the band-edge restriction and unwanted emissions limits specified in §§ 15.205 and 15.209, respectively, to enable the use of Channels 12 and 13 by Wi-Fi and other unlicensed devices, provided that use does not interfere with Globalstar's licensed low-power ATC operations in the upper portion of Channel 14, *i.e.,* in the 2483.5–2495 MHz band. Globalstar indicated that it does not object to seeking further comment on this issue, but noted that the existing unwanted emissions limits are necessary in order to protect its MSS in the 2483.5–2495 MHz band, and that it is fully committed to maintaining that service. Accordingly, the Commission seeks comment on this issue. Would relaxation of the limits in order to enable use of Channels 12 and 13 degrade MSS capabilities, particularly if those capabilities are not deployed on the same managed basis as Globalstar contemplates for its operations in Channel 14?

F. Equipment Certification

28. A party seeking to market RF devices to the public must first comply with the Commission's equipment authorization procedures, which, *inter alia,* require a demonstration that the device complies with the Commission's rules. 47 CFR 2.803, 2.901. The Commission proposes to require equipment manufacturers to certify all terrestrial low-power equipment under modified provisions specified in § 25.149 of the rules. The proposed rules would not distinguish between low-power network access points and end user terminals or client devices, and would require certification for all low-power network equipment. Since the equipment will be operating simultaneously under the provisions of § 15.247 and modified provisions specified in § 25.149, we also tentatively conclude that the equipment must be certified under both of the rule parts. In such cases the device could be treated like a composite device subject to multiple rule parts. Composite devices are required to ensure compliance with the relevant rule parts. The Commission seeks comment on this approach and how compliance should be demonstrated for such devices. The Commission also concludes that the current certification procedures in subpart J of part 2 of the rules permit such approval and seeks comment on this conclusion.

29. A grant of equipment certification specifies the frequency range over which the equipment is approved to operate. A grantee of equipment certification may obtain authorization to add additional frequency bands to a previously approved device by filing a new application for certification and labeling the equipment with a new FCC ID. In some cases, the Commission permits grantees to add new frequency bands to a previously certified device by filing a request for a ''permissive change.'' If the changes are made through software, the Commission has permitted the grantees to add certain additional frequency bands; however, the Commission does not permit a grantee of certification to add or change the rule part under which a device is certified (*e.g.,* from part 15 to part 25) by filing a request for a permissive change, unless the equipment was originally certified as a software defined radio (SDR). For such a change, the Commission would require the grantee to file a new application for certification and label the equipment with a new FCC ID.

30. Globalstar maintains that Wi-Fi enabled devices can be upgraded through software based modification. The Commission seeks comment on requiring applicants for certification of certain equipment that operates in the 2483.5–2495 MHz band to provide evidence of Globalstar's consent to the

applicant's request for equipment certification. Specifically, the Commission proposes limiting this requirement to equipment that operates in the 2483.5–2495 MHz band that is used as a network access point and that will operate as a master device as defined in § 15.202 of the Commission's rules, since the master device in a system controls the frequencies on which other devices in the system (client or end user terminal devices) can operate. The Commission seeks comment on whether a requirement to obtain Globalstar's consent is unnecessary for the certification of devices that operate exclusively as a client to a master device. Globalstar expects that network access points operating in the 2483.5–2495 MHz band would be new devices. The Commission seeks comment on whether requiring this additional step would place a significant burden on device manufacturers.

31. In the case of client or end user terminal devices that would operate with the master or network access points, Globalstar stated that to expand the operating frequency range of existing devices to include the 2483.5–2495 MHz band, the original grantees of certification for those devices will have to submit permissive change filings describing the proposed modifications. It also stated that it has the ability to control the availability of software updates for end-user devices and will provide the update only to devices certified by the Commission and to end-users authenticated to receive service over Globalstar's facilities. Globalstar further stated that most 802.11-enabled end-user devices have the hardware needed to operate at 2473–2495 MHz, but lack the capability to operate above 2483.5 MHz in the United States because of restrictions in their radio frequency (RF) software.

32. The Commission seeks comment on the capability of existing part 15 devices to be modified through software directly provided by Globalstar to use the 2473–2495 MHz frequency band with the transmission format that Globalstar proposed. In particular, the Commission seeks comment on whether the currently deployed devices have the hardware capability to operate in the additional frequency band with the Globalstar proposed protocol. The Commission also seeks comment on whether existing devices could be modified though over-the-air software changes, or whether changes to the devices' firmware would be necessary. In addition, the Commission seeks comment on the means that Globalstar plans to use to control the availability of software updates and prevent unauthorized modifications to certified equipment. The Commission further seeks comment on how Globalstar will limit operation of equipment to parties that are authorized to use its spectrum, and on how the Commission would ensure that the modified devices would be compliant with the proposed rules.

33. The Commission does not currently permit grantees or third-parties to modify non-SDR devices to operate under additional rule parts through a permissive change, but instead requires a new grant of certification and a new FCC ID. If the client devices can be modified by over-the-air software upgrades by Globalstar, how should such change be classified under our current rules and which party should be held responsible for compliance of the devices? Globalstar stated that grantees of such devices should file for a permissive change prior to Globalstar software upgrade. Also, if the client devices need firmware modifications which will require a filing of new equipment authorization with the Commission, this may require a large number of filings for permissive changes, if appropriate, or applications for new filings. This may inhibit manufacturers from taking advantage of the proposed rule changes. Thus, the Commission invites comments on the costs and benefits of different approaches to reduce the compliance burden on various parties while providing the assurance that modified devices are compliant with the revised rules. The Commission announced at its June 13, 2012 meeting that it is planning to initiate a proceeding to consider possible changes to the equipment certification procedures, including the permissive change rules. In the interim, the Commission seeks comment on whether, in the interim, more limited changes concerning only the Globalstar proposal would serve the public interest. Should the Commission permit Globalstar, or parties working with Globalstar, to add new frequency bands to previously approved equipment without the need to label equipment with a new FCC ID?

G. Free Access Points and Public Safety Considerations

34. In its Petition, Globalstar committed to ''deploying up to twenty thousand [low-power ATC] access points free of charge in the nation's public and non-profit schools, community colleges and hospitals.'' Subsequently, Globalstar noted in an *ex parte* filing that it fully supports the ConnectED initiative and that ''Globalstar's [low-power ATC] can play an important part in meeting the ambitious objectives of ConnectED.'' Further, Globalstar also committed to providing its ''mobile satellite service free of charge to Globalstar subscribers within any federally declared ''disaster area'' following a natural or man-made disaster.'' The Commission seeks comment on whether one or both of Globalstar's commitments should be incorporated as requirements in the Commission's rules. Alternatively, the Commission invites comment on directing the International Bureau to include one or both of Globalstar's commitments as license conditions, in the event that the Commission adopts rules as contemplated in this proceeding.

Procedural Matters

A. Regulatory Flexibility Act

35. As required by the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) regarding the possible significant economic impact on a substantial number of small entities of the proposals addressed in the Commission's proposed rules. The IRFA is set forth below. Written public comments are requested on the IRFA.

B. Initial Paperwork Reduction

36. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

C. Ex Parte Rules

37. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte*

presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Filing Requirements

38. *Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

39. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

40. *People With Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Initial Regulatory Flexibility Analysis

41. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in IB Docket No. 13–213. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA.

A. Need for, and Objectives of, the Proposed Rules

42. The *Commission* proposes modified rules for the operation of the Ancillary Terrestrial Component (ATC) of the single Mobile-Satellite Service (MSS) system operating in the 2483.5–2500 MHz frequency band. The proposed changes would allow Globalstar, Inc. (Globalstar) to deploy a low-power broadband network in the Big LEO S band. Under the proposals, Globalstar would be able to provide low-power ATC using its licensed spectrum under certain limited technical criteria, and could utilize spectrum in the adjacent 2473–2483.5 MHz band pursuant to the technical rules for unlicensed operations that apply in that band. The *Commission* proposes to make changes to relieve Globalstar from certain requirements in part 25 of the rules to provide for the operation of low-power ATC in the licensed MSS spectrum in the 2483.5–2495 MHz band. The Commission also proposes technical rules to prevent unwanted emissions to other services operating in or above or below the 2473–2495 MHz band and seeks comment on preventing interference.

43. The *Commission* seeks comment on the treatment of the proposed operations under a part 15 rule which specifies certain bands in which unlicensed devices are restricted from operation, and on the application of certain Part 15 equipment certification rules with respect to the proposed Globalstar network. The Commission also seeks comment on procedures for equipment certification and on the procedures that should be followed for modifying the devices that will provide the proposed network.

B. Legal Basis

44. The proposed action is authorized pursuant to sections 1, 2, 4(i), 301, 302, 303, and 324 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 301, 302, 303, and 324.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

45. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Below, we further describe and estimate the number of small entity licensees that may be affected by the adopted rules.

Satellite Telecommunications and All Other Telecommunications

46. The rules proposed would affect some providers of satellite telecommunications services, if adopted. Satellite telecommunications service providers include satellite and

earth station operators. Since 2007, the SBA has recognized two census categories for satellite telecommunications firms: ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $30 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $30 million or less in average annual receipts.

47. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.

48. The second category of Other Telecommunications is comprised of entities ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Some of these ''Other Telecommunications firms,'' which are small entities, are earth station applicants/licensees that might be affected if the proposed rule changes are adopted.

49. The proposed rule changes only impact one Satellite Telecommunications Service Provider, Globalstar, Inc. Globalstar reported $76.3 million in revenue in 2012. Regarding the use of the frequency bands that are the subject of this rulemaking, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Satellite Telecommunications. Because the proposed rule amendments affect only Globalstar, which cannot be described as a small entity, and no other satellite telecommunications service providers, the Commission believes that no substantial number of small entities is potentially affected by our actions.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing

50. The proposed rules will pertain to manufacturers of unlicensed communications devices. The appropriate small business size standard is that which the SBA has established for radio and television broadcasting and wireless communications equipment manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had fewer than 500 employees and 155 had more than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

51. The Commission anticipates that the proposed rules will affect equipment manufacturers of unlicensed communications devices, because the proposed rules would apply existing part 15 equipment certification rules to the proposed equipment that would provide low-power ATC service. The *Commission* proposes to apply the rules in part 15 to both existing equipment as well as new equipment that will be manufactured.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

52. The Commission seeks comment on whether it would be necessary to adopt rule changes that could affect the reporting, recordkeeping, and other compliance requirements for small business equipment manufacturers who would provide the equipment for the contemplated new service.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

53. The RFA requires that, to the extent consistent with the objectives of applicable statutes, the analysis shall discuss significant alternatives such as: (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 rule, or any part thereof, for small entities.

54. The Commission seeks comment from all interested parties. The Commission recognizes that proposals to require equipment manufacturers to comply with both existing and proposed equipment certification rules may impact small entities. To the extent possible, the Commission seeks to minimize the impact the proposed rule changes would have on small entities and seeks comment on those proposed changes. For devices which will operate on the low-power broadband network proposed, the Commission proposes that the equipment certification rules contained in part 15 of the Commission's rules apply to operations in the 2473–2483.5 MHz band. For operations in the 2483.5–2495 MHz band, the Commission proposed modifications to rules in § 25.149 of the Commission's rules. Since the operations will cover this band and the 2483.5–2495 MHz band, the devices may be treated as composite devices which would be required to comply with the relevant portions of both rule parts.

55. The Commission also suggests limiting a proposed rule, which would require parties seeking certification of equipment to provide evidence of Globalstar's consent to their request for equipment certification, to equipment that is used as a network access point and will operate as a master device. The Commission proposes not imposing this requirement on devices that will serve only as a client to a master device. The Commission seeks comment on whether already manufactured devices can be modified by over-the-air software upgrades or through firmware upgrades and how those modifications should be classified under the rules, as a

permissive change or as an application for a new filing. Finally, the Commission seeks comment from parties to ascertain the benefits and costs of different certification approaches to reduce the compliance burden on affected parties.

56. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals. The Commission expects to consider the economic impact on small entities, as identified in comments filed, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

57. None.

Conclusion

58. This action could potentially help to meet growing consumer demand for wireless broadband. At the same time, concerns have been raised about certain detrimental impacts on unlicensed devices. The Commission seeks comment on the costs and benefits of the approach proposed and on the changes to our rules, which may facilitate such deployment and minimize any negative impacts to authorized services and unlicensed devices that operate in and/or adjacent to the same bands that Globalstar proposed to use for its low-power terrestrial network.

Ordering Clauses

59. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 4(j), 7(a), 302(a), 303(c), 303(e), 303(f), 303(g), 303(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302(a), 303(c), 303(e), 303(f), 303(g), 303(j), and 303(r), this *Notice of Proposed Rulemaking* in IB Docket No. 13–147 *is adopted.*

60. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *NPRM,* including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

61. *It is further ordered* pursuant to sections 4(i) and (j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j), 303(r), and § 1.407 of the Commission's Rules, 47 CFR 1.407, that the Petition for Rulemaking filed by Globalstar, Inc. on November 13, 2012, *is granted* to the extent provided in this *NPRM.*

List of Subjects in 47 CFR Part 25

Satellites, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

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

Authority: 47 U.S.C. 701–744. Interprets or applies sections 4, 301, 302, 303, 307, 309, 310, and 332, of the Communications Act, as amended, 47 U.S.C. sections 154, 301, 302, 303, 307, 309, 310, and 332 unless otherwise noted.

■ 2. Section 25.149 is amended by
■ a. Revising paragraph (a)(1), the note to paragraph (a)(1), and paragraph (c)(3);
■ b. Adding paragraph (c)(4);
■ c. Revising paragraph (e);
■ d. Redesignating paragraph (g) as (h); and
■ e. Adding new paragraph (g) to read as follows:

§ 25.149 Application requirements for ancillary terrestrial components in the Mobile-Satellite Service networks operating in the 1.5./1.6 GHz, and 1.6/2.4 GHz Mobile-Satellite Service.

(a) * * *

(1) ATC shall be deployed in the forward-band mode of operation whereby the ATC mobile terminals transmit in the MSS uplink bands and the ATC base stations transmit in the MSS downlink bands in portions of the 2000–2020 MHz/2180–2200 MHz bands (2 GHz band), the 1626.5–1660.5 MHz/1525–1559 MHz bands (L-band), and the 1610–1626.5 MHz/2483.5–2500 MHz bands (1.6/2.4 GHz).

Note to paragraph (a)(1): An L-band MSS licensee is permitted to apply for ATC authorization based on a non-forward-band mode of operation provided it is able to demonstrate that the use of a non-forward-band mode of operation would produce no greater potential interference than that produced as a result of implementing the rules of this section. A 1.6/2.4 GHz licensee is permitted to apply for ATC authorization on a non-forward-band mode of operations where the equipment deployed will meet the requirements of paragraph (c)(4) of this section.

* * * * *

(c) * * *

(3) Licensees and manufacturers are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307(b), 2.1091, and 2.1093 of this chapter, as appropriate. ATC base stations must comply with the requirements specified in § 1.1307(b) of this chapter for PCS base stations. ATC mobile stations must comply with the requirements specified for mobile and portable PCS transmitting devices in § 1.1307(b) of this chapter. ATC mobile terminals must also comply with the requirements in §§ 2.1091 and 2.1093 of this chapter for Satellite Communications Services devices. Applications for equipment authorization of ATC mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(4) Applications for equipment authorization of terrestrial low-power system equipment (access point and end-user devices) operating under this section in the 2483.5–2495 MHz band must demonstrate the following:

(i) The system is digitally modulated;

(ii) The 6 dB bandwidth is at least 500 kHz;

(iii) The maximum transmit power is no more than 1 Watt with a peak EIRP of no more than 6 dBW;

(iv) The maximum power spectral density conducted to the antenna shall not be greater than 8 dBm in any 3 kHz band during any time interval of continuous transmission;

(v) Emissions above 2495 MHz shall be attenuated by a factor of at least 40 + 10 log (P) dB at the channel edge at 2495 MHz, 43 + 10 log (P) dB at 5 MHz from the channel edges, and 55 + 10 log (P) dB at X MHz from the channel edges where X is the greater of 6 MHz or the actual emission bandwidth.

(vi) Compliance with these rules is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 MHz bands immediately above and adjacent to the 2495 MHz a resolution bandwidth of at least 1 percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. If 1 percent of the emission bandwidth of the fundamental emission is less than 1 MHz, the power measured must be integrated over the required measurement bandwidth of 1 MHz. A resolution bandwidth narrower than 1 MHz is permitted to improve measurement accuracy, provided the measured power is integrated over the full required measurement bandwidth (*i.e.,* 1 MHz). The emission bandwidth of the fundamental emission of a transmitter is defined as the width of

the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power. When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

Note to paragraph (c)(4): Systems meeting the requirements set forth in this section are deemed to have also met the requirements of § 25.254. No further demonstration is needed for these systems with respect to § 25.254.

* * * * *

(e) Except as provided for in paragraphs (f) and (g) of this section, no application for an ancillary terrestrial component shall be granted until the applicant has demonstrated actual compliance with the provisions of paragraph (b) of this section. Upon receipt of ATC authority, all ATC licensees must ensure continued compliance with this section and § 25.253 or § 25.254, as appropriate.

* * * * *

(g) Special provisions for terrestrial low-power systems in the 2473–2495 MHz band. An operational MSS system that applies for authority to deploy ATC in the 2483.5–2495 MHz band for terrestrial low-power operations satisfying the equipment certification requirements of paragraph (c)(4) of this section is not required to demonstrate compliance with paragraph (b) of this section, except to demonstrate the commercial availability of MSS, without regard to coverage requirements.

* * * * *

[FR Doc. 2014–03618 Filed 2–14–14; 4:15 pm]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 79, No. 33

Wednesday, February 19, 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

Forest Service

Notice of Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement between the United States, on behalf of the U.S. Department of Agriculture, Forest Service, and Opal Creek Ancient Forest Center (OCAFC) and Gannett Co., Inc. on behalf of Shiny Rock Mining Corporation (Shiny Rock) for the recovery of costs incurred by the United States in responding to the release or threatened release of hazardous substances at and from the Ruth and Morning Star Mines Site (Site), located in the Opal Creek Scenic Recreation Area on the Willamette National Forest, Marion County, Oregon. The Forest Service has incurred costs investigating conditions, analyzing cleanup alternatives, and overseeing OCAFC's and Shiny Rock's work at the Site. Under the proposed settlement OCAFC and Shiny Rock will relocate and stabilize contaminated material at the Site. OCAFC and Shiny Rock will bear the costs for relocating and stabilizing the contaminated material, including the Forest Service's costs for overseeing that work. OCAFC and Shiny Rock will pay a liquidated amount of $4,650, which represents an estimated 50% of the anticipated costs for planned monitoring and maintenance following the relocation and stabilization of the contaminated material. OCAFC and Shiny Rock will not otherwise be responsible for future CERCLA costs at the Site associated with current contamination at the Site. OCAFC, Shiny Rock, and the United States retain the right to recover costs at the Site from persons not parties to the settlement.

DATES: Comments must be received, in writing, on or before March 21, 2014.

ADDRESSES: Written comments on this proposed settlement agreement may be sent to: James Alexander, USDA Office of General Counsel, 1220 SW Third Avenue, Suite 310, Portland, Oregon 97204–2825, and should refer to the Ruth and Morning Star Mines Site, Marion County, Oregon. A copy of the proposed settlement agreement may be obtained by mail or email from James Alexander, USDA Office of General Counsel, 1220 SW Third Avenue, Suite 310, Portland, Oregon 97204–2825.

FOR FURTHER INFORMATION CONTACT: James Alexander, USDA Office of General Counsel, 1220 SW Third Avenue, Suite 310, Portland, Oregon 97204–2825.

Dated: February 11, 2014.

Maureen T. Hyzer,

Deputy Regional Forester.

[FR Doc. 2014–03553 Filed 2–18–14; 8:45 am]

BILLING CODE 3410–11–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, March 10–12, 2014 at the times and location listed below.

DATES: The schedule of events is as follows:

Monday, March 10, 2014

10:15–11:30 a.m. Ad Hoc Committee Meetings: Closed to public
11:30–Noon Budget Committee
1:30–2:30 p.m. Ad Hoc Committee Meetings: Closed to public
3:00–4:00 p.m. Ad Hoc Committee on Frontier Issues

Tuesday, March 11, 2014

9:30–11:30 a.m. Guest Speaker Presentations
11:30–Noon Technical Programs Committee
1:30–2:00 p.m. Planning and Evaluation Committee
2:00–4:00 Ad Hoc Committee: Closed to Public

Wednesday, March 12, 2014

9:30–11:00 a.m. Board Meeting

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0054 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the morning of Wednesday, March 12, 2014, the Access Board will consider the following agenda items:

- Approval of the draft January 15, 2014 meeting minutes (vote)
- Ad Hoc Committee Reports: Self-Service Transaction Machines; Information and Communications Technologies; Classroom Acoustics; Passenger Vessels; Medical Diagnostic Equipment; Accessible Design in Education; Public Rights-of-Way and Shared Use Paths; Frontier Issues; and Transportation Vehicles
- Budget Committee
- Technical Programs Committee
- Planning and Evaluation Committee
- Election Assistance Commission Report
- Election of Officers
- Executive Director's Report

All meetings are accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be available at the Board meeting and committee meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/*

the-board/policies/fragrance-free-environment for more information).

David M. Capozzi,

Executive Director.

[FR Doc. 2014–03526 Filed 2–18–14; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BD12

Revision to Management Measures for the Subsistence Taking of Northern Fur Seals on St. George Island, AK

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

ACTION: Notice; intent to prepare a supplemental environmental impact statement.

SUMMARY: NMFS announces its intent to prepare a supplemental environmental impact statement (SEIS) in accordance with the National Environmental Policy Act of 1969. The SEIS will evaluate proposed changes in the management of the northern fur seal subsistence harvest on St. George Island, AK. The SEIS will supplement the 2005 Final Environmental Impact Statement for Setting the Annual Subsistence Harvest of Northern Fur Seals on the Pribilof Islands. NMFS decided to prepare an SEIS because the proposed action would make substantial changes to the action analyzed in the 2005 EIS that are relevant to environmental effects.

ADDRESSES: The Final Environmental Impact Statement for Setting the Annual Subsistence Harvest of Northern Fur Seals on the Pribilof Islands is available on the NMFS Alaska Region Web page at *http://alaskafisheries.noaa.gov/protectedresources/seals/fur/eis/final0505.pdf*. The report summarizing public comments received regarding proposed changes to the northern fur seal harvest regulations for St. George Island is available at *http://alaskafisheries.noaa.gov/protectedresources/seals/fur/analysis/ea0412.pdf*.

FOR FURTHER INFORMATION CONTACT: Michael Williams, (907) 271–5117.

SUPPLEMENTARY INFORMATION: NMFS manages the subsistence harvest of the eastern Pacific stock of northern fur seals (*Callorhinus ursinus*) in the Pribilof Islands through co-management agreements and Federal regulations (at 50 CFR 216.71–74) established under the Fur Seal Act (FSA) and the Marine Mammal Protection Act (MMPA). The St. George co-management agreement under section 119 of the MMPA is specific to the conservation and management of northern fur seals, with particular attention to the subsistence take and use of northern fur seals. Co-management of the subsistence harvest of northern fur seals on St. George under the MMPA provides the mechanism and process for harvesters to communicate their subsistence needs and opportunities for scientific collaboration with NMFS.

St. George Island, AK

St. George Island is a remote island located in the Bering Sea. St. George Island residents have a need for long-term sustainable use of northern fur seals for subsistence purposes of cultural continuity, food, clothing, arts, and crafts. Alaska Natives from St. George Island have a long history of harvesting fur seals for subsistence purposes prior to the United States' purchase of Alaska in 1867. Prior to the U.S. purchase of Alaska, the Aleuts harvested young of the year; U.S. records of these subsistence harvests of pups indicate thousands were harvested annually during the late 1800s and where viewed by Aleuts as one of their most valued traditional food sources. In the late 1800s, the fur seal population had declined due to the international pelagic harvest which killed mainly females on foraging trips; therefore, the U.S. government asked the Aleuts of the Pribilof Islands to stop harvesting young of the year. The population recovered by the mid-1960s, but the pup harvest was never resumed to meet the subsistence needs of the Alaska Natives on St. George. The subsistence way of life has remained an important, consistent, and supporting factor in the personal, economic, and traditional character of St. George. A continued subsistence harvest preserves the traditional skills, cultural values, and knowledge, provides a traditional food source for Alaska Native residents, and enables the passing of tradition on to younger hunters. The Traditional Council of St. George petitioned NMFS to change the current subsistence harvest regulations because they prohibit the harvest of pups, which were an important traditional food source for their residents.

Proposed Action

NMFS, in conjunction with the Pribilof Island Community of St. George Island, Traditional Council, proposes to use both harvester and scientific experience to develop best harvest practices, while creating firm regulatory measures to conserve the fur seal population and a sustainable subsistence harvest on St. George Island. The proposed action would change the management of subsistence harvest of northern fur seals on St. George Island based on a petition from the Traditional Council (75 FR 21233; April 23, 2010).

The 2005 EIS analyzed setting the annual fur seal subsistence take ranges for St. George Island and St. Paul Island, as required by regulations. The new proposed action is specific to St. George Island and would maintain the established take range for St. George Island of 300–500 subadult male seals. NMFS decided to prepare an SEIS because this new proposed action would make substantial changes to the action analyzed in the 2005 EIS that are relevant to environmental effects. Specifically, this new proposed action would allow the limited subsistence take of male northern fur seal young of the year.

Purpose and Need

The purpose of the proposed action is to manage the subsistence harvest of fur seals on St. George Island for the long-term sustainable use of northern fur seals for purposes of cultural continuity, food, clothing, arts, and crafts. This proposed action is necessary to fulfill Federal trust responsibilities under the MMPA and FSA. These trust responsibilities include the conservation of northern fur seals and the regulation of the subsistence harvests by Alaska Natives when the species used for subsistence purposes is listed as depleted under the MMPA. In addition, NMFS trust responsibilities include recognizing the nutritional and cultural needs of Alaskan Natives on St. George Island to the fullest extent possible consistent with applicable law, and to ensure that any subsistence harvest does not adversely affect the conservation of the depleted eastern Pacific stock of northern fur seals.

Proposed Alternatives

The SEIS will evaluate two alternatives. Alternative 1 is the status quo subsistence harvest management. Federal regulations (1) limit the subsistence harvest to sub-adult male fur seals, (2) identify two specific hauling grounds from which fur seals may be taken, and (3) establish the period between June 23 and August 8 of each year during which fur seals may be taken for subsistence purposes.

Alternative 2 would modify the northern fur seal subsistence harvest to (1) create a second harvest season in the autumn for taking of 150 young of the

year male northern fur seals, (2) add new conservation controls to prevent female harvest mortality, (3) add new conservation controls to allow harvests only at those breeding areas capable of sustaining any harvest, and (4) encourage the development of best harvest practices within the co-management structure. These changes would allow for a regulated harvest of male young of the year and subadult northern fur seals to meet the subsistence needs described in the Traditional Council's petition.

Under Alternative 2, NMFS and the Traditional Council would continue to co-manage the harvest consistent with new regulatory controls to reduce the accidental killing of females, reduce the concentration of the harvest, and prohibit harvest at small breeding areas, and would implement best harvest practices. The resulting modified harvest regime would reduce impacts to females, minimize harassment of non-target seals, and schedule harvesting to promote scientific coordination and monitoring along with reduction of repeated harassment at harvest locations. The best available scientific evidence suggests that preserving females in the population is essential to recovery. Historically, when the fur seal population has experienced more than minor levels of direct female mortality the estimated pup production in subsequent year(s) has declined. The best harvest practices would be reviewed each year by the Traditional Council and NMFS within the MMPA co-management structure.

Public Involvement

Scoping is an early and open process for determining the scope of issues, alternatives, and impacts to be addressed in an EIS, and for identifying the significant issues related to the proposed action. A principal objective of the scoping and public involvement process is to identify a range of reasonable management alternatives that, with adequate analysis, will delineate critical issues and provide a clear basis for distinguishing among those alternatives and selecting a preferred alternative.

NMFS began scoping for this issue when it received the petition from the St. George Traditional Council proposing changes in harvest regulations to better provide for cultural and traditional practices. On April 23, 2010, NMFS published a notice in the **Federal Register** and invited public comments on the petition (75 FR 21233). NMFS received no public comments during the 60-day comment period.

NMFS also conducted scoping meetings to identify the issues to be analyzed. NMFS circulated notices requesting public input on the proposed changes, and scheduled public meetings in St. George and Anchorage, AK. These meetings were designed to (1) be an open, public process for identifying the scope of physical, biological, and social environmental issues related to the proposed action that should be addressed, and (2) provide people potentially affected by the action an opportunity to express their views and offer any suggestions they may have regarding the project. NMFS used the following techniques for public notice:

- Newspaper advertisements announcing public meetings and comment period,
- Online posting on NMFS Web site and community calendars announcing public meetings and comment period,
- Announcements via email listservs announcing public meetings and comment period, and
- Personal phone calls to stakeholders.

The majority of comments NMFS received were from discussions during the St. George public meeting on May 27, 2011, which 14 people attended. No comments were received at the Anchorage public meeting on May 24, 2011, where only one person attended. NMFS received two letters from the Aleutian Pribilof Islands Association and Mr. Larry Merculief of Seven Generations Consulting. Public comments included several detailed remarks emphasizing the cultural and historic context of the requested changes to subsistence harvest management. NMFS prepared a report that reviewed the comments received regarding proposed changes to the northern fur seal harvest regulations for St. George Island. The report is available on the NMFS Alaska Region Web site (see **ADDRESSES**).

Dated: February 11, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–03528 Filed 2–18–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC825

Fisheries of the Caribbean; Southeast Data, Assessment and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 35 Data Workshop for Caribbean Red Hind.

SUMMARY: The SEDAR 35 assessment of the Caribbean Red Hind: A Data Workshop; a series of Assessment Webinars; and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 35 Data Workshop will be held from 9 a.m. on March 11, 2014 until 11:30 p.m. on March 13, 2014; the Assessment Webinars and Review Workshop dates and times will publish in a subsequent issue in the **Federal Register**. This workshop is a rescheduling of the SEDAR 35 Data Workshop originally schedule for October of 2013 which was cancelled due to the shutdown of the Federal government. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES:

Meeting address: The SEDAR 35 Data Workshop will be held at the Frenchman's Reef & Morning Star Marriott, 5 Estate Bakkeroe, St. Thomas, VI 00802, +1–340–776–8500 or 1–800–524–2000.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator; telephone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which

datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Data Workshop agenda are as follows:

1. An assessment data set and associated documentation will be developed.

2. Participants will evaluate all available data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance, as specified in the Terms of Reference for the workshop.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: February 13, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–03591 Filed 2–18–14; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2014–0004]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is proposing a new information collection titled, ''Randomized Evaluation of the Credit Matters Loan at St. Louis Community Credit Union and Credit Matters Counseling offered by BALANCE Financial Fitness Program.''

DATES: Written comments are encouraged and must be received on or before March 21, 2014 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- Electronic: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail/Hand Delivery/Courier: Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.

Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. In general, all comments received will be posted without change to regulations.gov, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov*. Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov*. Please do not submit comments to this email box.

SUPPLEMENTARY INFORMATION:

Title of Collection: Randomized Evaluation of the Credit Matters Loan at St. Louis Community Credit Union and Credit Matters Counseling offered by BALANCE Financial Fitness Program.

OMB Control Number: 3170–XXXX.

Type of Review: New collection (Request for a new OMB control number).

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,500.

Estimated Total Annual Burden Hours: 1,700.

Abstract: The aim of this data collection effort is to understand the impact of the Credit Matters Loan, a bundled credit-building loan product offered at St. Louis Community Credit Union (SLCCU), and Credit Matters counseling, a telephone based credit counseling service offered by BALANCE Financial Fitness Program, on asset building and financial behaviors of economically vulnerable SLCCU members. The information will be collected from economically vulnerable consumers who consent to participate in this research study. The target population for this survey collection is low-income consumers who have thin or poor credit histories. We will collect information about the financial health of these consumers, such as the amount of money they hold in savings, their credit score, and the size of their debt to income ratio. We will also collect information about their financial capability. The purpose of this data collection effort is to understand whether the Credit Matters Loan and Credit Matters counseling have an impact on asset building and financial capability.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on August 1, 2013, 78 FR 46578. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on 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 Office of

Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: February 12, 2014.

Ashwin Vasan,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2014–03527 Filed 2–18–14; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed renewal of the AmeriCorps National Civilian Community Corps (NCCC) Project Sponsor Survey. The NCCC Project Sponsor Survey measures a sponsor's level of satisfaction upon completion of each NCCC project. The survey measures two outcomes of NCCC projects: Enhanced capacity of the sponsoring organization (sponsor) to meet community needs, and expanded or enhanced community impact due to sponsor-NCCC collaboration. Completion of this information collection is not required to be considered for or obtain support from AmeriCorps NCCC.

Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 21, 2014.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, National Civilian Community Corps, Cameron Lewis, Program Associate, 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through *www.regulations.gov*.

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Cameron Lewis, 202–606–6992, or by email at *clewis@cns.gov*.

SUPPLEMENTARY INFORMATION:

CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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 expected to respond, including 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).

Background

The AmeriCorps NCCC Project Sponsor Survey evaluates NCCC's performance impact on sponsoring organizations and communities. NCCC utilizes this data, completed by sponsoring organizations, to capture the short and long-term outcomes of the NCCC program on the organizations and the communities they serve. In order to achieve this goal, the survey measures enhanced capacity of the sponsoring organization (''sponsor'') to meet community needs, and expanded or enhanced community impact due to sponsor-NCCC collaboration. Sponsors receive one of two possible surveys. The first is for project sponsors that self-identify as having a volunteer generation component and the other is for non-volunteer generating projects. The volunteer generation survey has additional questions to evaluate the effectiveness of NCCC teams in recruiting or coordinating volunteers. The survey is administered electronically to all project sponsors after each round is completed.

Current Action

The information collection will otherwise be used in the same manner as the existing survey. CNCS also seeks to continue using the current survey until the revised survey is approved by OMB. The current survey is due to expire on May 2014.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps NCCC Sponsor Survey.

OMB Number: 3045–0138.

Agency Number: None.

Affected Public: The NCCC sponsor survey will be administered to the project sponsor for any NCCC service project. These sponsors apply to receive a 10-person NCCC team for a period of six–eight weeks to implement local service projects. There are approximately 156 projects in each of four project rounds per year. The project sponsors are uniquely able to provide the information sought in the NCCC Sponsor Survey.

Total Respondents: Based on the number of projects completed last fiscal year, NCCC expects to administer 625 surveys each fiscal year. These may not be unique responders as many sponsors receive teams on a rotating basis and thus may complete the survey more than once per year.

Frequency: Quarterly distribution. Each sponsor will complete only one survey per project.

Time per Response: 10 minutes.

Estimated Total Burden Hours: 104 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 11, 2014.

Kate Raftery,

Director, AmeriCorps National Civilian Community Corps.

[FR Doc. 2014–03507 Filed 2–18–14; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0017]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Grants Under the Training Program for Federal TRIO Programs

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before March 21, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0017 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Kate Mullan, 202–401–0563 or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here. We will ONLY accept comments in this mailbox when the regulations.gov site is not available to the public for any reason.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Grants under the Training Program for Federal TRIO Programs.

OMB Control Number: 1840–0814.

Type of Review: Reinstatement of a previously approved information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 30.

Total Estimated Number of Annual Burden Hours: 1,100.

Abstract: The application is needed to conduct a national competition for new grant awards under the Training Program for Federal TRIO Programs for Fiscal Year 2014. The Training Program for Federal TRIO programs is mandated by statute to provide training for leadership personnel and staff employed in, participating in, or preparing for employment in Federal TRIO Program projects designed to identify individuals from disadvantaged backgrounds, prepare them for a program of postsecondary education, and provide special services for such students pursuing programs of postsecondary education.

Dated: February 12, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–03506 Filed 2–18–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–50–000.

Applicants: Northern States Power Company, a Minnesota corporation, Border Winds Energy, LLC, Pleasant Valley Wind, LLC.

Description: Amendment to January 30, 2014 Joint Application of Northern States Power Company, a Minnesota corporation, et. al. for Authorization under Section 203 of the Federal Power Act.

Filed Date: 2/7/14.

Accession Number: 20140207–5143.

Comments Due: 5 p.m. ET 2/28/14.

Docket Numbers: EC14–54–000.

Applicants: Big Sky Wind, LLC, Edison Mission Energy, Everpower Wind Holdings, Inc., Suzlon Wind Energy Corporation.

Description: Application of Big Sky Wind, LLC, Edison Mission Energy, Suzlon Wind Energy Corporation, and EverPower Wind Holdings, Inc. for Authorization Under Section 203 of the Federal Power Act.

Filed Date: 2/7/14.

Accession Number: 20140207–5191.

Comments Due: 5 p.m. ET 2/28/14.

Docket Numbers: EC14–55–000.

Applicants: EAM Nelson Holding, LLC, Entergy Nuclear FitzPatrick, LLC, Entergy Nuclear Generation Company, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Palisades, LLC, Entergy Nuclear Power Marketing, LLC, Entergy Nuclear Vermont Yankee, LLC, Entergy Power, LLC, Entergy Rhode Island State Energy, L.P., EWO Marketing, LLC, Llano Estacado Wind, LLC, Northern Iowa Windpower, LLC, RS Cogen, LLC.

Description: Joint Application for Authorization under Section 203 to Acquire Securities and Request for Expedited Commission Action of EAM Nelson Holding, LLC, et. al.

Filed Date: 2/7/14.

Accession Number: 20140207–5193.

Comments Due: 5 p.m. ET 2/28/14.

Docket Numbers: EC14–56–000.

Applicants: Fortis Inc., FortisUS Inc., Color Acquisition Sub Inc., UNS Energy Corporation, Tucson Electric Power Company, UNS Electric, Inc., UniSource Energy Development Company.

Description: Fortis-UNS Energy Section 203 Application for Authorization for Merger and Disposition of Jurisdictional Facilities.

Filed Date: 2/7/14.
Accession Number: 20140207–5194.
Comments Due: 5 p.m. ET 3/10/14.

Docket Numbers: EC14–57–000.
Applicants: Bruce Power Inc.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Bruce Power Inc.
Filed Date: 2/7/14.
Accession Number: 20140207–5197.
Comments Due: 5 p.m. ET 2/28/14.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG14–27–000.
Applicants: Pattern Panhandle Wind LLC.
Description: Pattern Panhandle Wind LLC Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 2/10/14.
Accession Number: 20140210–5059.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: EG14–28–000.
Applicants: Pattern Panhandle Wind 2 LLC.
Description: Pattern Panhandle Wind 2 LLC Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 2/10/14.
Accession Number: 20140210–5060.
Comments Due: 5 p.m. ET 3/3/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–83–005.
Applicants: Duke Energy Progress, Inc., Duke Energy Carolinas, LLC.
Description: OATT Order No. 1000 Third Compliance Filing—Carolinas to be effective 6/1/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5055.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–865–000.
Applicants: Southwestern Public Service Company.
Description: Supplement to December 27, 2013 Southwestern Public Service Company tariff filing.
Filed Date: 2/7/14.
Accession Number: 20140207–5190.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–964–001.
Applicants: Pleasant Valley Wind, LLC.
Description: Amended Pleasant Valley Wind LLC MBR filing to be effective 3/10/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5104.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–965–001.
Applicants: Border Winds Energy, LLC.
Description: Amended Border Winds Energy MBR Filing to be effective 3/10/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5109.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1127–001.
Applicants: Bayou Cove Peaking Power, LLC.
Description: Bayou Cove—Supplement to Compliance Filing to be effective 1/23/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5120.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1128–001.
Applicants: Big Cajun I Peaking Power LLC.
Description: Big Cajun—Supplement to Compliance Filing to be effective 1/23/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5121.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1129–001.
Applicants: Energy Alternatives Wholesale, LLC.
Description: Energy Alternatives—Supplement to Compliance Filing to be effective 1/23/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5128.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1130–001.
Applicants: Louisiana Generating LLC.
Description: LA Gen—Supplement to Compliance Filing to be effective 1/23/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5130.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1131–001.
Applicants: NRG Sterlington Power LLC.
Description: Sterlington-Supplement to Compliance Filing to be effective 1/23/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5134.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1132–001.
Applicants: NRG Wholesale Generation LP.
Description: Wholesale-Supplement to Compliance Filing to be effective 1/23/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5137.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1289–000.
Applicants: Noble Bellmont Windpark, LLC.
Description: Notice of Cancellation of Market-Based Rate Tariff to be effective 2/8/2014.
Filed Date: 2/7/14.
Accession Number: 20140207–5181.
Comments Due: 5 p.m. ET 2/28/14.

Docket Numbers: ER14–1290–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–02–07_Schedule 34 Filing to be effective 4/8/2014.
Filed Date: 2/7/14.
Accession Number: 20140207–5187.
Comments Due: 5 p.m. ET 2/28/14.

Docket Numbers: ER14–1291–000.
Applicants: Electric Energy, Inc.
Description: Request for Waiver of the Requirements of Order No. 764 of Electric Energy, Inc.
Filed Date: 2/7/14.
Accession Number: 20140207–5206.
Comments Due: 5 p.m. ET 2/28/14.

Docket Numbers: ER14–1292–000.
Applicants: Public Service Company of New Mexico.
Description: PNM Cargill Unexecuted TSA to be effective 1/1/2015.
Filed Date: 2/10/14.
Accession Number: 20140210–5051.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1293–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Request for Waiver and Suspension, and Pro Forma Notice of Cancellation, of Cost-Based Power Sales Tariff of Oklahoma Gas and Electric Company.
Filed Date: 2/10/14.
Accession Number: 20140210–5071.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1294–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–02–10_SA 2633_Ameren-FutureGen Procurement Agr to be effective 1/10/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5072.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1295–000.
Applicants: Milford Wind Corridor Phase I, LLC.
Description: Market-Based Rate Tariff Revisions to be effective 4/5/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5087.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1296–000.
Applicants: Milford Wind Corridor Phase II, LLC.
Description: Market-Based Rate Tariff Revisions to be effective 4/5/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5088.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1297–000.
Applicants: Palouse Wind, LLC.
Description: Market-Based Rate Tariff Revisions to be effective 4/5/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5089.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1298–000.

Applicants: First Wind Energy Marketing, LLC.
Description: Market-Based Rate Tariff Revisions to be effective 4/5/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5090.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1299–000.
Applicants: Longfellow Wind, LLC.
Description: Market-Based Rate Tariff Revisions to be effective 4/5/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5091.
Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1300–000.
Applicants: Southwest Power Pool, Inc.
Description: 2299R3 Rattlesnake Creek Wind Project, LLC GIA to be effective 1/17/2014.
Filed Date: 2/10/14.
Accession Number: 20140210–5093.
Comments Due: 5 p.m. ET 3/3/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 10, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–03543 Filed 2–18–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

TIME AND DATE: February 20, 2014, 10 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: Agenda.

* **Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1002ND—MEETING

[Regular meeting, February 20, 2014, 10:00 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Business Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
	Electric	
E–1	RM11–24–001, AD10–13–001	Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for Electric Storage Technologies.
E–2	PL14–1–000	Payment of Dividends from Funds Included in Capital Accounts.
E–3	ER14–623–000	PJM Interconnection, L.L.C.
E–4	ER14–552–000	New York Independent System Operator, Inc.
E–5	ER12–2292–004	Southwest Power Pool, Inc.
E–6	OMITTED.	
E–7	ER14–7–000	Ohio Power Company.
E–8	EL08–14–010	Black Oak Energy, L.L.C., EPIC Merchant Energy, L.P. and SESCO Enterprises, L.L.C. v. PJM Interconnection, L.L.C.
E–9	EL12–12–000	Allco Renewable Energy Limited v. Massachusetts Electric Company.
E–10	EL12–104–001	Interstate Power and Light Company v. ITC Midwest, LLC.
	ER13–2156–000	Midcontinent Independent System Operator, Inc.
E–11	EL14–15–000	Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California v. Trans Bay Cable L.L.C.
	ER13–2412–001, ER13–2412–000 (consolidated).	Trans Bay Cable L.L.C.
E–12	ER12–2681–000	ITC Holdings Corp.
	ER12–2681–001	Entergy Corporation.
	ER12–2681–002	Midwest Independent Transmission System Operator, Inc.
	ER13–948–001	Entergy Services, Inc.
	ER13–782–000	ITC Arkansas LLC.
	ER13–782–001 (consolidated)	ITC Texas LLC, ITC Louisiana LLC, ITC Mississippi LLC.
	ER12–2683–001	Entergy Services, Inc.
	ER12–2682–000, ER12–2682–001, ER12–2682–002 (not consolidated).	Midcontinent Independent System Operator, Inc.
E–13	ER12–2693–001	Entergy Arkansas, Inc., Entergy Gulf States Louisiana L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc.

1002ND—MEETING—Continued

[Regular meeting, February 20, 2014, 10:00 a.m.]

Item No.	Docket No.	Company
E–14	ER12–1179–008, ER12–1179–009, ER12–1179–011, ER13–1173–001.	Southwest Power Pool, Inc.
	Gas	
G–1	RP13–431–001, RP13–431–002	Dominion Transmission, Inc.
	Hydro	
H–1	P–3633–040, CD14–9–001	KC Brighton LLC.
H–2	P–2114–209	Public Utility District No. 2 of Grant County, Washington.
	Certificates	
C–1	CP13–8–001	Columbia Gas Transmission, LLC.
C–2	CP14–12–000	Sabine Pass Liquefaction, LLC, Sabine Pass LNG, L.P.

Issued February 12, 2014.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2014–03653 Filed 2–14–14; 4:15 pm]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0258; FRL–9906–43–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline Under the Tier 2 Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline under the Tier 2 Rule'' (EPA ICR No.1907.06, OMB Control No. 2060–0437) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a ''proposed extension of the ICR, which is currently approved through April 30, 2014. Public comments were previously requested via the **Federal Register** (78FR 72675) on December 3, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before March 21, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2010–0258, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Geanetta Heard, Fuel Compliance Center, 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9017 fax number: 202–566–1744 email address: *heard.geanetta@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: With this ICR renewal, EPA is seeking permission to continue recordkeeping and reporting

requirements for refiners and importers as they relate to gasoline sulfur content of motor vehicles under Section 211(e)(1) of the Clean Air Act and 40 CFR part 80, subpart H, and to provide a compliance option whereby a refiner or importer may demonstrate compliance with the gasoline sulfur control requirement via test results. These provisions, which have been in effect since 2006, are designed to grant compliance flexibility.

Form Numbers:

5900–312 Gasoline Sulfur Facility Summary report
5900–313 Gasoline sulfur Corporate Pool Facility Identification Report
5900–314 Overhead for Facility Level Reports
5900–315 Gasoline Sulfur Corporate Pool Averaging Report
5900–316 Overhead for Company Level Reports
5900–317 Gasoline Sulfur Allotment Banking Report
5900–318 Gasoline Sulfur Allotment Transfer/Conversion Report
5900–319 Gasoline Sulfur Credit Banking Allotment Generation Report
5900–320 Gasoline Sulfur Report for Batches Containing Previously Certified Gasoline
5900–321 Gasoline Sulfur and Benzene Batch Report
5900–322 Gasoline Sulfur Credit Transfer/Conversion Report

Respondents/affected entities: Gasoline Refiners, Importers, Gasoline Terminals, Pipelines, Truckers and Users of Research and Development Gasoline.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 1,380 (total).

Frequency of response: Annually, Monthly and on occasion.

Total estimated burden: 38,573 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $3,158,252 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: The total number of responses for this ICR increased by 60 compared to the previously approved ICR in the renewal. The responses increased from 37,605 to 37,665 responses. Also, the burden increased by 75 from 38,498 in the previously approved ICR to 38,573 in this renewal. These increases are due to the inclusion of the Geographic Phase-in Areas (GPA) refineries that were left out of the previous ICR renewal. The cost of this ICR compared with the currently approved OMB collection increased by $584,298 due to better numbers used to calculate burden.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–03489 Filed 2–18–14; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the February 13, 2014 regular meeting of the Farm Credit Administration Board (Board) has been rescheduled. The regular meeting of the Board will be held Tuesday, February 18, 2014 starting at 2 p.m. An agenda for this meeting was published on February 6, 2014 at 79 FR 7189.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

Dated: February 13, 2014.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2014–03655 Filed 2–14–14; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011117–053.

Title: United States/Australasia Discussion Agreement.

Parties: ANL Singapore Pte Ltd.; CMA–CGM; Compagnie Maritime Marfret S.A.; Hamburg-Süd; Hapag-Lloyd AG; and Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would add Pacific International Lines (PTE) Ltd. as a party to the agreement.

Agreement No.: 012246.

Title: Eukor/Mitsui O.S.K. Lines, Ltd. Space Charter Agreement.

Parties: Eukor Car Carriers, Inc. and Mitsui O.S.K. Lines, Ltd.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 401 9th Street NW., Suite 900; Washington, DC 20004.

Synopsis: The agreement authorizes the parties to charter space to one another in the trade between Asia and the U.S.

Agreement No.: 012247.

Title: Hyundai Glovis/Hoegh Space Charter Agreement.

Parties: Hyundai Glovis Co. Ltd. and Hoegh Autoliners AS.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes Hoegh to charter space to Hyundai Glovis in the trade from the Republic of Korea to the Atlantic Coast of the U.S.

Agreement No.: 201223.

Title: Lease and Operating Agreement between PRPA and Eco-Energy Distribution–Philadelphia, LLC.

Parties: Eco-Energy Distribution–Philadelphia, LLC and The Philadelphia Regional Port Authority (PRPA).

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; Attorneys and Counsellors at Law; 1050 Connecticut Avenue NW., 10th Floor; Washington, DC 20036.

Synopsis: The agreement authorizes Eco-Energy to dock and moor barges, and to receive, distribute and load cargo at facilities operated under the agreement. The agreement also provides for the cargo to be transferred to, from, and between cargo barges, trucks, and railcars.

By Order of the Federal Maritime Commission.

Dated: February 12, 2014.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–03535 Filed 2–18–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

[File No. 142–3026]

Fantage.com, 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. 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 March 13, 2014.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/fantageconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Fantage.com, Inc.—Consent Agreement; File No. 142–3026'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/fantageconsenthttps://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: Jessica Lyon, Bureau of Consumer Protection, (202–326–2344), 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 February 11, 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 March 13, 2014. Write ''Fantage.com, Inc.—Consent Agreement; File No. 142–3026'' 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/fantageconsent* 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 ''Fantage.com, Inc.—Consent Agreement; File No. 142–3026'' 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 March 13, 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 (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to Fantage.com, Inc. (''Fantage'').

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.

This matter concerns alleged false or misleading representations that Fantage made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (''EU'') (''U.S.-EU Safe Harbor Framework'' or ''Safe Harbor Framework''). It is among several actions the Commission is bringing to enforce the promises that companies make when they certify that they participate in the Safe Harbor Framework. The Safe Harbor framework allows U.S. companies to transfer data outside the EU consistent with European law. To join the Safe Harbor framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a

[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).

set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor*, where it posts the names of companies that have self-certified to the Safe Harbor framework. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as ''current'' members of the Safe Harbor framework.

Fantage developed and operates a massively multiplayer online role-playing game directed at children ages 6–16. According to the Commission's complaint, since June 2011, except for a one-month period from November to December 2013, Fantage set forth on its Web site, *www.fantage.com*, privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework.

The Commission's complaint alleges that Fantage falsely represented that it was a ''current'' participant in the U.S.-EU Safe Harbor Framework when, in fact, from June 2012 until January 2014, Fantage was not a ''current'' participant in the Safe Harbor Framework. The Commission's complaint alleges that in June 2011, Fantage submitted a Safe Harbor self-certification. Fantage did not renew its self-certification in June 2012 and Commerce subsequently updated Fantage's status to ''not current'' on its public Web site. In January 2014, Fantage renewed its self-certification to the Safe Harbor Framework, and its status was changed to ''current'' on Commerce's Web site.

Part I of the proposed order prohibits Fantage from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Fantage to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Fantage submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–03532 Filed 2–18–14; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0797]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Human Tissue Intended for Transplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Human Tissue Intended for Transplantation'' 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 December 20, 2013, the Agency submitted a proposed collection of information entitled ''Human Tissue Intended for Transplantation'' 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 0910–0302. 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: February 12, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–03502 Filed 2–18–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0103]

Draft Guidance for Industry on Analytical Procedures and Methods Validation for Drugs and Biologics; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Analytical Procedures and Methods Validation for Drugs and Biologics.'' This revised draft guidance supersedes the 2000 draft guidance for industry on ''Analytical Procedures and Methods Validation'' and, when finalized, will also replace the 1987 FDA guidance for industry on ''Submitting Samples and Analytical Data for Methods Validation.'' This draft guidance discusses how to submit analytical procedures and methods validation data to support the documentation of the identity, strength, quality, purity, and potency of drug substances and drug products.

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 May 20, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002; or to 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 draft guidance document.

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.

FOR FURTHER INFORMATION CONTACT: Lucinda Buhse, Center for Drug Evaluation and Research, Food and Drug Administration, 1114 Market St., Suite 1002, St. Louis, MO 63101, 314–539–2134; 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 draft guidance for industry entitled ''Analytical Procedures and Methods Validation for Drugs and Biologics.'' This revised draft guidance supersedes the 2000 draft guidance for industry on ''Analytical Procedures and Methods Validation'' and, when finalized, will also replace the 1987 FDA guidance for industry on ''Submitting Samples and Analytical Data for Methods Validation.'' It discusses how to submit analytical procedures and methods validation data to support the documentation of the identity, strength, quality, purity, and potency of drug substances and drug products and how to assemble information and present data to support analytical methodologies. The recommendations in this guidance apply to new drug applications, abbreviated new drug applications, biologics license applications, and supplements to these applications. The principles in this revised draft guidance also apply to Type II drug master files. This draft guidance does not address investigational new drug application (IND) methods validation specifically, but the principles being discussed may be helpful to sponsors preparing INDs.

This draft guidance complements the International Conference on Harmonisation guidance ''Q2(R1) Validation of Analytical Procedures: Text and Methodology.''

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 analytical procedures and methods validation. 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. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 211, 21 CFR part 314, and 21 CFR part 601 have been approved under OMB control numbers 0910–0139, 0910–0001, and 0910–0338.

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 *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm*, or *http://www.regulations.gov.*

Dated: February 12, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–03580 Filed 2–18–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1041]

Fibromyalgia Public Meeting on Patient-Focused Drug Development; Rescheduling of Public Meeting; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; rescheduling of public meeting; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is rescheduling a December 10, 2013, public meeting on Patient-Focused Drug Development for fibromyalgia, announced in the **Federal Register** on September 23, 2013. Due to inclement weather, the Federal Government was closed on December 10, 2013. We are rescheduling the public meeting to March 26, 2014, and extending the comment period for the public docket.

DATES: The public meeting will be held on March 26, 2014, from 1 p.m. to 5 p.m. Registration to attend the meeting must be received by March 20, 2014. See the **SUPPLEMENTARY INFORMATION** section for information on how to register for the meeting. Submit either electronic or written comments by May 27, 2014.

ADDRESSES: The meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, Sections B and C of the Great Room (rm. 1503), Silver Spring, MD 20993. Entrance for the public meeting participants is through Building 1, where routine security check procedures will be performed. For more information on parking and security procedures, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

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.

FDA will post the agenda approximately 5 days before the meeting at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm363203.htm.*

FOR FURTHER INFORMATION CONTACT: Graham Thompson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 1199, Silver Spring, MD 20993, 301–796–5003, FAX: 301–847–8443, email: *Graham.Thompson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 23, 2013 (78 FR 58313), FDA announced a public meeting on December 10, 2013, to obtain patients' perspectives on the impact of fibromyalgia on daily life as well as the available therapies for fibromyalgia. Due to the Government closure on December 10, 2013, the meeting was postponed. We are rescheduling the public meeting to March 26, 2014, and extending the comment period to May 27, 2014 (see

DATES). For additional information about the purpose of the meeting, topics for discussion, and registration see the September 23, 2013, **Federal Register** notice.

Dated: February 13, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–03587 Filed 2–18–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Medical Devices—The Case for Quality

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA), Office of Regulatory Affairs, Southwest Regional Office, in cosponsorship with the FDA Medical Device Industry Coalition, Inc. (FMDIC), is announcing a public workshop entitled ''Medical Devices—the Case for Quality.'' The public workshop is intended to seek input from representatives of medical device manufacturers and other stakeholders on best practices, what has worked for them, and what FDA can do to inspire quality efforts. This event will also focus on various topics of interest for those industry representatives who are responsible to ensure compliance with FDA regulations.

Date and Time: The meeting will be held on April 11, 2014 from 8 a.m. to 5 p.m.

Location: The meeting will be held at Wyndham Dallas Suites-Park Central, 7800 Alpha Rd., Dallas, TX 75240. Directions and lodging information are available at the FMDIC, Inc. Web site at *http:/www.fmdic.org/.*

Contact: C. Sue Thomason, Food and Drug Administration, 4040 N. Central Expressway, Suite 300, Dallas, TX 75204, 214–253–5203, FAX: 214–253–5318, email: *sue.thomason@fda.hhs.gov.*

Registration: FMDIC has early registration (industry $250, government with ID $150, student $50) available until March 11, 2014. Registration after March 11, 2014, increases to industry $300, government with ID $200, with student registration staying the same at $50. To register online, please visit *http://www.fmdic.org/.* As an alternative, send registration information including the registrant's name, title, organization, address, telephone and fax numbers, and email address (for each registrant), along with a check or money order (covering all registration fees) payable to FMDIC, Inc., to FMDIC Registrar, 4447 N. Central Expressway, Suite 110 PMB197, Dallas, TX 75205.

FMDIC, Inc. accepts registrations onsite on the day of the event beginning at 7:30 a.m. at the regular registration fee stated above. Registration onsite will be accepted on a space-available basis on the day of the public workshop beginning at 7:30 a.m. Please note that due to popularity, similar past events have reached maximum capacity well before the day of the event. The cost of registration at the site is $300 payable to FMDIC, Inc. The registration fee will be used to offset expenses of hosting the event, including continental breakfast, lunch, audiovisual equipment, venue, materials, and other logistics associated with this event.

If you need special accommodations due to a disability, please contact C. Sue Thomason (see *Contact*) at least 7 days in advance.

Transcripts: Transcripts of the public workshop will not be available due to the format of this workshop.

SUPPLEMENTARY INFORMATION: The workshop is being held in response to the interest in the topics discussed from small medical device manufacturers in the Dallas District area. This workshop helps achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), as an outreach activity by Government agencies to small businesses.

The goal of the public workshop is to present information that will enable manufacturers and regulated industry to better comply with FDA's medical device requirements. Please visit the *www.fmdic.org* Web site for the agenda and for information about the presenters at the workshop.

Dated: February 12, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–03584 Filed 2–18–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0157]

Study Approaches and Methods To Evaluate the Safety of Drugs and Biological Products During Pregnancy in the Post-Approval Setting; Public Meeting, Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Study Approaches and Methods to Evaluate the Safety of Drugs and Biological Products During Pregnancy in the Post-Approval Setting.'' The purpose of the public meeting is to engage in constructive dialogue and information sharing among regulators, researchers, the pharmaceutical industry, public health agencies, health care providers, and the general public concerning challenges in designing and implementing pregnancy registries and other methods of evaluating the post-approval safety profile of drugs and biological products in pregnant women. The input from this meeting and public docket will be used to support the revision of a guidance for industry on establishing pregnancy exposure registries.

Dates and Times: The meeting will be held on May 28, 2014, from 8 a.m. to 5 p.m. and May 29, 2014, from 8:30 a.m. to 12:30 p.m.

Location: The meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Participants must enter through Building 1 and undergo security screening. For parking and security information, please visit *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.* Please arrive early to ensure time for parking and security screening.

Contact Persons: For meeting background and content: Vicki Moyer, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–6148, FAX: 301–796–9855, *vicki.moyer@fda.hhs.gov. For registration, oral presentations, special accommodations, and other meeting logistics:* Cherice Holloway, Center for

Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–4909, FAX 301–796–9832, *cherice.holloway@fda.hhs.gov.*

Registration and Requests for Oral Presentations: Registration is free and available on a first-come, first-served basis. You must register online by May 14, 2014. Seating is limited, so register early. FDA may limit the number of participants from each organization. If time and space permit, onsite registration on the day of the meeting will be available. To register for this meeting, please visit FDA's Drugs News & Events—Meetings, Conferences & Workshops calendar at *http://www.fda.gov/Drugs/NewsEvents/ucm132703.htm* and select this meeting from the events list. If you need special accommodations due to a disability, please contact Cherice Holloway (see *Contact Persons*) at least 7 days before the meeting. Those without Internet access should contact Cherice Holloway to register.

This meeting includes a public comment session. If you would like to present during this session, please identify the topic(s) you will address during registration (see Section II).

FDA will do its best to accommodate requests to speak. FDA urges individuals and organizations with common interests to coordinate and give a joint, consolidated presentation. Following the close of registration, FDA will allot time for each presentation and notify presenters by May 20, 2014. Do not present or distribute commercial or promotional material during the meeting. Registered presenters should check in before the meeting.

Live Webcast of the Meeting: To view the Connect Pro Webcast of this meeting, you must register online by 4 p.m., May 14, 2014. Webcast connections are limited, so register early. Organizations should register all viewers but access the Webcast using one connection per location.

Webcast viewers will be sent system requirements after registration and will be sent connection information after May 21, 2014. Visit *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm* for the Connect Pro Connection Test. To get a quick overview of Connect Pro, visit *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this notice but is not responsible for any subsequent address changes after this notice publishes in the **Federal Register**.)

Comments: FDA is holding this meeting to obtain information on study approaches and methods to evaluate the safety of drugs and biological products during pregnancy in the post-approval setting. FDA is soliciting from interested persons electronic or written comments on all aspects of the meeting topics through June 30, 2014.

Attendees and non-attendees may 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. Send only one set of comments. When sending comments, please include the docket number from the heading of this notice. In addition, when addressing specific topics (see Section II), please identify the topic. Received comments may be viewed 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.*

Transcripts: After the meeting, FDA will post a transcript at *http://www.regulations.gov.* The transcript may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM after submission of a Freedom of Information request. Send requests to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is holding this meeting to seek input from industry, academia, public health agencies, the clinical community, and other stakeholders regarding the structure and design of pregnancy registries. In addition, other methods of evaluating the safety profile of drugs and biological products in pregnant women in the post-approval setting will be explored.

At the time of initial approval of a drug or biological product, there are generally very limited data on the safety of the product when used during pregnancy. Pregnancy registries provide post-approval safety information. In certain cases, these registries may be post-marketing requirements. The goal of pregnancy registries is to evaluate the risk of birth defects or pregnancy complications related to use of a product and to use these data to inform safety-related product labeling.

The purpose of the meeting is to engage in constructive dialogue and information sharing among regulators, researchers, the pharmaceutical industry, public health agencies, health care providers, and the general public concerning challenges in designing and implementing pregnancy registries. FDA is seeking feedback on practical approaches to improve pregnancy registries, as well as alternative approaches, to obtain robust scientific information on the rate and occurrence of birth defects or pregnancy complications related to the use of a product. Additionally, FDA is seeking input on best practices to communicate information to health care providers and patients about pregnancy registries and other post-approval studies in which pregnant women can enroll. Feedback from this meeting will be used to support revision of the current guidance for industry entitled ''Establishing Pregnancy Exposure Registries'' (August 2002), available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM071639.pdf.*

The meeting will include multiple sessions over 2 days.

II. Scope of the Meeting

The objective of the meeting is to engage researchers, industry, public health agencies, health care providers, and the public through presentations and panel discussions on the following topics:

- Current status of pregnancy registries and challenges in gathering data regarding drug and biological products used during pregnancy. These challenges include, but are not limited to, low enrollment, poor followup rate, limited sample size, ascertainment of adverse outcomes, and appropriate comparator group selection.
- Strategies to improve the design and conduct of pregnancy registries.
- Alternative approaches, such as enhanced pharmacovigilance, claims-based database studies, prospective cohort or case control studies and other innovative methodologies, to obtain robust scientific information on the rate and occurrence of possible safety concerns related to the use of drugs and biological products during pregnancy.
- Best practices for communicating information to health care providers and patients about pregnancy registries and other post-approval studies.

Information about this meeting, including registration and the agenda, will be posted at *http://www.fda.gov/Drugs/NewsEvents/ucm132703.htm* as it becomes available.

Dated: February 13, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–03589 Filed 2–18–14; 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 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 the following public workshop entitled ''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 and informed consent documents; regulations relating to drugs, devices, and biologics; as well as inspections of clinical investigators, IRBs, and research sponsors.

Date and Time: The public workshop will be held on May 21 and 22, 2014, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Sheraton Indianapolis at Keystone Crossing, 8787 Keystone Crossing, Indianapolis, IN 46240, 317–846–2700.

Attendees are responsible for their own accommodations. Please mention SoCRA to receive the hotel room rate of $109.00 plus applicable taxes (available until April 20, 2014, or until the SoCRA room block is filled).

Contact: Myra K. Casey, Food and Drug Administration, 101 West Ohio St., Suite 500, Indianapolis, IN 46204, 317–226–6500, ext. 104; 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.*

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 the registration is as follows: SoCRA member, $575.00; SoCRA nonmember (includes membership), $650.00; Federal Government member, $450.00; Federal Government nonmember, $525.00; and FDA employee, free (fee waived).

If you need special accommodations due to a disability, please contact SoCRA (see *Contact*) 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 accredited as a provider of CNE by the American Nurses Credentialing Center's Commission on Accreditation.

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: SoCRA (see *Contact* for address).

To register via the Internet, go to *http://www.socra.org/html/FDA_Conference.htm.* (FDA has verified the Web site address, but we are not responsible for any subsequent changes to the Web site after this document is published in the **Federal Register**).

Payment by major credit card is accepted (Visa/MasterCard/AMEX only). For more information on registration, or for questions on the public workshop, contact SoCRA (see *Contact*).

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 on related 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 quality 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: February 12, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–03583 Filed 2–18–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 30-day Comment Request; Incident HIV/Hepatitis B Virus Infections in South African Blood Donors: Behavioral Risk Factors, Genotypes and Biological Characterization of Early Infection

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of

Health (NIH) 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** in Volume 78 on Friday, November 8, 2013, and page 67175, and allowed 60 days for public comment. One public comment was received that was a personal opinion regarding protecting the safety of the American blood donation system. The purpose of this notice is to allow an additional 30 days for public comment. The 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.

Comments 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: Simone Glynn, MD, Project Officer/ICD Contact, Two Rockledge Center, Suite 9142, 6701 Rockledge Drive, Bethesda, MD 20892, or call 301–435–0065, or Email your request, including your address to: *glynnsa@nhlbi.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Incident HIV/Hepatitis B virus (HBV) infections in South African blood donors: Behavioral risk factors, genotypes and biological characterization of early infection, 0925-New, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH).

Need and Use of Information Collection: South Africa has one of the highest burdens for HIV infection in the world. The HIV epidemic in South Africa is largely heterosexual, but risk factors for infections can change and so identifying factors that contribute to the recent spread of HIV in a broad cross-section of the otherwise unselected general population, such as blood donors, is highly important for obtaining a complete picture of the epidemiology of HIV infection in Africa. Small previous studies suggest that the risk factors for HIV among more recently acquired (incident) infections in blood donors may differ from those of more distant (prevalent) infections. Similarly risk factors for recently acquired HBV may be different than for prevalent HBV infections. The demographic and behavioral risks associated with incident HIV and incident HBV infection have, as yet, not been formally assessed in South African blood donors using analytical study designs. Due to the high rates of HIV and HBV infection in South African blood donors, a better understanding of these risk factors can be used to modify donor screening questionnaires so as to more accurately exclude high-risk blood donors and contribute to transfusion safety. Risk factor data from this research may also provide critical information for blood banking screening strategies in other countries.

This study which provides a contemporary understanding of the current risk profiles for HIV and separately for HBV will also prospectively monitor genetic characteristics of recently acquired infections through genotyping and drug resistance profile testing, thus serving a US, South African, and global public health imperative to monitor the genotypes of HIV and HBV that have recently been transmitted. For HIV, the additional monitoring of drug resistance patterns in newly acquired infection is critical to determine if currently available antiretroviral medicines are capable of combating infection. Because the pace of globalization means these infections can cross borders easily, these study objectives have direct relevance for HIV and HBV control in the U.S. and globally. Further, the ability to identify recent HIV infections provides a unique opportunity to study the biology, host response and evolution of HIV disease at time points proximate to virus acquisition. Genotyping and host response information is scientifically important not only to South Africa, but to the U.S. and other nations since it will provide a broader global understanding of how to most effectively manage and potentially prevent HIV (e.g. through vaccine development). Efforts to develop vaccines funded by the National Institutes of Health and other US-based organizations may directly benefit from the findings of this study.

The South African National Blood Service (SANBS) uses both individual donation Nucleic Acid Testing (ID–NAT) and serology tests (either antibody or antigen detection tests) to screen blood donors for HIV and Hepatitis-B Virus (HBV), among other infections. A positive NAT test precedes HIV antibody detection or HBV surface antigen detection by days to weeks in newly acquired HIV and HBV infections. A combined testing strategy using NAT and serology tests therefore confers the ability to detect most acute infections and discriminate between recent (incident) and more remotely acquired (prevalent) infection. Additional tests that exploit antibody maturation kinetics such as the HIV Limiting Antigen Avidity assay (LAg Avidity) can further assist to classify persons with an HIV antibody positive test as having a recently acquired (incident) or longer-term (prevalent) infection. Hepatitis B core antibody (anti-HBc) testing of NAT-positive and NAT and Hepatitis B Virus Surface Antigen (HBsAg) positive HBV infections allows classification of HBV infections as recently acquired or prevalent infections. Infections that are anti-HBc negative are recently acquired (incident).

Leveraging this ability to classify HIV and HBV infections as incident or prevalent leads to three study objectives:

1. Objective 1 consists of evaluating the risk factors associated with having an incident HIV or HBV infection. To that end, a frequency matched case-control study will be conducted with two case groups: Incident HIV infected blood donors and incident HBV infected blood donors, respectively. Risk factors in these two case groups will be compared to the risk factors provided by a group of controls (blood donors whose infectious tests are all negative). Cases and controls will be accrued from a geographically diverse donor pool.

2. Objective 2 consists of characterizing HIV clade and drug resistance profiles and determining viral loads in all cases of incident HIV infection, as well as characterizing HBV genotype and viral load in all incident HBV infections.

3. Objective 3 consists of following persons with incident and ''elite controller'' HIV infections prospectively for three additional visits at 2, 3, and 6 months following the index positive test(s). The term ''elite controllers'' refers to those who are HIV antibody positive, but with undetectable viral RNA (NAT negative) who are believed to have a natural ability to control viral replication without therapy. These studies will be useful in identifying appropriate HIV drug therapy regimens for this condition, as well as strategies

for producing an effective HIV vaccine, which has eluded 30 years of HIV research.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden for Objectives 1 and 2 will be 395 hours for 483 respondents (participants). The total estimated annualized burden for Objective 3 will be 32 hours for 35 respondents.

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Objectives 1 and 2 consent form	Adult Donors	483	1	15/60	121
Objectives 1 and 2—ACASI Questionnaire	Adult Donors	483	1	34/60	274
Objective 3 consent form—Year 1	Adult Donors	35	1	15/60	9
Objective 3—Clinical Follow-up Questionnaire—Year 1 *.	Adult Donors	35	4	10/60	23
Objective 3 consent form*—Year 2	Adult Donors	35	1	15/60	9
Objective 3—Clinical Follow-up Questionnaire—Year 2 *.	Adult Donors	35	4	10/60	23

* The Objective 3 respondents are a subset of the respondents included in Objectives 1 and 2.

Dated: February 3, 2014.

Keith Hoots,

Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH.

Dated: February 6, 2014.

Lynn Susulske,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–03547 Filed 2–18–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Application—Neurosciences.

Date: March 4, 2014.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, (Teleconference), Rockville, MD 20852.

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS).

Dated: February 12, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03515 Filed 2–18–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Applications—Biomedical Sciences.

Date: March 10, 2014.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, (Teleconference), Rockville, MD 20852.

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS)

Dated: February 12, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03514 Filed 2–18–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; BIOCARDS.
Date: March 27, 2014.
Time: 2:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.
Contact Person: Elaine Lewis, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*
(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 12, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03511 Filed 2–18–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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: National Institute of Environmental Health Sciences Special Emphasis Panel; Career Training in Environmental Health Sciences.
Date: March 12, 2014.
Time: 11:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIEHS/National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).
Contact Person: Linda K Bass, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P. O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, *bass@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Environmental Health Research Career Development.
Date: March 13, 2014.
Time: 1:00 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIEHS/National Institutes of Health, KeyStone Building, 530 Davis Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).
Contact Person: Linda K Bass, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, *bass@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Clinical-Related Research Training in Environmental Health Sciences.
Date: March 13, 2014.
Time: 3:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIEHS/National Institutes of Health, KeyStone Building, 530 Davis Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).
Contact Person: Linda K Bass, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P. O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, *bass@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 12, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03529 Filed 2–18–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Applications.
Date: March 21, 2014.
Time: 2:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, (Teleconference), Rockville, MD 20852.
Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS).

Dated: February 12, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03510 Filed 2–18–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: February 25, 2014.

Closed: 8:00 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health National Institute on Minority Health and Health Disparities, 6707 Democracy Blvd., Rm. 849, Bethesda, MD 20892.

Open: 9:30 a.m. to 5:00 p.m.

Agenda: The agenda will include opening remarks, administrative matters, Director's Report, NIH Health Disparities update, and other business of the Council.

Place: National Institutes of Health, National Institute on Minority Health and Health Disparities, 6707 Democracy Blvd., Rm. 849, Bethesda, MD 20892.

Contact Person: Donna Brooks, Executive Officer, National Institutes of Health, National Institute on Minority Health and Heath Disparities, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 435–2135, *brooksd@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: February 12, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03512 Filed 2–18–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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: National Institute of Child Health and Human Development Initial Review Group; Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: March 12, 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: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6916, *kielbj@mail.nih.gov*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Pediatrics Subcommittee.

Date: March 13–14, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Anand, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd. Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Population Sciences Subcommittee.

Date: March 20–21, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carla T. Walls, Ph.D., Scientific Review Administratior, Scientific Review Branch, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898 *wallsc@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Biobehavioral and Behavioral Sciences Subcommittee.

Date: April 2–3, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 12, 2014

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03513 Filed 2–18–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0008; DS63610300 DR2PS0000.CH7000 134D0102R2]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1012–0006).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), ONRR is inviting comments on the renewal of a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. This ICR covers the paperwork requirements in the regulations under 30 CFR part 1243.

DATES: Submit written comments on or before April 21, 2014.

ADDRESSES: You may submit comments on this ICR to ONRR by using one of the following three methods: (Please use ''ICR 1012–0006'' as an identifier in your comment).

1. Electronically go to *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ONRR–2011–0008 and then click search. Follow the instructions to submit public comments. ONRR will post all comments.

2. Mail comments to Mr. Luis Aguilar, Regulatory Specialist, ONRR, P.O. Box 25165, MS 61030A, Denver, Colorado 80225–0165.

3. Hand-carry or mail comments, using an overnight courier service, to ONRR. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Ms. Kimberly Werner, Office of Enforcement (OE), ONRR, telephone (303) 231–3801 or email at *Kimberly.Werner@onrr.gov.* For other questions, contact Mr. Luis Aguilar, telephone (303) 231–3418, or email at *Luis.Aguilar@onrr.gov.* You may also contact Mr. Aguilar to obtain copies (free of charge) of (1) the ICR and (2) the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 1243—Suspensions Pending Appeal and Bonding—Office of Natural Resources Revenue.

OMB Control Number: 1012–0006.

Bureau Form Numbers: Forms ONRR–4435, ONRR–4436, and ONRR–4437.

Abstract: The Secretary of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary is required by various laws to manage mineral resource production from Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds collected in accordance with applicable laws. The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands. Public laws pertaining to mineral revenues are on our Web site at *http://www.onrr.gov/Laws_R_D/PubLaws/default.htm.*

If ONRR determines that a lessee has not properly reported or paid, we may issue an order to pay additional royalties, a Notice of Noncompliance, or a Civil Penalty Notice requiring correct reporting or payment. Lessees then have a right to appeal ONRR's determination(s).

Regulations at 30 CFR part 1243 govern the submission of appropriate surety instruments to suspend compliance with orders or decisions and to stay the accrual of civil penalties (if the Office of Hearings and Appeals grants a lessee's petition to stay accrual of civil penalties), pending administrative appeal for Federal and Indian leases. For Federal oil and gas leases, under 30 U.S.C. 1724(l) and its implementing regulations in 30 CFR part 1243, appellants who are requesting a suspension without providing a surety must submit information to demonstrate financial solvency. This ICR covers the burden hours associated with submitting financial statements or surety instruments required to stay an ONRR order, decision, or accrual of civil penalties.

Stay of Payment Pending Appeal

Title 30 CFR 1243.1 states that lessees or recipients of ONRR orders may suspend compliance with an order if they appeal in accordance with 30 CFR part 1290. Pending appeal, ONRR may suspend the payment requirement if the appellant submits a formal agreement of payment in case of default such as a bond or other surety; for Federal oil and gas leases, the appellant may demonstrate financial solvency. If the Office of Hearings and Appeals grants a lessee's, or other recipient of a Notice of Noncompliance or Civil Penalty Notice, request to stay the accrual of civil penalties under 30 CFR 1241.55(b)(2) and 1241.63(b)(2), the lessee or other recipient must post a bond or other surety; for Federal oil and gas leases, the appellant may demonstrate financial solvency.

ONRR accepts the following surety types: Form ONRR–4435, Administrative Appeal Bond; Form ONRR–4436, Letter of Credit; Form ONRR–4437, Assignment of Certificate of Deposit; Self-bonding; and U.S. Treasury Securities.

When one of the surety types is selected and put in place, appellants must maintain the surety until completion of the appeal. If the appeal is decided in favor of the appellant, ONRR returns the surety to the appellant. If the appeal is decided in favor of ONRR, then we will take action to collect the total amount due or draw down on the surety. We draw down on a surety if the appellant fails to comply with requirements relating to amount due, timeframe, or surety submission or resubmission. Whenever ONRR must draw down on a surety, we must draw down the total amount due, which is defined as unpaid principal plus the interest accrued to the projected receipt date of the surety payment. Appellants may refer to the Surety Instrument Posting Instructions, which are on our Web site at *http://www.onrr.gov/compliance/appeals.htm.*

Forms and Other Surety Types

Form ONRR–4435, Administrative Appeal Bond

Appellants may file Form ONRR–4435, Administrative Appeal Bond, which ONRR uses to secure the financial interests of the public and Indian lessors during the entire administrative and judicial appeal process. Under 30 CFR 1243.4, appellants are required to submit their contact and surety amount information on the bond to obtain the benefit of suspension of an obligation to comply with an order. The bond must be issued by a qualified surety company that is approved by the U.S. Department of the Treasury (see Department of the Treasury Circular No. 570, revised periodically in the **Federal Register**). The Director for ONRR or the delegated bond-approving officer maintains these bonds in a secure facility. After the appeal has concluded, ONRR may release and return the bond to the appellant or collect payment on the bond. If collection is necessary for a remaining balance, ONRR will issue a demand for payment to the surety company with a notice to the appellant. We will also include all interest accrued on the affected receivable.

Form ONRR–4436, Letter of Credit

Appellants may choose to file Form ONRR–4436, Letter of Credit, with no modifications. Requirements at 30 CFR 1243.4 continue to apply. The Director or the delegated bond-approving officer maintains the Letter of Credit (LOC) in a secure facility. The appellant is responsible for verifying that the bank provides a current Fitch rating to ONRR. After the appeal has been concluded, we

may release and return the LOC to the appellant or collect payment on the LOC. If collection is necessary for a remaining balance, we will issue a demand for payment, which includes all interest assessed on the affected receivable, to the bank with a notice to the appellant.

Form ONRR–4437, Assignment of Certificate of Deposit

Appellants may choose to secure a debt by requesting to use a Certificate of Deposit (CD) from a bank with the required minimum rating and submitting Form ONRR–4437, Assignment of Certificate of Deposit. Requirements at 30 CFR 1243.4 continue to apply. Appellants must file the request with ONRR prior to the invoice due date. We will accept a book-entry CD that explicitly assigns the CD to the Director. If collection of the CD is necessary for an unpaid balance, we will return unused CD funds to the appellant after total settlement of the appealed issues, including applicable interest charges.

Self-Bonding

For Federal oil and gas leases, regulations at 30 CFR 1243.201 provide that no surety instrument is required when a person representing the appellant periodically demonstrates, to the satisfaction of ONRR, that the guarantor or appellant is financially solvent or otherwise able to pay the obligation. Appellants must submit a written request to ''self-bond'' every time a new appeal is filed. To evaluate the financial solvency and exemption from requirements of appellants to maintain a surety related to an appeal, ONRR requires appellants to submit a consolidated balance sheet, subject to annual audit. In some cases, we also require copies of the most recent tax returns (up to 3 years) filed by appellants.

In addition, appellants must annually submit financial statements, subject to annual audit, to support their net worth. ONRR uses the consolidated balance sheet or business information supplied to evaluate the financial solvency of a lessee, designee, or payor seeking a stay of payment obligation pending review. If appellants do not have a consolidated balance sheet documenting their net worth or if they do not meet the $300 million net worth requirement, ONRR selects a business information or credit reporting service to provide information concerning an appellant's financial solvency. ONRR charges the appellant a $50 fee each time we need to review data from a business information or credit reporting service. The fee covers our costs in determining an appellant's financial solvency.

U.S. Treasury Securities

Appellants may choose to secure their debts by requesting to use a U.S. Treasury Security (TS). Appellants must file the letter of request with ONRR prior to the invoice due date. The TS must be a U.S. Treasury note or bond with maturity equal to or greater than 1 year. The TS must equal 120 percent of the appealed amount plus 1 year of estimated interest (necessary to protect ONRR against interest rate fluctuations). ONRR only accepts book-entry TS.

Request to OMB

We are requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge fiduciary duties and also may result in loss of royalty and other payments.

Proprietary information submitted to ONRR under this collection is protected, and no items of a sensitive nature are collected. A response is mandatory in order to suspend compliance with an order pending appeal.

Frequency: Annually and on occasion.

Estimated Number and Description of Respondents: 105 Federal or Indian appellants.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 210 hours.

The following chart shows the estimated annual burden hours by CFR section and paragraph. We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary.

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR part 1243	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1243.4(a)(1); 1243.6; 1243.7(a); 1243.8(a)(2) and (b)(2); 1243.101(b); 1243.202(c)	How do I suspend compliance with an order? (a) If you timely appeal an order, and if that order or portion of that order: (1) Requires you to make a payment, and you want to suspend compliance with that order, you must post a bond or other surety instrument or demonstrate financial solvency * * *.	2 hours	40 (surety instruments: Forms ONRR–4435, ONRR–4436, ONRR–4437, or TS).	80
1243.200(a) and (b); 1243.201 (c)(1), (c)(2)(i) and (c)(2)(ii) and (d)(2)	How do I demonstrate financial solvency? (a) To demonstrate financial solvency under this part, you must submit an audited consolidated balance sheet, and, if requested by the ONRR bond-approving officer, up to 3 years of tax returns to the ONRR, * * * (b) You must submit an audited consolidated balance sheet annually, and, if requested, additional annual tax returns on the date ONRR first determined that you demonstrated financial solvency as long as you have active appeals, or whenever ONRR requests * * *.	2 hours	65 self-bonding submissions.	130

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

Citation 30 CFR part 1243	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
TOTAL BURDEN	.....	.....	105	210

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: There are no additional recordkeeping costs associated with this information collection. However, ONRR estimates 5 appellants per year will pay a $50 fee to obtain credit data from a business information or credit reporting service, which is a total ''non-hour'' cost burden of $250 per year (5 appellants per year × $50 = $250).

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that 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.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency to ''. . . provide 60-day notice in the **Federal Register** . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. . . .'' Agencies must specifically solicit comments to: (1) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, usefulness, and clarity of the information to be collected; and (4) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. We also will post the ICR on our Web site at *http://www.onrr.gov/Laws_R_D/FRNotices/ICR0122.htm.*

Public Comment Policy: ONRR will post all comments, including names and addresses of respondents at *http://www.regulations.gov.* Before including Personally Identifiable Information (PII), such as address, phone number, email address, or other personal information in your comment(s), you should be aware that your entire comment (including PII) may be made available to the public at any time. While you may ask us, in your comment, to withhold PII from public view, we cannot guarantee that we will be able to do so.

Information Collection Clearance Officer: David Alspach (202) 219–8526.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2014–03551 Filed 2–18–14; 8:45 am]

BILLING CODE 4310–T2–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–800]

Certain Wireless Devices With 3G Capabilities and Components Thereof Commission Determination To Grant an Unopposed Motion by Complainants To Withdraw the Complaint as to the Remaining Respondents; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant an unopposed motion by complainants to withdraw the investigation as to the following remaining respondents: LG Electronics, Inc. of Seoul, Republic of Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; and LG Electronics Mobilecomm U.S.A., Inc. of San Diego, California (collectively, ''LG''). The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 31, 2011, based on a complaint filed by InterDigital Communications, LLC of King of

Prussia, Pennsylvania; InterDigital Technology Corporation of Wilmington, Delaware; and IPR Licensing, Inc. of Wilmington, Delaware (collectively, ''InterDigital''). 76 FR 54252 (Aug. 31, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless devices with 3G capabilities and components thereof by reason of infringement of certain claims of United States Patent Nos. 7,349,540 (terminated from the investigation); 7,502,406 (the '406 patent); 7,536,013 (the '013 patent); 7,616,970 (the '970 patent); 7,706,332 (the '332 patent); 7,706,830 (the '830 patent); and 7,970,127 (the '127 patent). The notice of investigation named several respondents. The complaint and notice of investigation were subsequently amended to allege infringement of certain claims of United States Patent No. 8,009,636 (the '636 patent) and to add the LG entities as respondents. 76 FR 81527 (Dec. 28, 2011). The complaint and notice of investigation were further amended to include an additional respondent. 77 FR 26788 (May 7, 2012).

InterDigital Communications, LLC subsequently moved for leave to amend the Complaint and Notice of Investigation to reflect the fact that it converted from a Pennsylvania limited liability company to a Delaware corporation, and changed its name to InterDigital Communications, Inc. The ALJ issued an ID granting the motion and the Commission determined not to review. *See* Order No. 91 (Jan. 17, 2013); Notice of Commission Determination Not to Review an Initial Determination Granting Complainants' Motion for Leave to Amend the Complaint and Notice of Investigation (Feb. 4, 2013).

On June 4, 2012, the ALJ granted a motion by LG under 19 CFR 210.21(a)(2) to terminate the investigation as to LG based on an arbitration agreement. *See* Order No. 30 (June 4, 2012). The Commission determined not to review. InterDigital appealed LG's termination from this investigation, and the Federal Circuit reversed the Commission's determination. *InterDigital Commc'ns, LLC* v. *Int'l Trade Comm'n*, 718 F.3d 1336 (Fed. Cir. 2013). The mandate issued on October 10, 2013, returning jurisdiction to the Commission.

On June 28, 2013, the ALJ issued his final initial determination (''ID''), finding no violation of section 337 by respondents whose products were adjudicated (''Adjudicated Respondents''). On December 19, 2013, the Commission determined to affirm the ALJ's finding of no violation of section 337 as to those respondents with the modifications set forth in a Commission opinion that issued on December 20, 2013. The Commission adopted the ALJ's findings that the '970, '013, and '127 patents are invalid in light of the prior art. However, due to the LG remand, the Commission noted that all other issues, namely, validity of the '830, '636, '406, and '332 patents, domestic industry, and FRAND continue to remain under review.

On January 13, 2014, InterDigital moved to withdraw the complaint as to LG. On January 23, 2014, the Commission investigative attorney filed a response in support of the motion. That same day, LG filed a response stating that it does not oppose the motion.

Having reviewed the motion and responses, the Commission has determined to grant the motion. The motion complies with the requirements of Commission Rule 210.21 (19 CFR 210.21) and includes the required statement that there are no agreements, written or oral, express or implied, between the parties concerning the subject matter of this investigation. In addition, there appear to be no extraordinary circumstances that would compel denying the motion. *Certain Ultrafiltration Membrane Sys. and Components Thereof,* Inv. No. 337–TA–107, Commission Action and Order, at 2 (Mar. 11, 1982). As all the parties observe, terminating the investigation as to LG will conserve substantial public and private resources. Under these circumstances, termination of LG will not adversely affect the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers.

In its December 19, 2013, notice terminating the Adjudicated Respondents, the Commission noted that due to the LG remand, issues pertaining to the validity of the Power Ramp Up (the '830 and '636 patents) and Power Control (the '406 and '332 patents) patents as well as domestic industry and FRAND remained under review. The Commission has determined to adopt the ALJ's finding in the final ID that the Adjudicated Respondents failed to establish by clear and convincing evidence that the '830, '636, '406, and '332 patents are invalid. The Commission has determined to take no position on whether InterDigital established a domestic industry as required by 19 U.S.C. 1337(a)(2). In view of its finding that Adjudicated Respondents did not violate section 337 because of non-infringement and the withdrawal of the remaining respondents, the Commission has also determined to take no position on the FRAND issues. *See Beloit Corp.* v. *Valmet Oy,* 742 F.2d 1421, 1423 (Fed. Cir. 1984) (''The Commission . . . is at perfect liberty to reach a 'no violation' determination on a single dispositive issue. That approach may often save the Commission, the parties, and this court substantial unnecessary effort.'').

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21, 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42–46 and 210.50).

Issued: February 12, 2014.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–03548 Filed 2–18–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Affordable Care Act Advance Notice of Rescission

AGENCY: Office of the Secretary, DOL.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Affordable Care Act Advance Notice of Rescission,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Submit comments on or before March 21, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201312-1210-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3507(a)(1)(D). The Patient Protection and Affordable Care Act provides rules regarding rescissions of health coverage for group health plans and health insurance issuers offering group or individual health insurance coverage. Under the statute and interim final regulations issued by the EBSA, a group health plan or a health insurance issuer offering group or individual health insurance coverage generally must not rescind coverage except in the case of fraud or an intentional misrepresentation of a material fact. Furthermore, coverage may not be cancelled unless prior notice is provided. Specifically, interim final regulations that the EBSA has promulgated provide that a group health plan or a health insurance issuer offering group health insurance coverage must provide at least 30 days advance notice to an individual before coverage may be rescinded. The notice must be provided regardless of whether the rescission is of group or individual coverage; or whether, in the case of group coverage, the coverage is insured or self-insured, or the rescission applies to an entire group or only to an individual within the group.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0141.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on February 28, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 29, 2013 (78 FR 71669).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0141. The OMB is particularly interested in comments that:

- 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.

Agency: DOL–EBSA.

Title of Collection: Affordable Care Act Advance Notice of Rescission.

OMB Control Number: 1210–0141.

Affected Public: Private Sector—businesses or other for profits and not-for-profit institutions.

Total Estimated Number of Respondents: 100.

Total Estimated Number of Responses: 1,600.

Total Estimated Annual Time Burden: 26 hours.

Total Estimated Annual Other Costs Burden: $400.

Dated: February 10, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–03541 Filed 2–18–14; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Transit Worker Protections Under Federal Transit Act Section 5333(b) Urban Program

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Labor Management Standards (OLMS) sponsored information collection request (ICR) titled, ''Transit Worker Protections under Federal Transit Act Section 5333(b) Urban Program,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

DATES: Submit comments on or before March 21, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201309-1245-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OLMS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of

the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authorization for the information collection requirements needed for the OLMS to administer Federal Transit Act section 5333(b) Urban Program worker protections. *See* 49 U.S.C. 5333(b). Section 5333(b) provides that the DOL must ensure that a recipient of Federal funds used to acquire, improve, or operate a transit system establishes arrangements to protect the rights of affected transit employees. Federal law requires such an arrangement to be fair and equitable, and the DOL must certify the arrangement before the U.S. Department of Transportation, Federal Transit Administration (FTA) can award certain funds to grantees. An employee protective arrangement must include provisions that may be necessary for the preservation of rights, privileges, and benefits under existing collective bargaining agreements or otherwise; the continuation of collective bargaining rights; the protection of individual employees against a worsening of their positions related to employment; assurances of employment to employees of acquired transportation systems; assurances of priority of reemployment of employees whose employment is ended or who are laid off; and paid training or retraining programs. *See* 49 U.S.C. 5333(b)(2).

Pursuant to regulations 29 CFR part 215, upon receipt of copies of applications for Federal assistance subject to 49 U.S.C. 5333(b) from the FTA, together with a request for DOL certification of employee protective arrangements, the DOL will process those applications, which must be in final form. The FTA will provide the DOL with information necessary to enable the DOL to process employee protections for certification of the project.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1245–0006.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on March 31, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 26, 2014 (78 FR 70584).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1245–0006. The OMB is particularly interested in comments that:

- 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.

Agency: DOL–OLMS.

Title of Collection: Transit Worker Protections under Federal Transit Act Section 5333(b) Urban Program.

OMB Control Number: 1245–0006.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 2,294.

Total Estimated Number of Responses: 2,294.

Total Estimated Annual Time Burden: 18,352 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: February 11, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–03499 Filed 2–18–14; 8:45 am]

BILLING CODE 4510–CP–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Proposed Extension of the Approval of Information Collection Requirements; Correction; OMB Number: 1250–0002

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice; correction.

SUMMARY: The Department of Labor, Office of Federal Contract Compliance Programs, published a document in the **Federal Register** on February 5, 2014 seeking comments on its information collection and revised complaint form. This form, ''Complaint Form CC–4, Complaint of Employment Discrimination by Federal Government Contractors or Subcontractors,'' is OMB control number 1250–0002. Under the heading ''Improved Information Technology'' in column 3 on page 6926 the incorrect statement ''The CC–4 is available on the Internet for downloading or electronic submission at *http://www.dol.gov/ofccp/regs/compliance/pdf/English.pdf*.'' is corrected to read ''The current OMB approved CC–4 is available on the Internet for downloading or electronic submission at *http://www.dol.gov/ofccp/regs/compliance/pdf/English.pdf*.''

The first page of the proposed information collection on page 6929 of the **Federal Register** failed to display information in three fields located in the left-hand column, the third block of the right-hand column and the bottom section of the form. The questions and information included in these fields is posted below in a reformatted version of the form originally published on February 5, 2014.

FOR FURTHER INFORMATION CONTACT: Debra Carr, (202) 693–0103 (voice) or (202) 693–1337 (TTY).

Dated: February 11, 2014.

Debra A. Carr,

Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs.

BILLING CODE 4510–CM–P

Complaint of Employment Discrimination by Federal Government Contractors or Subcontractors

OMB: 1250-0002
Expires: XX/XX/XXXX

Please read all the instructions before completing this form.

How can we reach you?	Name (First, Middle, Last):_____ Street Address: _____ City, State, Zip Code: _____ Telephone Number: _____ ____ Home ____ Work ____ Cell Email: _____ Have you filed these allegations of employment discrimination with another federal or local agency? _____ Yes _____No If yes, which agency: _____ Contact Name: _____ Phone Number: _____
Who can we contact if we cannot reach you?	Name (First, Middle, Last):_____ Street Address: _____ City, State, Zip Code: _____ Telephone Number: _____ ____ Home ____ Work ____ Cell Email: _____
What company or employer do you believe discriminated against you?	Company Name:_____ Street Address: _____ City, State, Zip Code: _____ Telephone Number: _____ Give the date(s) and times you believe you were discriminated against: _____
Why do you believe this company or employer discriminated against you?	☐ **Race** ☐ American Indian/Alaskan Native Indicate Tribal affiliation: _____ ☐ Asian ☐ Black/African American ☐ Native Hawaiian or Other Pacific Islander ☐ White ☐ **National Origin** ☐ Hispanic or Latino ☐ Other ☐ **Color** ☐ **Religion** ☐ **Sex/Gender** ☐ Female ☐ Male ☐ **Pregnancy** ☐ **Retaliation** ☐ **Veteran Status** (See instructions for definitions) Note: you will be asked to provide a DD Form214. ☐ **Disability**

Where did you learn you could file a complaint with OFCCP?
☐ Internet ☐ Poster ☐ Local Community Organization ☐ OFCCP Meeting or Event
☐ Brochure ☐ Fact Sheet ☐Other

Form CC-4, revised 01/2014

Your Complaint:
Please describe below what you believe the employer did or failed to do to cause discrimination or retaliation.
Answer the following questions below and describe in detail the alleged discrimination or retaliation:
-Why you believe the act(s) were (1) discriminatory based on your race, sex, color, religion, national origin, disability, veteran status; and/or (2) in retaliation for filing a complaint, participating in discrimination proceedings or otherwise opposing discrimination under any of the above listed bases;
-Specific dates, places, names and titles of person(s) involved;
-What harm, if any, was caused to you or others with whom you work as a result of the alleged discriminatory or retaliatory act(s);
-What explanation, if any, was offered for the act(s) by the employer or their representatives; and
-Any information you may have on federal contracts held by the company.
Please attach additional pages, if needed.

Do you think other people experienced the same discrimination you described?	Do you know if other employees or applicants were allegedly discriminated against in the same way as you indicated above? _____ Yes* _____No Do you know if there were people outside of your protected class who were treated more favorably than you were? _____ Yes* _____No *Note: If you answer yes, please be prepared to provide to OFCCP the names and titles of the individuals who faced similar discrimination.
Do you have an attorney or other representative?	If you are represented by an attorney or other person or organization, please provide their contact information below. Name (First, Middle, Last):_____ Street Address: _____ City, State, Zip Code: _____ Telephone Number: _____ Email: _____ If you have an attorney or other representative, who should we contact for additional information regarding your complaint? ____Me ____ Representative
Signature and Verification	I declare under penalty of perjury that the information given above is true and correct to the best of my knowledge or belief. A willful false statement is punishable by law. I hereby authorize the release of any medical information needed for this investigation. Signature of Complainant: _____ Date: _____

[FR Doc. 2014–03505 Filed 2–18–14; 8:45 am]
BILLING CODE 4510–CM–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[14–019]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Frances Teel, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JF0000, Washington, DC 20546, (202) 358–2225.

SUPPLEMENTARY INFORMATION:

I. Abstract

The KEEP is a job shadowing program designed to provide students with career exploration opportunities under the mentorship of a NASA Kennedy Space Center (KSC) subject matter expert. Participation in the program is limited to students who are U.S. citizens and 16 years or older. Interested students will submit a job shadowing application package, which includes recommendations from two separate science, math, or technology teachers associated with their current school of enrollment and designation of their top three choices for the job shadowing experience to include but not limited to biomedical, chemistry, computer science, engineering, meteorology, and physics. Students may request a shadowing opportunity for a period of 1–5 days. This information collection renewal includes updates to the application package for clarity and comprehensibility.

II. Method of Collection

Paper.

III. Data

Title: Kennedy Educational Experiences program (KEEP).

OMB Number: 2700–0135.

Type of review: Renewal, with change, of currently approved information collection.

Affected Public: Individuals.

Estimated Number of Respondents: 60.

Estimated Total Annual Burden Hours: 30.6.

Estimated Total Annual Cost to Respondents: $15.00 per respondent.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) The accuracy of NASA's estimate of the burden (including hours and cost) 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 respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2014–03590 Filed 2–18–14; 8:45 am]
BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection System

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received by April 21, 2014, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Engineering Program Monitoring Data Collections.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection for post-award output and outcome monitoring system.

Abstract:

Proposed Project:

NSF provides nearly 20 percent of federal funding for basic research to academic institutions.[1] Within NSF, the Directorate for Engineering (ENG) has primary responsibility for promoting the progress of engineering in the United States in order to enable the Nation's capacity to perform. Its investments in engineering research and education aim to build and strengthen a national capacity for innovation that can lead over time to the creation of new shared wealth and a better quality of life. Most NSF programs in engineering are funded through the Directorate for Engineering, which also sponsors the NSF's Industrial Innovation and Partnerships (IIP) Division. To these ends, ENG

[1] National Science Foundation. (2012). *NSF at a glance.* Retrieved from *http://www.nsf.gov/about/glance.jsp.*

provides support for research and implementation activities that may meet national needs. While scientists seek to discover what is not yet known, engineers apply fundamental science to design and develop new devices and engineered systems to solve societal problems. ENG also focuses on broadening participation in engineering research and careers.

The Directorate for Engineering (ENG) requests of the Office of Management and Budget (OMB) a clearance that will allow NSF–ENG to improve the rigor of our surveys for evaluations and program monitoring, as well as to initiate new data collections to monitor the immediate, intermediate and long-term outcomes of our investments by periodically surveying the grantees and their students involved in the research. The clearance will allow any program in the Directorate for Engineering at NSF to rigorously develop, test, and implement survey instruments and methodologies.

Some NSF–ENG programs regularly conduct a variety of data collection activities that include routine program monitoring, program evaluations, and education-related data collections from federally funded institutions of higher education. The primary objective of this clearance is to allow other programs in NSF–ENG to collect outcome and output data from grantees, their partners and students, which will enable the evaluation of the impact of its investments in engineering research over time. With that purpose, this clearance will allow us to use a bank of approved question items as needed as long as the resources consumed to do not exceed this request. The second related objective is to improve our questionnaires and/or data collection procedures through pilot tests and other survey methods used in these activities for different programs. Under this clearance a variety of surveys could be pre-tested, modified and used. The exact combination of questions from the question bank is currently unknown for each program, but it will be based on their respective logic models and program goals. Following standard OMB requirements, NSF will submit to OMB an individual request for each survey project it undertakes under this clearance. NSF will request OMB approval in advance and provide OMB with a copy of the questionnaire (if one is used) and materials describing the project.

In doing so, this request seeks approval for multiple data collections that have similar elements and purposes and will provide essential information for program monitoring purposes through multiple possible methods of collection. Data collected by ENG program outcome monitoring systems will be used for program planning, management, evaluation, and audit purposes. Summaries of output and outcome monitoring data are used to respond to queries from Congress, the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors (COVs), and NSF's Office of the Inspector General. These data are needed for effective administration, program and project monitoring, evaluation, strategic reviews and for measuring attainment of NSF's program and strategic goals, as identified by the President's Accountable Government Initiative, the Government Performance and Results Act (GPRA) Modernization Act of 2010, and NSF's Strategic Plan.

Outcome and output monitoring data represented in this collection is complementary to the data collected in the RPPR both with respect to type of questions and indicators (content) and timeliness of the collection. All questions asked are questions that are NOT included in the final or annual report and the intention is to ask them even beyond the period of performance on voluntary basis in order to capture impacts of the research that occur beyond the life of the award. Questionnaire items fall into the category of general items that could be used across programs as well as items of interest to a particular division. We are seeking to collect additional information from the grantees about the outcomes of their research that go above and beyond the standard reporting requirements used by the NSF and could span a period of up to 10 years after the award.

The six (6) divisions or offices in NSF–ENG which oversee multiple programs are included in this request. They are designed to assist in management of specific programs, divisions, or multi-agency initiatives and to serve as data resources for current and future program evaluations.

Program/office	Type of program
Emerging Frontiers in Research and Innovation (EFRI).	Fundamental Research.
Engineering Education and Centers (EEC).	Large research center's research (Implementation & Development) & Research and Education.
Industrial Innovation and Partnerships (IIP).	Translational Research.
Chemical, Bioengineering, Environmental, and Transport Systems (CBET).	Fundamental Research.
Civil, Mechanical, and Manufacturing Innovation (CMMI).	Fundamental Research.
Electrical, Communications, and Cyber Systems (ECCS).	Fundamental Research.

ENG-funded projects could include research opportunities and mentoring for educators, scholars, and university students, as well as outreach programs that help stir the imagination of K–12 students, often with a focus on groups underrepresented in science and engineering. The surveys to be tested and implemented would be designed to assist in management of specific division programs, divisions, or multi-agency initiatives and to serve as data resources for current and future program evaluations.

This data collection effort will enable program officers to longitudinally monitor outputs and outcomes given the unique goals and purpose of their programs. This is very important to enable appropriate and accurate evidence-based management of the programs and to determine whether or not the specific goals of the programs are being met.

Grantees will be invited to submit this information on a periodic basis to support performance review and the management of ENG grants by ENG officers. Once the survey tool for a specific program is tested, ENG grantees will be invited to submit these indicators to NSF via data collection methods that include but are not limited to online surveys, interviews, focus groups, phone interviews, etc. These indicators are both quantitative and descriptive and may include, for example, the characteristics of project personnel and students; sources of complementary cash and in-kind support to the ENG project; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; descriptions of significant advances and other outcomes of the ENG-funded effort.

Use of the Information: The data collected will be used for NSF internal reports, historical data, program level studies and evaluations, and for securing future funding for the ENG program maintenance and growth. These data could be used for program

evaluation purposes if deemed necessary for a particular program. Evaluation designs could make use of metadata associated with the award, and other characteristics to identify a comparison group to evaluate the impact of the program funding and other interesting research questions. Different designs could be possible based on the research questions varying from program to program but the fact that NSF–ENG has already collected data on the outcomes of interest will result in substantial savings on the evaluation per se.

Estimate of Burden:

Collection title	Number of respondents	Annual number of responses/ respondent	Annual hour burden
Emerging Frontiers in Research and Innovation (EFRI)	85	0.25	21.25
Civil, Mechanical, and Manufacturing Innovation (CMMI)	1300	0.25	325
Chemical, Bioengineering, Environmental, and Transport Systems (CBET)	1750	0.25	437.5
Electrical, Communications, and Cyber Systems (ECCS)	1000	0.25	250
Engineering Education and Centers (EEC)	100	0.25	100
Industrial Innovation and Partnerships (IIP)	1000	4	4000
Total	5,235		5,133.75

Below is an example that shows how the hour burden was estimated for the monitoring system.

The estimated average number of annual respondents is 5,235, with an estimated annual response burden of 5,133.75 hours. For post-award monitoring systems, most divisions expect to collect data at 1, 2, 5, and 10 years post-award, in order to have the best chance of capturing the more immediate outcomes expected by 1–2 years post-award, intermediate outcomes at 5 years post-award, and long-term outcomes/impacts at 10 years post-award. These four (4) data collections spread over the span of 10 years; this averages to 0.25 data collections/year. For the IIP division, many awards are made in translational research, such that we might expect a shorter and more condensed timeline of outcomes and impacts. Thus, some programs may wish to collect data quarterly for the first two years of the award, and then once annually at 5 and 10 years post-award. The annual number of responses for the first 2 years post-award is included in this table.

For life-of-award monitoring, the data collection burden to awardees will be limited to no more than 2 hours of the respondents' time in each instance.

Respondents: The respondents are either PIs or program coordinators. One PI or program coordinator per award completes the questionnaire.

Estimates of Annualized Cost to Respondents for the Hour Burdens

The overall annualized cost to the respondents is estimated to be $214,635. The following table shows the annualized estimate of costs to PI/program coordinator respondents, who are generally university professors. This estimated hourly rate is based on a report from the American Association of University Professors, ''Annual Report on the Economic Status of the Profession, 2011–12,'' *Academe,* March–April 2012, Survey Report Table 4. According to this *report,* the average salary of an associate professor across all types of doctoral-granting institutions (public, private-independent, religiously affiliated) was $86,319. When divided by the number of standard annual work hours (2,080), this calculates to approximately $41 per hour.

Respondent type	Number of respondents	Burden hours per respondent	Average hourly rate	Estimated annual cost
PIs/Program Coordinators (EFRI, CBET, CMMI, ECCS, EEC)	4,235	0.25	$41	$173,635
PIs/Program Coordinators (IIP Division)	1,000	1	41	41,000
Total	5,235			214,635

Estimated Number of Responses per Report: Data collection for the collections involves all awardees in the programs involved. The table below shows the total universe and sample size for each of the collections.

RESPONDENT UNIVERSE AND SAMPLE SIZE OF ENG PROGRAM MONITORING CLEARANCE COLLECTIONS

Collection title	Universe of respondents	Sample size
Emerging Frontiers in Research and Innovation (EFRI)	85	85
Civil, Mechanical, and Manufacturing Innovation (CMMI)	1300	1300
Chemical, Bioengineering, Environmental, and Transport Systems (CBET)	1750	1750
Electrical, Communications, and Cyber Systems (ECCS)	1000	1000
Engineering Education and Centers (EEC)	100	100
Industrial Innovation and Partnerships (IIP)	1000	1000

Dated: February 12, 2014.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2014–03534 Filed 2–18–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0022]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NUREG/BR–0254, Payment Methods; and NRC Form 629, ''Authorization for Payment by Credit Card.''

2. *Current OMB approval number:* 3150–0190.

3. *How often the collection is required:* As needed to process credit card payments.

4. *Who is required or asked to report:* Anyone doing business with the Nuclear Regulatory Commission including licensees, applicants and individuals who are required to pay a fee for inspections and licenses.

5. *The number of annual respondents:* 545.

6. *The number of hours needed annually to complete the requirement or request:* 45.4 hours.

7. *Abstract:* The U.S. Department of Treasury encourages the public to pay monies owed to the government through use of the Automated Clearinghouse Network and credit cards. These two methods of payment are used by licensees, applicants, and individuals to pay civil penalties, full cost licensing fees, and annual fees to the NRC.

Submit, by April 21, 2014, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly-available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*. The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2014–0022. You may submit your comments by any of the following methods: Electronic comments go to *http://www.regulations.gov* and search for Docket No. NRC–2014–0022. Mail comments to Acting NRC Clearance Officer, Kristen Benney (T–5 F50), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the Acting NRC Clearance Officer, Kristen Benney (T–5 F50), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6355, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 12th day of February 2014.

For the Nuclear Regulatory Commission.

Brenda Miles,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–03538 Filed 2–18–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0248]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on November 25, 2013 (78 FR 70353).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 39, ''Licenses and Radiation Safety Requirements for Well Logging.''

3. *Current OMB approval number:* 3150–0130.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required:* Applications for new licenses and amendments may be submitted at any time. Applications for renewals are submitted every 10 years. Reports are submitted as events occur.

6. *Who will be required or asked to report:* Applicants for and holders of specific licenses authorizing the use of licensed radioactive materials for well logging.

7. *An estimate of the number of annual responses:* 2,393 (326 NRC licensees' responses + 2,067 Agreement States licensees' responses).

8. *The estimated number of annual respondents:* 235 (32 NRC licensees + 203 Agreement States licensees).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 50,980 hours (6,943 NRC licensees' hours + 44,037 Agreement States licensees' hours). The NRC licensees' total burden is 6,943 hours (103 reporting and 6,840 recordkeeping hours). The Agreement States licensees' total burden is 44,037

hours (644 reporting + 43,393 recordkeeping hours).

10. *Abstract:* Part 39 of Title 10 of the *Code of Federal Regulations* (10 CFR), establishes radiation safety requirements for the use of radioactive materials in well logging operations. Information in the applications, reports, and records is used by the NRC staff to ensure that the health and safety of the public is protected and that the licensees' possession and use of the radioactive sources and byproduct materials is in compliance with the license and the regulatory requirements.

The public may examine and have copied for a fee publicly-available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 21, 2014. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Danielle Y. Jones, Desk Officer, Office of Information and Regulatory Affairs (3150–0130), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Danielle_Y_Jones@omb.eop.gov* or submitted by telephone at 202–395–1741.

The Acting NRC Clearance Officer is Kristen Benney, telephone: 301–415–6355.

Dated at Rockville, Maryland, this 12th day of February 2014.

For the Nuclear Regulatory Commission.

Brenda Miles,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–03537 Filed 2–18–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0024]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 26, ''Fitness-for-Duty Programs.''

2. *Current OMB approval number:* 3150–0146.

3. *How often the collection is required:* Annually and on occasion.

4. *Who is required or asked to report:* Nuclear power reactor licensees licensed under Parts 50 and 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) (except those who have permanently ceased operations and have verified that fuel has been permanently removed from the reactor); all holders of nuclear power plant construction permits and early site permits with a limited work authorization and applicants for nuclear power plant construction permits that have a limited work authorization under the provisions of 10 CFR Part 50; all holders of a combined license for a nuclear power plant issued under 10 CFR Part 52 and applicants for a combined license that have a limited work authorization; all licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) under the provisions of 10 CFR Part 70; all holders of a certificate of compliance of an approved compliance plan issued under 10 CFR Part 76, if the holder engages in activities involving formula quantities of SSNM; and all contractor/vendors (C/V) who implement fitness-for-duty (FFD) programs or program elements to the extent that the licensees and other entities listed in this paragraph rely on those C/V FFD programs or program elements to comply with 10 CFR Part 26.

5. *The number of annual respondents:* 98,630 respondents (30 drug and alcohol programs + 23 fatigue management programs + 12 HHS-certified laboratories + 98,565 third-party respondents).

6. *The number of hours needed annually to complete the requirement or request:* 609,006.4 hours (6,269 hours reporting + 299,121.6 hours recordkeeping + 303,615.8 hours third-party disclosure).

7. *Abstract:* The NRC regulations in 10 CFR Part 26 prescribe requirements to establish, implement, and maintain FFD programs at affected licensees and other entities. The objectives of these requirements are to provide reasonable assurance that persons subject to the rule are trustworthy, reliable, and not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way could adversely affect their ability to safely and competently perform their duties. These requirements also provide reasonable assurance that the effects of fatigue and degraded alertness on individual's abilities to safely and competently perform their duties are managed commensurate with maintaining public health and safety. The information collections required by Part 26 are necessary to properly manage FFD programs and to enable effective and efficient regulatory oversight of affected licensees other entities. These licensees and other entities must perform certain tasks, maintain records, and submit reports to comply with Part 26 drug and alcohol provisions and fatigue management requirements. These records and reports are necessary to enable regulatory inspection and evaluation of a licensee's or entity's compliance with NRC regulations, its FFD performance, and of any significant FFD-related event to help maintain public health and safety, promote the common defense and security, and protect the environment.

Submit, by April 21, 2014, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly-available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/*

public-involve/doc-comment/omb/. The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2014–0024. You may submit your comments by any of the following methods: Electronic comments go to *http://www.regulations.gov* and search for Docket No. NRC–2014–0024. Mail comments to the Acting NRC Clearance Officer, Kristen Benney (T–5 F50), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the Acting NRC Clearance Officer, Kristen Benney (T–5 F50), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6355, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 12th day of February 2014.

For the Nuclear Regulatory Commission.

Brenda Miles,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–03536 Filed 2–18–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0028]

Biweekly Notice, Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 22, 2014 to February 5, 2014. The last biweekly notice was published on January 21, 2014 (79 FR 3412).

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0028. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0028 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0028.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0028 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in you comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received

within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rmdoc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's petitioner's interest. The petition must also identify the specific contentions which the requestor petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor petitioner intends to rely in proving the contention at the hearing. The requestor petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the reques to petitioner to relief. A request or petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support

unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)-(iii).

For further details with respect to this license amendment *application,* see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station (MNS) Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 26, 2013.

Description of amendment request: The amendments requests transition of the fire protection licensing basis at MNS, Units 1 and 2, from §§ 50.48(b) and 50.48(c) of Title 10 of the *Code of Federal Regulations* (10 CFR), National Fire Protection Association (NFPA) 805.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Operation of MNS in accordance with the proposed amendment does not increase the probability or consequences of accidents previously evaluated. The Updated Final Safety Analysis Report documents the analyses of design basis accidents at MNS. The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility and does not adversely affect the ability of structures, systems, and components to perform their design function. Structures, systems, and components required to safely shut down the reactor and to maintain it in a safe shutdown condition will remain capable of performing their design functions.

One purpose of this amendment is to permit MNS to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and

the guidance in Regulatory Guide (RG) 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify Fire Protection system and features that are an acceptable alternative to the Appendix R fire protection features (69 FR 33536; June 16, 2004). Engineering Analyses, in accordance with NFPA 805, have been performed to demonstrate that the risk-informed performance-based requirements for NFPA 805 have been met.

The NFPA 805, taken as a whole, provides an acceptable alternative to 10 CFR 50.48(b) and satisfies 10 CFR 50.48(a) and General Design Criterion 3 of Appendix A to 10 CFR Part 50 and meets the underlying intent of the NRC's existing fire protection regulations and guidance, and achieves defense-in-depth and the goals, performance objectives, and performance criteria specified in Chapter 1 of the standard. The increases in core damage frequency associated with the LAR submittal are acceptable within the guidance of RG 1.174, therefore this allows self approval of the fire protection program changes post-transition. If there are any increases post-transition in core damage frequency or risk, the increase will be small and consistent with the intent of the Commission's Safety Goal Policy.

Based on this, the implementation of this proposed amendment does not significantly increase the probability of any accident previously evaluated. Equipment required to mitigate an accident remains capable of performing the assumed function.

Therefore, the consequences of any accident previously evaluated are not significantly increased with the implementation of the amendment.

Criterion 2: Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Operation of MNS in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Any scenario or previously analyzed accident with offsite dose was included in the evaluation of design basis accidents documented in the Updated Final Safety Analysis Report. The proposed change does not alter the requirements or function for systems required during accident conditions. Implementation of the new Fire Protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in RG 1.205 will not result in new or different accidents.

The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility. The proposed amendment does not adversely affect the ability of structure, systems, and components to perform their design function. Structure, systems, and components required to safely shut down the reactor and maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of this amendment is to permit MNS to adopt a new Fire Protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in RG 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify Fire Protection systems and features that are an acceptable alternative to the Appendix R Fire Protection features (69 FR 33536; June 16, 2004).

The requirements in NFPA 805 address only Fire Protection and the impacts of fire on the plant have already been evaluated. Based on this, the implementation of this proposed amendment does not create the possibility of a new or different kind of accident from any kind of accident previously evaluated. The proposed changes do not involve new failure mechanisms or malfunctions that can initiate a new accident.

Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created with the implementation of this amendment.

Criterion 3: Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Operation of MNS in accordance with the proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the Updated Final Safety Analysis Report. The proposed amendment does not adversely affect the ability of Structure, Systems, and Components to perform their design function. Structure, Systems, and Components required to safely shut down the reactor and to maintain it in a safe shutdown condition remain capable of performing their design functions.

One purpose of this amendment is to permit MNS to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in RG 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify Fire Protection systems and features that are an acceptable alternative to the McGuire Nuclear Station's existing fire protection requirements. Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based methods do not result in a significant reduction in the margin of safety.

Based on this, the implementation of this proposed amendment does not significantly reduce the margin of safety. The proposed changes are evaluated to ensure that risk and safety margins are kept within acceptable limits. Therefore, the transition does not involve a significant reduction in the margin of safety.

The NFPA 805 continues to protect public health and safety because the overall approach of NFPA 805 is consistent with the key principles for evaluating license basis changes, as described in RG 1.174, is consistent with the defense-in-depth philosophy, and maintains sufficient safety margins.

Margins previously established for the MNS Fire Protection program in accordance with existing fire protection requirements are not significantly reduced.

Therefore, this proposed amendment does not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Robert J. Pascarelli.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station (ONS), Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: October 24, 2013.

Description of amendment request: The proposed amendments would revise Section 3.1.1.1 of the Updated Final Safety Analysis Report (UFSAR) for ONS Units 1, 2, and 3 to clarify quality requirements of the Standby Shutdown Facility (SSF) and interconnected systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves no change to the plant design and is intended to ensure a consistent interpretation of wording previously included in the UFSAR regarding the QA classification of certain Structures, Systems, and Components (SSCs) relied upon to address a postulated Turbine Building flood event. The proposed change will help to ensure the design of the SSF is maintained consistent with the licensed design. The proposed UFSAR change does not involve operating any installed equipment in a new or different manner or a change to any set points for parameters which initiate protective or mitigation action. There is no adverse impact on containment integrity, radiological release pathways, fuel design, filtration systems, main steam relief valve set

points, or radwaste systems. No new radiological release pathways are created. Because this correction and clarification to the UFSAR design description does not alter the SSF design as licensed, the proposed change does not involve a significant increase in the probability or consequences of any event requiring operation of the SSF.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change requests approval to modify and clarify a UFSAR design description to ensure the described design of the ONS units and the SSF is maintained consistent with the licensed design. In accordance with this revision, replacement equipment is functionally equivalent to the existing and is designed to the appropriate pressure, temperature, and environmental parameters. The proposed change does not change the design function or operation of the SSF or of the interconnecting seismic induced turbine building flood equipment. Further, the proposed change does not create a new or different kind of accident since the proposed changes do not introduce credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change requests approval to modify and clarify a UFSAR design description to ensure a consistent understanding of the licensed design of the plant, including the SSF. The proposed change does not change the design function or operation of the SSF. The proposed change does not involve operating any installed equipment in a new or different manner; a change to any set points for parameters which initiate protective or mitigation action; or any impact on the fission product barriers or safety limits.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202–1802.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: October 31, 2013.

Description of amendment request: The licensee has indicated their intent to submit certifications pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 50.82(a)(1)(i) and (ii) along with 10 CFR 50.82(a)(2) committing to the permanent cessation of operations and the permanent removal of fuel from the reactor vessel. Following these certifications, the 10 CFR part 50 operating license will no longer permit operation of the reactor or placement of fuel in the reactor vessel. The proposed amendment includes a number of changes to revise or eliminate current requirements found in Section 6.0, Administrative Controls, of the Vermont Yankee Technical Specifications to support a defueled reactor, the new organization, and the permanent shutdown of the facility. Proposed changes include (1) elimination of the Mitigating Strategies License Condition in the operating license, (2) revisions to Section 6.1, Responsibility, regarding control room command function and delegation of authority, (3) revisions to Section 6.2, Organization, to reflect emphasis on the safe handling and storage of spent nuclear fuel as opposed to nuclear plant operations along with the conversion of license reactor operators to certified fuel handlers, (4) elimination of Section 6.3, Actions to be Taken if a Safety Limit is Exceeded, (5) revision to Section 6.4, Procedures, to reflect a permanently defueled reactor vessel, (6) revision to Section 6.6, Reporting Requirements, to eliminate the Core Operating Limits Report, and (7) revision to Section 6.7, Programs and Manuals to eliminate the Integrity of Systems Outside Containment program, eliminate the Plant Offsite Review Committee review of changes to the Offsite Dose Calculation Manual, and eliminate the Primary Containment Leakage Rate Testing Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously examined?

Response: No.

The proposed amendment would not take effect until VY [Vermont Yankee Nuclear Power Station] has permanently ceased operation and entered a permanently defueled condition. The proposed amendment would modify the VY OL [operating license] and TS [technical specifications] by deleting the portions of the OL and TS that are no longer applicable to a permanently defueled facility, while modifying the other sections to correspond to the permanently defueled condition.

The deletion and modification of provisions of the administrative controls do not directly affect the design of structures, systems, and components (SSCs) necessary for safe storage of irradiated fuel or the methods used for handling and storage of such fuel in the fuel pool. The changes to the administrative controls are administrative in nature and do not affect any accidents applicable to the safe management of irradiated fuel or the permanently shutdown and defueled condition of the reactor. The deletion of the Mitigation Strategy License Condition is also administrative in nature as the sections of the Order requiring implementation of the condition have been rescinded and the controlling regulation in which the mitigation strategies have been codified, 10 CFR 50.54(hh), specifies that these requirements are not applicable in the permanently defueled condition.

In a permanently defueled condition, the only credible accident is the fuel handling accident.

The probability of occurrence of previously evaluated accidents is not increased, since extended operation in a defueled condition will be the only operation allowed, and therefore bounded by the existing analyses. Additionally, the occurrence of postulated accidents associated with reactor operation is no longer credible in a permanently defueled reactor. This significantly reduces the scope of applicable accidents.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes have no impact on facility SSCs affecting the safe storage of irradiated fuel, or on the methods of operation of such SSCs, or on the handling and storage of irradiated fuel itself. The administrative removal of an OL condition [* * *] or modifications of the TS that are related only to administration of facility cannot result in different or more adverse failure modes or accidents than previously evaluated because the reactor will be permanently shutdown and defueled and VY will no longer [be] authorized to operate the reactor.

The proposed deletion of requirements of the VY OL and TS do not affect systems credited in the accident analysis for the fuel handling accident at VY. The proposed OL and TS will continue to require proper control and monitoring of safety significant parameters and activities.

The proposed amendment does not result in any new mechanisms that could initiate damage to the remaining relevant safety barriers for defueled plants (fuel cladding and spent fuel cooling). Since extended operation in a defueled condition will be the only operation allowed, and therefore bounded by the existing analyses, such a condition does not create the possibility of a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Because the 10 CFR Part 50 license for VY will no longer authorize operation of the reactor or emplacement or retention of fuel into the reactor vessel once the certifications required by 10 CFR 50.82(a)(1) are submitted, as specified in 10 CFR 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer credible. The only remaining credible accident is a fuel handling accident (FHA). The proposed amendment does not adversely affect the inputs or assumptions of any of the design basis analyses that impact the FHA.

The proposed changes are limited to those portions of the OL and TS that are not related to the safe storage of irradiated fuel. The requirements that are proposed to be revised or deleted from the VY OL and TS are not credited in the existing accident analysis for the remaining applicable postulated accident; and as such, do not contribute to the margin of safety associated with the accident analysis. Postulated DBAs involving the reactor are no longer possible because the reactor will be permanently shutdown and defueled and VY will no longer be authorized to operate the reactor.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, New York 10601.

NRC Branch Chief: Benjamin G. Beasley.

Indiana Michigan Power Company (IandM), Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of amendment request: October 8, 2013.

Description of amendment request: The proposed amendment would increase the normal reactor coolant system (RCS) temperature and pressure at the Donald C. Cook Nuclear Plant, Unit 1, consistent with the previously licensed conditions. The proposed amendment would modify the Unit 1 technical specifications and license basis associated with this change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

• SR 3.4.14.1 RCS [Pressure Isolation Valve (PIV)] Leakage—Surveillance Requirements

The proposed change to the RCS PIV RCS pressure range does not significantly increase the probability or consequences of an accident previously evaluated in the [Updated Final Safety Analysis Report (UFSAR)]. The analytical and evaluation efforts performed for the [Normal Operating Pressure/Normal Operating Temperature (NOP/NOT)] conditions were shown to be acceptable. The systems and components (including interface systems and control systems) will function as designed and all performance requirements for these systems remain acceptable. There are no physical changes being made to the fuel cladding, the RCS pressure boundary, or the containment. No significant increase in the consequences has been identified. The NOP/NOT conditions do not introduce the possibility of a change in the frequency of an accident because the parameter changes are not an initiator of any accident previously considered and no new failure modes have been introduced.

Therefore, neither the probability nor the consequences of an accident previously evaluated has been significantly increased.

• SR 3.5.5.1 Seal Injection Flow—Surveillance Requirements

The proposed change to the pressurizer pressure range and the elimination of the low pressure operation does not significantly increase the probability or consequences of an accident previously evaluated in the UFSAR. The analytical and evaluation efforts performed for the NOP/NOT conditions were shown to be acceptable. The systems and components (including interface systems and control systems) will function as designed and all performance requirements for these systems remain acceptable. There are no physical changes being made to the fuel cladding, the RCS pressure boundary, or the containment. No significant increase in the consequences has been identified. The NOP/NOT conditions do not introduce the possibility of a change in the frequency of an accident because the parameter changes are not an initiator of any accident previously considered and no new failure modes have been introduced.

Therefore, neither the probability nor the consequences of an accident previously evaluated has been significantly increased.

• SR 3.6.10.1 Containment Air Recirculation/Hydrogen Skimmer (CEQ) System—Surveillance Requirements

The proposed change to the containment air recirculation fan delay/start times does not significantly increase the probability or consequences of an accident previously evaluated in the UFSAR. The analytical and evaluation efforts performed for the NOP/NOT conditions were shown to be acceptable. The systems and components (including interface systems and control systems) will function as designed and all performance requirements for these systems remain acceptable. There are no physical changes being made to the fuel cladding, the RCS pressure boundary, or the containment. No significant increase in the consequences has been identified. The NOP/NOT conditions do not introduce the possibility of a change in the frequency of an accident because the parameter changes are not an initiator of any accident previously considered and no new failure modes have been introduced.

Therefore, neither the probability nor the consequences of an accident previously evaluated has been significantly increased.

• UFSAR Section 6.3.2, Containment Spray Systems [CTSs], System Design

The proposed revision to UFSAR Section 6.3.2 specifically recognizes use of the CTS pump time delay relay in mitigating the consequences of postulated accidents. Previously, the setting of this relay was established to support proper [emergency diesel generator] bus loading and it was accounted for as an input to accident analyses. Use of the time delay relay setting to mitigate the consequences of an accident does not significantly increase the probability or consequences of an accident previously evaluated in the UFSAR. The analytical and evaluation efforts performed for the NOP/NOT conditions were shown to be acceptable. The systems and components (including interface systems and control systems) will function as designed and all performance requirements for these systems remain acceptable. There are no physical changes being made to the fuel cladding, the RCS pressure boundary, or the containment. No significant increase in the consequences has been identified. The NOP/NOT conditions do not introduce the possibility of a change in the frequency of an accident because the parameter changes are not an initiator of any accident previously considered and no new failure modes have been introduced.

Therefore, neither the probability nor the consequences of an accident previously evaluated has been significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

• SR 3.4.14.1 RCS PIV Leakage—Surveillance Requirements

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. This proposed change has no adverse effects on any safety related system and does not challenge the performance or integrity of any safety related system. The specified RCS pressure functions support meeting the accident analyses criteria.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

• SR 3.5.5.1 Seal Injection Flow—Surveillance Requirements

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. This proposed change has no adverse effects on any safety related system and does not challenge the performance or integrity of any safety related system. The specified pressurizer pressure range supports meeting all of the accident analyses criteria.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

• SR 3.6.10.1 Containment Air Recirculation/Hydrogen Skimmer (CEQ) System—Surveillance Requirements

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. This proposed change has no adverse effects on any safety related system and does not challenge the performance or integrity of any safety related system. The delay/start time functions support meeting all of the accident analyses criteria.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

• UFSAR Section 6.3.2, Containment Spray Systems, System Design

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated in the UFSAR because this change simply recognizes potential use of the existing CTS pump time delay relay setting to mitigate the consequences of an accident. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed change. This proposed change has no adverse effects on any safety related system and does not challenge the performance or integrity of any safety related system. The delay/start time functions support meeting all of the accident analyses criteria.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

• SR 3.4.14.1 RCS PIV Leakage—Surveillance Requirements

The proposed change does not involve a significant reduction in a margin of safety. Analyses and evaluations supporting the Return to NOP/NOT Program conditions demonstrate that all acceptance criteria continue to be met. There are no changes to the design, material, and construction standards that are applicable to any System, Structure, or Component (SSC). There are no physical changes being made to the fuel cladding, the RCS pressure boundary, or the containment. Also, there is no change to a Design Basis Limit for Fission Product Barriers (DBLFPB).

Therefore, the proposed change does not involve a significant reduction in margin of safety.

• SR 3.5.5.1 Seal Injection Flow—Surveillance Requirements

The proposed change does not involve a significant reduction in a margin of safety. Analyses and evaluations supporting the Return to NOP/NOT Program demonstrate that all acceptance criteria continue to be met. There are no changes to the design, material, and construction standards that are applicable to any SSC. There are no physical changes being made to the fuel cladding, the RCS pressure boundary, or the containment. Also, there is no change to a DBLFPB.

Therefore, the proposed change does not involve a significant reduction in margin of safety.

• SR 3.6.10.1 Containment Air Recirculation/Hydrogen Skimmer (CEQ) System—Surveillance Requirements

The proposed change does not involve a significant reduction in a margin of safety. Analyses and evaluations supporting the Return to NOP/NOT Program conditions demonstrate that all acceptance criteria continue to be met. There are no changes to the design, material, and construction standards that are applicable to the CEQ System. There are no physical changes being made to the fuel cladding, the RCS pressure boundary, or the containment. Also, there is no change to a DBLFPB.

Therefore, the proposed changes do not involve a significant reduction in margin of safety.

• UFSAR Section 6.3.2, Containment Spray Systems, System Design

The proposed change does not involve a significant reduction in a margin of safety. There are no changes to the design, material, and construction standards that are applicable to the Containment Spray System. There are no physical changes being made to the fuel cladding, the RCS pressure boundary, or the containment. Also, there is no change to a DBLFPB.

Therefore, the proposed changes do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: Robert D. Carlson.

Indiana Michigan Power Company (IandM), Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: November 6, 2013.

Description of amendment request: The proposed amendment would revise Technical Specification 3.6.13, Divider Barrier Integrity, concerning the divider barrier seal inspection requirements for the Donald C. Cook Nuclear Plant, Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not involve changes to the installed structures, systems or components of the facility. The affected component (divider barrier seal) is not an accident initiator and therefore, this change does not involve a significant increase in the probability of an accident. The proposed change is considered adequate to ensure continued operability of the divider barrier. Since the divider barrier will continue to be available to perform its accident mitigation function, the consequences of accidents previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce a new mode of plant operation and does not involve physical modification to the plant. The change does not introduce new accident initiators or impact assumptions made in the safety analysis. Testing requirements continue to demonstrate that the Limiting Conditions for Operation are met and the system components are functional.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not exceed or alter a design basis or safety limit, so there is no significant reduction in the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: Robert D. Carlson.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: December 20, 2013.

Description of amendment request: The proposed amendments would revise the Prairie Island Nuclear Generating Plant, Units 1 and 2, Emergency Plan to increase the staff augmentation times for certain Emergency Response Organization functions from 30 minutes and 60 minutes to 90 minutes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed increase in staff augmentation times has no effect on normal plant operation or on any accident initiator or precursors and does not impact the function of plant structures, systems, or components (SSCs). The proposed change does not alter or prevent the ability of the Emergency Response Organization to perform their intended functions to mitigate the consequences of an accident or event. The ability of the emergency response organization to respond adequately to radiological emergencies has been demonstrated as acceptable through a staffing analysis as required by 10 CFR Part 50, Appendix E.IV.A.9.

Therefore, the proposed Emergency Plan changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not impact the accident analysis. The change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed), a change in the method of plant operation, or new operator actions. The proposed change does not introduce failure modes that could result in a new accident, and the change does not alter assumptions made in the safety analysis. This proposed change increases the staff augmentation response times in the Emergency Plan, which are demonstrated as acceptable through a staffing analysis as required by 10 CFR Part 50, Appendix E.IV.A.9. The proposed change does not alter or prevent the ability of the Emergency Response Organization to perform their intended functions to mitigate the consequences of an accident or event.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed change is associated with the Emergency Plan staffing and does not impact operation of the plant or its response to transients or accidents. The change does not affect the Technical Specifications. The proposed change does not involve a change in the method of plant operation, and no accident analyses will be affected by the proposed change. Safety analysis acceptance criteria are not affected by this proposed change. The revised Emergency Plan will continue to provide the necessary response staff with the proposed change. A staffing analysis and a functional analysis were performed for the proposed change on the timeliness of performing major tasks for the functional areas of Emergency Plan. The analysis concluded that an increase in staff augmentation times, with the addition of two on-shift positions, would not significantly affect the ability to perform the required Emergency Plan tasks. Therefore, the proposed change is determined to not adversely affect the ability to meet 10 CFR 50.54(q)(2), the requirements of 10 CFR Part 50, Appendix E, and the emergency planning standards as described in 10 CFR 50.47 (b).

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401

NRC Branch Chief: Robert D. Carlson.

South Carolina Electric and Gas Docket Nos.: 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: November 26, 2013.

Description of amendment request: The proposed change would amend Combined License Nos. NPF–93 and NPF–94 for VCSNS Units 2 and 3 by departing from approved AP1000 Design Control Document (DCD) Tier 2 information as incorporated into the Updated Final Safety Analysis Report (UFSAR) to allow use of a new methodology to determine the effective thermal conductivity resulting from oxidation of the inorganic zinc (IOZ) used in the containment vessel coating system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Implementation of a methodology which specifies an effective thermal conductivity and oxidation progression for the inorganic zinc coating of the containment vessel is used to eliminate non-mechanistic modeling of inorganic zinc thermal conductivity in the containment integrity analyses to show that the value for inorganic zinc thermal conductivity used in the containment integrity analyses is conservative, but is not used to change any of the parameters used in those analyses. There is no change to any accident initiator or condition of the containment that would affect the probability of any accident. The containment peak pressure analysis as reported in the UFSAR is not affected; therefore, the previously reported consequences are not affected.

Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment to implement a methodology which specifies an effective thermal conductivity and oxidation progression and effects for the inorganic zinc coating of the containment vessel is used to eliminate non-mechanistic modeling of inorganic zinc thermal conductivity in the containment integrity analyses to show that the value for inorganic zinc thermal conductivity used in the containment integrity analyses is conservative, but is not used to change any of the parameters used in the containment peak pressure analysis. The change in methodology does not change the condition of containment; therefore, no new accident initiator is created. The containment peak pressure analysis as currently evaluated is not affected, and the consequences previously reported are not changed. The new methodology does not change the containment; therefore, no new fault or sequence of events that could lead to containment failure or release of radioactive material is created.

Therefore, this activity does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed implementation of a methodology which specifies an effective thermal conductivity and oxidation progression and effects for the inorganic zinc coating of the containment vessel is used to eliminate non-mechanistic modeling of inorganic zinc thermal conductivity in the containment integrity analyses to show that the value for inorganic zinc thermal conductivity used in the containment integrity analyses is conservative, but is not used to change any of the parameters used in the containment peak pressure analysis. The change in methodology does not change the condition of the containment and the integrity of the containment vessel is not affected. The containment peak pressure analysis as currently evaluated is not affected, and the consequences previously reported are not changed. No safety analysis or design basis acceptance limit/criterion is changed by the proposed change, thus no margin of safety is reduced.

Therefore, the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Lawrence Burkhart.

South Carolina Electric and Gas Docket Nos.: 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: December 17, 2013.

Description of amendment request: The proposed amendment would revise the VCSNS Units 2 and 3 Emergency Plan to facilitate compliance with the Final Rule for Emergency Planning and Preparedness published on November 23, 2011. These proposed changes include the addition of text that (1) clarifies the distance of the Emergency Operations Facility from the site, (2) updates the content of exercise scenarios to be performed at least once each exercise cycle, and (3) requires the Evacuation Time Estimate to be updated annually between decennial censuses. This amendment request also proposes a new license condition to ensure the completion of a staffing analysis of on-shift personnel responsibilities no later than 180 days before fuel load.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The VCSNS Units 2 and 3 Emergency Plan provides assurance that the requirements of emergency preparedness regulations are met. The changes do not affect the design, construction, or operation of the nuclear plant, so there is no change to the probability or consequences of an accident previously evaluated.

Adding a license condition related to an emergency preparedness staffing analysis and changing the VCSNS Units 2 and 3 Emergency Plan does not affect prevention and mitigation of abnormal events, e.g., accidents, anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses as the purpose of the plan is to implement emergency preparedness regulations. No safety-related structure, system, component (SSC) or function is adversely affected. The change does not involve nor interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the UFSAR are not affected. Because the changes do not involve any SSC or function used to mitigate an accident, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the requested amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The VCSNS Units 2 and 3 Emergency Plan provides assurance that the requirements of emergency preparedness regulations are met. The changes do not affect the design, construction, or operation of the nuclear plant, so there is no new or different kind of accident from any accident previously evaluated. The changes do not affect safety-related equipment, nor do they affect equipment which, if it failed, could initiate an accident or a failure of a fission product barrier. In addition, the changes do not result in a new failure mode, malfunction, or sequence of events that could affect safety or safety-related equipment.

Therefore, the requested amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The VCSNS Units 2 and 3 Emergency Plan provides assurance that the requirements of emergency preparedness regulations are met. The changes do not affect the assessments or the plant itself. The changes do not affect safety-related equipment or equipment whose failure could initiate an accident, nor does it adversely interface with safety-related equipment or fission product barriers. No safety analysis or design basis acceptance limit or criterion is challenged or exceeded by the requested change.

Therefore, the requested amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Lawrence Burkhart.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental

Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Calvert County, Maryland

Date of application for amendments: January 28, 2013, as supplemented by letter dated April 1, 2013.

Brief description of amendments: The amendments revised Technical Specification (TS) 1.3, ''Completion Times'' Example 1.3–3, TS 3.6.6, ''Containment Spray and Cooling Systems,'' TS 3.7.3, ''Auxiliary Feedwater (AFW) System,'' TS 3.8.1, ''AC [Alternating Current] Sources-Operating,'' and TS 3.8.9, ''Distribution Systems-Operating'' by eliminating the second completion time in accordance with TS Task Force (TSTF)–439–A, Revision 2, ''Eliminate Second Completion Times Limiting Time from Discovery of Failure to Meet an LCO [limiting condition for operation].''

Date of issuance: January 29, 2014.

Effective date: As of the date of issuance to be implemented within 90 days.

Amendment Nos.: 304 and 282.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: May 28, 2013 (78 FR 31981).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated January 29, 2014.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit 2 (MPS2), New London County, Connecticut

Date of amendment request: March 21, 2013.

Description of amendment request: The amendment would revise Technical Specification (TS) 3.1.3.7—Control Rod Drive Mechanisms to provide consistency with the operability requirements of TS Table 3.3–1, Reactor Protective Instrumentation, when control rod drive mechanisms are energized and capable of withdrawal for MPS2.

Date of issuance: January 30, 2014.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 317.

Renewed Facility Operating License No. DPR–65: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: June 11, 2013 (78 FR 35061).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 2014.

No significant hazards consideration comments received: No.

DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: January 11, 2013.

Brief description of amendment: The amendment revises the Fermi 2 Technical Specifications (TSs) to risk-inform requirements regarding selected Required Action end states. Additionally, it would modify the TSs Required Actions with a Note prohibiting the use of limiting condition for operation 3.0.4.a when entering the preferred end state (Mode 3) on startup. The changes are consistent with the NRC's Technical Specification Task Force traveler TSTF–423, Revision 1, ''Technical Specifications End States, NEDC–32988–A,'' dated December 22, 2009 (ADAMS Accession No. ML093570241).

Date of issuance: January 17, 2014.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 194.

Facility Operating License No. NPF–43: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: April 16, 2013 (78 FR 22565).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 17, 2014.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: January 31, 2012, as supplemented by letters dated July 31, August 22, October 5, and November 12, 2012, and January 7, April 11, May 9, and August 6, 2013.

Brief description of amendment: The amendment allows the licensee to expand the operating domain by the implementation of Average Power Range Monitor/Rod Block Monitor/Technical Specifications/Power Range Neutron Monitoring/Maximum Extended Load Line Limit Analysis (ARTS/PRNM/MELLLA). The Neutron Monitoring System will be modified by replacing the Average Power Range Monitor (APRM) subsystem with the Nuclear Measurement Analysis and Control (NUMAC) Power Range Neutron Monitoring (PRNM) System. The modification of the PRNM system replaces analog technology with digital technology to improve the management and maintenance of the system. The licensee will expand the operating domain to Maximum Extended Load Line Limit Analysis (MELLLA) and make changes to certain allowable values and limits and to the Technical Specifications (TSs). The changes to the TSs include the adoption of Technical Specifications Task Force (TSTF) Change Traveler TSTF–493, ''Clarify Application of Setpoint Methodology for LSSS [Limiting Safety System Setting] Functions,'' Option A surveillance notes. Furthermore, the amendment allows a change in the licensing basis to support Anticipated Transient without Scram accident mitigation with one Standby Liquid Control pump instead of two.

Date of Issuance: January 31, 2014.

Effective Date: The license amendment is effective as of its date of issuance and shall be implemented within 60 days thereafter. The Technical Specification revisions will be applicable following completion of the refueling outage (R22) scheduled to begin May 8, 2015.

Amendment No.: 226.

Renewed Facility Operating License No. NPF–21: The amendment revised the Facility Operating License and Technical Specifications.

Date of Initial Notice in ***Federal Register:*** September 11, 2012 (77 FR 55867). The supplemental letters dated July 31, August 22, October 5, and November 12, 2012, and January 7, April 11, May 9, and August 6, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated January 31, 2014.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota (NSPM), Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of application for amendment: September 18, 2012, as supplemented on March 12, 2013, July 17, 2013, and November 15, 2013.

Brief description of amendment: The amendment revises the MNGP Renewed Facility Operating License and Technical Specification (TS) 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' by removing the current stored diesel fuel oil, and lube oil numerical volume requirements from the TSs and replacing them with duration-based numerical requirements consistent with TSTF–501, Revision 1.

Date of issuance: January 28, 2014.

Effective date: This license amendment is effective as of the date of issuance and shall be implemented within 60 days from date of issuance.

Amendment No.: 178.

Renewed Facility Operating License No. DPR–22: Amendment revises the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register:*** December 11, 2012 (77 FR 73689). The licensee's supplements dated March 12, 2013, July 17, 2013, and November 15, 2013, did not change the scope of the original amendment request, did not change the NRC staff's initial proposed finding of no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 2014.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: December 13, 2012, as supplemented by letters dated June 21, 2013, and July 23, 2013.

Brief description of amendments: The amendments made changes to the Prairie Island Nuclear Generating Plant Emergency Plan emergency action level initiating conditions for the classification of liquid effluent releases and for the determination of fuel clad barrier loss.

Date of issuance: January 25, 2014.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: Unit 1—210; Unit 2—198.

Renewed Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Prairie Island Nuclear Generating Plant Emergency Plan.

*Date of initial notice in **Federal Register:*** March 4, 2013 (78 FR 14134). The supplemental letters dated June 21, 2013, and July 23, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 25, 2014.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket Nos. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: December 21, 2012, as supplemented by letter dated May 16, 2013.

Brief description of amendments: The amendment made changes to the Monticello Nuclear Generating Plant Emergency Plan by revising the Emergency Action Level (EAL) setpoint for the Turbine Building Normal Waste Sump (TBNWS) Monitor. The change to the EAL restores indication of an Alert classification of a liquid effluent release via the TBNWS pathway to within the indication range of the applicable instrumentation.

Date of issuance: January 28, 2014.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment No.: 177.

Renewed Facility Operating License No. DPR–22: Amendment revised the Renewed Facility Operating License.

*Date of initial notice in **Federal Register:*** March 4, 2013 (78 FR 14133). The supplemental letter dated May 16, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 2014.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit 1, Washington County, Nebraska

Date of amendment request: April 27, 2012, as supplemented by letter dated June 27, 2013.

Brief description of amendment: The amendment revised the Fort Calhoun Station, Unit 1 (FCS) Technical Specification (TS) Limiting Condition for Operation 2.16, ''River Level,'' and TS Surveillance Requirement 3.2, ''Equipment and Sampling Tests,'' and a related change to the FCS Radiological Emergency Response Plan to revise two emergency action levels related to high water level in the Missouri River.

Date of issuance: January 28, 2014.

Effective date: As of its date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment No.: 274.

Renewed Facility Operating License No. DPR–40: The amendment revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register:*** December 26, 2012 (77 FR 76082). The supplemental letter dated June 27, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a safety evaluation dated January 28, 2014.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: April 3, 2013.

Brief description of amendment: This amendment allows for the extension of the 130-month frequency of the VCSNS containment integrated leak rate test (ILRT) or Type A test, that is required by TS 6.8.4(g) to 15 years on a permanent basis.

Date of issuance: February 5, 2014.

Effective date: This license amendment is effective as of the date of its issuance.

Amendment No.: 194.

Renewed Facility Operating License No. NPF–12: Amendment revises the License.

*Date of initial notice in **Federal Register:*** June 25, 2013 (78 FR 38084).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 5, 2014.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc. Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4, Burke County, Georgia

Date of amendment request: July 15, 2013, as supplemented by a letter dated November 15, 2013.

Brief description of amendment: The proposed amendment modified design details related to the construction of Module CA03 which forms the west wall of the in-containment refueling water storage tank. The changes sought to clarify the materials used in fabrication of the module, as well as the design details related to the horizontal stiffeners used to support the in-containment refueling water storage tank, and module legs used to anchor the module in place.

Date of issuance: January 28, 2014.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: Unit 3–17, and Unit 4–17.

Facility Combined Licenses No. NPF–91 and NPF–92: Amendment revised the Facility Combined Licenses.

*Date of initial notice in **Federal Register:*** September 3, 2013 (78 FR 54288).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 2014.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 10th day of February 2014.

For the Nuclear Regulatory Commission.

Michele. G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–03494 Filed 2–18–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of February 17, 24, March 3, 10, 17, 24, 2014.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of February 17, 2014

Wednesday, February 19, 2014

9:30 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

1:30 p.m. Briefing on Security Issues (Closed—Ex. 3)

Thursday, February 20, 2014

9:30 a.m. Briefing on Threat Environment Assessment (Closed—Ex. 1)

Week of February 24, 2014—Tentative

There are no meetings scheduled for the week of February 24, 2014.

Week of March 3, 2014—Tentative

Monday, March 3, 2014

1:30 p.m. Briefing on Human Reliability Program Activities and Analyses (Public Meeting)

(Contact: Sean Peters, 301–251–7582)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/*.

Tuesday, March 4, 2014

9:00 a.m. Briefing on Security Issues (Closed—Ex. 1)

1:30 p.m. Briefing on Security Issues (Closed—Ex. 1)

Friday, March 7, 2014

10:00 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

(Contact: Ed Hackett, 301–415–7360)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/*.

Week of March 10, 2014—Tentative

There are no meetings scheduled for the week of March 10, 2014.

Week of March 17, 2014—Tentative

Friday, March 21, 2014

1:00 p.m. Briefing on Waste Confidence Rulemaking (Public Meeting)

(Contact: Andrew Imboden, 301–287–9220)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/*.

Week of March 24, 2014—Tentative

There are no meetings scheduled for the week of March 24, 2014.

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The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *Kimberly.Meyer-Chambers@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Darlene.Wright@nrc.gov*.

Dated: February 12, 2014.

Rochelle Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2014–03645 Filed 2–14–14; 4:15 pm]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Senior Executive Service Performance Review Board Membership

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Annual Notice.

SUMMARY: Notice is given under 5 U.S.C. 4314(c)(4) of the appointment of members to the Performance Review Board (PRB) of the Occupational Safety and Health Review Commission.

DATES: Membership is effective on February 19, 2014.

FOR FURTHER INFORMATION CONTACT: Linda M. Beard, Human Resources Specialist, U.S. Occupational Safety and Health Review Commission, 1120 20th Street NW., Washington, DC 20036, (202) 606–5393.

SUPPLEMENTARY INFORMATION: The Review Commission, as required by 5 U.S.C. 4314(c)(1) through (5), has established a Senior Executive Service PRB. The PRB reviews and evaluates the

initial appraisal of a senior executive's performance by the supervisor, and makes recommendations to the Chairman of the Review Commission regarding performance ratings, performance awards, and pay-for-performance adjustments. Members of the PRB serve for a period of 24 months. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees, pursuant to 5 U.S.C. 4314(c)(5). The names and titles of the PRB members are as follows:

- Shireen L. Dodson, Ombudsman, U.S. Department of State;
- Victor Thompson, Director and HQ Chief Information Officer, National Aeronautics and Space Administration;
- Tracy Murrell, Director, Office of Marine Safety, National Transportation Safety Board; and
- Linda J. Dreeben, Deputy Associate General Counsel, National Labor Relations Board.

Dated: February 4, 2014.

Thomasina V. Rogers,

Chairman.

[FR Doc. 2014–03552 Filed 2–18–14; 8:45 am]

BILLING CODE 7600–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 3 p.m., Wednesday, March 12, 2014.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

STATUS: Hearing OPEN to the Public at 3 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Procedures

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Wednesday, March 5, 2014. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Wednesday, March 5, 2014. Such statement must be typewritten, double spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the March 20, 2014 Board meeting will be posted on OPIC's Web site on or about Friday, February 28, 2014.

CONTACT PERSON FOR MORE INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 408–0297, or via email at *Connie.Downs@opic.gov*.

Dated: February 14, 2014.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2014–03624 Filed 2–14–14; 4:15 pm]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 0–2, Form ADV–NR; OMB Control No. 3235–0240, SEC File No. 270–214.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The title for the collection of information is ''Rule 0–2 and Form ADV–NR'' under the Investment Advisers Act of 1940. Rule 0–2 and Form ADV–NR facilitate service of process to non-resident investment advisers and exempt reporting advisers and their non-resident general partners or non-resident managing agents. The Form requires these persons to designate the Commission as agent for service of process. The purpose of this collection of information is to enable the commencement of legal and or regulatory actions against investment advisers and exempt reporting advisers that are doing business in the United States, but are not residents.

The respondents to this information collection would be each non-resident general partner or non-resident managing agent of an SEC-registered adviser and each non-resident general partner or non-resident managing agent of an exempt reporting adviser. The Commission has estimated that compliance with the requirement to complete Form ADV–NR imposes a total burden of approximately 1.0 hours for an adviser. Based on our experience with these filings, we estimate that we will receive 47 Form ADV–NR filings annually. Based on the 1.0 hours per respondent estimate, the Commission staff estimates a total annual burden of 47 hours for this collection of information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB 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 OMB control number.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: February 12, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03578 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–6 OMB Control No. 3235–0564, SEC File No. 270–506

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Section 17(a) of the Investment Company Act of 1940 (the ''Act'') generally prohibits affiliated persons of a registered investment company (''fund'') from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls. [1] Rule 17a–6 (17 CFR 270.17a–6) permits a fund and a ''portfolio affiliate'' (a company that is an affiliated person of the fund because the fund controls the company, or holds five percent or more of the company's outstanding voting securities) to engage in principal transactions that would otherwise be prohibited under section 17(a) of the Act under certain conditions. A fund may not rely on the exemption in the rule to enter into a principal transaction with a portfolio affiliate if certain prohibited participants (e.g., directors, officers, employees, or investment advisers of the fund) have a financial interest in a party to the transaction. Rule 17a–6 specifies certain interests that are not ''financial interests,'' including any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. A board making this finding is required to record the basis for the finding in its meeting minutes. This recordkeeping requirement is a collection of information under the Paperwork Reduction Act of 1995 (''PRA'').[2]

The rule is designed to permit transactions between funds and their portfolio affiliates in circumstances in which it is unlikely that the affiliate would be in a position to take advantage of the fund. In determining whether a financial interest is ''material,'' the board of the fund should consider whether the nature and extent of the interest in the transaction is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement. The information collection requirements in rule 17a–6 are intended to ensure that Commission staff can review, in the course of its compliance and examination functions, the basis for a board of director's finding that the financial interest of an otherwise prohibited participant in a party to a transaction with a portfolio affiliate is not material.

Based on staff discussions with fund representatives, we estimate that funds currently do not rely on the exemption from the term ''financial interest'' with respect to any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. Accordingly, we estimate that annually there will be no principal transactions under rule 17a–6 that will result in a collection of information.

The Commission requests authorization to maintain an inventory of one burden hour to ease future renewals of rule 17a–6's collection of information analysis should funds rely on this exemption to the term ''financial interest'' as defined in rule 17a–6.

The estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 17a–6. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F St, NE., Washington DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

February 12, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03576 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 80a–17(a).

[2] 44 U.S.C. 3501.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 482; OMB Control No. 3235–0565, SEC File No. 270–508.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Like most issuers of securities, when an investment company (''fund'') [1] offers its shares to the public, its promotional efforts become subject to the advertising restrictions of the Securities Act of 1933 (15 U.S.C. 77) (the ''Securities Act''). In recognition of the particular problems faced by funds that continually offer securities and wish to advertise their securities, the Commission has previously adopted advertising safe harbor rules. The most important of these is rule 482 (17 CFR 230.482) under the Securities Act, which, under certain circumstances, permits funds to advertise investment performance data, as well as other information. Rule 482 advertisements are deemed to be

[1] ''Investment company'' refers to both investment companies registered under the Investment Company Act of 1940 (''Investment Company Act'') (15 U.S.C. 80a–1 *et seq.*) and business development companies.

''prospectuses'' under Section 10(b) of the Securities Act.[2]

Rule 482 contains certain requirements regarding the disclosure that funds are required to provide in qualifying advertisements. These requirements are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. For example, a fund is required to include disclosure advising investors to consider the fund's investment objectives, risks, charges and expenses, and other information described in the fund's prospectus, and highlighting the availability of the fund's prospectus and, if applicable, its summary prospectus. In addition, rule 482 advertisements that include performance data of open-end funds or insurance company separate accounts offering variable annuity contracts are required to include certain standardized performance information, information about any sales loads or other nonrecurring fees, and a legend warning that past performance does not guarantee future results. Such funds including performance information in rule 482 advertisements are also required to make available to investors month-end performance figures via Web site disclosure or by a toll-free telephone number, and to disclose the availability of the month-end performance data in the advertisement. The rule also sets forth requirements regarding the prominence of certain disclosures, requirements regarding advertisements that make tax representations, requirements regarding advertisements used prior to the effectiveness of the fund's registration statement, requirements regarding the timeliness of performance data, and certain required disclosures by money market funds.

Rule 482 advertisements must be filed with the Commission or, in the alternative, with the Financial Industry Regulatory Authority (''FINRA'').[3] This information collection differs from many other federal information collections that are primarily for the use and benefit of the collecting agency.

Rule 482 contains requirements that are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. The Commission is concerned that in the absence of such provisions fund investors may be misled by deceptive rule 482 advertisements and may rely on less-than-adequate information when determining in which funds they should invest money. As a result, the Commission believes it is beneficial for funds to provide investors with balanced information in fund advertisements in order to allow investors to make better-informed decisions.

The Commission estimates that 59,245 responses to rule 482 are filed annually by 3,430 investment companies offering approximately 16,428 portfolios, or approximately 3.6 responses per portfolio annually. The burden associated with rule 482 is presently estimated to be 5.16 hours per response. The annual hourly burden is therefore approximately 305,704 hours.[4]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. The provision of information under rule 482 is necessary to obtain the benefits of the safe harbor offered by the rule. The information provided under rule 482 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F St. NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 12, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03577 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

[2] 15 U.S.C. 77j(b).

[3] See rule 24b–3 under the Investment Company Act (17 CFR 270.24b–3), which provides that any sales material, including rule 482 advertisements, shall be deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act upon filing with FINRA.

[4] 59,245 responses × 5.16 hours per response = 305,704 hours.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71550/February 12, 2014]

Order Making Fiscal Year 2014 Annual Adjustments to Transaction Fee Rates

I. Background

Section 31 of the Securities Exchange Act of 1934 (''Exchange Act'') requires each national securities exchange and national securities association to pay transaction fees to the Commission.[1] Specifically, Section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities (''covered sales'') transacted on the exchange.[2] Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of covered sales transacted by or through any member of the association other than on an exchange.[3]

Section 31 of the Exchange Act requires the Commission to annually adjust the fee rates applicable under Sections 31(b) and (c) to a uniform adjusted rate.[4] Specifically, the Commission must adjust the fee rates to a uniform adjusted rate that is reasonably likely to produce aggregate fee collections (including assessments on security futures transactions) equal to the regular appropriation to the Commission for the applicable fiscal year.[5]

The Commission is required to publish notice of the new fee rates under Section 31 not later than 30 days after the date on which an Act making a regular appropriation for the applicable fiscal year is enacted.[6] On January 17, 2014, the President signed the Consolidated Appropriations Act of 2014, providing $1,350,000,000 in funds to the SEC for fiscal year 2014.

II. Fiscal Year 2014 Annual Adjustment to the Fee Rate

The new fee rate is determined by (1) subtracting the sum of fees estimated to

[1] 15 U.S.C. 78ee.

[2] 15 U.S.C. 78ee(b).

[3] 15 U.S.C. 78ee(c).

[4] In some circumstances, the SEC also must make a mid-year adjustment to the fee rates applicable under Sections 31(b) and (c).

[5] 15 U.S.C. 78ee(j)(1) (the Commission must adjust the rates under Sections 31(b) and (c) to a ''uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments collected under [Section 31(d)]) that are equal to the regular appropriation to the Commission by Congress for such fiscal year.'').

[6] 15 U.S.C. § 78ee(g).

be collected prior to the effective date of the new fee rate[7] and estimated assessments on security futures transactions to be collected under Section 31(d) of the Exchange Act for all of fiscal year 2014[8] from an amount equal to the regular appropriation to the Commission for fiscal year 2014, and (2) dividing the difference by the estimated aggregate dollar amount of sales for the remainder of the fiscal year following the effective date of the new fee rate.

The regular appropriation to the Commission for fiscal year 2014 is $1,350,000,000. The Commission estimates that it will collect $513,805,098 in fees for the period prior to the effective date of the new fee rate and $58,854 in assessments on round turn transactions in security futures products during all of fiscal year 2014.[9] Using a methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal year 2014 (developed after consultation with the CBO and OMB), the Commission estimates that the aggregate dollar amount of covered sales for the remainder of fiscal year 2014 to be $37,881,618,779,245.

As described above, the uniform adjusted rate is computed by dividing the residual fees to be collected of $836,136,049 by the estimate of the aggregate dollar amount of covered sales for the remainder of fiscal year 2014 of $37,881,618,779,245. This results in a uniform adjusted rate for fiscal year 2014 of $22.10 per million.[10]

III. Effective Date of the Uniform Adjusted Rate

Under Section 31(j)(4)(A) of the Exchange Act, the fiscal year 2014 annual adjustments to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2013, or 60 days after the date on which a regular appropriation to the Commission for fiscal year 2014 is enacted.[11] The regular appropriation to the Commission for fiscal year 2014 was enacted on January 17, 2014, and accordingly, the new fee rates applicable under Sections 31(b) and (c) of the Exchange Act will take effect on March 18, 2014.

IV. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act,

It is hereby ordered that the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall be $22.10 per $1,000,000 effective on March 18, 2014.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

Appendix A

This appendix provides the formula for determining the annual adjustment to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act for fiscal year 2014. Section 31 of the Exchange Act requires the fee rates to be adjusted so that it is reasonably likely that the Commission will collect aggregate fees equal to its regular appropriation for fiscal year 2014.

To make the adjustment, the Commission must project the aggregate dollar amount of covered sales of securities on the securities exchanges and certain over-the-counter markets over the course of the year. The fee rate equals the ratio of the Commission's regular appropriation for fiscal year 2014 (less the sum of fees to be collected during fiscal year 2014 prior to the effective date of the new fee rate and aggregate assessments on security futures transactions during all of fiscal year 2014) to the estimated aggregate dollar amount of covered sales for the remainder of the fiscal year following the effective date of the new fee rate.

For 2014, the Commission has estimated the aggregate dollar amount of covered sales by projecting forward the trend established in the previous decade. More specifically, the dollar amount of covered sales was forecasted for months subsequent to December 2013, the last month for which the Commission has data on the dollar volume of covered sales.[12]

The following sections describe this process in detail.

A. Baseline Estimate of the Aggregate Dollar Amount of Covered Sales for Fiscal Year 2014

First, calculate the average daily dollar amount of covered sales (ADS) for each month in the sample (December 2003–December 2013). The monthly total dollar amount of covered sales (exchange plus certain over-the-counter markets) is presented in column C of Table A.

Next, calculate the change in the natural logarithm of ADS from month to month. The average monthly percentage growth of ADS over the entire sample is 0.0082 and the standard deviation is 0.122. Assuming the monthly percentage change in ADS follows a random walk, calculating the expected monthly percentage growth rate for the full sample is straightforward. The expected monthly percentage growth rate of ADS is 1.57%.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for December 2013 ($250,727,781,285) to forecast ADS for January 2014 ($254,668,736,673 = $250,727,781,285 × 1.0157).[13] Multiply by the number of trading days in January 2014 (21) to obtain a forecast of the total dollar volume for the month ($5,348,043,470,127). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume of covered sales are in column G of Table A. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column C) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).

2. For each month t, calculate the change in ADS from the previous month as $\Delta_t = \log(ADS_t/ADS_{t-1})$, where log (x) denotes the natural logarithm of x.

3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, \ldots, \Delta_{120}\}$. These are given by $\mu = 0.0082$ and $\sigma = 0.122$, respectively.

4. Assume that the natural logarithm of ADS follows a random walk, so that Δ_s and Δ_t are statistically independent for any two months s and t.

5. Under the assumption that Δ_t is normally distributed, the expected value of ADS_t/ADS_{t-1} is given by $\exp(\mu + \sigma^2/2)$, or on average $ADS_t = 1.0157 \times ADS_{t-1}$.

6. For January 2014, this gives a forecast ADS of 1.0157 × $250,727,781,285 = $254,668,736,673. Multiply this figure by the 21 trading days in January 2014 to obtain a total dollar volume forecast of $5,348,043,470,127.

7. For February 2014, multiply the January 2014 ADS forecast by 1.0157 to obtain a forecast ADS of $258,671,636,250. Multiply this figure by the 19 trading days in February 2014 to obtain a total dollar volume forecast of $4,914,761,088,752.

[7] The sum of fees to be collected prior to the effective date of the new fee rate is determined by applying the current fee rate to the dollar amount of covered sales prior to the effective date of the new fee rate. The exchanges and FINRA have provided data on the dollar amount of covered sales through December 31, 2013. To calculate the dollar amount of covered sales from that date to the effective date of the new fee rate, the Division is using the same methodology it developed in consultation with the Congressional Budget Office (''CBO'') and the Office of Management and Budget (''OMB'') to estimate the dollar amount of covered sales in prior fiscal years. An explanation of the methodology appears in Appendix A.

[8] The Division is using the same methodology it has used previously to estimate assessments on security futures transactions to be collected in fiscal year 2014. An explanation of the methodology appears in Appendix A.

[9] The estimate of fees to be collected prior to the effective date of the new fee rate is determined by applying the current fee rate to the dollar amount of covered sales prior to the effective date of the new fee rate.

[10] Appendix A shows the purely arithmetic process of calculating the fiscal year 2014 annual adjustment. The appendix also includes the data used by the Commission in making this adjustment.

[11] 15 U.S.C. 78ee(j)(4)(A).

[12] To determine the availability of data, the Commission compares the date of the appropriation with the date the transaction data are due from the exchanges (10 business days after the end of the month). If the business day following the date of the appropriation is equal to or subsequent to the date the data are due from the exchanges, the Commission uses these data. The appropriation was signed on January 17, 2014. The first business day after this date was January 21, 2014. Data for December were due from the exchanges on January 15. So the Commission used December 2013 and earlier data to forecast volume for January 2014 and later months.

[13] The value 1.0157 has been rounded. All computations are done with the unrounded value.

8. Repeat this procedure for subsequent months.

B. Using the Forecasts From A To Calculate the New Fee Rate

1. Use Table A to estimate fees collected for the period 10/1/13 through 3/17/14. The projected aggregate dollar amount of covered sales for this period is $29,529,028,597,158. Actual and projected fee collections at the current fee rate of 0.0000174 are $513,805,098.

2. Estimate the amount of assessments on security futures products collected from 10/1/13 through 9/30/14 to be $58,854 by projecting a 1.57% monthly increase from a base of $4,940 in December 2013.

3. Subtract the amounts $513,805,098 and $58,854 from the target offsetting collection amount set by Congress of $1,350,000,000 leaving $836,136,049 to be collected on dollar volume for the period 3/18/14 through 9/30/14.

4. Use Table A to estimate dollar volume for the period 3/18/14 through 9/30/14. The estimate is $37,881,618,779,245. Finally, compute the fee rate required to produce the additional $836,136,049 in revenue. This rate is $836,136,049 divided by $37,881,618,779,245 or 0.00002207234.

5. Round the result to the seventh decimal point, yielding a rate of .0000221 (or $22.10 per million).

TABLE A—BASELINE ESTIMATE OF THE AGGREGATE DOLLAR AMOUNT OF SALES

Fee rate calculation	
a. Baseline estimate of the aggregate dollar amount of sales, 10/01/2013 to 02/28/2014 ($Millions)	26,638,917
b. Baseline estimate of the aggregate dollar amount of sales, 03/01/2014 to 03/17/2014 ($Millions)	2,890,112
c. Baseline estimate of the aggregate dollar amount of sales, 03/18/2014 to 03/31/2014 ($Millions)	2,627,375
d. Baseline estimate of the aggregate dollar amount of sales, 04/01/2014 to 09/30/2014 ($Millions)	35,254,244
e. Estimated collections in assessments on security futures products in fiscal year 2014 ($Millions)	0.059
f. Implied fee rate (($1,350,000,000 − $17.40*(a+b) − e) / (c+d)	$22.10

Month	Number of trading days in month	Total dollar amount of sales	Average daily dollar amount of sales (ADS)	Change in natural logarithm of ADS	Forecast ADS	Forecast total dollar amount of sales
Data						
(A)	(B)	(C)	(D)	(E)	(F)	(G)
Dec–03	22	2,066,530,151,383	93,933,188,699			
Jan–04	20	2,390,942,905,678	119,547,145,284	0.241		
Feb–04	19	2,177,765,594,701	114,619,241,826	−0.042		
Mar–04	23	2,613,808,754,550	113,643,858,893	−0.009		
Apr–04	21	2,418,663,760,191	115,174,464,771	0.013		
May–04	20	2,259,243,404,459	112,962,170,223	−0.019		
Jun–04	21	2,112,826,072,876	100,610,765,375	−0.116		
Jul–04	21	2,209,808,376,565	105,228,970,313	0.045		
Aug–04	22	2,033,343,354,640	92,424,697,938	−0.130		
Sep–04	21	1,993,803,487,749	94,943,023,226	0.027		
Oct–04	21	2,414,599,088,108	114,980,908,958	0.191		
Nov–04	21	2,577,513,374,160	122,738,732,103	0.065		
Dec–04	22	2,673,532,981,863	121,524,226,448	−0.010		
Jan–05	20	2,581,847,200,448	129,092,360,022	0.060		
Feb–05	19	2,532,202,408,589	133,273,810,978	0.032		
Mar–05	22	3,030,474,897,226	137,748,858,965	0.033		
Apr–05	21	2,906,386,944,434	138,399,378,306	0.005		
May–05	21	2,697,414,503,460	128,448,309,689	−0.075		
Jun–05	22	2,825,962,273,624	128,452,830,619	0.000		
Jul–05	20	2,604,021,263,875	130,201,063,194	0.014		
Aug–05	23	2,846,115,585,965	123,744,155,912	−0.051		
Sep–05	21	3,009,640,645,370	143,316,221,208	0.147		
Oct–05	21	3,279,847,331,057	156,183,206,241	0.086		
Nov–05	21	3,163,453,821,548	150,640,658,169	−0.036		
Dec–05	21	3,090,212,715,561	147,152,986,455	−0.023		
Jan–06	20	3,573,372,724,766	178,668,636,238	0.194		
Feb–06	19	3,314,259,849,456	174,434,728,919	−0.024		
Mar–06	23	3,807,974,821,564	165,564,122,677	−0.052		
Apr–06	19	3,257,478,138,851	171,446,217,834	0.035		
May–06	22	4,206,447,844,451	191,202,174,748	0.109		
Jun–06	22	3,995,113,357,316	181,596,061,696	−0.052		
Jul–06	20	3,339,658,009,357	166,982,900,468	−0.084		
Aug–06	23	3,410,187,280,845	148,269,012,211	−0.119		
Sep–06	20	3,407,409,863,673	170,370,493,184	0.139		
Oct–06	22	3,980,070,216,912	180,912,282,587	0.060		
Nov–06	21	3,933,474,986,969	187,308,332,713	0.035		
Dec–06	20	3,715,146,848,695	185,757,342,435	−0.008		
Jan–07	20	4,263,986,570,973	213,199,328,549	0.138		
Feb–07	19	3,946,799,860,532	207,726,308,449	−0.026		
Mar–07	22	5,245,051,744,090	238,411,442,913	0.138		
Apr–07	20	4,274,665,072,437	213,733,253,622	−0.109		
May–07	22	5,172,568,357,522	235,116,743,524	0.095		
Jun–07	21	5,586,337,010,802	266,016,048,133	0.123		
Jul–07	21	5,938,330,480,139	282,777,641,911	0.061		

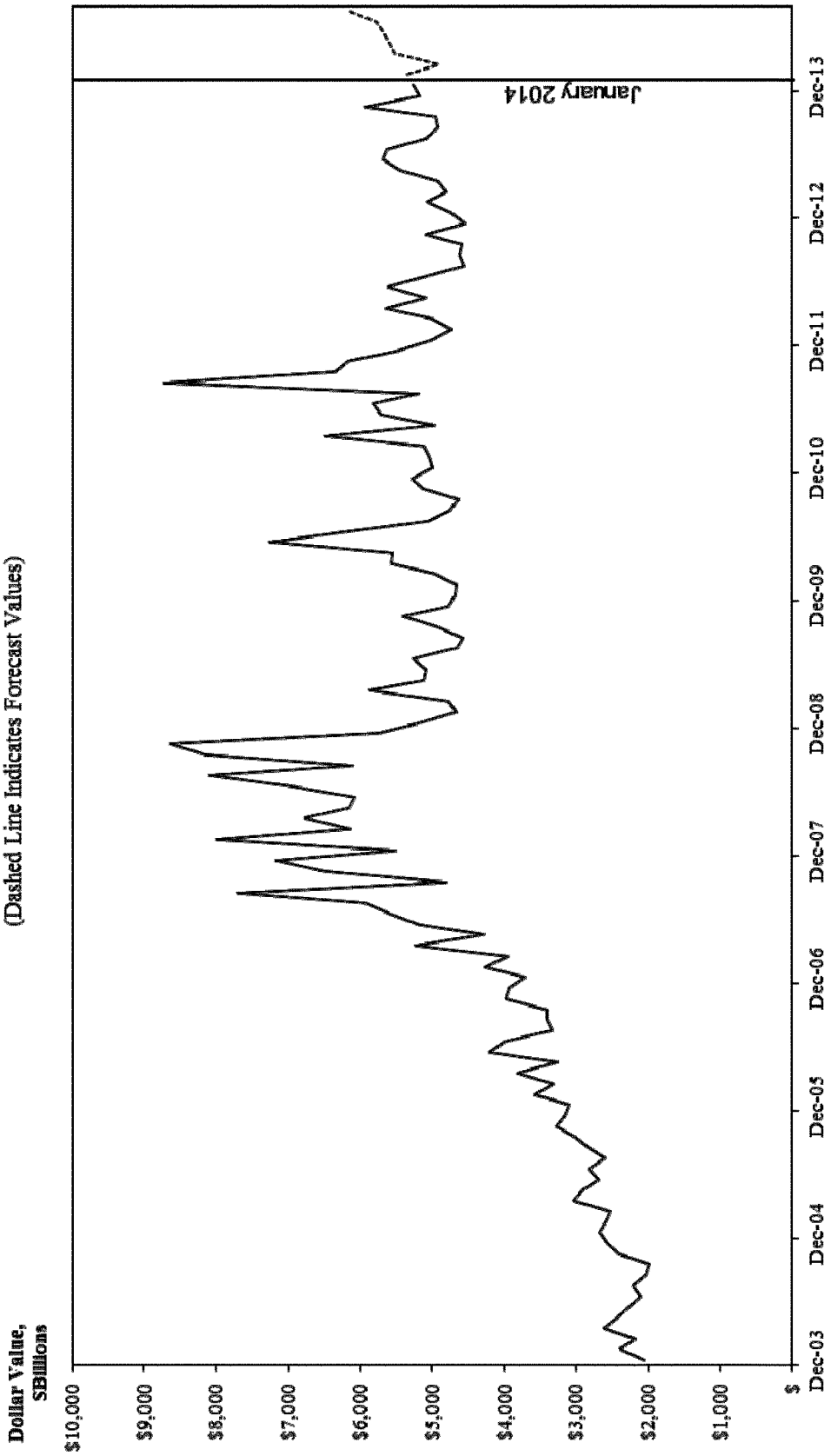
Month	Number of trading days in month	Total dollar amount of sales	Average daily dollar amount of sales (ADS)	Change in natural logarithm of ADS	Forecast ADS	Forecast total dollar amount of sales
(A)	(B)	(C)	(D)	(E)	(F)	(G)
Aug–07	23	7,713,644,229,032	335,375,836,045	0.171		
Sep–07	19	4,805,676,596,099	252,930,347,163	−0.282		
Oct–07	23	6,499,651,716,225	282,593,552,879	0.111		
Nov–07	21	7,176,290,763,989	341,728,131,619	0.190		
Dec–07	20	5,512,903,594,564	275,645,179,728	−0.215		
Jan–08	21	7,997,242,071,529	380,821,051,025	0.323		
Feb–08	20	6,139,080,448,887	306,954,022,444	−0.216		
Mar–08	20	6,767,852,332,381	338,392,616,619	0.098		
Apr–08	22	6,150,017,772,735	279,546,262,397	−0.191		
May–08	21	6,080,169,766,807	289,531,893,657	0.035		
Jun–08	21	6,962,199,302,412	331,533,300,115	0.135		
Jul–08	22	8,104,256,787,805	368,375,308,537	0.105		
Aug–08	21	6,106,057,711,009	290,764,652,905	−0.237		
Sep–08	21	8,156,991,919,103	388,428,186,624	0.290		
Oct–08	23	8,644,538,213,244	375,849,487,532	−0.033		
Nov–08	19	5,727,998,341,833	301,473,596,939	−0.221		
Dec–08	22	5,176,041,317,640	235,274,605,347	−0.248		
Jan–09	20	4,670,249,433,806	233,512,471,690	−0.008		
Feb–09	19	4,771,470,184,048	251,130,009,687	0.073		
Mar–09	22	5,885,594,284,780	267,527,012,945	0.063		
Apr–09	21	5,123,665,205,517	243,984,057,406	−0.092		
May–09	20	5,086,717,129,965	254,335,856,498	0.042		
Jun–09	22	5,271,742,782,609	239,624,671,937	−0.060		
Jul–09	22	4,659,599,245,583	211,799,965,708	−0.123		
Aug–09	21	4,582,102,295,783	218,195,347,418	0.030		
Sep–09	21	4,929,155,364,888	234,721,684,042	0.073		
Oct–09	22	5,410,025,301,030	245,910,240,956	0.047		
Nov–09	20	4,770,928,103,032	238,546,405,152	−0.030		
Dec–09	22	4,688,555,303,171	213,116,150,144	−0.113		
Jan–10	19	4,661,793,708,648	245,357,563,613	0.141		
Feb–10	19	4,969,848,578,023	261,570,977,791	0.064		
Mar–10	23	5,563,529,823,621	241,892,601,027	−0.078		
Apr–10	21	5,546,445,874,917	264,116,470,234	0.088		
May–10	20	7,260,430,376,294	363,021,518,815	0.318		
Jun–10	22	6,124,776,349,285	278,398,924,967	−0.265		
Jul–10	21	5,058,242,097,334	240,868,671,302	−0.145		
Aug–10	22	4,765,828,263,463	216,628,557,430	−0.106		
Sep–10	21	4,640,722,344,586	220,986,778,314	0.020		
Oct–10	21	5,138,411,712,272	244,686,272,013	0.102		
Nov–10	21	5,279,700,881,901	251,414,327,710	0.027		
Dec–10	22	4,998,574,681,208	227,207,940,055	−0.101		
Jan–11	20	5,043,391,121,345	252,169,556,067	0.104		
Feb–11	19	5,114,631,590,581	269,191,136,346	0.065		
Mar–11	23	6,499,355,385,307	282,580,668,926	0.049		
Apr–11	20	4,975,954,868,765	248,797,743,438	−0.127		
May–11	21	5,717,905,621,053	272,281,220,050	0.090		
Jun–11	22	5,820,079,494,414	264,549,067,928	−0.029		
Jul–11	20	5,189,681,899,635	259,484,094,982	−0.019		
Aug–11	23	8,720,566,877,109	379,155,081,613	0.379		
Sep–11	21	6,343,578,147,811	302,075,149,896	−0.227		
Oct–11	21	6,163,272,963,688	293,489,188,747	−0.029		
Nov–11	21	5,493,906,473,584	261,614,593,980	−0.115		
Dec–11	21	5,017,867,255,600	238,946,059,790	−0.091		
Jan–12	20	4,726,522,206,487	236,326,110,324	−0.011		
Feb–12	20	5,011,862,514,132	250,593,125,707	0.059		
Mar–12	22	5,638,847,967,025	256,311,271,228	0.023		
Apr–12	20	5,084,239,396,560	254,211,969,828	−0.008		
May–12	22	5,611,638,053,374	255,074,456,972	0.003		
Jun–12	21	5,121,896,896,362	243,899,852,208	−0.045		
Jul–12	21	4,567,519,314,374	217,500,919,732	−0.115		
Aug–12	23	4,621,597,884,730	200,939,038,467	−0.079		
Sep–12	19	4,598,499,962,682	242,026,313,825	0.186		
Oct–12	21	5,095,175,588,310	242,627,408,967	0.002		
Nov–12	21	4,547,882,974,292	216,565,855,919	−0.114		
Dec–12	20	4,744,922,754,360	237,246,137,718	0.091		
Jan–13	21	5,079,603,817,496	241,885,896,071	0.019		
Feb–13	19	4,800,663,527,089	252,666,501,426	0.044		
Mar–13	20	4,917,701,839,870	245,885,091,993	−0.027		
Apr–13	22	5,451,358,637,079	247,789,028,958	0.008		

Month	Number of trading days in month	Total dollar amount of sales	Average daily dollar amount of sales (ADS)	Change in natural logarithm of ADS	Forecast ADS	Forecast total dollar amount of sales
(A)	(B)	(C)	(D)	(E)	(F)	(G)
May–13	22	5,681,788,831,869	258,263,128,721	0.041		
Jun–13	20	5,623,545,462,226	281,177,273,111	0.085		
Jul–13	22	5,083,861,509,754	231,084,614,080	−0.196		
Aug–13	22	4,925,611,193,095	223,891,417,868	−0.032		
Sep–13	20	4,959,197,626,713	247,959,881,336	0.102		
Oct–13	23	5,928,804,028,970	257,774,088,216	0.039		
Nov–13	20	5,182,024,612,049	259,101,230,602	0.005		
Dec–13	21	5,265,283,406,995	250,727,781,285	−0.033		
Jan–14	21				254,668,736,673	5,348,043,470,127
Feb–14	19				258,671,636,250	4,914,761,088,752
Mar–14	21				262,737,453,660	5,517,486,526,869
Apr–14	21				266,867,177,850	5,604,210,734,855
May–14	21				271,061,813,310	5,692,298,079,518
Jun–14	21				275,322,380,320	5,781,769,986,729
Jul–14	22				279,649,915,197	6,152,298,134,326
Aug–14	21				284,045,470,544	5,964,954,881,430
Sep–14	21				288,510,115,513	6,058,712,425,783

BILLING CODE 8011–01–P

Figure A.

Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)[1]
Methodology Developed in Consultation With OMB and CBO
(Dashed Line Indicates Forecast Values)



[1]Forecasted line is not smooth because the number of trading days varies by month.

[FR Doc. 2014–03575 Filed 2–18–14; 8:45 am]
BILLING CODE 8011–01–C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71524; File No. PCAOB–2013–01]

Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rules, Standards for Attestation Engagements Related to Broker and Dealer Compliance or Exemption Reports Required by the U.S. Securities and Exchange Commission and Related Amendments to PCAOB Standards

February 12, 2014.

I. Introduction

On October 30, 2013, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 107(b) [1] of the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'') and Section 19(b) [2] of the Securities Exchange Act of 1934 (the ''Exchange Act''), proposed rules to adopt standards for attestation engagements related to broker and dealer compliance or exemption reports required by the U.S. Securities and Exchange Commission and related amendments to PCAOB standards (collectively, the ''Proposed Rules''). The Proposed Rules were published for comment in the **Federal Register** on November 15, 2013.[3] At the time the notice was issued, the Commission designated a longer period to act on the Proposed Rules, until February 13, 2014.[4] The Commission received two comment letters in response to the notice.[5] This order approves the Proposed Rules.

II. Description of the Proposed Rules

Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers,* establishes requirements for the auditor with respect to the auditor's examination regarding a broker's or dealer's compliance report and establishes requirements that are designed specifically for the examination required by Exchange Act Rule 17a–5 (''Rule 17a–5'').[6] Consistent with Rule 17a–5, Attestation Standard No. 1 requires auditors to obtain sufficient appropriate evidence to opine on a broker's or dealer's statements in its compliance report as to whether:

- The Internal Control Over Compliance of the broker or dealer was effective during the most recent fiscal year;
- The Internal Control Over Compliance of the broker or dealer was effective as of the end of the most recent fiscal year;
- The broker or dealer was in compliance with Exchange Act Rule 15c3–1 [7] (the ''net capital rule'') and Exchange Act Rule 15c3–3(e) [8] (the ''reserve requirements rule'') as of the end of the most recent fiscal year; and
- The information the broker or dealer used to state whether it was in compliance with the net capital rule and reserve requirements rule was derived from the books and records of the broker or dealer.[9]

Attestation Standard No. 1 provides requirements for auditors that:

- Focus the auditor on the matters that are most important to the auditor's conclusions regarding the broker's or dealer's assertions;
- Incorporate consideration of fraud risks, including the risk of misappropriation of customer assets;
- Are designed to be scalable based on the broker's or dealer's size and complexity;
- Coordinate the examination engagement with the audit of the financial statements and the audit procedures performed on supplemental information; and
- Describe how to report on an examination engagement in connection with the requirements of Rule 17a–5.

Attestation Standard No. 1 reflects the requirement in Rule 17a–5 that the auditor must obtain reasonable assurance to support the auditor's opinion. In particular, Attestation Standard No. 1 requires the auditor to obtain reasonable assurance in order to opine on whether the broker's or dealer's assertions are fairly stated, in all material respects.

Attestation Standard No. 2 establishes requirements for the auditor with respect to the auditor's review regarding the broker's or dealer's exemption report and establishes requirements that are designed specifically for the review required by Rule 17a–5.[10] Attestation Standard No. 2 establishes requirements for making inquiries and performing other procedures that are commensurate with the auditor's responsibility to obtain moderate assurance regarding whether one or more conditions exist that would cause one or more of the broker's or dealer's assertions not to be fairly stated, in all material respects. The broker's or dealer's exemption report includes the following assertions:

- A statement that identifies the provisions in paragraph (k) of Exchange Act Rule 15c3–3 (the ''exemption provisions'') under which the broker or dealer claimed an exemption from Exchange Act Rule 15c3–3 (the ''identified exemption provisions'');
- A statement that the broker or dealer (1) met the identified exemption provisions throughout the most recent fiscal year without exception or (2) met the identified exemption provisions throughout the most recent fiscal year except as described in the exemption report; and
- If applicable, a statement that identifies each exception during the most recent fiscal year in meeting the identified exemption provisions (an ''exception'') and that briefly describes the nature of each exception and the approximate date(s) on which the exceptions existed.[11]

The procedures required by Attestation Standard No. 2 include evaluating relevant evidence obtained from the audit of the financial statements and the audit procedures performed on supplemental information and are designed to enable the auditor to scale the review engagement based on the broker's or dealer's size and complexity. Attestation Standard No. 2 also establishes requirements for the content of the review report.

As part of the Proposed Rules, the Board adopted conforming amendments to several PCAOB auditing and attestation standards, including Auditing Standard No. 3, *Audit Documentation,* Auditing Standard No. 7, *Engagement Quality Review,* and interim attestation standards AT sec. 101 and AT sec. 601.

The Proposed Rules would be effective for examination engagements and review engagements for fiscal years ending on or after June 1, 2014.

III. Comment Letters

As noted above, the Commission received two comment letters concerning the Proposed Rules. The commenters expressed support for the

[1] 15 U.S.C. 7217(b).

[2] 15 U.S.C. 78s(b).

[3] *See* Release No. 34–70842 (November 8, 2013), 78 FR 68911 (November 15, 2013).

[4] Ibid.

[5] *See* letters to the Commission from Deloitte & Touche LLP, dated December 5, 2013 (''Deloitte Letter'') and Suzanne H. Shatto, dated December 17, 2013 (''Shatto Letter'').

[6] 17 CFR 240.17a–5.

[7] 17 CFR 240.15c3–1.

[8] 17 CFR 240.15c3–3(e).

[9] *See* paragraphs (d)(3)(i)(A)(2)–(5) of SEC Rule 17a–5.

[10] *See* 17 CFR 240.17a–5(g)(2)(ii).

[11] *See* SEC Rule 17a–5(d)(4).

Proposed Rules, with one commenter noting that they are consistent with the Commission's amended Rule 17a–5 and are necessary to enable auditors of brokers and dealers to comply with the requirements therein.[12]

IV. Conclusion

The Commission has carefully reviewed and considered the Proposed Rules and the information submitted therewith by the PCAOB, including the comment letters received. In connection with the PCAOB's filing and the Commission's review, the Commission finds that the Proposed Rules are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors.[13]

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rules (File No. PCAOB–2013–01) be and hereby are approved.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03555 Filed 2–18–14; 8:45 am]

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[12] *See* Deloitte Letter.

[13] Because these proposed rules apply solely in connection with the obligations of registered brokers and dealers pursuant to 17 CFR 240.17a–5, no separate determination is necessary under 15 U.S.C. 7213(a)(3)(C).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71525; File No. PCAOB–2013–02]

Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rules, Auditing Standard No. 17, Auditing Supplemental Information Accompanying Audited Financial Statements, and Related Amendments to PCAOB Standards

February 12, 2014.

I. Introduction

On October 30, 2013, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 107(b)[1] of the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'') and Section 19(b)[2] of the Securities Exchange Act of 1934 (the ''Exchange Act''), proposed rules to adopt Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements,* and related amendments to PCAOB standards (collectively, the ''Proposed Rules''). The Proposed Rules were published for comment in the **Federal Register** on November 15, 2013.[3] At the time the notice was issued, the Commission designated a longer period to act on the Proposed Rules, until February 13, 2014.[4] The Commission received one comment letter in response to the notice.[5] This order approves the Proposed Rules.

II. Description of the Proposed Rules

Auditing Standard No. 17, which would supersede PCAOB interim auditing standard AU section 551, *Reporting on Information Accompanying the Basic Financial Statements in Auditor-Submitted Documents,* applies when the auditor of the company's financial statements is engaged to perform audit procedures and report on supplemental information that accompanies financial statements audited pursuant to PCAOB standards. Such supplemental information includes:

- Supporting schedules that brokers and dealers are required to file pursuant to Exchange Act Rule 17a–5;[6]
- Supplemental information (i) required to be presented pursuant to the rules and regulations of a regulatory authority and (ii) covered by an independent public accountant's report on that information in relation to financial statements that are audited in accordance with PCAOB standards; or
- Information that is (i) ancillary to the audited financial statements, (ii) derived from the company's accounting books and records, and (iii) covered by an independent public accountant's report on that information in relation to the financial statements that are audited in accordance with PCAOB standards.

Historically, when auditors reported on supplemental information, they often expressed their opinions on the supplemental information ''in relation to'' the basic financial statements taken as a whole.[7] Audit procedures regarding that supplemental information generally have been performed in conjunction with the audit of the financial statements. The auditor's report on supplemental information under AU sec. 551 is rooted in the concept that the supplemental information is fairly presented ''in relation to'' the financial statements as a whole. The Proposed Rules retain the existing ''in relation to'' language in the auditor's report; however, they also update the report to describe the auditor's responsibilities for the supplemental information.

The Proposed Rules establish procedural and reporting responsibilities for the auditor regarding supplemental information accompanying financial statements. Specifically, the Proposed Rules establish:

- Requirements that the auditor perform audit procedures to test the supplemental information;
- Requirements that the auditor evaluate the supplemental information, which include evaluating (1) whether the supplemental information, including its form and content, is fairly stated, in all material respects, in relation to the financial statements as a whole, and (2) whether the supplemental information is presented in conformity, in all material respects, with the relevant regulatory requirements or other applicable criteria;
- Requirements that promote enhanced coordination between the work performed on the supplemental information with work performed on the financial statement audit and, if applicable, other engagements, such as an attestation engagement for brokers and dealers; and
- Reporting requirements that clearly articulate the auditor's responsibilities when reporting on supplemental information.

As part of the Proposed Rules, the Board adopted conforming amendments to several PCAOB standards, including superseding PCAOB interim auditing standard AU section 551.

The Proposed Rules would be effective for audit procedures and reports on supplemental information that accompanies financial statements for fiscal years ending on or after June 1, 2014.

III. Comment Letters

As noted above, the Commission received one comment letter concerning the Proposed Rules. The commenter expressed unqualified support for the Proposed Rules, noting that they are consistent with the Commission's amended Rule 17a–5 and are necessary to enable auditors of brokers and dealers to comply with the requirements therein.[8] The commenter further noted that the requirements for auditors included in the Proposed Rules are

[1] 15 U.S.C. 7217(b).

[2] 15 U.S.C. 78s(b).

[3] *See* Release No. 34–70843 (November 8, 2013), 78 FR 68872 (November 15, 2013).

[4] Ibid.

[5] *See* letter to the Commission from Deloitte & Touche LLP, dated December 5, 2013 (''Deloitte Letter'').

[6] *See* 17 CFR 240.17a–5.

[7] *See* AU sec. 551.12.

[8] *See* Deloitte Letter.

consistent with the goal of improving the confidence of investors and other stakeholders in the quality and consistency of supplemental information.[9]

IV. The PCAOB's EGC Request

Section 103(a)(3)(C) of the Sarbanes-Oxley Act provides that any additional rules adopted by the PCAOB subsequent to April 5, 2012 do not apply to the audits of emerging growth companies (''EGCs''), unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.[10] Having considered those factors, and as explained further below, the Commission finds that applying the Proposed Rules to audits of EGCs is necessary or appropriate in the public interest.

The PCAOB has proposed application of its Proposed Rules to audits of all issuers, as applicable, including EGCs; and the PCAOB requested that the Commission make the determination to the extent necessary required by Section 103(a)(3)(C). To assist the Commission in making its determination, the PCAOB prepared and submitted to the Commission its own EGC analysis. The PCAOB's EGC analysis includes discussions of: (1) The economic baseline for consideration of the Proposed Rules; (2) the PCAOB's consideration of alternatives; (3) economic considerations; and (4) characteristics of EGCs. In its analysis, the PCAOB noted that, according to its research, the PCAOB is not aware of EGCs for which auditors would be required to apply the Proposed Rules, but that issuers may voluntarily file supplemental information to which the standard could apply.

The PCAOB's EGC analysis was included in the Commission's public notice soliciting comment on the Proposed Rules. No comments were received on the analysis. Based on the analysis submitted, we believe the information in the record is sufficient for us to make the EGC determination in relation to this standard. Specifically, the PCAOB's EGC analysis discussed its approach to developing the new standard and its consideration of alternatives, as well as the characteristics of EGCs and economic considerations. The Commission also takes note, in particular, of the PCAOB's analysis which explained that the PCAOB is not aware of EGCs for which auditors would be required to apply the Proposed Rules, and the only entities that are currently required to file supplemental information to which Auditing Standard No. 17 would apply are: (1) Brokers and dealers pursuant to Rule 17a–5; and (2) Form 11–K[11] filers that elect to file plan financial statements and schedules prepared in accordance with the financial reporting requirements of the Employee Retirement Income Security Act of 1974.[12] Nonetheless, audited supplemental information can be provided by an EGC voluntarily. Although electing to do so is rare, the Commission believes that the Proposed Rules represent an improvement over PCAOB interim auditing standard AU section 551 for auditing and reporting on such information and should therefore be applied in such circumstances. Applying the same standard to audits of EGCs who voluntarily file supplemental information would be efficient for issuers and auditors and because of its scalability should not disproportionately affect EGCs.[13] Approving the Proposed Rules for audits of EGCs also ensures that PCAOB standards continue to include appropriate direction for auditors when engaged to audit supplemental information.

V. Conclusion

The Commission has carefully reviewed and considered the Proposed Rules and the information submitted therewith by the PCAOB, including the PCAOB's EGC analysis and the comment letter received. In connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Proposed Rules are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that the application of the Proposed Rules to EGC audits is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rules (File No. PCAOB–2013–02) be and hereby are approved.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03556 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

[9] Ibid.

[10] Section 103(a)(3)(C) of the Sarbanes-Oxley Act, as amended by Section 104 of the Jumpstart Our Business Startups Act (the ''JOBS Act''). The term ''emerging growth company'' is defined in Section 3(a)(80) of the Exchange Act.

[11] 17 CFR 249.311. Form 11–K is used for annual reports pursuant to Exchange Act Section 15(d) with respect to employee stock purchase, savings and similar plans.

[12] 29 U.S.C. 1001 et seq. (1974).

[13] To the extent the Commission considers in the future to amend filing requirements to require any new supplemental information to which the Proposed Rules would be applicable, the application of such requirements to EGCs could be considered in connection with any such rulemaking.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71549; File No. SR–OCC–2014–801]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice of and No Objection to an Amendment to The Options Clearing Corporation's Unsecured, Committed Credit Agreement

February 12, 2014.

Notice is hereby given that, on January 14, 2014, The Options Clearing Corporation (''OCC'') filed an advance notice with the Securities and Exchange Commission (''Commission'') pursuant to Section 806(e)(1)(A) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''),[1] and Rule 19b–4(n)(1)(i) of the Securities Exchange Act of 1934 (''Exchange Act'').[2] The advance notice is described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments from interested persons, to issue a non-objection to the changes set forth in the advance notice, and to authorize OCC to implement those changes earlier than 60 days after the filing of the advance notice.

[1] 12 U.S.C. 5465(e)(1)(A). The Financial Stability Oversight Council designated OCC a systemically important financial market utility on July 18, 2012. *See* Financial Stability Oversight Council 2012 Annual Report, Appendix A, *http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.* Therefore, OCC is required to comply with Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

[2] 17 CFR 240.19b–4(n)(1)(i).

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice concerns a proposed change to OCC's operations (the ''Change'') in the form of an amendment to its unsecured, committed credit agreement (the ''Existing Agreement'' or the ''Existing Facility'').

The Commission previously published a notice of no objection to OCC's advance notice filing through which OCC entered into the Existing Facility.[3] The Existing Facility currently provides OCC with access to additional liquidity for working capital needs and general corporate purposes. The Existing Facility also helps OCC satisfy the liquidity requirement of the Commodity Futures Trading Commission's (''CFTC'') regulation Section 39.11(e)(2). The Existing Facility is scheduled to terminate on February 21, 2014. The Change would extend the termination date of the Existing Facility for 364 days after the renewal date, increase the commitment amount of the Existing Facility from $25 million to $35 million, and make minor, non-material, changes to the terms of the Existing Facility requested by the lender (the ''Extended Agreement'' or the ''Extended Facility'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

Description of Change

The Change would provide OCC with continued access to an unsecured, committed credit facility in an aggregate principal amount of $35 million until early 2015. The Extended Facility is designed to provide OCC with access to additional liquidity for working capital needs and general corporate purposes. The Extended Facility would also satisfy the liquidity requirement of CFTC regulation Section 39.11(e)(2).

OCC's principal reason for entering into the Extended Facility is to provide OCC additional flexibility in managing its liquid assets while ensuring continued compliance with the liquidity requirements of the CFTC regulation cited above. Among other things, CFTC regulation Section 39.11(a)(2) requires a derivatives clearing organization (''DCO'') to hold an amount of financial resources that, at a minimum, exceeds the total amount that would enable the DCO to cover its operating costs for a period of at least one year, calculated on a rolling basis.[4] In addition, CFTC regulation Section 39.11(e)(2) provides that these financial resources must include unencumbered, liquid financial assets (i.e., cash and/or highly liquid securities), equal to at least six months' operating costs and that if any portion of such financial resources is not sufficiently liquid, the DCO may rely on a committed line of credit or similar facility.[5] Accordingly, OCC entered into the Existing Facility with BMO Harris Bank N.A. (''Lender'') having a maximum aggregate principal loan amount not to exceed $25 million. OCC now proposes to enter into an amendment to the Existing Facility to increase the maximum aggregate principal loan amount to $35 million, extend the termination date to February 20, 2015, and make other non-material changes requested by the Lender. Attached to this filing as Exhibit 3B is a marked Summary of Terms and Conditions that are applicable to the Extended Facility.[6] The marked Summary of Terms and Conditions show the changes from the Summary of Terms and Conditions applicable to the Existing Facility.[7]

In order to have continued access to the Existing Facility, OCC must execute an amendment to the Existing Agreement between OCC and the Lender. Ongoing conditions governing OCC's ability to access the Extended Facility would be the same as with the Existing Facility and would include that no default or event of default may exist before or during an extension of credit by the Lender to OCC through the Extended Facility and that certain representations of OCC must remain true and correct. Events of default would include, but not be limited to, failure to pay any interest, principal, fees or other amounts when due, default under any covenant or agreement in any loan document, repudiation or cessation of the effectiveness of any loan document, materially inaccurate or false representations or warranties, cross default with other material debt agreements, insolvency, bankruptcy and unsatisfied judgments.

The Extended Facility would be available to OCC on a revolving basis for a 364-day term. Upon written or telephonic notice by OCC to the Lender of a request for funds, the Lender would disburse loaned funds to OCC in U.S. dollars. The date of any loan would be required to be a business day and the loans would be unsecured and made and evidenced by a promissory note provided by OCC. Under the Extended Facility, any loan proceeds would be required to be used by OCC to finance its working capital needs or for OCC's general corporate purposes.

As with the Existing Facility, OCC would have the ability to terminate the Extended Facility at any time. Termination within the first six months of the Extended Facility would trigger a termination fee. After six months from the date of entering the Extended Agreement with the Lender to establish the terms of the Extended Facility, OCC would be permitted to cancel the Extended Facility with no termination fee. Upon five days written notice during the term of the Extended Facility, OCC would also be permitted to reduce the overall size of the Extended Facility at any time. Any such reductions would be required to be made in an initial amount of at least $2.5 million. Thereafter, reductions would be able to be made by OCC in multiples of $1 million. In no event, however, would OCC be permitted to reduce the size of the Extended Facility to an amount that is less than the greater of either its aggregate principal amount of indebtedness outstanding with respect to loans from the Extended Facility or $15 million.

The outstanding principal balance of all loans made to OCC through the Extended Facility will accrue interest equal to a base rate (generally equal to a Prime Rate, a Federal Funds Rate, or a LIBOR rate), as in effect from time to time, plus a certain applicable margin. Regardless of which method applies to a particular portion of OCC's total outstanding loan balance, in an event of a default, the calculation of the amount of interest would be subject a 2.00%

[3] Securities Exchange Act Release No. 34–68935 (February 13, 2013), 78 FR 12121 (February 21, 2013), (SR–OCC–2012–801).

[4] 17 CFR 39.11(a)(2).

[5] 17 CFR 39.11(e)(2).

[6] As OCC has requested confidential treatment of Exhibit 3B pursuant to 17 CFR 240.24b–2, Exhibit 3B will not be attached to the published version of this notice.

[7] SR–OCC–2012–801, *See* Fn. 3 above. Other than as described in this Section II.A., the differences between the Existing Facility and the Extended Facility (that appear in the comparison attached to this filing as Exhibit 3) are non-material. As OCC has requested confidential treatment of Exhibit 3 pursuant to 17 CFR 240.24b–2, Exhibit 3 will not be attached to the published version of this notice.

increase above the otherwise applicable rate.

The Extended Facility would involve a variety of customary fees payable by OCC to the Lender, including but not limited to: (1) A one-time upfront fee payable at closing to the Lender calculated as a percentage of the total commitment amount of the Extended Facility; (2) commitment fees payable quarterly in arrears on the average daily unused amount of the Extended Facility; (3) reasonable out-of-pocket costs and expenses of the Lender in connection with the negotiation, preparation, execution and delivery of the Extended Facility and loan documentation, and costs and expenses in connection with any default, event of default or enforcement of the Extended Facility; and (4) termination fees if OCC elects to terminate the Extended Facility prior to six months from the date of the credit agreement underlying the Extended Facility.

Anticipated Effect on and Management of Risk

Overall, the Extended Facility would reduce the risks to OCC, its clearing members and the options market in general because it would provide OCC with additional liquidity for working capital needs and general corporate purposes and thereby assist OCC in satisfying the CFTC's requirements with respect to liquidity under CFTC regulation Section 39.11.

Like any lending arrangement, the Extended Facility would involve risks. One of the primary risks to OCC associated with the Extended Facility is the risk that the Lender would fail to fund when OCC requests a loan, because of the Lender's insolvency, operational deficiencies, or otherwise. Even if OCC were to draw on the Extended Facility for liquidity purposes, which it does not anticipate, OCC believes the potential funding risk associated with the Extended Facility is mitigated in several ways. First, the Lender would be a national banking association that is subject to oversight by prudential banking regulators with respect to its safety and soundness and its ability to meet its lending obligations. Furthermore, the $35 million maximum size of the Extended Facility would be relatively small when compared to the total resources available to OCC. Therefore, if the Extended Facility proved unavailable to OCC for any reason, OCC believes it readily would be able to access, or arrange for access, to other sources of liquidity if necessary.

A second risk associated with the Extended Facility is the risk that OCC would default on its obligation to make timely payment of principal or interest. Because the Extended Facility would be an unsecured lending arrangement, OCC would not be at risk in an event of default of the Lender's potentially liquidating OCC assets that are used to secure loaned funds. Furthermore, OCC intends to mitigate the risk of default by never drawing on the Extended Facility.

Accelerated Commission Action Requested

Pursuant to Section 806(e)(1)(I) of Title VIII of the Clearing Supervision Act, OCC requests that the Commission notify OCC that it has no objection to the Change no later than February 14, 2014, which is one week prior to the February 21, 2014 termination date of the Existing Facility. OCC requests Commission action one week in advance of the effective date to ensure that there is no period of time that OCC operates without access to additional liquidity for working capital needs and general corporate purposes, and to satisfy the liquidity requirements of CFTC regulation Section 39.11(e)(2).

(B) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments on the advance notice were not and are not intended to be solicited with respect to the advance notice and none have been received.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The advance notice may be implemented if the Commission does not object to the advance notice within 60 days of the later of (i) the date that the advance notice was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. OCC shall not implement the advance notice if the Commission has any objection to the advance notice.

The Commission may extend the period for review by an additional 60 days if the advance notice raises novel or complex issues, subject to the Commission providing OCC with prompt written notice of the extension. An advance notice may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies OCC in writing that it does not object to the advance notice and authorizes OCC to implement the advance notice on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its Web site of proposed changes that are implemented.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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–OCC–2014–801 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–OCC–2014–801. 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 of submission. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 Section, 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 OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_801.pdf.*

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–OCC–2014–801 and should be submitted on or before March 12, 2014.

V. Commission's Findings and Notice of No Objection

Section 806(e)(1)(G) of the Clearing Supervision Act provides that a designated financial market utility may implement a change if it has not received an objection from the Commission within 60 days of the later of (i) the date that the Commission receives notice of the proposed change or (ii) the date the Commission receives any further information it requests for consideration of the notice. A designated financial market utility may implement a proposed change in less than 60 days from the date of receipt of the notice of the change by the Commission, or the date the Commission receives any further information it requested, if the Commission notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.[8]

In its filing with the Commission, OCC requested that the Commission notify OCC that it has no objection to the change no later than February 14, 2014, which is one week before the February 21, 2014 termination date of the Existing Facility. OCC requested Commission action by this date, which is fewer than 60 days after OCC filed this advance notice, to ensure that there is no period of time during which OCC operates without access to additional liquidity for working capital needs and general corporate purposes, and to make certain that OCC remains in compliance with the liquidity requirements of CFTC regulation Section 39.11(e)(2)[9] at all times.

The Commission does not object to the changes described in the advance notice. The Commission agrees that the Extended Facility will afford OCC continued access to additional liquidity that should help OCC meet its CFTC requirement for working capital. Moreover, the Commission believes that access to the Extended Facility affords OCC needed flexibility in meeting its daily needs for operating capital. The Commission further believes that the Extended Facility represents an important safeguard against potential disruptions to OCC's ability to provide clearance and settlement services, and thereby enhances OCC's safety and soundness.[10] Improving OCC's resilience furthers the objectives of the Clearing Supervision Act,[11] and is consistent with the regulations adopted by the Commission thereunder.[12]

VI. Conclusion

Pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[13] the Commission does not object to the proposed change, and hereby authorizes OCC to implement the Change (SR–OCC–2014–801) as of the date of this Order.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03574 Filed 2–18–14; 8:45 am]

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[8] 12 U.S.C. 5465(e)(1)(I).

[9] 17 CFR 39.11(e)(2).

[10] *See* 12 U.S.C. 5464(b) (noting that the objectives of the Clearing Supervision Act include a desire to ''promote the safety and soundness'' of clearing agencies).

[11] *Id.*

[12] 17 CFR 240.17Ad–22(d)(4) (requiring, pursuant to the Clearing Supervision Act, that clearing agencies (i) develop procedures to minimize ''sources of operational risk,'' (ii) implement systems that are ''reliable'' and ''resilient,'' and (iii) have ''business continuity plans that allow for . . . fulfillment of [the agency's] obligations,'' among other things).

[13] 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71540; File No. SR–NYSEArca–2013–138]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Listing and Trading of Shares of iShares Enhanced International Large-Cap ETF and iShares Enhanced International Small-Cap ETF Under NYSE Arca Equities Rule 8.600

February 12, 2014.

I. Introduction

On December 13, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the iShares Enhanced International Large-Cap ETF (''Large-Cap Fund'') and iShares Enhanced International Small-Cap ETF (''Small-Cap Fund,'' each a ''Fund,'' and, collectively, ''Funds'') of the iShares U.S. ETF Trust (''Trust''). The proposed rule change was published for comment in the **Federal Register** on January 2, 2014.[3] On February 12, 2014, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Funds under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by the Trust,[5] which is registered with the Commission as an open-end management investment company. BlackRock Fund Advisors (''BFA'' or ''Adviser'') will serve as the investment adviser to the Funds. BFA is an indirect, wholly-owned subsidiary of BlackRock, Inc. BlackRock Investments, LLC will be the principal underwriter and distributor of the Funds' Shares. State Street Bank and Trust Company will serve as administrator, custodian, and transfer agent for the Funds. The Exchange represents that the Adviser is not registered as a broker-dealer but is affiliated with multiple broker-dealers and has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition or changes to a Fund's portfolio.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71186 (December 26, 2013), 79 FR 154 (''Notice'').

[4] The Exchange's initial proposal stated that the Funds' Indicative Optimized Portfolio Value (''IOPV''), which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3), would be based on the current value of the securities and/or cash to be deposited in exchange for a creation unit of the Funds using market data converted into U.S. dollars at the current currency rates. In Amendment No. 1, the Exchange revised this statement and clarified that the IOPV instead will be based on the current value of the securities and other assets held by the Funds using market data converted into U.S. dollars at the current currency rates. Because Amendment No. 1 seeks to clarify the description of the IOPV and does not materially affect the substance of the proposed rule change or raise novel or unique issues, Amendment No. 1 does not require notice and comment.

[5] The Exchange represents that, on October 4, 2013, the Trust filed with the Commission Post-Effective Amendment No. 22 (with respect to the Large-Cap Fund, ''Large-Cap Registration Statement'') and Post-Effective Amendment No. 23 (with respect to the Small-Cap Fund, ''Small-Cap Registration Statement'') to its registration statement on Form N–1A under the Securities Act of 1933 (''Securities Act''), and under the Investment Company Act of 1940 (''1940 Act'') (File Nos. 333–179904 and 811–22649) (collectively, ''Registration Statements''). In addition, the Exchange states that the Trust has obtained certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812–13601).

[6] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, in the

Continued

The Exchange has made the following representations and statements in describing the Funds and their respective investment strategies, including other portfolio holdings and investment restrictions.[7]

Large-Cap Fund

The Large-Cap Fund will seek long-term capital appreciation. The Fund will seek to achieve its investment objective by investing, under normal circumstances,[8] at least 80% of its net assets in equity securities of international large-capitalization issuers. The Fund will seek to maintain strategic exposure to international large-capitalization stocks with targeted investment characteristics. BFA will utilize a proprietary investment process to assemble an investment portfolio from a defined group of international large-capitalization stocks based on certain quantitative investment characteristics.

The Fund's proprietary investment process will begin with securities representing a defined investable universe of stocks of international large-capitalization issuers. The universe will then be subjected to rules-based screens designed to exclude securities with very low trading volume or very low prices. The stocks will then be scored based on quantitative metrics, including, but not limited to, cash earnings, earnings variability, leverage, price-to-book ratio, and market capitalization. BFA will assemble a portfolio emphasizing those stocks with higher cash earnings, lower earnings variability, lower leverage, lower price-to-book ratio, and smaller market capitalization relative to other stocks in the investable universe. BFA will seek to ensure that the Fund avoids unnecessary turnover and minimizes sources of risk by taking into account volatilities of certain factors and by placing constraints on the weighting of sectors, industries, and issuers.

The Fund will purchase publicly-traded exchange-listed common stocks of non-U.S. issuers. The Fund's investment in such stocks may be in the form of American Depositary Receipts (''ADRs''), Global Depositary Receipts (''GDRs''), and European Depositary Receipts (''EDRs,'' and together with ADRs and GDRs, collectively, ''Depositary Receipts'').[9] With respect to its investments in exchange-listed common stocks and Depositary Receipts of non-U.S. issuers, the Fund will invest at least 90% of its assets invested in such securities in exchange-listed common stocks and Depositary Receipts that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The Fund will generally invest in sponsored Depositary Receipts that are listed on ISG member exchanges and that BFA deems as liquid at the time of purchase. In certain limited circumstances, the Fund may invest in unlisted or unsponsored Depositary Receipts, Depositary Receipts listed on non-ISG member exchanges, or Depositary Receipts that BFA deems illiquid at the time of purchase or for which pricing information is not readily available.[10] The Exchange states that the issuers of unlisted or unsponsored Depositary Receipts are not obligated to disclose material information in the United States. Therefore, according to the Exchange, there may be less information available regarding such issuers, and there may be no correlation between available information and the market value of the Depositary Receipts.

Small-Cap Fund

The Small-Cap Fund will seek long-term capital appreciation. The Fund will seek to achieve its investment objective by investing, under normal circumstances,[11] at least 80% of its net assets in equity securities of international small-capitalization issuers. The Fund will seek to maintain strategic exposure to international small-capitalization stocks with targeted investment characteristics. BFA will utilize a proprietary investment process to assemble an investment portfolio from a defined group of international small-capitalization stocks based on certain quantitative investment characteristics.

The Fund's proprietary investment process will begin with securities representing a defined investable universe of stocks of international small-capitalization issuers. The universe will then be subjected to rules-based screens designed to exclude securities with very low trading volume or very low prices. The stocks will then be scored based on quantitative metrics, including, but not limited to, cash earnings, earnings variability, leverage, price-to-book ratio, and market capitalization. BFA will assemble a portfolio emphasizing those stocks with higher cash earnings, lower earnings variability, lower leverage, lower price-to-book ratio, and smaller market capitalization relative to other stocks in the investable universe. BFA will seek to ensure that the Fund avoids unnecessary turnover and minimizes sources of risk by taking into account volatilities of certain factors and by placing constraints on the weighting of sectors, industries, and issuers.

The Fund will purchase publicly-traded exchange-listed common stocks of non-U.S. issuers. To the extent the Fund invests in stocks of non-U.S. issuers, the Fund's investment in such stocks may be in the form of Depositary Receipts.[12] With respect to its investments in exchange-listed common stocks and Depositary Receipts of non-U.S. issuers, the Fund will invest at least 90% of its assets invested in such securities in exchange-listed common stocks and Depositary Receipts that trade in markets that are members of the ISG or are parties to a comprehensive

event that (a) the Adviser or any sub-adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of or changes to a portfolio and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding a portfolio.

[7] The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, net asset value (''NAV'') calculation, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statements, as applicable. *See* Notice and Registration Statements, *supra* notes 3 and 5, respectively.

[8] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[9] The Exchange states that Depositary Receipts are receipts, typically issued by a bank or trust issuer, which evidence ownership of underlying securities issued by a non-U.S. issuer. For ADRs, the depository is typically a U.S. financial institution and the underlying securities are issued by a non-U.S. issuer. For other forms of Depositary Receipts, the depository may be a non-U.S. or a U.S. entity, and the underlying securities may be issued by a non-U.S. or a U.S. issuer. Depositary Receipts are not necessarily denominated in the same currency as their underlying securities. Generally, ADRs, issued in registered form, are designed for use in the U.S. securities markets, and EDRs, issued in bearer form, are designed for use in European securities markets. GDRs are tradable both in the United States and in Europe and are designed for use throughout the world.

[10] Not more than 10% of the net assets of each Fund, in the aggregate, will be invested in (1) unlisted or unsponsored Depositary Receipts; (2) Depositary Receipts not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange; or (3) unlisted common stocks or common stocks not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

[11] *See* note 8, *supra.*

[12] *See* note 9, *supra.*

surveillance sharing agreement with the Exchange.

The Fund will generally invest in sponsored Depositary Receipts that are listed on ISG member exchanges and that BFA deems as liquid at time of purchase. In certain limited circumstances, the Fund may invest in unlisted or unsponsored Depositary Receipts, Depositary Receipts listed on non-ISG member exchanges, or Depositary Receipts that BFA deems illiquid at the time of purchase or for which pricing information is not readily available.[13] The Exchange states that issuers of unlisted or unsponsored Depositary Receipts are not obligated to disclose material information in the United States. Therefore, according to the Exchange, there may be less information available regarding such issuers, and there may be no correlation between available information and the market value of the Depositary Receipts.

Other Investments

While each Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, a Fund may directly invest in certain other investments, as described below. A Fund may temporarily depart from its normal investment process,[14] provided that the alternative, in the opinion of BFA, is consistent with a Fund's investment objective and is in the best interest of a Fund. However, BFA will not seek to actively time market movements.

A Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.[15] Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid securities. According to the Exchange, illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Each Fund may invest in repurchase and reverse repurchase agreements. The Exchange states that a repurchase agreement is an instrument under which the purchaser (*i.e.,* a Fund) acquires the security and the seller agrees, at the time of the sale, to repurchase the security at a mutually agreed upon time and price, thereby determining the yield during the purchaser's holding period. Reverse repurchase agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing.

Each Fund may invest in other short-term instruments, including money market instruments, on an ongoing basis to provide liquidity or for other reasons. According to the Exchange, money market instruments are generally short-term investments that may include but are not limited to: (i) Shares of money market funds (including those advised by BFA or otherwise affiliated with BFA); (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit, bankers' acceptances, fixed-time deposits, and other obligations of U.S. and non-U.S. banks (including non-U.S. branches) and similar institutions; (iv) commercial paper rated, at the date of purchase, ''Prime-1'' by Moody's Investors Service, Inc., ''F–1'' by Fitch Inc., or ''A–1'' by Standard & Poor's, or if unrated, of comparable quality as determined by BFA; (v) non-convertible corporate debt securities (*e.g.,* bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of non-U.S. banks (including U.S. branches) that, in the opinion of BFA, are of comparable quality to obligations of U.S. banks which may be purchased by a Fund. Any of these instruments may be purchased on a current or forward-settled basis. According to the Exchange, time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates.

Each Fund may enter into currency forward contracts for hedging and trade settlement purposes.[16] Each Fund may invest in total return swaps on single securities in limited circumstances, including as a means to gain exposure to securities that trade on exchanges that are not members of ISG. The credit risk of counterparties to swaps and forward contracts will be assessed and monitored in accordance with policies and procedures adopted by the Adviser and such contracts will be collateralized.[17] Each Fund also may invest in futures contracts based on currencies, stock indexes, and single stocks. The Funds will not invest in options.

Each Fund may invest a small portion of its assets in exchange-listed tracking stocks. The Exchange states that a tracking stock is a separate class of common stock whose value is linked to a specific business unit or operating division within a larger company and is designed to ''track'' the performance of such business unit or division. The tracking stock may pay dividends to shareholders independent of the parent company. The parent company, rather than the business unit or division, generally is the issuer of tracking stock. However, holders of the tracking stock may not have the same rights as holders of the company's common stock.

Each Fund will be classified as a ''diversified'' investment company under the 1940 Act.

Each Fund will not purchase the securities of issuers conducting their principal business activity in the same industry if, immediately after the purchase and as a result thereof, the value of a Fund's investments in that industry would equal or exceed 25% of the current value of a Fund's total assets, provided that this restriction does not limit a Fund's: (i) Investments in securities of other investment companies; (ii) investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities; or (iii) investments in

[13] *See* note 10, *supra.*

[14] Circumstances under which a Fund may temporarily depart from its normal investment process include, but are not limited to, extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[15] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[16] According to the Exchange, a forward currency contract is an obligation to purchase or sell a specific currency at a future date, which may be any fixed number of days from the date of the contract agreed upon by the parties, at a price set at the time of the contract.

[17] The Adviser has implemented policies and procedures to assess the creditworthiness of prospective and existing derivatives counterparties. Derivatives transactions are conducted only with approved counterparties with whom appropriate documentation is executed. Exposure to counterparties is independently and actively monitored. Where appropriate, collateral is posted and actively managed to reduce counterparty credit exposure.

repurchase agreements collateralized by U.S. government securities.

Each Fund intends to qualify for and to elect treatment as a separate regulated investment company under Subchapter M of the Internal Revenue Code. In addition, each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [18] and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[20] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the initial and continued listing criteria in NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares of each Fund will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the IOPV,[22] which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[23] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for such Fund's calculation of NAV at the end of the business day.[24] In addition, a basket composition file, which includes the security names and share quantities (as applicable) required to be delivered in exchange for each Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange, LLC (''NYSE'') via the National Securities Clearing Corporation. The basket will represent one creation unit of a Fund. The NAV of each Fund normally will be determined once each business day, generally as of the regularly scheduled close of normal trading on the NYSE (normally, 4:00 p.m., Eastern Time) on each day that the NYSE is open for trading, based on prices at the time of closing provided that (a) any Fund assets or liabilities denominated in currencies other than the U.S. dollar will be translated into U.S. dollars at the prevailing market rates on the date of valuation as quoted by one or more data service providers, and (b) U.S. fixed-income assets may be valued as of the announced closing time for trading in fixed-income assets in a particular market or exchange.[25] Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The intra-day, closing, and settlement prices of equity securities, including common stocks, tracking stocks, and sponsored and unsponsored Depositary Receipts, will be readily available from the securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Price information regarding currency, stock index, and single stock futures is available from the exchange on which such futures trade as well as from major market data vendors. Price information regarding unsponsored Depositary Receipts, swaps, currency forward contracts, and short-term instruments will be available from major

[18] 15 U.S.C. 78f.

[19] 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).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[22] According to the Exchange, the IOPV will be based on the current value of the securities and other assets held by the Funds using market data converted into U.S. dollars at the current currency rates. The IOPV price will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the IOPV and the market price may occur. The IOPV will not necessarily reflect the precise composition of the current portfolio of securities held by a Fund at a particular point in time or the best possible valuation of the current portfolio. Therefore, the IOPV should not be viewed as a ''real-time'' update of a Fund's NAV, which will be calculated only once a day. The quotations of certain Fund holdings may not be updated during U.S. trading hours if such holdings do not trade in the United States.

[23] According to the Exchange, several major market data vendors display and/or make widely available IOPVs taken from CTA or other data feeds.

[24] On a daily basis, each Fund will disclose for each portfolio security and other financial instrument of each Fund the following information on the Funds' Web site: Ticker symbol (if applicable), name of security and financial instrument, number of shares and dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

[25] According to the Exchange, equity investments, including common stocks, tracking stocks, and sponsored and unsponsored Depositary Receipts, and investments in futures, including currency, stock index, and single stock futures, will be valued at market value, which is generally determined using the last reported official closing price or last trading price on the exchange or other market on which the security or futures contract is primarily traded at the time of valuation. Swaps and currency forward contracts generally will be valued based on quotations from market makers or by a pricing service in accordance with valuation procedures approved by the Trust's Board of Directors/Trustees (''Board''). Repurchase agreements and reverse repurchase agreements are generally valued at par. Other short-term instruments will generally be valued at the last available bid price received from independent pricing services. In determining the value of a fixed income investment, pricing services may use certain information with respect to transactions in such investments, quotations from dealers, pricing matrixes, market transactions in comparable investments, various relationships observed in the market between investments, and calculated yield measures. In certain circumstances, short-term instruments may be valued on the basis of amortized cost. According to the Exchange, generally, trading in non-U.S. securities, U.S. government securities, money market instruments, certain fixed-income securities, and certain derivatives will be substantially completed each day at various times prior to the close of business on the NYSE. The values of such securities used in computing the NAV of a Fund will be determined as of such times. When market quotations are not readily available or are believed by BFA to be unreliable, a Fund's investments will be valued at fair value. Fair value determinations are made by BFA in accordance with policies and procedures approved by the Trust's Board and in accordance with the 1940 Act. BFA may conclude that a market quotation is not readily available or is unreliable if a security or other asset or liability does not have a price source due to its lack of liquidity, if a market quotation differs significantly from recent price quotations or otherwise no longer appears to reflect fair value, where the security or other asset or liability is thinly traded, or where there is a significant event subsequent to the most recent market quotation. The Exchange states that a ''significant event'' is an event that, in the judgment of BFA, is likely to cause a material change to the closing market price of the asset or liability held by a Fund. Non-U.S. securities whose values are affected by volatility that occurs in U.S. markets on a trading day after the close of foreign securities markets may be fair valued.

market data vendors. The Funds' Web site will include a form of the prospectus for each Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share of each Fund will be calculated daily, and that the NAV and the Disclosed Portfolio for each Fund will be made available to all market participants at the same time. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,[26] and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which trading in the Shares of a Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Reporting Authority must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Funds' portfolios. In addition, the Exchange states that the Adviser has implemented a ''fire wall'' with respect to its affiliated broker-dealers regarding access to information concerning the composition or changes to a Fund's portfolio.[27] The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[28] The Exchange further represents that these procedures are adequate to properly monitor Exchange-trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Moreover, prior to the commencement of trading, the Exchange states that it will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares of the Funds, as well as underlying equity securities (including exchange-listed Depositary Receipts and tracking stocks) and futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares of the Funds as well as underlying equity securities and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares of the Funds as well as underlying equity securities (including exchange-listed Depositary Receipts and tracking stocks) and futures from ISG member markets or markets with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) Not more than 10% of the net assets of each Fund, in the aggregate, will be invested in (1) unlisted or unsponsored Depositary Receipts; (2) Depositary Receipts not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange; or (3) unlisted common stocks or common stocks not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (d) how information regarding the IOPV is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Trust will be in compliance with Rule 10A–3 under the Act,[29] as provided by NYSE Arca Equities Rule 5.3.

(7) The Funds will not invest in options.

(8) To the extent that a Fund invests in futures, not more than 10% of the weight of such futures contracts held by a Fund in the aggregate will consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[26] These reasons may include: (1) The extent to which trading is not occurring in the securities or the financial instruments composing the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.

[27] *See supra* note 6 and accompanying text. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[28] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[29] *See* 17 CFR 240.10A–3.

(9) A Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.

(10) The Adviser has implemented policies and procedures to assess the creditworthiness of prospective and existing derivatives counterparties. Derivatives transactions are conducted only with approved counterparties with whom appropriate documentation is executed. Exposure to counterparties is independently and actively monitored. Where appropriate, collateral is posted and actively managed to reduce counterparty credit exposure.

(11) Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

(12) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [30] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–NYSEArca–2013–138), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03569 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71526; File No. SR–BX–2014–009]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Amend the Fee Schedule Under Exchange Rule 7018(a) With Respect to Transactions in Securities Priced at $1 per Share or More

February 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on February 3, 2014, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule under Exchange Rule 7018(a) with respect to transactions in securities priced at $1 per share or more. The Exchange will implement the proposed rule change on February 3, 2014.

The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing several changes to its fees for certain orders that execute at the New York Stock Exchange (''NYSE''). Additionally, the Exchange is proposing to modify the tier regarding credit for entering order [sic] that accesses liquidity in the BX Equities System.

Currently, the Exchange charges members for BSTG (includes BSKN orders since it is a form of BSTG), BSCN (includes BSKP orders since it is a form of BSCN) and BTFY orders that execute at NYSE $0.0025 per share executed. The Exchange is proposing to increase the charge assessed for all such orders executed at NYSE to $0.0030 per share.

Also currently, the Exchange charges members for BMOP orders that execute at NYSE $0.0027 per share executed. The Exchange is proposing to increase the charge assessed for such orders executed at NYSE to $0.0035 per share.

The Exchange is also proposing to modify a tier with respect to the rebates it pays for orders that access liquidity in securities priced at $1 or more. Currently, a member will receive a credit of $0.0013 per share executed when accessing liquidity [3] if the member (i) has a daily average volume of liquidity accessed in all securities during the month of 6 million or more shares through one or more of its BX Equities System market participant identifiers (''MPIDs''), and (ii) adds and/or removes liquidity of 40,000 or more contracts per day during the month through BX Options. The Exchange proposes to reduce the 40,000 or more contracts per day to 30,000 or more contracts per day.

The tier recognizes the prevalence of trading in which members simultaneously trade different asset classes within the same strategy. Because cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other, the Exchange believes that a pricing incentive that encourages market participant activity in BX Options will also support price discovery and liquidity provision in the BX Equities System.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions

[3] As with other rebate tiers, the tier does not apply to an order that executes against a midpoint pegged order, because the accessing order receives price improvement.

of Section 6 of the Act,[4] in general, and Sections 6(b)(4) and (b)(5) of the Act,[5] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The change with respect to the tier for members active in both the BX Equities System and BX Options is reasonable because it reflects the availability of a price reduction for members that support liquidity on both markets. The change is consistent with an equitable allocation of fees because the pricing tier requires significant levels of liquidity provision, which benefits all market participants, and because activity in BX Options also supports price discovery and liquidity provision in the BX Equities System due to the increasing propensity of market participants to be active in both markets and the influence of each market on the pricing of securities in the other. Moreover, making one of the provisions of the tier easier to qualify for by reducing from 40,000 or more to 30,000 or more contracts per day during the month through BX options, has the potential to reduce fees for a wider range of market participants by introducing a new means of qualifying for a lower fee for providing liquidity. The change is not unreasonably discriminatory because market participants may qualify for a still lower fee without participating in BX Options through participation in BX's Qualified Liquidity Provider program.

The proposed change to fees for certain orders that execute at NYSE are reasonable because they reflect a modest increase to such fees. Specifically, the proposed change is reasonable because it reflects a modest increase of $0.0005 per share, from $0.0025 per share to $0.0030 per share, in the charge assessed to members executing at NYSE of BSTG, BSCN and BTFY orders. The proposed change is also reasonable because it reflects a modest increase of $0.0008 per share, from $0.0027 per share to $0.0035 per share, in the charge assessed to members executing at NYSE of BMOP orders. In addition, the change is equitable and not unfairly discriminatory because it affects similarly situated members in the same way.

These fee changes are consistent with an equitable allocation of fees and not unfairly discriminatory because the increase will maintain the same fee being assessed to members executing at NYSE for BSTG, BSCN and BTFY orders. The fee increase for members executing at NYSE for BMOP orders is an equitable allocation of fees and not unfairly discriminatory because BMOP[6] is a premium routing option and the fee increase is modest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[7] BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, BX believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the increases with respect to certain orders coupled with the easier to qualify for pricing tier for members active in the Exchange's cash equities and options markets enhances the Exchange's competitiveness by reducing fees for some and raising fees modestly for others. Thus, although price increases, one of the proposed rule changes provides incentives for behavior that may allow members to reduce their trading costs. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that BX will lose market share as a result of the changes if they are unattractive to market participants. Accordingly, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f) of Rule 19b–4[9] 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.

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–BX–2014–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2014–009. 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

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4), (5).

[6] BX Rule 4758(a)(1)(A)(iii) defines BMOP as a routing option under which orders route only to protected quotations and only for displayed size. If shares remain unexecuted after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the system will not route the order to the locking or crossing market center.

[7] 15 U.S.C. 78f(b)(8).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2014–009 and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03557 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71535; File No. SR–Phlx–2014–011]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ OMX PSX's Optional Anti-Internalization Functionality

February 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 4, 2014, NASDAQ OMX PHLX LLC (''Phlx'' 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 comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the optional anti-internalization functionality of NASDAQ OMX PSX (''PSX'').

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx is proposing to modify PSX's voluntary anti-internalization functionality to provide an additional option under that functionality. In addition, the proposed rule change contains certain clarifications to the text of the rule. Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit broker-dealers managing accounts governed by ERISA from trading as principal with orders generated for those accounts. The functionality can also assist market participants in avoiding execution fees that may result from the interaction of executable buy and sell trading interest from the same firm. Phlx notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) they would have originally obtained if execution of the order was not inhibited by the functionality.

Currently, market participants may apply anti-internalization logic to all quotes/orders entered through a particular MPID, or to all orders entered through a particular order entry port, to which a unique group identification modifier is then appended. In other words, the logic may be applied on an MPID-by-MPID, or on a port-by-port basis.[3] Currently, two forms of anti-internalization logic may be applied: (i) If quotes/orders are equivalent in size, both quotes/orders will be cancelled, or if they are not equivalent in size, the smaller will be cancelled and the size of the larger will be reduced by the size of the smaller; or (ii) regardless of the size of the quotes/orders, the oldest quote/order will be cancelled in full. The applicable logic may be applied to an entire MPID, or alternatively, different logic may be applied to different order entry ports under a particular MPID.[4]

In response to member input, the proposed rule change will add an additional form of anti-internalization logic that a market participant could choose to apply, under which the most recent quote/order would be cancelled. As with the two existing forms of anti-internalization logic, the logic could be applied to an entire MPID, or to selected order entry ports under a particular MPID.[5] Phlx believes that the change will provide members with an additional tool for managing the book of orders that they submit to PSX and the associated execution costs.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(5) of the Act[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In the proposed rule change that introduced the ability to assign a group identification modifier with respect to anti-internalization processing, Phlx stated that the modifier may be assigned ''at the port level.'' Securities Exchange Act Release No. 65869 (December 2, 2011), 76 FR 76793 (December 8, 2011) (SR–Phlx–2011–080). However, this level of specificity was not included in the text of Rule 3307. In addition, although the rule indicates that designation of functionality at the port level is an option available to the market participant, the rule does not make it clear that in order to make use of these options, market participants must use PSX's OUCH order entry protocol. Thus, the proposed rule change also adds additional specificity to the rule text with respect to these aspects of the anti-internalization functionality.

[4] With respect to this functionality also, participants wishing to make designations on the order port level must use the OUCH order entry protocol.

[5] *Id.*

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, Phlx believes that the change, which is responsive to member input, will facilitate transactions in securities and perfect the mechanism of a free and open market by providing members with additional optional functionality that may assist them with managing the book of orders that they submit to PSX and the associated execution costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, by offering market participants additional options with regard to preventing inadvertent internalization of orders submitted to PSX, the change has the potential to enhance PSX's competitiveness with respect to other trading venues, thereby promoting greater competition. Moreover, the change does not burden competition in that its use is optional and provided at no additional cost to members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2014–011 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–Phlx–2014–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2014–011 and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03565 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(a)(ii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71534; File No. SR–FINRA–2014–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Broadening Arbitrators' Authority To Make Referrals During an Arbitration Proceeding

February 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2014, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA.[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 Substance of the Proposed Rule Change

FINRA is proposing to amend Rule 12104 of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and Rule 13104 of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') (together, ''Codes'') to broaden

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This notice includes some clarifying changes from the Form 19b–4 filed with the Commission that were discussed with FINRA. Telephone conversation on February 12, 2014 among Mignon McLemore of FINRA and John Fahey and Darren Vieira of the Commission.

arbitrators' authority to make referrals during an arbitration proceeding.

In July 2010, FINRA filed a proposal with the Commission to amend Rules 12104 and 13104 of the Codes to permit arbitrators to make referrals to FINRA during an arbitration case, and to adopt new rules to address the assessment of hearing session fees, costs, and expenses if an arbitrator made a referral during a case that resulted in withdrawal of the entire panel (''original proposal'').[4] Under the original proposal, if an arbitrator made a mid-case referral, a party could request that the referring arbitrator withdraw. Upon a party's request that the referring arbitrator withdraw, the entire panel also would have been required to withdraw. In July 2011, FINRA responded to comments received by the SEC by filing Amendment No. 1,[5] which replaced the original proposal in its entirety.

Under Amendment No. 1, an arbitrator would have been permitted to make a mid-case referral if an arbitrator became aware of any matter or conduct that the arbitrator had reason to believe posed a serious ongoing or imminent threat that was likely to harm investors. A mid-case referral could not have been based solely on allegations in the pleadings. Also, Amendment No. 1 would have instructed the arbitrator to wait until the arbitration concluded to make a referral, if investor protection would not have been materially compromised by the delay. Further, if an arbitrator made a mid-case referral, the Director of Arbitration (''Director'') would have disclosed the act of making the referral to the parties, and a party would have been permitted to request recusal of the referring arbitrator. Amendment No. 1 would have required either the President of FINRA Dispute Resolution (''President'') or the Director to evaluate the referral and determine whether to forward it to other divisions of FINRA for further review. Finally, Amendment No. 1 would have retained the provision in Rule 12104(b) of the Customer Code and Rule 13104(b) of the Industry Code that would have permitted an arbitrator to make a post-case referral. The SEC received five comments on Amendment No. 1.[6]

On January 29, 2014, FINRA withdrew SR–FINRA–2010–036[7] without responding to the comments submitted on Amendment No. 1. FINRA is filing the current proposal, SR–FINRA–2014–005, to replace the withdrawn proposal under a new rule filing number and under the SEC's new Rules of Practice.[8] While this new rule filing responds to the comments submitted on Amendment No. 1, FINRA is not proposing to make any changes to the rule language filed in Amendment No. 1.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

In light of well publicized securities markets schemes that resulted in harm to investors, FINRA has reviewed the Codes and determined that its rules on arbitrator referrals should be amended to permit arbitrators to make referrals during an arbitration proceeding, rather than solely at the conclusion of a matter as is currently the case.

Currently, Rule 12104(b) of the Customer Code and Rule 13104(b) of the Industry Code state, in relevant part, that any arbitrator may refer to FINRA for disciplinary investigation any matter that has come to the arbitrator's attention during and in connection with the arbitration *only* at the conclusion of an arbitration (emphasis added). FINRA is concerned that the current rule's requirement that arbitrators in all instances must wait until a case is concluded before making a referral could hamper FINRA's efforts to uncover threats to investors as early as possible. FINRA is proposing, therefore, to broaden the arbitrators' authority under the Codes to make referrals during the hearing phase of an arbitration in those extremely rare circumstances in which investor protection requires that the referral not be delayed.

The Proposed Rule Change[9]

Rule 12104—Effect of Arbitration on FINRA Regulatory Activities

First, FINRA proposes to add the phrase ''Arbitrator Referral During or at Conclusion of Case'' to the title of Rule 12104 so that it reflects accurately the proposed changes. The new title would read: ''Effect of Arbitration on FINRA Regulatory Activities; Arbitrator Referral During or at Conclusion of Case.''

Second, the current rule would be rearranged to reflect the order in which an arbitrator may make a referral in an arbitration case. Subparagraph (a) would remain unchanged. The language in current subparagraph (b) of the rule, which addresses arbitrator referrals made only at the conclusion of the case (hereinafter, ''the post-case referral provision''), would be amended and moved to new subparagraph (e). In its place, FINRA would insert new rule language in subparagraph (b) to address arbitrator referrals made during the hearing phase of an arbitration (hereinafter, ''the mid-case referral provision''). New subparagraph (c) would require the Director to disclose the mid-case referral to the parties and permit the parties to request the referring arbitrators' recusal, as is currently permitted under the Code. New subparagraph (d) would provide the President and the Director with the authority to evaluate the arbitrator referral to determine whether to transmit it to other divisions of FINRA. Finally, new subparagraph (e) would contain the rule language in current subparagraph (b), with some minor amendments to address post-case referrals.

[4] *See* Securities Exchange Act Rel. No. 62930 (Sept. 17, 2010), 75 FR 58007 (Sept. 23, 2010) (SR–FINRA–2010–036).

[5] *See* Securities Exchange Act Rel. No. 64954 (July 25, 2011), 76 FR 45631 (July 29, 2011) (SR–FINRA–2010–036) (Notice of Filing Proposed Rule Change and Amendment No. 1 to Amend the Codes of Arbitration Procedure To Permit Arbitrators To Make Mid-Case Referrals).

[6] *See* note 40, *infra.*

[7] *See* SR–FINRA–2010–036, Withdrawal of Proposed Rule Change, available at *http://www.finra.org/Industry/Regulation/RuleFilings/2010/P121722.*

[8] *See* Securities Exchange Act Rel. No. 63723 (Jan. 14, 2011), 76 FR 4066 (Jan. 24, 2011), Final Rule (adopting new Rules of Practice to formalize the process used when conducting proceedings to determine whether an SRO's proposed rule change should be disapproved under Section 19(b)(2) of the Exchange Act).

[9] FINRA is proposing to amend Rules 12104 and 13104 of the Codes. To simplify the explanation, FINRA's discussion of the proposed changes focuses on changes to Rule 12104. However, as the proposed changes are the same for Rule 13104, the discussion also applies to Rule 13104.

Rule 12104(b)—Mid-Case Referral Provision

Rule 12104(b) would be amended to state that during the pendency of an arbitration, any arbitrator may refer to the Director any matter or conduct that has come to the arbitrator's attention during the hearing, which the arbitrator has reason to believe poses a serious threat, whether ongoing or imminent, that is likely to harm investors unless immediate action is taken. The proposed rule would also state that arbitrators should not make referrals during the pendency of an arbitration based solely on allegations in the statement of claim, counterclaim, cross claim, or third party claim. Further, the proposed rule would state that if a case is nearing completion, the arbitrator should wait until the case concludes to make the referral if, in the arbitrator's judgment, investor protection would not be materially compromised by this delay.

The first element of proposed Rule 12104(b) contains two prerequisites. The first prerequisite would permit any arbitrator [10] to make a mid-case referral to the Director but only after the commencement of an evidentiary hearing. The proposal would limit mid-case referrals so that they would be based on evidence presented by the parties during a hearing. FINRA believes this limitation would ensure that arbitrators have reviewed or heard actual evidence that would enable them to make an informed decision before making a mid-case referral, and would thus eliminate unnecessary mid-case referrals. Furthermore, Dispute Resolution routinely provides copies of arbitration claims and other pleadings to other FINRA divisions for analysis; thus, mid-case referrals based only on the pleadings are not necessary to apprise these divisions of possible wrongdoing.

The second prerequisite would require that, before making a mid-case referral, the arbitrator must have reason to believe the serious threat, whether ongoing or imminent, is likely to harm investors unless immediate action is taken. Under the proposed standard for referral, the referring arbitrator would not need to conclude that there is a threat; the arbitrator would only need to have reason to believe that a threat, whether ongoing or imminent, is likely to harm investors unless immediate action is taken. FINRA believes the proposed standard for making a mid-case referral would reduce the potential for a finding of arbitrator bias and would help a prevailing investor defend against a possible motion to vacate the award.

The Federal Arbitration Act (''FAA'') establishes four grounds for vacating an arbitration award, one of which is evident partiality.[11] Arbitrator evident partiality encompasses both an arbitrator's explicit bias toward one party and an arbitrator's implicit bias when an arbitrator fails to disclose relevant information to the parties.[12] ''The party alleging evident partiality must establish specific facts which indicate improper motives'' on the part of the arbitrators.[13] The appearance of impropriety, standing alone, is insufficient.[14] In the context of mid-case referrals, FINRA acknowledges that a party may challenge an award on the ground that an arbitrator's mid-case referral demonstrates an arbitrator's evident partiality. For purposes of Section 10(a) of the FAA, courts have found that situations involving ''evident partiality'' include an arbitrator's financial interest in the outcome of the arbitration,[15] or an arbitrator's failure to disclose prior consulting work for a party,[16] for example. However, courts have not found that a situation rises to the level of evident partiality where an arbitrator forms an opinion using evidence presented during a hearing and then acts on that evidence.[17]

Further, courts expect that after an arbitrator has heard considerable testimony, the arbitrator will have some view of the case.[18] As long as that view is one that arises from the evidence and the conduct of the parties, courts have found that it cannot be fairly claimed that some expression of that view amounts to bias.[19] FINRA believes, therefore, that, as arbitrators are expected to form opinions based on evidence presented to them after they are appointed, a prevailing investor's award would not likely be vacated because arbitrators acted on their views, in the form of a mid-case referral, prior to the conclusion of the proceedings.[20]

The second element of proposed Rule 12104(b) would state that arbitrators must not make mid-case referrals based only on allegations in the statement of claim, counterclaim, cross claim, or third party claim. Thus, mid-case referrals could not be based solely on the parties' pleadings.[21] Because Dispute Resolution routinely provides copies of arbitration claims and other pleadings to other FINRA divisions for analysis, mid-case referrals based only on the pleadings are not necessary to apprise those divisions of possible wrongdoing.[22] By ensuring that a mid-case referral is based on testimony and other evidence presented at the hearing on the merits, the rule would limit mid-case referrals to situations where facts warranting a referral may not generally be known to FINRA regulators.

The final element of proposed Rule 12104(b) would instruct the arbitrators to delay their referral until the conclusion of a case if, in the arbitrator's judgment, investor protection will not be materially compromised by a short delay in making the mid-case referral. Arbitrators may have the opportunity to exercise such judgment if, for example, during the third of four consecutively

[10] Under the proposal, an arbitrator on a three-person panel may make a mid-case referral alone or together with either or both of the other arbitrators on the panel.

[11] An award may be vacated upon the application of any party to the arbitration: (1) Where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. *See* 9 U.S.C. 10(a).

[12] Windsor, Kathryn A. (2012) ''Defining Arbitrator Evident Partiality: The Catch-22 Of Commercial Litigation Disputes,'' *Seton Hall Circuit Review:* Vol. 6: Iss. 1, Article 7, p. 192. Available at: *http://erepository.law.shu.edu/circuit_review/vol6/iss1/7.*

[13] *Sheet Metal Workers International Association Local Union 420* v. *Kinney Air Conditioning Co.,* 756 F.2d 742, 746 (9th Cir. 1985).

[14] *Kinney,* 756 F.2d at 746 (citing *International Produce, Inc.* v. *Rosshavet,* 638 F.2d 548, 551 (2d Cir.), *cert. denied,* 451 U.S. 1017 (1981)).

[15] *Id.*

[16] *Commonwealth Coatings Corp.* v. *Continental Casualty Co.,* 393 U.S. 145, 146, 89 S. Ct. 337 (1968), *reh. den.* 393 U.S. 1112, 89 S. Ct. 848 (1968).

[17] *Ballantine Books Inc.* v. *Capital Distributing Company,* 302 F.2d 17, 21 (2nd Cir. 1962). *See also Bell Aerospace Co.* v. *Local 516, UAW,* 500 F.2d 921, 923 (2nd Cir. 1974).

[18] *Ballantine,* 302 F.2d at 21.

[19] *Id. See also Health Services Management Corp.* v. *Hughes,* 975 F.2d 1253, 1267 (7th Cir. 1992).

[20] *Health Services Management Corp.,* 975 F.2d at 1267.

[21] A pleading is a statement describing a party's causes of action or defenses. Documents that are considered pleadings are: a statement of claim, an answer, a counterclaim, a cross claim, a third party claim, and any replies. Rule 12100(s) of the Customer Code and Rule 13100(s) of the Industry Code.

[22] Dispute Resolution provides copies of all statements of claim, amended initial claims, counterclaims, amended counterclaims, cross claims, amended cross claims, third party claims, amended third party claims, and answers in promissory note cases to the Central Review Group (''CRG''), which is part of the Office of Fraud Detection and Market Intelligence, to analyze for fraudulent securities activity. If this analysis indicates possible securities violations, CRG may alert Enforcement for further review.

scheduled hearing days,[23] they learn of a serious, ongoing or imminent threat that meets the criteria of the proposed rule. If the arbitrators anticipate that they can complete their remaining tasks shortly after the last hearing session is conducted on the fourth day, the arbitrators could defer making the mid-case referral until the case concludes so that they would not delay significantly the conclusion of the case.[24] In deciding whether to delay making a mid-case referral, however, arbitrators should weigh the potential harm a mid-case referral could have on the individual claimant against the possible harm to the markets and other investors that a brief delay could cause.

FINRA contemplates that the mid-case referral rule would typically be used in those circumstances where hearings are scheduled for many days, or even weeks, and, in particular, when the hearing days are not scheduled consecutively. In the example above, if four hearing days were scheduled, but not consecutively, and this scheduling resulted in a significant time gap between when they learned of the ongoing or imminent threat and the potential conclusion of the case, then a delay in making a mid-case referral would not likely be appropriate. The proposed rule would encourage arbitrators to determine, based on their judgment and the facts and circumstances of the case, whether a mid-case or post-case referral is more appropriate.

Accordingly, FINRA believes that, as a result of the strict criteria in proposed Rule 12104(b), there would be very few mid-case referrals.

Rule 12104(c)—Arbitrator Disclosure and Arbitrator Recusal

To make a referral under proposed Rule 12104(c), the arbitrator would notify the Director, who, in turn, would notify the parties about the arbitrator's act of making the referral. The proposed rule also states that a party may request that the referring arbitrators recuse themselves, as provided in the Codes.

FINRA believes that if an arbitrator makes a mid-case referral, this information must be disclosed to the parties.[25] This disclosure might prompt a party to make a recusal motion, which a party currently may do under the Codes.[26] However, it is FINRA's view that an arbitrator would not be required to withdraw from the case because of the act of making a mid-case referral. Under the Codes, an arbitrator who is the subject of a recusal request has the discretion to decide whether to withdraw from the case.[27] FINRA rules do not dictate the grounds for granting recusal requests and do not require specific decisions by arbitrators in response to such requests. Consistent with other recusal requests, an arbitrator challenged because of a mid-case referral is required to make that decision in accordance with the Codes[28] and the Code of Ethics for Arbitrators in Commercial Disputes.[29] FINRA does not believe the proposed rule should change this authority, or the right of a non-moving party to oppose the request.

Thus, under the proposed rule, neither the referring arbitrator nor the panel would be required to recuse itself upon a party's recusal motion to the referring arbitrator. This means that the entire panel could remain after a party's recusal motion, and the case would proceed as normal. This should minimize the possibility that the arbitration where a mid-case referral occurs would have to start anew; thus, the investor would be less likely to experience procedural disadvantages, significant delays, or increased costs.

Moreover, if a referring arbitrator from a three-person panel, in his or her discretion, grants a recusal request, the parties may agree to proceed with the remaining two arbitrators to limit expenses rather than seek a replacement arbitrator.[30] If the parties agree to select a replacement arbitrator, or the parties do not agree on the issue of a replacement, FINRA would appoint a replacement arbitrator.

If an arbitrator from a three-person panel is replaced, the parties may agree to methods of saving time and costs, such as rehearing only one or two key witnesses, or stipulating to summaries of prior testimony.[31] If an arbitrator from a single-arbitrator panel agrees to a recusal request after making a mid-case referral, FINRA would appoint a replacement arbitrator who would review the hearing record (*e.g.,* digital recordings and exhibits), and the case would proceed from where it was interrupted.

In either instance, FINRA would pay the replacement arbitrator to review the hearing record and learn about the arbitration case up to the point at which it was interrupted. Pursuant to forum policy, the parties would not be assessed this fee.

While FINRA cannot eliminate the attendant costs or potential delays that may arise if an arbitrator grants a recusal request after a mid-case referral, the Codes provide parties with tools to minimize them. Further, under the circumstances that would warrant a mid-case referral, the referral could save a substantial number of non-party investors from losses or costs.

Rule 12104(d)—Authority To Forward the Arbitrator Referral to FINRA Divisions

Proposed Rule 12104(d) would authorize only the President or Director to evaluate the arbitrator referral to determine whether it should be transmitted to other FINRA divisions to begin a regulatory investigation.

Under this provision, the President or Director would have the discretion not to forward information revealed during hearings that an arbitrator believed warranted a mid-case referral. Whether or not the mid-case referral is forwarded, the staff[32] would disclose to the parties that an arbitrator had made a mid-case referral to the President or Director.

This provision would ensure that an experienced regulator reviews the referral in order to alert the appropriate FINRA divisions. In most cases, the President or Director would forward the mid-case referral, unless the President or Director knows that an investigation involving such matter or conduct has begun.

Rule 12104(e)—Post-Case Referral Provision

The language in current subparagraph (b) of Rule 12104, which addresses

[23] The average arbitration hearing takes about 5 days.

[24] If the referring arbitrator delays making the referral until the conclusion of the case, the referral would then take place under the proposed Rule 12104(e), which provides for referrals at the conclusion of a case.

[25] *See Commonwealth Coatings Corp.,* 393 U.S. 145, (establishing a broad requirement that arbitrators make full disclosures of facts that could create an ''impression of bias'').

[26] Rule 12406 of the Customer Code and Rule 13409 of the Industry Code.

[27] *Id.*

[28] *Id.*

[29] *See* The Code of Ethics for Arbitrators in Commercial Disputes, Canon II(G). Section G states, in relevant part, that ''if an arbitrator is requested to withdraw by less than all of the parties because of alleged partiality, the arbitrator should withdraw unless either of the following circumstances exists: (1) An agreement of the parties, or arbitration rules agreed to by the parties, or applicable law establishes procedures for determining challenges to arbitrators, in which case those procedures should be followed; or (2) in the absence of applicable procedures, if the arbitrator, after carefully considering the matter, determines that the reason for the challenge is not substantial, and that he or she can nevertheless act and decide the case impartially and fairly.''

[30] Rules 12403(c)(6) and 12403(d)(6)(A), 12403(d)(7)(A) and 12403(d)(8)(A) of the Customer Code and Rule 13411 of the Industry Code.

[31] Rule 12105 of the Customer Code and Rule 13105 of the Industry Code.

[32] In this case, FINRA staff, likely a case administrator, would serve as the delegate for the Director, pursuant to delegated authority. Rules 12100(k) and 13100(k).

arbitrator referrals made only at the conclusion of the case, would be amended and moved to new subparagraph (e).

The current rule states that ''only at the conclusion of an arbitration, any arbitrator may refer to FINRA for disciplinary investigation any matter that has come to the arbitrator's attention during and in connection with the arbitration, either from the record of the proceeding or from material or communications related to the arbitration, which the arbitrator has reason to believe may constitute a violation of NASD or FINRA rules, the federal securities laws, or other applicable rules or laws.''

The proposal would continue to permit arbitrators to make post-case referrals. However, FINRA would remove the term ''disciplinary'' to ensure that the scope of potential referrals is not limited to disciplinary findings, and would add the phrase ''or conduct,'' so that the subject-matter of Rule 12104 is consistent throughout the proposed rule. Also, the proposed rule would be amended to replace the reference to violations of ''NASD or FINRA rules'' with ''the rules of'' FINRA because the current FINRA rulebook consists of FINRA Rules, NASD Rules, and incorporated NYSE Rules.

Dispute Resolution would continue the current practice of forwarding all post-case arbitrator referrals to FINRA's regulatory divisions for review.

Conclusion

FINRA believes the proposal would strengthen its regulatory structure and provide additional protection to investors and the securities markets. In addition, FINRA believes the proposed rule change would provide it with an important tool for detecting and addressing serious ongoing or imminent threats to investors that may only be known to the participants in the arbitration.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[33] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because the proposal could help FINRA detect serious ongoing or imminent threats to the securities markets at an earlier stage, which could help curb the financial losses of investors as well as the effects these threats could have on investors if left unchecked. Thus, the proposed rule change would strengthen FINRA's ability to carry out its regulatory mission and provide additional protection to investors and the markets.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will be a burden on competition. All members would be subject to the proposed rule change, so they would be affected in the same manner.

While the proposed rule change would not be a burden on competition for members, FINRA acknowledges that an individual claimant may experience delays and costs if an arbitrator makes a mid-case referral under the proposed rule change and the arbitrator recuses himself or herself as a result. However, the procedural safeguards of the proposed rule change would help to ameliorate the negative effects such a referral could have on the individual claimant's case. These procedural safeguards would help minimize delays and cumbersome administrative procedures, and reduce the potential for a finding of arbitrator bias, which would help a prevailing investor defend against a motion to vacate. When balancing the potential outcomes of possible serious misconduct that goes undetected, FINRA believes the proposed rule change would save a substantial number of other investors from significant losses, which would outweigh the risk of potentially increasing hearing costs for an individual claimant.

In addition, the proposed rule change would help FINRA detect serious, ongoing or imminent threats to investors at an earlier stage, which could help curb the financial losses of investors as well as the effects these threats could have on investors if left unchecked. For these reasons, FINRA believes the proposal would not burden competition, but, instead, would strengthen FINRA's regulatory structure and provide additional protection to investors.

In assessing the economic impact of the proposed rule change, FINRA considered the comments submitted on the original proposal[34] to guide further the process of balancing the risk of potentially increasing the costs to an individual investor against the harm of significant losses to a larger group of investors. Amendment No. 1 incorporated FINRA's economic impact assessment by focusing on minimizing the costs to the individual claimant under the proposed rule change.

First, Amendment No. 1 addressed a chief concern raised by the commenters with the original proposal by removing the requirement that the entire panel withdraw upon a party's request that a referring arbitrator withdraw. Under the original proposal, this procedural step would likely have required the arbitration case to start over, thereby increasing the individual claimant's costs (as well as those of the respondent) and delaying resolution of the dispute. In Amendment No. 1, FINRA changed the withdrawal requirement to permit a party to submit a recusal motion to the referring arbitrator upon learning of the mid-case referral.

FINRA notes that under Amendment No. 1, which is identical to the current proposal, the referring arbitrator would not have been required to grant a recusal motion upon a party's request. FINRA rules do not dictate the grounds for granting recusal requests and do not require written decisions by arbitrators in response to such requests.[35] Amendment No. 1 reflects FINRA's view that arbitrators who make a mid-case referral are not required to recuse themselves. Therefore, the entire panel could remain after a party's recusal motion, and the case would proceed. As a result, the individual claimant would be less likely to experience procedural disadvantages, significant delays, and increased costs, because Amendment No. 1 minimizes the possibility that the arbitration would start anew.

Second, the Codes provide parties with tools to minimize these costs and delays if a referring arbitrator, in his or her discretion, grants a recusal request. For example, the parties could proceed with the remaining two arbitrators in a case with a three-arbitrator panel to limit expenses, rather than seek a replacement arbitrator.[36] Alternatively, the parties could agree to other methods to save time and cost, such as rehearing

[33] 15 U.S.C. 78o–3(b)(6).

[34] *See* note 38, *infra.*

[35] *See* note 51, *infra.*

[36] *See* note 56, *infra.*

only one or two key witnesses, or stipulating to summaries of prior testimony.[37] Further, a party could seek recovery of any additional costs as part of an award.

Third, under forum policy, if an arbitrator agrees to a recusal request after making a mid-case referral and the parties do not agree on how to proceed, FINRA would appoint a replacement arbitrator to review the hearing record, and the case would proceed from where it was interrupted. FINRA would pay the replacement arbitrator to review the hearing record and other case documents. The parties would not be assessed any fees in conjunction with those payments.

FINRA recognizes that Amendment No. 1, like the current proposed rule change, would not have eliminated all of the potential costs or delays that may occur if an arbitrator grants a recusal request. In light of its economic impact assessment, FINRA believes that the proposed rule change provides targeted solutions to address some of the measurable economic effects on the individual claimant.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On July 12, 2010, FINRA filed the original proposal with the SEC to amend Rules 12104 and 13104 of the Codes; the proposal would have permitted arbitrators to make referrals during an arbitration. The SEC published the original proposal in the **Federal Register** on September 23, 2010.[38] The original proposal would have provided arbitrators with express authority to alert the Director during the prehearing, discovery, or hearing phase of a case when they learned of any matter or conduct that they had reason to believe posed a serious, ongoing, imminent threat to investors that required immediate action. Also, the original proposal would have required the Director to disclose the mid-case referral to the parties, and would have required the entire panel to withdraw upon a party's request that a referring arbitrator withdraw. The SEC received eleven comments, all of which opposed the original proposal.[39]

On July 7, 2011, in response to the comments, FINRA filed Amendment No. 1 (''Amendment No. 1''), which replaced the original proposal in its entirety.[40] The SEC received five comments on Amendment No. 1.[41] FINRA withdrew Amendment No. 1 prior to filing a response to comments.[42] Accordingly, FINRA discusses the comments to Amendment No. 1 and its responses below.

Disclosure of Mid-case Referral to Parties:

Three commenters[43] opposed proposed Rule 12104(c) of Amendment No. 1, which would have required the Director to disclose to the parties when an arbitrator makes a mid-case referral, and would have permitted a party to request recusal of the referring arbitrator. These commenters noted that the proposed rule would have permitted counsel for the party that is the subject of the referral to request recusal of the referring arbitrator based solely on the act of making the referral.[44] Two commenters suggested that FINRA amend proposed Rule 12104(c) to provide that making a mid-case referral would not be grounds for recusal of an arbitrator.[45]

Disclosure of an arbitrator's mid-case referral is consistent with an arbitrator's duty to disclose potential sources of bias.[46] This disclosure might prompt a party to make a recusal motion, which a party currently may do under the Codes in other circumstances.[47] However, an arbitrator would not be required to withdraw from the case because of a mid-case referral. Under the Codes, an arbitrator who is the subject of a recusal request has the discretion to decide whether to withdraw from the case.[48] Amendment No. 1 did not propose to change this authority, or the right of a non-moving party to oppose the request. Three commenters to the original proposal[49] cited case law that suggests arbitrators are expected to form opinions based on the evidence presented to them after they are appointed, and such an expression of those views prior to the conclusion of the case would not be considered proof of bias.[50] FINRA believes the disclosure provision in Amendment No. 1 is consistent with current practice and case law and declines to change it in response to the comments.

FINRA notes that the original proposal would have required the entire panel to withdraw upon a party's request that the referring arbitrator withdraw.[51] After considering the comments and our rules concerning arbitrator recusal, FINRA determined not to include this requirement in Amendment No. 1, which is identical to the current proposal. Some commenters suggested that FINRA should have added rule language noting that a mid-case referral would not be a valid basis for making a motion to recuse. FINRA rules do not dictate the grounds for granting recusal requests and do not require specific decisions by arbitrators in response to such requests. Consistent with any other recusal requests, an arbitrator challenged because of a mid-case referral is required to make that decision in accordance with the Codes.[52] As in Amendment No. 1, the current proposal reflects FINRA's view that recusal of arbitrators making a mid-case referral is not mandated.

Updating Training Materials:

One commenter suggested that FINRA update its arbitrator training materials and reference guides with relevant case law citations that support the argument that mid-case referrals should not provide new grounds for recusal.[53]

Whenever the SEC approves a proposed rule change involving its dispute resolution forum, FINRA reviews its arbitrator training materials and reference guides and, when

[37] *See* note 57, *infra.*

[38] *See* note 3, *supra.*

[39] *See* Comments on FINRA Rulemaking, Notice of Proposed Rule Change to Amend the Codes of Arbitration Procedure to Permit Arbitrators to Make Mid-case Referrals, available at *http://www.sec.gov/comments/sr-finra-2010-036/finra2010036.shtml* (last visited February 10, 2014).

[40] *See* Securities Exchange Act Rel. No. 64954 (July 25, 2011), 76 FR 45631 (July 29, 2011) (File No. SR–FINRA–2010–036, Notice of Filing of Proposed Rule Change and Amendment No. 1 to Amend the Codes of Arbitration Procedure to Permit Arbitrators to Make Mid-Case Referrals).

[41] Comments on Amendment No. 1 were submitted from: Peter J. Mougey, President, Public Investors Arbitration Bar Association, Aug. 18, 2011 (''PIABA Comment''); Richard P. Ryder, Esquire, Securities Arbitration Commentator, Inc., Aug. 27, 2001 (''Ryder Comment''); William A. Jacobson, Esq., Director, Cornell Securities Law Clinic, Aug. 22, 2011 (''Cornell Comment''); Seth E. Lipner, Professor of Law, Baruch College, Sept. 8, 2011 (''Lipner Comment''); and Barry D. Estell, Attorney at Law, Sept. 12, 2011 (''Estell Comment'').

[42] *See* note 6, *supra.*

[43] PIABA Comment, Cornell Comment, and Estell Comment.

[44] *Id.*

[45] The Cornell Comment suggested amending Rule 12104(b) only to state that a referral under the rule would not be grounds for recusal or removal of an arbitrator. The Estell Comment supported this suggestion. However, the Ryder Comment opposed the suggestion.

[46] *See Commonwealth Coatings Corp.,* 393 U.S. 145 (establishing a broad requirement that arbitrators make full disclosures of facts that could create an ''impression of bias'').

[47] Rule 12406 of the Customer Code and Rule 13409 of the Industry Code.

[48] *Id.*

[49] Theodore M. Davis, Esq. Law Office of Theodore M. Davis, Oct. 11, 2010; Dale Ledbetter, Ledbetter & Associates, P.A., Oct. 13, 2010, and Richard A. Stephens, Esq., Attorney, Oct. 11, 2010.

[50] *See Ballantine Books Inc.,* 302 F.2d at 21; *see also Health Services Management Corp.,* 975 F.2d at 1267.

[51] *See* note 3, *supra.*

[52] Rule 12406 of the Customer Code and Rule 13409 of the Industry Code.

[53] PIABA Comment.

appropriate, updates them to give guidance on the issue addressed in the proposed rule change.

Impact of Mid-case Referral on Investors:

Two commenters argued that Amendment No. 1 would have cause claimants to incur increased costs if an arbitrator made a mid-case referral under the proposed rule.[54] The commenters expressed concern that replacing an arbitrator who granted a recusal request would result in additional time and expense to reschedule delayed hearing dates.[55]

Amendment No. 1 addressed a chief concern expressed by commenters with the original proposal by removing the requirement that the entire panel withdraw upon a party's request that a referring arbitrator withdraw.[56] Under Amendment No. 1, which is identical to the current proposal, neither the referring arbitrator nor the panel would have been required to withdraw as the original proposal would have required. Instead, a party would have been permitted to submit a recusal motion to the referring arbitrator. This means that the entire panel could remain after a party's recusal motion, and the case could proceed as normal. The investor would have been less likely, therefore, to experience procedural disadvantages, significant delays, and increased costs, because Amendment No. 1 would have minimized the possibility that the arbitration would start anew.

Further, the Codes provide parties with tools to minimize these costs and delays, if a referring arbitrator, in his or her discretion, granted a recusal request under Amendment No. 1. For example, the parties could agree to proceed with the remaining two arbitrators in a three-arbitrator panel to limit expenses rather than seek a replacement arbitrator[57] or could agree to other methods of saving time and cost, such as rehearing only one or two key witnesses, or stipulating to summaries of prior testimony.[58] Further, a party could seek recovery of any additional costs as part of an award.

FINRA recognizes that Amendment No. 1 could not have eliminated the attendant costs or potential delays that may have arisen if an arbitrator granted a recusal request after making a mid-case referral. FINRA believes, however, that the ability to retain the panel after an arbitrator makes a mid-case referral would ameliorate the negative effects that a mid-case referral could have on the individual claimant's case. In addition, the provisions in the Codes help parties minimize costs and delays in the event of an arbitrator's recusal.

Costs of a Replacement Arbitrator:

Some commenters[59] contended that arbitrator discretion to assess costs associated with selecting and educating a replacement arbitrator could have exposed claimants to additional costs that they otherwise would not have incurred but for the past conduct of the party that was the subject of the mid-case referral.

If an arbitrator were to have agreed to a recusal request after making a mid-case referral and the parties did not agree on how to proceed, FINRA would have appointed a replacement arbitrator to review the hearing record (*e.g.,* digital recordings and exhibits), and the case would have proceeded from where it was interrupted. FINRA would have paid the replacement arbitrator to review the hearing record and learn about the arbitration case up to the point at which it was interrupted. Pursuant to forum policy, the parties would not have been assessed any fees in conjunction with those payments. Thus, as these costs could not be allocated to the parties, FINRA did not incorporate the commenters' suggestion in Amendment No. 1, or in the current proposal.

Motions to Vacate After a Mid-case Referral:

One commenter suggested that the party that is the subject of the referral would be more likely to file a motion to vacate any award in favor of an investor regardless of the referring arbitrator's decision on the recusal motion.[60] This commenter suggested that, even when courts deny motions to vacate, investors would incur additional delay and expense related to defending against such motions.[61]

The proposed criteria in Amendment No. 1 for a mid-case referral would have helped the prevailing party minimize the expense of defending against an attack on the award based on the use of the mid-case referral rule. Under Amendment No. 1, a mid-case referral would have been based on evidence presented at a hearing, not information provided in the pleadings. Further, the evidence must have supported the arbitrator's belief that the threat was serious, either ongoing or imminent, and likely to harm investors unless immediate action was taken. Under this standard of referral, which is lower than the threshold in the original proposal, the referring arbitrator would not need to conclude that there is a violation, just that there might be a serious problem that required immediate action.[62] Moreover, Amendment No. 1 instructed arbitrators to consider delaying their referral until the conclusion of a case if, in their judgment, investor protection would not have been materially compromised by a short delay in making the referral.

FINRA acknowledges that under Amendment No. 1, which is identical to the current proposal, there is a risk that a claimant would incur costs defending against a motion to vacate. FINRA believes, however, that the rule language attempts to minimize this risk by reducing the potential for establishing arbitrator bias to help a claimant successfully defend against a party's challenge to an award. Despite this risk, FINRA believes the theoretical cost to one claimant must be weighed against the potential harm to numerous other investors.

Effect of Mid-case Referral on Case Strategy:

Some commenters to Amendment No. 1 argued that, if an arbitrator made a mid-case referral, the application of the rule would negatively impact the investor's case strategy.[63] Specifically, they contended that if parties cannot stipulate how evidence would be presented to the replacement arbitrator, the arbitrators, including the replacement arbitrator, would decide what evidence would be reviewed and how to proceed.[64] Under this scenario, the commenters contended that investors could lose the ability to present their case as they were otherwise entitled to do.[65]

Under the Codes, if the parties cannot agree or are unable to provide suggestions on how to educate a replacement arbitrator, arbitrators are permitted to use their discretion in

[54] PIABA Comment and Ryder Comment.

[55] *Id.*

[56] The Lipner Comment suggested that FINRA amend its proposal to provide only the investor with the option to continue with the existing panel or request a new panel. Amendment No. 1 removed the requirement that the entire panel withdraw upon a party's request that the referring arbitrator withdraw. Hence, FINRA believes this comment was addressed with the changes made by Amendment No. 1.

[57] Rules 12403(c)(6) and 12403(d)(6)(A), 12403(d)(7)(A) and 12403(d)(8)(A) of the Customer Code and Rule 13411 of the Industry Code.

[58] Rule 12105 of the Customer Code and Rule 13105 of the Industry Code.

[59] PIABA Comment and Cornell Comment (joining in concerns expressed by PIABA).

[60] PIABA Comment.

[61] *Id.*

[62] Under the original proposal, before making a mid-case referral, arbitrators would have been required to have ''reason to believe that a matter or conduct poses a serious, ongoing or imminent threat to investors that requires immediate action.'' Under that standard, the arbitrators would have had to be certain that an ongoing threat existed and the threat was imminent. *See* note 3, *supra.*

[63] PIABA Comment and Cornell Comment (joining in concerns expressed by PIABA).

[64] *Id.*

[65] *Id.*

deciding what evidence to consider and to admit.[66] Under Amendment No. 1, investors would not forfeit their case strategy because the arbitrators, including the replacement arbitrator, would have access to information and evidence submitted previously. Transcripts or recordings from prior hearing sessions would have provided a verbatim account of the sessions that were conducted in accordance with the claimant's original strategy. Thus, under current rules, if arbitrators make a mid-case referral as proposed, the claimant would be able to propose a method of reviewing the prior evidence or testimony.

Arbitrators' Code of Ethics:

One commenter[67] argued that Amendment No. 1 would cause an arbitrator who made a mid-case referral to violate the Code of Ethics for Arbitrators in Commercial Disputes (''Code of Ethics'').[68] Specifically, the commenter argued that the arbitrator's duty of confidentiality could be compromised if the arbitrator acted under the proposed rule.[69]

An arbitrator must adhere to the duty of confidentiality outlined in the Code of Ethics, which requires that if an agreement of the parties sets forth procedures to be followed conducting an arbitration, the arbitrators must comply with those procedures. Specifically, the Code of Ethics states, in relevant part that, ''[w]hen an arbitrator's authority is derived from the agreement of the parties, an arbitrator should neither exceed that authority nor do less than is required to exercise that authority completely. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator to comply with such procedures or rules.''[70] Based on these criteria, the FINRA Submission Agreement provides arbitrators with the authority to conduct an arbitration pursuant to FINRA rules. Thus, arbitrators would not have violated their duty of confidentiality under the Code of Ethics by making a mid-case referral pursuant to Amendment No. 1, nor would they do so by making a referral under the proposed rule.

Post-Case Referral:

Three commenters supported proposed paragraph (e) of Rule 12104,[71] which makes minor changes to current Rule 12104(b) governing post-case referrals. Specifically, under proposed Rule 12104(e), FINRA would remove the term ''disciplinary'' as a qualification on the type of investigation FINRA may conduct once the arbitrators make a post-case referral. Further, as proposed in Amendment No. 1 and again here, FINRA would expand the type of activity that could be the subject of a referral to include ''conduct.'' These commenters believed that broadening the scope of potential post-case referrals by arbitrators would ''efficiently promote investor protections.''[72]

Conclusion:

FINRA continues to believe that mid-case referrals would provide it with an important tool to protect investors by alerting FINRA to potentially serious wrongdoing earlier than is currently possible. Thus, FINRA has filed the current proposal, which is identical to Amendment No. 1. FINRA believes that like Amendment No. 1, the current proposal contains stringent criteria for making mid-case referrals, which should make them an extremely rare occurrence in its forum. If the arbitrators make a mid-case referral, the current proposal's other protections would help to ameliorate the negative effects such a referral could have on the individual claimant's case. These protections would help minimize delays, costs and cumbersome administrative procedures, as well as reduce the potential for a finding of arbitrator bias, which would help a prevailing investor defend against a motion to vacate. Despite these measures, FINRA acknowledges that some individual claimants may incur delays and costs. However, FINRA believes that its investor protection mission requires that an arbitrator who, based on testimony or evidence revealed at a hearing, has reason to believe that there is a serious threat, whether ongoing or imminent, that is likely to harm investors unless immediate action is taken must be permitted to alert FINRA regulators without waiting until a case is over. FINRA believes, therefore, that the current proposal could save a substantial number of other investors from losses, and that this benefit, on balance, outweighs the risk of potentially increasing hearing costs for an individual claimant.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission solicits input on all aspects of the proposed rule. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2014–005. 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

[66] Rule 12604 of the Customer Code and Rule 13604 of the Industry Code.

[67] Ryder Comment.

[68] *See* The Code of Ethics for Arbitrators in Commercial Disputes *http://www.finra.org/ArbitrationMediation/Rules/RuleGuidance/P009525* (last visited January 23, 2014).

[69] Ryder Comment (citing The Code of Ethics for Arbitrators in Commercial Disputes (2004), Canons VI(A) & (B), which state, in relevant part, that ''[a]n arbitrator should not, at any time, use confidential information acquired during the arbitration proceeding to affect adversely the interest of another. The arbitrator should keep confidential all matters relating to the arbitration proceedings and decision.'').

[70] *See* The Code of Ethics for Arbitrators in Commercial Disputes, Canon I(E).

[71] PIABA Comment, Cornell Comment (citing support for PIABA Comment), and Estell Comment (citing support for Cornell Comment).

[72] *Id.*

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2014–005 and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[73]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03564 Filed 2–18–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71531; File No. SR–NYSEMKT–2014–16]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule in a Number of Different Ways

February 12, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 31, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Amex Options Fee Schedule (''Fee Schedule'') in a number of different ways. The proposed changes will be operative on February 3, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule in a number of different ways as described below. The proposed changes will be operative on February 3, 2014.

First, the Exchange proposes to eliminate the existing Professional Customer and Broker Dealer Electronic average daily volume (''ADV'') Tiers For Taking Liquidity and the associated endnote 16. Instead, the Exchange will adopt a flat fee of $0.32 per contract for electronically executed Professional Customer and Broker Dealer volumes. The fee of $0.32 per contract is the same rate presently charged to Professional Customers and/or Broker Dealers for their electronic volumes up to and including 16,999 contracts of ADV in taking liquidity volume.[4]

Second, the Exchange proposes to make changes to what qualifies as a Firm Facilitation trade for purposes of the Fee Schedule by modifying Firm Facilitation to read as Firm Facilitation Manual and making edits to the associated endnote 6. Currently, Firm Facilitation trades are charged a rate of $0.00 per contract and are defined in endnote 6 as follows: ''The firm facilitation rate applies to trades that clear in the firm range (clearance account ''F'') and customer on the contra (clearance account ''C'') with the same clearing firm symbol on both sides of the trade''. At this time, the Exchange does not offer an electronic means for crossing a facilitation trade.[5] Consequently, the only manner that a Facilitation Cross Transaction can be executed is by trading in open outcry.[6] The Exchange proposes to revise endnote 6 to make clear that the Firm Facilitation rate of $0.00 per contract will apply only to those Facilitation Cross Transactions executed manually or in open outcry. In addition, the Exchange proposes to capitalize and revise the term ''firm facilitation'' as it appears in endnote 6 to ''Firm Facilitation Manual'' to conform to the amended Fee Schedule.

Third, the Exchange proposes to eliminate the Firm Proprietary Electronic ADV Tiers. Instead, the Exchange proposes to adopt a flat fee of $0.32 per contract for electronically executed Firm Proprietary volumes. The fee of $0.32 per contract is the same rate presently charged to Firms Proprietary trades for their electronic volumes up to and including .21% of Total Industry Customer equity and Exchange-Traded Funds (''ETF'') option ADV.[7]

Fourth, the Exchange proposes a non-substantive change to the Fee Schedule designed to make it easier to navigate. The Exchange recently submitted a filing to adopt a Market Access and Connectivity Subsidy (the ''MAC Subsidy'').[8] In proposing the MAC

[73] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities and Exchange Release No. 34–68407 (December 11, 2012), 77 FR 74710 (December 17, 2012) (SR–NYSEMKT–2012–74).

[5] Although the Exchange does not currently offer an electronic means of executing Facilitation Cross Transactions, Firms have in the past received the Firm Facilitation rate for electronic trades by sheer happenstance, which would happen when an electronic Firm Proprietary order traded with an electronic Customer order where both sides of the trade had the same clearing firm symbol. When this has occurred, the Firm did not receive any participation entitlements or priority advantages, etc. that would normally be associated with a Facilitation Cross Transaction. The Exchange believes that, when this has occurred, it appropriately charged any Firms the Firm Facilitation rate of $0.00 for electronic trades and the Exchange will continue to charge this rate under these circumstances, until the effective date of this filing. Upon the effective date of this filing, if an electronic Firm Proprietary order were to execute against an electronic Customer order, where the same clearing firm symbol is present on both sides of the trade, the Firm Proprietary order would be subject to the Firm Proprietary Electronic charge of $0.32 per contract, as proposed herein and discussed below, and the electronic Customer order would be subject to the current Non BD Customer Electronic charge of $0.00 per contract.

[6] *See* Rule 934.1NY (Facilitation Cross Transactions).

[7] *See* Securities Exchange Act Release 34–71275 (January 9, 2014), 79 FR 2723 (January 15, 2014) (SR–NYSEMKT–2014–04).

[8] *See* SR–NYSEMKT–2014–12. Because the Exchange has previously filed the MAC Subsidy filing, which is immediately effective upon filing, the Exchange has not included as new rule text in the accompanying Exhibit 5 the subsection entitled ''NYSE AMEX OPTIONS: TRADE-RELATED REBATES OR SUBSIDIES FOR STANDARD

Continued

Subsidy, the Exchange added a new section to the end of the Fee Schedule entitled, ''NYSE AMEX OPTIONS: TRADE-RELATED REBATES OR SUBSIDIES FOR STANDARD OPTIONS''. The Exchange believes that creating this separate section for trade-related rebates and subsidies would make it easier for participants to navigate and locate the relevant parts of the Fee Schedule. Accordingly, the Exchange is proposing to move the existing subsection entitled ''Customer Electronic Complex Order ADV Tiers'' and the associated per contract rebates to this recently added section of the Fee Schedule (i.e., ''NYSE AMEX OPTIONS: TRADE-RELATED REBATES OR SUBSIDIES FOR STANDARD OPTIONS''), with no other change to either the qualifying volumes, the tiers, or the rebate per contract, per tier associated with the existing Customer Electronic Complex Order ADV Tiers. As proposed, the Customer Electronic Complex Order ADV Tiers and the associated per contract rebates would appear directly below the Mac [sic] Subsidy rebate in the Fee Schedule.

Fifth, the Exchange proposes to modify the existing criteria and tiers used by Order Flow Providers (''OFPs'') to qualify and earn a rebate under the Customer Electronic ADV Tiers. The Exchange proposes to eliminate the existing Customer Electronic ADV Tiers and will instead adopt a single tier (Tier 1) with two parts—A and B—each of which provides OFPs an alternate means of earning a rebate. The newly proposed Tier 1A and Tier 1B, and language describing the qualifying criteria and the associated rebate is shown below:

OFP Electronic ADV Tiers	Rebate Per Contract For Certain Electronic Equity and ETF Option Volume (excludes volume from QCC Orders, Strategy Executions, Complex Orders and orders routed away in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY).
TIER 1A—Electronic Customer volume of at least 2.0% of Total Industry Customer equity and ETF option ADV—rebate paid on Customer electronic contract volumes in excess of 200,000 ADV only.	$0.06.
OR	
TIER 1B—Electronic volume of at least .75% of Total Industry Customer equity and ETF option ADV where 40% of the electronic volume consists of Non-NYSE Amex Options Market Maker, Firm, Professional Customer and/or Broker Dealer—rebate paid on all Customer electronic contract volumes.	$0.06.

The Exchange proposes that both Tier 1A and Tier 1B would be based on the Total Industry Customer equity and ETF option ADV, as is current practice.[9] For reference, the 3-month average of Total Industry Customer equity and ETF option ADV as of December 31, 2013 was 11,867,765 contracts. Under the current proposal, an OFP would be eligible to earn a rebate under one of the two tiers. First, to be eligible to receive the $0.06 per contact rebate under Tier 1A, an OFP would need to have executed electronic Customer ADV of at least 2.0% of Total Industry Customer equity and ETF options volume or 237,355 contracts ADV. Under Tier 1A, the rebate would only be paid on electronic Customer volumes in excess of 200,000 contracts ADV. Alternatively, to be eligible to receive the $0.06 per contact rebate under Tier 1B, an OFP would need to have executed electronic ADV of at least .75% of Total Industry Customer equity and ETF options volume or 89,008 contracts ADV and, of those 89,008 contracts ADV executed electronically, the OFP must have 40%—or at least 35,603 contracts—of electronic ADV executed on behalf of any combination of Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer or Broker Dealer business. As proposed, provided the foregoing criteria are met, the rebate under Tier 1B would be paid on all Customer electronic volumes.

As with the existing Customer Electronic ADV Tiers, as proposed, volumes attributable to Qualified Contingent Cross (''QCC'') Orders, Strategy Executions, Complex Orders and orders routed away in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY would not count toward achieving either Tier 1A or Tier 1B and would not be eligible for the per contract rebate that might be paid under Tier 1A or Tier 1B. In the event that an OFP qualifies for a rebate under both Tier 1A and Tier 1B, the Exchange proposes that the OFP would only be paid under the Tier—A or B—that yields the greatest total rebate and the Exchange proposes to reflect this change in a revised endnote 17. In addition, the Exchange proposes to move the modified Customer Electronic ADV Tiers to the end of the newly proposed subsection of the Fee Schedule entitled ''NYSE AMEX OPTIONS: TRADE-RELATED REBATES OR SUBSIDIES FOR STANDARD OPTIONS''[10] and retitle that section ''OFP Electronic ADV Tiers'' to more accurately reflect how different types of electronic volumes will now be capable of earning a rebate for the OFP on certain types of electronic Customer volumes.

Finally, the Exchange is proposing to eliminate the service fee for any capped participants who are trading as part of a QCC. Currently, the Exchange assesses a service fee or surcharge for Firms, Specialists, e-Specialists, and Market Makers (both Directed and non-Directed) who have exceeded their monthly fee cap. The amount of the service fee is the same for all enumerated participants and only varies based on whether the contra party is a Customer, in which case the service fee is $0.10, or a non-Customer in which case the service fee is $0.05. With this proposed change, the service fee would be eliminated such that any Firm, Specialist, e-Specialist or Market Maker (Directed or non-Directed) that has exceeded their applicable monthly fee

OPTIONS'', even though the MAC Subsidy is not operative until February 3, 2014.

[9] Total Industry Customer equity and ETF option ADV will be that which is reported for the month by The Options Clearing Corporation (''OCC'') in the month in which the OFP may earn a rebate for certain electronic volumes. For example, February 2014 Total Industry Customer equity and ETF option ADV will be used in determining what, if any, rebate a qualifying OFP may be eligible for on select electronic Customer volumes it executes in February 2014 relative to Total Industry Customer equity and ETF option ADV. Total Industry Customer equity and ETF option ADV comprises those equity and ETF contracts that clear in the customer account type at OCC and does not include contracts that clear in either the firm or market maker account type at OCC or contracts overlying a security other than an equity or ETF security.

[10] *See supra* note 8.

cap [11] would not pay any incremental service fee when they participate in a QCC trade. Concurrent with this change, the Exchange would also adopt language to limit the amount of the Floor Broker Rebate for Executed QCC orders to a maximum of $375,000 per month per Floor Brokerage firm, which changes would be reflected in the section for ''NYSE AMEX OPTIONS: QUALIFIED CONTINGENT CROSS ('QCC') FEES'' and related endnotes 5, 6 and 15.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [12] of the Act, in general, and Section 6(b)(4) and (5) [13] of the Act, 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 and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to eliminate the existing Professional Customer and Broker Dealer Electronic ADV Tiers For Taking Liquidity and to instead adopt flat, per contract, pricing of $0.32 is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the Exchange notes that the proposed per contract fee of $0.32 is within the range of fees charged by other exchanges for Professional Customers and Broker Dealers.[14] Further, the Exchange notes that the proposed $0.32 fee is the same fee that the Exchange currently charges for Professional Customers and Broker Dealers who execute electronically less than 17,000 contracts per day in taking liquidity volume, and, as noted by the Exchange when it adopted the fee, the fee is reasonable, equitable and not unfairly discriminatory.[15] For these reasons, the Exchange believes that the proposal to charge $0.32 per contract for electronic volumes from Professional Customers and Broker Dealers while eliminating volume-based tiers at the same time is reasonable, equitable and not unfairly discriminatory, particularly as it will apply equally to all Professional Customers and Broker Dealers electronically executed volumes on the Exchange.

In addition, the Exchange believes that the proposal to modify the criteria for what qualifies as a Firm Facilitation trade for purposes of the Fee Schedule is reasonable given that the change will make clear that Firms wishing to qualify for the Firm Facilitation charge of $0.00 per contract must do so using the procedures of Rule 934.1NY Facilitation Cross Transactions. Further, the Exchange believes this proposed change is also equitable and not unfairly discriminatory as it will apply equally to all Firms that trade on the Exchange. The Exchange notes that other exchanges that offer open outcry trading have also limited the application of the Firm Facilitation rate to those trades effected in open outcry.[16] For these reasons the Exchange believes the proposal to limit the application of the Firm Facilitation rate to those transactions executed in open outcry utilizing the procedures set forth in Rule 934.1NY are reasonable, equitable and not unfairly discriminatory.

The Exchange likewise believes that the proposal to eliminate the existing Firm Proprietary Electronic ADV Tiers and to adopt flat per contract pricing of $0.32 per contract is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the Exchange notes that the proposed per contract fee of $0.32 is within the range of fees charged by other exchanges for Firm Proprietary Electronic volumes.[17] Further, the Exchange notes that the proposed fee is the same fee that the Exchange currently charges for Firms that execute electronically less than .21% of Total Industry Customer equity and ETF option ADV, and, as noted by the Exchange when it adopted the fee, the fee is reasonable, equitable and not unfairly discriminatory.[18] For these reasons, the Exchange believes that the proposal to charge $0.32 per contract for electronic volumes from Firms and to eliminate volume-based tiers at the same time is reasonable, equitable and not unfairly discriminatory, particularly as it will apply equally to all Firm Proprietary electronically executed volumes on the Exchange.

The Exchange believes that the proposal to re-locate the existing Customer Electronic Complex Order ADV Tiers to a new section of the Fee Schedule, entitled ''NYSE AMEX OPTIONS: TRADE RELATED REBATES OR SUBSIDIES FOR STANDARD OPTIONS'' is reasonable, equitable and not unfairly discriminatory as it will make it easier for participants to locate all standard options rebates and/or subsidies within the Fee Schedule. The Exchange further notes that there are no changes, aside from the location of the text describing the existing Customer Electronic Complex Order ADV Tiers and, as the Exchange noted when it adopted these volume-based tiers, the rebates are reasonable, equitable and not unfairly discriminatory.[19]

The Exchange believes that the proposal to modify the existing criteria and tiers used by Order Flow Providers (''OFPs'') to qualify and earn a rebate under the Customer Electronic ADV Tiers by the adoption of Tier 1A and Tier 1B is reasonable, equitable and not unfairly discriminatory for the following reasons.

First, the Exchange is providing OFPs with two alternate means of potentially earning a rebate on certain of their electronic Customer volumes. Under the first, Tier 1A, an OFP would need to have executed electronic Customer ADV of at least 2.0% of Total Industry Customer equity and ETF options volume, in which case they would be eligible for a rebate of $0.06 per contract on certain Customer electronic volumes over 200,000 contracts ADV. Under the second, Tier 1B, an OFP would need to have executed electronic ADV of at least .75% of Total Industry Customer equity and ETF options volume, of which 40% must be comprised of any combination of Non-NYSE Amex Options Market Maker, Firm, Professional Customer or Broker Dealer business in order to qualify for the rebate of $0.06 per

[11] *See* NYSE Amex Options Fee Schedule *available here https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_amex_options_fee_schedule_for_1-8-14.pdf* at endnotes 5 and 6 (describing Market Maker and Firm monthly fee caps).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Chicago Board of Options (''CBOE'') Fee Schedule *available at http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf* (charging a $0.30 per contract for Professional Customers and either $0.45 or $0.60 per contract in Penny/Non-Penny issues for Broker Dealers). *See also* Nasdaq Options Market (''NOM'') Fee Schedule *available at http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing* (charging $0.49 per contract in Penny issues and $.89 per contract in Non-Penny issues to both Professional Customers and Broker Dealers who take liquidity).

[15] *See supra* note 4.

[16] *See* NASDAQ OMX PHLX (''PHLX'') Fee Schedule *available at http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing* (''The Firm Floor Options Transaction Charges will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 [Crossing, Facilitation and Solicited Orders] when such members are trading in their own proprietary account (including 'Cabinet Options Transaction Charges')'').

[17] *See* International Securities Exchange (''ISE'') Fee Schedule, *available at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf* (charging a flat fee of $0.30 per contract for Firm Proprietary transactions in Non-Select Symbols). *See also* NOM Fee Schedule, *available at http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing* (charging a flat fee of $0.49 per contract in Penny issues and $0.89 per contract in Non-Penny issues to Firms who take liquidity).

[18] *See supra* note 7.

[19] *See* Securities and Exchange Release No. 34–67635 (August 9, 2012), 77 FR 49035 (August 15, 2012) (SR–NYSEMKT–2012–34).

contract for their electronic Customer volumes. Offering OFPs an alternate means to earn a rebate is nothing new or novel. In fact, at least one exchange offers OFPs three different ways to earn the same rebate per contract.[20] The Exchange believes that offering OFPs a $0.06 per contract rebate under the terms outlined in Tier 1A—beyond the level of 200,000 contracts ADV—is reasonable as the rebate is designed to attract additional Customer volumes to the Exchange which benefits all other participants by increasing the opportunities to trade, enhancing transparency and price discovery. By only offering the rebate to qualifying OFPs for Customer electronic volumes in excess of 200,000 contracts ADV the Exchange is intending to attract new business to the Exchange and to avoid paying for existing business, which the Exchange believes is a reasonable approach lest the Exchange risk raising costs for other participants to fund a rebate for existing business.

Similarly, the Exchange believes that offering OFPs a $0.06 per contract rebate under the terms and conditions outlined in Tier 1B is also reasonable as the rebate is designed to attract additional Customer volumes along with Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer and Broker Dealer volumes to the Exchange which benefits all other participants by increasing the opportunities to trade, enhancing transparency and price discovery. Requiring a certain level and type of activity before qualifying for a rebate on a different type of activity is also not new or novel and has not been viewed as being unreasonable, inequitable or unfairly discriminatory. Specifically, the Exchange notes the fee arrangements available on two other exchanges that require participants to commit to a certain level and type of activity before qualifying for a rebate on other activity.[21]

In addition, the Exchange believes that excluding certain volumes from being eligible for the rebate, specifically QCC volumes, electronic Customer Complex volumes, Strategy Executions and orders routed away in conjunction with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY is also reasonable as these volumes are already eligible for either reduced rates, rebates or capped fees and offering additional discounts on these volumes is not desirable as to do so may lead to increased costs for other participants.

As the Exchange noted when it established OFP Rebates with exclusions for the above-described volumes, excluding such volumes is reasonable, equitable and not unfairly discriminatory as well.[22] The Exchange also believes that paying OFPs that qualify under both Tier 1A and Tier 1B from the tier that generates the largest rebate for the OFP is also reasonable, as to do otherwise might result in having to raise fees for other participants in order to fund a rebate for any participant who qualified for both Tier 1A and Tier 1B. As the proposed OFP Electronic ADV Tiers and the associated rebates will be available to all participants who route electronic Customer business, the Exchange believes the proposal is also equitable and not unfairly discriminatory.

The Exchange believes that the proposal to eliminate the service fee of either $0.10 or $0.05 per contract for any capped participants who are trading as part of a QCC is also reasonable, equitable and not unfairly discriminatory. First, the Exchange notes that other exchanges that offer QCC trading do not charge a service fee for capped participants who are party to a QCC trade.[23] The Exchange believes that the elimination of the service fee for capped participants will better enable our Floor Broker participants to compete for QCC orders, enhancing the competitiveness of the Exchange relative to those exchanges that either do not charge a service fee for capped participants engaged in QCC trades or those that pay a higher per contract rebate for QCC volumes.[24] To enhance the competiveness of the Exchange is reasonable, as higher overall volume levels on the Exchange can benefit all participants potentially in the form of more complete information and enhanced price discovery. The Exchange also believes that the elimination of the of the [sic] service fee for capped participants that are party to a QCC trade is also equitable and not unfairly discriminatory as all capped participants are being treated the same in this regard.

Finally, the Exchange believes that adopting a maximum Floor Broker Rebate for QCC trades of $375,000 per month is reasonable, particularly in light of the elimination of the service fee for capped participants who are party to a QCC trade. The Exchange believes that absent a cap on the maximum to be paid under the monthly QCC rebate program, costs of the program may need to be shared by other participants on the Exchange, even those who do not engage in QCC trading. As such, the Exchange believes it is reasonable and equitable to adopt such a cap. The Exchange further notes that at least one other exchange with a QCC rebate has also adopted a similar cap or maximum rebate to be paid.[25] As the proposed monthly maximum rebate to be paid under the Floor Broker Rebate program for QCC is applying to all ATP Holders acting as Floor Brokers equally, the Exchange believes the proposal is also equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes will enhance the competiveness of the Exchange relative to other exchanges. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other

[20] *See* NOM Fee Schedule *available here: http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing* and Tiers 4, 5, and 6 (The Customer and Professional Rebate to Add Liquidity in Penny Pilot Options) (offering alternate means of achieving a $0.45 rebate for NOM participants with Customer and Professional volumes that add liquidity).

[21] *See* CBOE Fee Schedule *available here: http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf* (offering the CBOE Proprietary Products Sliding Scale which provides Clearing Trading Permit Holders reduced rates in CBOE Proprietary Products (SPX, VIX, etc.) if the Clearing Trading Permit Holder achieves certain ADV thresholds in multiply-listed options). *See also* PHLX Fee Schedule *available here http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing* (offering the Customer Rebate Program and Tier 3 where, ''The Exchange will pay a $0.02 per contract rebate in addition to the applicable Tier 3 rebate to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in Section II'').

[22] *See* Securities and Exchange Release No. 34–68036 (October 11, 2012), 77 FR 63900 (October 17, 2012) (SR–NYSEMKT–2012–50).

[23] *See* PHLX Fee Schedule *available here http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing* (QCC Transaction Fees).

[24] *See* ISE Fee Schedule *available here http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf* (offering QCC rebates up to $0.11 per contract compared to $0.10 on NYSE Amex). *See also supra* note 20 [sic].

[25] *See supra* note 20 [sic] (PHLX Fee Schedule, regarding QCC Transaction Fees, ''The maximum QCC Rebate to be paid in a given month will not exceed $375,000.'').

exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [26] of the Act and subparagraph (f)(2) of Rule 19b–4 [27] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [28] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2014–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–16. 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 at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–16, and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03562 Filed 2–18–14; 8:45 am]

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[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(2).

[28] 15 U.S.C. 78s(b)(2)(B).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71545; File No. SR–FINRA–2014–006]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to per Share Estimated Valuations for Unlisted DPP and REIT Securities

February 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the provisions addressing per share estimated valuations for unlisted direct participation program (''DPP'') and real estate investment trust (''REIT'') securities. The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend (1) NASD Rule 2340 (Customer Account Statements) to modify the requirements relating to the inclusion of a per share estimated value for unlisted DPP and REIT securities on a customer account statement; and (2) FINRA Rule 2310 (Direct Participation Programs) to modify the requirements applicable to members' participation in a public offering of DPP or REIT securities.

Proposed Amendments to NASD Rule 2340 (Customer Account Statements)

NASD Rule 2340 generally requires that general securities members [3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Rule 2340(d)(2) defines ''general securities member'' as any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of Rule 15c3–1(a) under the Act. A member that does not carry customer accounts and does not hold

Continued

provide periodic account statements to customers, on at least a quarterly basis, containing a description of any securities positions, money balances or account activity since the last statement. Paragraph (c) addresses the inclusion of per share estimated values for unlisted DPP or REIT securities held in customer accounts or included on customer account statements. The rule also provides for several disclosures regarding the illiquidity and resale value of unlisted DPPs and REITs.

FINRA (then NASD) adopted these requirements [4] in part to respond to concerns expressed by the Commission's Division of Trading and Markets (then Division of Market Regulation) (''Division'') regarding the sufficiency of information provided on customer account statements with respect to the current value of illiquid partnership securities.[5] To address these concerns, the Division suggested that FINRA adopt a rule requiring members to, at a minimum, disclose: (1) There is no liquid market for most limited partnership interests; (2) that the value of a partnership, if any, reported on the account statement may not reflect a value at which customers can liquidate their positions; and (3) the source of any reported value and a short description of the methodology used to determine the value and the date the value was last determined. FINRA, therefore, developed the provisions found in paragraph (c) of NASD Rule 2340, which have not been amended since original adoption in 2000.[6]

NASD Rule 2340(c) also addresses the sources that may be used in developing the per share estimated value included on a customer account statement. When an unlisted DPP or REIT security's annual report includes a per share estimated value, the general securities member must include the estimated value from the annual report in the customer account statement or an estimated value from an independent valuation service or any other source, in the first account statement issued by the general securities member thereafter.[7] However, the customer account statement may not be left blank when an estimated value is included on an annual report.

While the rule permits the use of estimated values from sources other than the annual report, it has become industry practice to include the annual report's per share estimated value. During the offering period, the annual report typically reflects the security's gross offering price (*e.g.,* $10.00/share par value). A per share estimated value that reflects the gross offering price does not take into account organization and offering expenses or cash distributions that occur during the offering period. An initial offering period can last for three years and may be extended.[8] Customer account statements thus may reflect the gross offering price for up to seven and a half years.[9]

FINRA proposes to eliminate the requirement in NASD Rule 2340(c) that general securities members, at a minimum, include the per share estimated value that is reflected on a DPP or REIT security's annual report. Under the proposal, a general securities member would not be required to include in a customer account statement a per share estimated value for an unlisted DPP or REIT security, but any member (not only a general securities member) may choose to do so if the value has been developed in a manner reasonably designed to ensure that it is reliable, the member has no reason to believe that it is unreliable,[10] and the account statement includes certain disclosures. FINRA proposes two methodologies under which an estimated value would be presumed reliable: (1) Net investment; and (2) independent valuation.

The net investment methodology, which may be used for up to two years following the breaking of escrow,[11] would reflect the ''net investment'' disclosed in the issuer's most recent periodic or current report (''Issuer Report''). ''Net investment'' must be based on the ''amount available for investment'' percentage in the ''Estimated Use of Proceeds'' section of the offering prospectus or, where ''amount available for investment'' is not provided, another equivalent disclosure.[12] For example, if the prospectus for an offering with a $10 offering price per share disclosed selling commissions totaling 10% of the offering proceeds and organizational and offering expenses of 2%, the amount available for investment would be 88%, or $8.80 per share.

The per share estimated value also must deduct the portion, if any, of cumulative distributions per share that exceeded Generally Accepted Accounting Principles (''GAAP'') net income per share for the corresponding period, after adding back depreciation and amortization or depletion expenses. This provision recognizes that depreciation, amortization and depletion expenses reduce net income per share, but are not expenditures and do not impact the issuer's cash reserves. In addition, the deduction for each distribution would be limited to the full amount of the distribution. Therefore, even if net income, which may be negative during the two years following the breaking of escrow, with depreciation and amortization or depletion expenses added back in equals a negative number, the required deduction from the net investment amount would be limited to the amount of the distribution (rather than being further reduced by the amount of any negative net income).

The independent valuation methodology, which may be used at any time, would consist of the most recent valuation disclosed in the issuer's periodic or current reports. The independent valuation methodology

customer funds or securities is exempt from the definition.

[4] *See* Exchange Act Release No. 43601 (Nov. 21, 2000), 65 FR 71169 (Nov. 29, 2000) (Order Approving File No. SR–NASD–2000–13) (''Original Approval Order'').

[5] *See* Letter from Brandon Becker, Director, Division of Market Regulation, SEC, to Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD, dated June 14, 1994.

[6] *See* Original Approval Order *supra* note 4.

[7] Notwithstanding this requirement, the rule provides that a general securities member must refrain from providing an estimated value for a DPP or REIT security on a customer account statement if the general securities member can demonstrate that the estimated value is inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust. *See* NASD Rule 2340(c)(4). In addition, the estimated value must have been developed from data that are no more than 18 months old at the time the statement is issued. *See* NASD Rule 2340(c)(1)(B)(2).

[8] Rule 415(a)(5) under the Securities Act of 1933 (''Securities Act'') provides that certain types of securities offerings, including continuous offerings of DPPs and REITs, may continue for no more than three years from the initial effective date of the registration statement. Under Rule 415(a)(6), the SEC may declare another registration statement for a DPP or REIT effective such that an offering can continue for another three-year offering period.

[9] Because NASD Rule 2340(c) permits the use of an estimated value developed from data that are no more than 18 months old, the estimated value from the annual report may be used until up to a year and a half from the conclusion of the offering.

[10] FINRA would not consider a last sale price of an unlisted REIT or DPP in the secondary market, by itself, to constitute a reason to believe that an estimate derived by one of the methodologies set forth in this proposal is unreliable because these transactions often are infrequent and the illiquid nature of the secondary market may result in large discounts from independent valuation prices.

[11] Generally, offering proceeds are placed in escrow until the minimum conditions of the offering are met, at which time the issuer is permitted to access the offering proceeds.

[12] This disclosure is typically included in the prospectus for REIT offerings and is described in the SEC's Securities Act Industry Guide 5 (Preparation of registration statements relating to interests in real estate limited partnerships). FINRA would permit the use of equivalent disclosure in DPP offerings if the disclosure provides a percentage amount available for investment by the issuer after deduction of organizational and offering expenses.

requires that a third-party valuation expert or experts determine, or provide material assistance in the process of determining, the valuation.[13]

Consistent with the recommendations of the Division prior to the original adoption of paragraph (c), FINRA proposes to retain disclosure requirements relating to the nature and liquidity of DPP and REIT products in customer account statements. Under the proposal, when a customer account statement includes a per share estimated value for an unlisted DPP or REIT security, the statement must: (1) Briefly describe the per share estimated value, its source and an explanation of the method by which such per share estimated value was developed; and (2) disclose that the DPP or REIT securities are not listed on a national securities exchange, are generally illiquid and that, even if a customer is able to sell the securities, the price received may be less than the per share estimated value provided in the statement.

When a member refrains from including a per share estimated value in a customer account statement for an unlisted DPP or REIT security, the statement nonetheless must disclose that: (1) Unlisted DPP and REIT securities are generally illiquid; (2) the current value of the security will be different than its purchase price and may be less than the purchase price; and (3) if applicable, an estimated per share value of the security currently is not available.[14]

Proposed Amendments to Rule 2310 (Direct Participation Programs)

FINRA Rule 2310(b)(5) (Valuation for Customer Account Statements) generally provides that no member is permitted to participate in a public offering of DPP or REIT securities unless the general partner or sponsor will disclose in each annual report distributed to investors pursuant to Section 13(a) of the Act: (1) A per share estimated value of the securities; (2) the method by which such estimated value was developed; and (3) the date of the data used to develop the estimated value.

FINRA proposes to amend this provision to provide that a member may not participate in a public offering of a DPP or REIT security unless: (A) A per share estimated value is calculated on a periodic basis in accordance with a methodology disclosed in the prospectus, or (B) the general partner or sponsor has agreed to disclose in the first periodic report filed pursuant to Sections 13(a) or 15(d) of the Act after the second anniversary of breaking escrow: (1) A per share estimated value of the DPP or REIT calculated by, or with the material assistance of, a third-party valuation expert;[15] (2) an explanation of the method by which the per share estimated value was developed; (3) the date of the valuation; and (4) the identity of the third-party valuation expert used. In addition, the general partner or sponsor of the program or REIT must have agreed to ensure that the valuation is conducted at least once every two years; is derived from a methodology that conforms to standard industry practice; and is accompanied by a written opinion to the general partner or sponsor of the program or REIT that explains the scope of the review, the methodology used to develop the valuation, and the basis for the per share estimated value.

Industry Consultation and Alternatives Considered

The proposal is intended to protect the investing public by seeking to ensure that any per share estimated value for an unlisted DPP or REIT security included on a customer's account statement is developed in a manner reasonably designed to ensure that it is reliable. In developing this proposed rule change, FINRA consulted extensively with members and other industry participants, including concerning the issues relevant to the various alternative approaches that were considered. These commenters expressed a variety of opinions concerning what type of valuation should be provided to customers. Specifically, FINRA requested public comment in two *Regulatory Notices*[16] and met with industry participants, including independent broker-dealers; broker-dealers affiliated with sponsors that act as wholesalers; broker-dealers that specialize in advising boards of directors and general partners; DPP general partners and executives of REITs; clearing firms; and trade association representatives. The comments received in response to the *Regulatory Notices* are summarized here and discussed in detail in Item II. C. below.

For example, some commenters to *Notice 11–44* favored the use of the gross offering price, while others preferred the use of a net offering price. In *Notice 11–44,* FINRA proposed to require general securities members that hold DPP or REIT securities in customer accounts to provide a per share estimated value of the security on the account statement only if it appeared in the most recent annual report of the DPP or REIT. *Notice 11–44* proposed to prescribe the valuations that could be presented. As a practical matter, the proposal in *Notice 11–44* would have required every customer account statement to present the prescribed per share estimated value unless the member had reason to know that it was unreliable.

FINRA considered requiring that every customer account statement provided by a general securities member present a valuation of DPP and REIT securities. Requiring a valuation could provide a level of transparency concerning the value of those securities and the effect of brokerage commissions and other expenses. However, inclusion of a value on customer account statements for unlisted DPPs and REITs is beneficial to investors only if the valuation is reliable. As further discussed below, FINRA has determined not to explicitly require the presentation of a valuation in customer account statements because it could interfere with the objective of ensuring that valuations are reliable.

FINRA believes that a preferable approach is to require that any valuation that is included in a customer account statement has been developed in a manner reasonably designed to ensure that it is reliable, and to prohibit a member from including any valuation that it has reason to believe is unreliable. This approach directly addresses FINRA's concern, which is that members currently are presenting an unreliable valuation (such as the gross offering price) in customer account statements—while also providing members with two possible methodologies that FINRA believe would result in more informative disclosure to investors. Under the

[13] Valuation definitions and methodologies for real estate investments generally use GAAP (ASC 820) as a standard. Performance reporting for institutional real estate investments also relies on GAAP as its foundational basis. *See* Investment Program Association Practice Guidelines 2013–01, entitled ''Valuations of Publicly Registered Non-Listed REITs'' (''IPA Guidance'') (Apr. 29, 2013).

[14] FINRA also is proposing to amend the definitions of DPP and REIT in Rule 2340(d) to cover such securities if they are ''on deposit in a registered securities depository and settled regular way.'' FINRA does not believe that the treatment of account statement disclosures for unlisted DPP or REIT securities should be different based upon where they are held on deposit or their settlement cycle.

[15] The issuer further must agree to ensure that such valuation is conducted at least once every two years, is derived from a methodology that conforms with standard industry practice, and is accompanied by a written opinion to the general partner or sponsor of the program or REIT that explains the scope of the review, the methodology used to develop the valuation and the basis for the per share estimated value.

[16] *See Regulatory Notice* 11–44 (Sept. 2011) (''*Notice 11–44*'') and *Regulatory Notice* 12–14 (Mar. 2012) (''*Notice 12–14*'').

proposal, a methodology developed in a manner reasonably designed to help ensure that it is reliable may be used (unless the member has reason to believe that the valuation is unreliable).

While the proposal would permit a member to develop its own methodology, FINRA expects that, in almost all cases, members would rely on the methodologies suggested by the proposal, both of which would be derived by the program sponsor. Currently, Rule 2340 permits members to present a valuation from an independent valuation service or some other source. When the provision was adopted in 2000, it was unclear whether members would rely on the valuation stated in the annual report, calculate their own valuation, or utilize a valuation service. Experience with the rule since its original adoption has shown that the consistent industry practice is to present the value in the program's annual report. If the proposal were adopted, FINRA believes that members would continue to present the valuation in the program's periodic reports.

Nevertheless, optionality is necessary to ensure that the valuation is reliable. The proposal would prohibit a member from presenting a valuation that it has reason to believe is unreliable. Thus, if FINRA requires presentation of a valuation, then in some circumstances a member might have to weigh two conflicting obligations, to present a valuation or to exclude one that, in the member's judgment, might be unreliable.

The question of whether a valuation is ''unreliable'' may be difficult under particular facts. It would require consideration of the circumstances under which it was developed, the evidence of any ''red flags'' that indicate it may be unreliable and the significance of various aspects of the methodology. The difficulty is compounded by the fact that the valuation has been developed by the sponsor, not the member. FINRA believes that if presentation of a valuation was optional, then the rule would not deter the member from following up on red flags and excluding a valuation that it has reason to believe is unreliable. FINRA believes that a requirement to present the valuation would place the member in a conundrum: Should it exclude a suspicious valuation based upon the limited facts at its disposal, or must it present the valuation because the rule requires it? FINRA believes that a requirement that might discourage members from being vigilant would not be consistent with the objective of investor protection.

FINRA believes that members and program sponsors have a strong incentive to provide these valuations; they know that their customers react very negatively to seeing their positions shown without a value. If the Commission approves the proposal, FINRA will monitor for changes to business practices and, if there is a significant shift to not presenting a valuation, then FINRA will reconsider the optional nature of the proposal.

FINRA recognizes that the question of whether to require a valuation in all customer account statements of a general securities member is fundamental to the proposal. FINRA will carefully review any comments on whether a valuation should be required and whether valuations will continue to be made available.

Among others, FINRA consulted extensively with the Investment Program Association's (''IPA'') Task Force on Account Statement Reporting. On January 31, 2013, the IPA sent a letter proposing ''possible solutions which achieve [FINRA's] regulatory objectives and enhance transparency, accuracy and understandability of account statement reporting for investors.'' [17] The IPA suggested that account statements reflect a net offering price until the earlier of (1) an appraisal-based valuation of the securities is published in the issuer's periodic or current report, or (2) the filing of the issuer's first periodic report following the first anniversary of the date when initial escrow is released to commence investments. The IPA proposed to define ''net offering price'' as the gross offering price less sales commissions and dealer manager fees (*i.e.,* front-end underwriting compensation expenses as defined in Rule 2310(b)(4)(c)(ii)) reimbursed or paid for with offering proceeds.

The IPA suggested that, following the filing of the issuer's first periodic report after the first anniversary of the breaking of escrow, the net offering price included on a customer account statement should be reduced to reflect that portion, if any, of cumulative distributions to investors through the anniversary of the breaking of escrow which was provided from borrowings, net offering proceeds, returns of capital in distributions from asset sales proceeds, or stock dividends. Such an adjustment would capture any dilution of per share value resulting from unearned distributions in the initial year following breaking of escrow. The IPA suggested that after the filing of the second periodic report following the second anniversary of the effective date of the first registration of the offering, the account statement should reflect the per share estimated value.

The IPA also recommended amending FINRA Rule 2310(b)(5) to prohibit a member from participating in an offering unless the general partner or sponsor of the REIT or DPP agrees to provide a per share estimated value no later than the filing of the second periodic report following the second anniversary of the effective date of the first registration of the offering. As noted earlier, FINRA proposes to prohibit a member from participating in an offering unless the general partner or sponsor of the REIT or DPP agrees to provide a per share estimated value in a periodic report filed pursuant to Section 13(a) or 15(d) of the Act, no later than the second anniversary of breaking escrow and in each annual report thereafter.

On April 29, 2013, the IPA issued its IPA Guidance recommending that REITs, subject to the approval of a valuation committee and its board of directors, engage a third-party valuation expert to assist in the process of determining an estimated per share value.[18] The IPA Guidance generally recommends that the independent third party be a qualified firm with substantial and demonstrable expertise in valuation of assets or investments similar to those owned by the REIT, that the valuation be first conducted after the closing of the REIT's initial public offering and at least once every two years thereafter, that it be conducted in accordance with the standards of the Appraisal Institute,[19] and that it be certified by a member of the Appraisal Institute with an appropriate designation.

Similarly, the proposed amendments to Rule 2310 would require that the general partner or sponsor of the REIT or program agree to ensure that the valuation is conducted at least once every two years, is derived from a methodology that conforms to standard industry practice, and is accompanied by a written opinion to the general partner or sponsor of the program or REIT that explains the scope of the review, the methodology used to develop the valuation, and the basis for the per share estimated value. The proposed rule change also builds upon

[17] *See* Letter from IPA Task Force on Account Statement Reporting, to Robert L.D. Colby, Chief Legal Officer, FINRA, dated January 31, 2013.

[18] *See* IPA Guidance at *supra* note 13.

[19] The Appraisal Institute is a trade organization that, among other things, focuses on education, testing, experience and demonstration of knowledge, understanding and ability for real estate appraisers.

the IPA Guidelines by offering a set of valuation methodologies that are similar, but somewhat more expansive.[20]

As further discussed in Item II.B. below, FINRA does not believe that the proposal will cause a significant economic impact on members. The current rule, and each of the previously proposed approaches to estimated valuation, requires the inclusion of estimated valuations in customer account statements in certain circumstances. In contrast, the proposal would remove this requirement, while allowing all members to voluntarily provide estimated values. Neither the disclosure requirements nor the proposed amendments to Rule 2310 should impose a significant economic impact on members. The Rule 2310 amendments generally build upon the existing requirements and are consistent with the IPA's guidance. The disclosures proposed by the amendments are substantially similar to those in the existing rule.

The effective date of the proposed rule change will be announced in a *Regulatory Notice* no later than 90 days following Commission approval. In order to give industry participants time to make changes to distribution agreements they may wish to implement in response to the amendments, the effective date of the proposed rule change will be no earlier than 180 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[21] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The proposed rule change is necessary for the protection of investors in unlisted DPP and REIT securities in that it seeks to ensure that per share estimated values for unlisted DPP and REIT securities included on customer account statements have been developed in a manner reasonably designed to ensure their reliability. The proposed rule change also would eliminate the current requirement that members must, at a minimum, include on customer account statements the per share estimated value of these securities when a value appears in the annual report. For the reasons explained earlier, FINRA has determined not to explicitly require the presentation of a valuation in customer account statements because it could interfere with the objective of ensuring that valuations are reliable. Instead, under the proposal, a general securities member would not be required to include in a customer account statement a per share estimated value for an unlisted DPP or REIT security, but any member (not only a general securities member) may choose to do so if the value has been developed in a manner reasonably designed to ensure that it is reliable, the member has no reason to believe that it is unreliable, and the account statement includes certain disclosures.

In addition, the proposed rule change would ensure that customers continue to receive meaningful information about the nature of DPPs and REITs where a value is not included and, when a value is provided, the source of the per share estimate, the methodology by which it is developed and the illiquid nature of the securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As stated above, FINRA believes that this proposed rule change is necessary for the protection of investors in unlisted DPP and REIT securities who currently often receive unreliable per share estimates on their customer account statements. Further, the proposed rule change treats all general securities members uniformly, including in cases where the general securities member voluntarily refrains from including a per share estimate, which is permissible under the proposal.

Each general securities member may choose either to: Refrain from including a per share estimated value (though the member must include the required disclosures, which are substantially similar to those currently required); choose from one of the methodologies described in the proposed rule change (so long as the member has no reason to believe it is unreliable);[22] or provide a per share estimated value that is derived from some other methodology that was developed in a manner reasonably designed to ensure that it is reliable (and so long as the member has no reason to believe that it is unreliable).

Irrespective of the methodology used, any member choosing to include a per share estimated value on a customer account statement must provide the disclosures required under the proposed rule, which also are substantially similar to those currently required. Therefore, FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In September 2011, FINRA published *Notice 11–44* requesting comment on proposed amendments to NASD Rule 2340(c). The comment period expired on November 12, 2011, and FINRA received 25 comments.[23] In March 2012,

[20] For example, the net investment methodology suggested by the IPA would not deduct distributions until the end of the first year, whereas the current proposal provides for such deductions immediately. FINRA believes that investors will be better served by understanding immediately the effect of a return of capital as a distribution (rather than the use of the capital to generate a return on investment) on the value of their investment. Since expenses, other than those for distribution—such as program management fees—may contribute to a return on investment, the current proposal would not deduct those fees in the net investment calculation.

[21] 15 U.S.C. 78*o*–3(b)(6).

[22] FINRA also notes that the methodologies proposed are intended to provide general securities members with two acceptable approaches where they choose to continue to include per share estimated values on customer account statements. Such guidance was requested by commenters to the prior proposals, as further discussed in Item II.C. below.

[23] *See* Letters to Marcia Asquith, Senior Vice President and Corporate Secretary, FINRA, from: Ryan Bakhtiari, President, Public Investors Arbitration Bar Association (''PIABA''), dated November 11, 2011; David Bellaire, General Counsel and Director of Government Affairs, Financial Services Institute, dated November 11, 2011; Stephanie Brown, Managing Director and General Counsel, LPL Financial, dated November 12, 2011; Richard Chess, President, Real Estate Investment Securities Association (''REISA''), dated November 12, 2011; Ryan Conley, Senior Vice President, Franklin Square Holdings, L.P. (''Franklin Square''), dated November 11, 2011; Martel Day, Chairman, IPA, dated November 11, 2011; DFPG Investments, Inc., undated; Daniel Gilbert and Timothy O'Toole, NorthStar Realty Finance (''NorthStar''), dated November 11, 2011; Jon Hale, President, Partnership Consultants, Inc., dated November 11, 2011; Jon Hale, President, Partnership Consultants, Inc., dated November 11, 2011; Jack Herstein, President, North American Securities Administrators Association, Inc. (''NASAA''), dated November 18, 2011; David Hirschmann, President and Chief Executive Officer, U.S. Chamber of Commerce, dated November 11, 2011; Charlie Howell and Laura Stankosky; William Jacobson and Brittany Ruiz, Cornell University Law School, dated November 11, 2011; John Kearney, General Counsel, Research and Due Diligence Association, Inc., dated November 11, 2011; Randy Lewis, President, Ascent Real Estate Securities, LLC, dated November 11, 2011; Thomas Price, Managing Director, Securities Industry and Financial Markets Association (''SIFMA''), dated November 10, 2011; Prodigious, LLC (''Prodigious''), dated November 11, 2011; Jeffrey Rubin, Federal Regulation of Securities Committee

Continued

FINRA published *Notice 12–14,* which re-proposed amendments to NASD Rule 2340(c) in light of comments received in response to *Notice 11–44.* The comment period expired on April 11, 2012, and FINRA received 17 comments.[24] A summary of the comments and FINRA's response is provided below.

Notice 11–44 Proposal

In *Notice 11–44,* FINRA proposed several modifications to NASD Rule 2340 that were designed to improve the quality of the information provided to customers on account statements. The amendments proposed in *Notice 11–44* would have limited the period of time during which per share estimated values could be based on the gross offering price to the initial three-year offering period provided for under Rule 415(a)(5) of the Securities Act. These amendments also would have required firms to deduct organization and offering expenses from the gross offering price to arrive at a per share estimated value (*i.e.,* a net offering price). In addition, these amendments would have prohibited a firm from using a per share estimated value from any source, if it ''knows or has reason to know the value is unreliable,'' based upon publicly available information or nonpublic information that came to the firm's attention. Finally, in *Notice 11–44* FINRA proposed to permit members to refrain from providing a per share estimated value on a customer account statement if the most recent annual report of the DPP or REIT did not contain a value that complied with the disclosure requirements of NASD Rule 2340.

While commenters generally supported the proposed changes in *Notice 11–44,* the most notable comments concerned using a value other than the public offering price during the initial offering period and imposing an affirmative duty on members to monitor and confirm the reliability of the per share estimated value given the proposed requirement that the member must refrain from using the value if it knows or ''had reason to know'' that the value was unreliable.[25]

Notice 12–14 Proposal

FINRA considered the comments received in response to *Notice 11–44* and issued *Notice 12–14* reflecting changes that were responsive to the comments received. Under the revised proposal in *Notice 12–14,* general securities members would no longer be required to provide a per share estimated value, unless and until the issuer provided an estimate based on an appraisal of assets and liabilities in a periodic or current report. During the initial offering period, member firms would have the option of using a modified net offering price or designating the securities as ''not priced.'' The revised proposal also modified the account statement disclosures that accompany per share estimated values. *Notice 12–14* also included alternative disclosure requirements for DPPs or REITs that calculate a daily net asset value (''NAV'').

While most commenters supported the use of a modified net offering price on the customer account statement during the initial offering period,[26] some commenters requested that FINRA change the proposed rule language to uniformly state whether the net offering price should exclude fees other than front-end underwriting compensation expenses, as opposed to requiring it ''at a minimum.'' [27]

Further, while some commenters supported FINRA's proposed use of a ''not priced'' option,[28] other commenters objected to members designating securities as ''not priced'' on the customer account statement.[29] In light of these comments, FINRA's proposal would, as described above, allow members to choose to not provide a per share estimated value for an unlisted DPP or REIT security on the customer account statement, but any member could do so if the value has been developed in a manner reasonably designed to ensure that it is reliable, the member has no reason to believe that it is unreliable, and the account statement includes certain disclosures.

FINRA received several comments on the use of a per share estimated value based upon an appraisal or valuation of the program's assets and operations. While some objected,[30] several commenters supported the use of a per share estimated value, as proposed,[31] while others suggested that FINRA require the use of an independent third-party valuation service to provide the value.[32] Some commenters requested that FINRA, at a minimum, clarify whether it would create or require members to use a standardized valuation methodology.[33] In view of the broad range of DPPs and REITs existing in the marketplace, FINRA believes that the current proposal permits flexibility in choosing a methodology for developing an independent valuation.

Several commenters requested that FINRA broaden the proposal to accommodate programs, such as business development companies that use a NAV on a periodic basis.[34] The new proposed amendments do not specify the use of a daily NAV, but rather would accommodate any DPP or REIT that provides a per share estimated value reflecting a valuation disclosed in the issuer report where a third-party valuation expert or experts determine, or provide material assistance in the process of determining, the valuation.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

Chair, American Bar Association (''ABA''), dated November 16, 2011; Nicholas Schorsch and Michael Weil, American Realty Capital, dated November 11, 2011; James Stanfield, Chief Executive Officer, VSR Financial Services, Inc., dated November 11, 2011; Gordon Taylor, Vice President and Chief Compliance Officer, Dividend Capital Securities LLC, dated November 17, 2011; Steven Wechsler, President and CEO, National Association of Real Estate Investment Trusts (''NAREIT''), dated November 11, 2011; Daniel Wildermuth, Chief Executive Officer, Kalos Financial, undated; and W.P. Carey & Co. LLC (''W.P. Carey''), dated November 11, 2011.

[24] *See* Letters to Marcia Asquith, Senior Vice President and Corporate Secretary, FINRA, from: Ryan Bakhtiari, President, PIABA, dated April 11, 2012; Martel Day, Chairman, IPA, dated April 11, 2012; Michael Forman, Chief Executive Officer, Franklin Square, dated April 11, 2012; Mark Gatto and Michael Reisner, ICON Investments, dated April 12, 2012; Daniel Gilbert and W. Timothy Toole, NorthStar, dated April 11, 2012; Jon Hale, President, Partnership Consultants, Inc., dated March 22, 2012; Jack Herstein, NASAA, dated April 11, 2012; David Hirschmann, President and Chief Executive Officer, U.S. Chamber of Commerce, dated April 11, 2012; Daniel Oschin, President, REISA, dated April 11, 2012; Prodigious, dated April 12, 2012; Jeffrey Rubin, Federal Regulation of Securities Committee Chair, ABA, dated April 9, 2012; Nicholas Schorsch and Michael Weil, American Realty Capital, dated April 11, 2012; Steven Wechsler, President and CEO, NAREIT, dated April 11, 2012; and W.P. Carey, dated April 11, 2012.

See also Letters to Robert Colby, Chief Legal Officer, FINRA, from: IPA Task Force on Account Statement Reporting, IPA, dated January 31, 2013; Steven Wechsler, President and CEO, NAREIT, dated March 8, 2013; and Mark Goldberg, Chairman, IPA, dated January 14, 2013.

[25] ABA and SIFMA.

[26] American Realty Capital, NAREIT, REISA and U.S. Chamber of Commerce.

[27] NASAA and NorthStar.

[28] ABA and NASAA.

[29] Franklin Square, IPA, NAREIT, NorthStar and PIABA.

[30] ABA, ICON Investments, IPA and NAREIT.

[31] American Realty Capital and W.P. Carey.

[32] NASAA.

[33] NASAA and Prodigious.

[34] American Realty Capital, IPA, and NAREIT.

(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

Two commenters requested that the Commission provide a 90-day comment period for the proposal, arguing that the rule was complex and technical. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 provides for 45 days (with a possible extension up to 90 days) for the Commission to act on proposed SRO rule changes. In light of this statutory deadline, the Commission is not extending the comment period at this time.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2014–006. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–FINRA–2014–006 and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03573 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71539; File No. SR–CBOE–2014–012]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

February 12, 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 February 3, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a number of amendments to its Fees Schedule. First, the Exchange proposes to increase the Exchangefone relocation fee from $100 to $116. The Exchange contracts with a vendor to provide the Exchangefone relocations, and this vendor has increased its fees, so the Exchange proposes to increase the Exchangefone relocation fee to reflect the increased vendor cost.

On January 2, 2014, the Securities and Exchange Commission (the ''Commission'') approved a proposed rule change to eliminate the Exchange's e-DPM program.[3] Pursuant to that approved rule change, the Exchange announced that the e-DPM program will be eliminated effective February 3, 2014.[4] As such, with the elimination of the e-DPM program, the Exchange hereby proposes to delete all references to e-DPMs and the e-DPM program from its Fees Schedule.

The Exchange also proposes to make an amendment to its OHS (Order Handling System) Order Cancellation Fee (''Cancel Fee''). Currently, the Notes section of the Cancel Fee carves out certain circumstances in which the Cancel Fee does not apply. The Exchange would like to add exception to cover the cancellation of any orders that were entered during the pre-open or opening rotation states. Sometimes one or more other option exchanges open a class sooner than CBOE and a TPH may desire to cancel orders still pending at CBOE and route to exchanges that are open. The Exchange does not believe

[3] *See* Securities Exchange Act Release No. 71227 (January 2, 2014), 79 FR 1398 (January 8, 2014) (SR–CBOE–2013–110).

[4] *See* CBOE Regulatory Circular RG–14–002 (January 9, 2014), available at *http://www.cboe.com/aboutCBOE/legal/crclReg.aspx.*

that market participants should be assessed the Cancel Fee in these circumstances. Similarly, on occasion, a trading halt may occur on the Exchange, and market participants may want orders that they had entered onto CBOE to be cancelled during such halts and moved to another exchange for execution. The Exchange does not believe that market participants should be assessed the Cancel Fee in these circumstances, either. As such, the Exchange proposes to add exception (vii) of the Cancel Fee to state that the Cancel fee shall not apply to orders that are entered or canceled prior to the opening, during the opening rotation, or during a trading halt.

The Exchange always strives for clarity in its rules and Fees Schedule, so that market participants may best understand how rules and fees apply. As such, the Exchange proposes a number of changes to clarify its Fees Schedule. The first such proposed change regards the Hybrid 3.0 Execution Fee. The Exchange assesses a Hybrid 3.0 Execution Fee on electronic executions in Hybrid 3.0 classes (with a number of exceptions).[5] However, as the Hybrid 3.0 Execution Fee is assessed on top of regular transaction fees for transactions in the Hybrid 3.0 classes, the Hybrid 3.0 Execution Fee would more accurately be described as a ''surcharge'' (as other fees listed on the Fees Schedule that are assessed on top of regular transaction fees are labeled as ''surcharges''). As such, the Exchange proposes to rename the Hybrid 3.0 Execution Fee the ''Hybrid 3.0 Execution Surcharge''.

The Exchange also proposes to clarify Footnote 21 of the Fees Schedule, which currently states that ''All electronic executions in Hybrid 3.0 classes shall be assessed the Hybrid 3.0 Execution Fee, except that this fee shall not apply to . . . orders executed by a broker.'' The Exchange wishes to clarify that this means that orders executed by a floor broker using a PAR terminal (as opposed to simply ''orders executed by a broker'') shall be excepted from assessment of the Hybrid 3.0 Execution Fee (renamed herein the ''Hybrid 3.0 Execution Surcharge'' as described above). This was, and is, the original intent of this exception. This is not a substantive fee change because the only brokers that apply here are floor brokers, and the only way floor brokers can perform such executions is via a PAR terminal. This change to the language only makes more clear the types of executions that are excepted from the Hybrid 3.0 Execution Surcharge.

Similarly, the Exchange proposes to clarify Footnote 31 of the Fees Schedule's description of the Customer Priority Surcharge as it applies to SPXW. Currently, Footnote 31 states that such surcharge applies to all customer contracts executed electronically, except those contracts traded on a PAR terminal. The Exchange wishes to use the same clarifying language as applies to the Hybrid 3.0 Execution Surcharge (as described above), and state that the SPXW Customer Priority Surcharge applies to all customer contracts executed electronically, except those executed by a floor broker on a PAR terminal. This is a clarification and not a substantive fee change because only floor brokers can execute orders using a PAR terminal.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that the increased Exchangefone relocation fee is reasonable because the increase is being enacted to reflect an increase in the amount that a vendor charges the Exchange to provide the Exchangefone relocations, and also because the amount of the increase is a mere $16. The Exchange believes that this change is equitable and not unfairly discriminatory because the increased Exchangefone relocation fee will apply to all market participants who request an Exchangefone relocation.

The Exchange believes that the removal of references to e-DPMs and the e-DPM program from the Fees Schedule will eliminate any potential confusion regarding whether or not the e-DPM program is still active on the Exchange, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system. Similarly, the Exchange believes that renaming the Hybrid 3.0 Execution Fee as the ''Hybrid 3.0 Execution Surcharge'' will clarify that the Hybrid 3.0 Execution Fee applies on top of regular transaction fees (like other surcharges listed on the Fees Schedule), thereby eliminating potential confusion and removing impediments to and perfecting the mechanism of a free and open market and a national market system. The Exchange also believes that the clarification in Footnote 21 of the Fees Schedule that the Hybrid 3.0 Execution Surcharge shall not apply to orders executed by a floor broker using a PAR terminal will eliminate potential confusion regarding to whom the Hybrid 3.0 Execution Surcharge applies (and does not apply), thereby eliminating potential confusion and removing impediments to and perfecting the mechanism of a free and open market and a national market system. Along the same lines, the Exchange believes that the clarification in Footnote 31 that the SPXW Customer Priority Surcharge applies to all customer contracts executed electronically, except those executed by a floor broker on a PAR terminal will eliminate potential confusion regarding to whom the SPXW Customer Priority Surcharge applies (and does not apply), thereby eliminating potential confusion and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed change to the Cancel Fee is reasonable because it would allow some market participants who currently would get assessed the Cancel Fee to avoid having to pay the fee. The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory because it makes logical sense to not apply the

[5] For more information on the Hybrid 3.0 Execution Fee, see Footnote 21 of the Exchange Fees Schedule.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78f(b)(4).

Cancel Fee to orders that are entered or canceled prior to the opening, during the opening rotation, or during a trading halt. The Exchange does not believe that a TPH should be assessed a Cancel Fee for cancelling orders in order to move such orders to another exchange because that other exchange opens a class sooner than CBOE or because there is a trading halt on CBOE and the TPH wishes to get those orders filled. Moreover, this proposed change will apply to all market participants equally; the Cancel Fee will not be assessed to any cancelled orders, regardless of the type of market participant, that are entered or canceled prior to the opening, during the opening rotation, or during a trading halt.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. CBOE does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all of the proposed changes will apply to all market participants. CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only apply to trading on CBOE. To the extent that any of the proposed changes makes CBOE a more attractive market for market participants on other exchanges, such market participants may elect to become market participants on CBOE. Finally, the majority of the proposed changes are non-substantive clarifications.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. 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) of the Act [10] and paragraph (f) 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2014–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2014–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–012 and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03568 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71538; File No. SR–BX–2014–011]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify BX's Optional Anti-Internalization Functionality

February 12, 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 February 4, 2014, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify BX's optional anti-internalization functionality. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is proposing to modify its voluntary anti-internalization functionality to provide an additional option under that functionality. In addition, the proposed rule change contains certain clarifications to the text of the rule. Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit broker-dealers managing accounts governed by ERISA from trading as principal with orders generated for those accounts. The functionality can also assist market participants in avoiding execution fees that may result from the interaction of executable buy and sell trading interest from the same firm. BX notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) they would have originally obtained if execution of the order was not inhibited by the functionality.

Currently, market participants may apply anti-internalization logic to all quotes/orders entered through a particular MPID, or to all orders entered through a particular order entry port, to which a unique group identification modifier is then appended. In other words, the logic may be applied on an MPID-by-MPID, or on a port-by-port basis. Currently, two forms of anti-internalization logic may be applied: (i) If quotes/orders are equivalent in size, both quotes/orders will be cancelled, or if they are not equivalent in size, the smaller will be cancelled and the size of the larger will be reduced by the size of the smaller; or (ii) regardless of the size of the quotes/orders, the oldest quote/order will be cancelled in full. The applicable logic may be applied to an entire MPID, or alternatively, different logic may be applied to different order entry ports under a particular MPID.

In response to member input, the proposed rule change will add an additional form of anti-internalization logic that a market participant could choose to apply, under which the most recent quote/order would be cancelled. As with the two existing forms of anti-internalization logic, the logic could be applied to an entire MPID, or to selected order entry ports under a particular MPID. BX believes that the change will provide members with an additional tool for managing the book of orders that they submit to BX and the associated execution costs.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act, in general, and with Section 6(b)(5) of the Act in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, BX believes that the change, which is responsive to member input, will facilitate transactions in securities and perfect the mechanism of a free and open market by providing members with additional optional functionality that may assist them with managing the book of orders that they submit to BX and the associated execution costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, by offering market participants additional options with regard to preventing inadvertent internalization of orders submitted to BX, the change has the potential to enhance BX's competitiveness with respect to other trading venues, thereby promoting greater competition. Moreover, the change does not burden competition in that its use is optional and provided at no additional cost to members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2014–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2014–011. This file

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2014–011 and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03567 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71529; File No. SR–Phlx–2014–08]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Monthly Strategy Cap

February 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2014, NASDAQ OMX PHLX LLC (''Phlx'' 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 comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee caps applicable to certain strategies on Multiply Listed Options in Section II, entitled ''Multiply Listed Options Fees.'' [3]

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on February 3, 2014.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the fee caps relating to dividend,[4] merger,[5] short stock interest,[6] reversal and conversion,[7] jelly roll [8] and box spread [9] strategies in Section II of the Pricing Schedule [10] (together the ''Monthly Strategy Cap''). The Exchange believes the proposed amendment would continue to incentivize market participants to trade on the Exchange by capping floor option transaction charges related to various strategies.

Today, Specialist,[11] Market Maker,[12] Professional,[13] Firm and Broker-Dealer floor option transaction charges are capped at $1,250 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts. Specialist, Market Maker, Professional, Firm and Broker-Dealer floor option transaction charges executed on the same trading day in the same options class are capped at $700 each for reversal and conversion, jelly roll and box spread strategies. In addition, the Monthly Strategy Cap for floor option transaction charges for dividend, merger and short stock interest, reversal and conversion, jelly roll and box spread strategies are capped at $35,000 per member organization for combined executions in

[3] Section II Multiply Listed Options Fees include options overlying equities, ETFs, ETNs and indexes that are multiply listed.

[4] A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

[5] A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

[6] A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

[7] A reversal and conversion strategy is defined as transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

[8] A jelly roll strategy is defined as transactions created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position.

[9] A box spread strategy is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively.

[10] While the fee caps are noted in Section II of the Pricing Schedule, the caps apply to all Multiply Listed Options in Sections I and II.

[11] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[12] A ''Market Maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)).

[13] The term ''Professional'' is a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

a month when such members are trading in their own proprietary account. The Exchange is proposing to modify only the Monthly Strategy Cap per member organization. The remaining caps are not changed.

The Exchange proposes to increase the Monthly Strategy Cap for dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies from $35,000 per member organization per month to $50,000 per member organization for combined executions in a month provided that such member organizations are trading in their own proprietary account.[14]

For purposes of clarity, the Exchange also proposes to make a technical correction to Section II of the Pricing Schedule to remove a reference the term ''short stock, interest'' and replace it with the correct term ''short stock interest''.[15] The clarification makes the use of ''short stock interest'' consistent throughout the Pricing Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(4) of the Act[17] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange's proposal to increase the Monthly Strategy Cap on floor option transaction charges for dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies from $35,000 to $50,000 per month, provided the strategy is executed on the same trading day in the same options class when such members are trading in their own proprietary account, is reasonable because the Exchange seeks to continue to incentivize member organizations to transact a greater number of strategies on the Exchange to benefit from the fee cap. Also, this proposal is similar in nature to caps on other exchanges, namely NYSE Arca, Inc. (''NYSE Arca''),[18] NYSE Amex, Inc. (''NYSE Amex'')[19] and the Chicago Board Options Exchange, Incorporated (''CBOE'')[20] for strategies. The Exchange also believes that the increased fee cap is equitable and not unfairly discriminatory because the Exchange is offering all members, except for Customers,[21] the same opportunity to cap their floor option transaction charges in Multiply Listed Options.

The Exchange believes that its proposal to amend the amount of the Monthly Strategy Cap to orders originating from the Exchange floor is reasonable because members continue to pay floor brokers to execute trades on the Exchange floor. The Exchange believes that offering fee caps to member organizations executing multiply listed floor options transactions in their own proprietary accounts would defray brokerage costs associated with executing strategy transactions and continue to incentivize members to utilize the floor for certain executions.[22] The Exchange believes that its proposal to amend the Monthly Strategy Cap originating from the Exchange floor is equitable and not unfairly discriminatory because today, the fee caps are only applicable for floor transactions. Moreover, the Exchange believes that a requirement that both the buy and sell sides of the order originate from the floor to qualify for applicability of the Monthly Strategy Cap would constitute equal treatment of members.

The Exchange believes that making clarifying changes to the Pricing Schedule, such as that the reference in respect of the Monthly Strategy Cap is to ''short stock interest'' rather than ''short stock, interest'', is a reasonable, equitable and not unfairly discriminatory amendment because this technical amendment would clarify the Pricing Schedule and make its terms consistent throughout.

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 proposed fees would continue to encourage members to transact strategies on the exchange because the proposed fee caps are competitive with fee caps at other options exchanges, and would clarify the use of ''short stock interest'' in respect of the Monthly Strategy Cap to make it consistent throughout the Pricing Schedule to the benefit of members, member organizations, and traders.

The Exchange operates in a highly competitive market, comprised of twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed as described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[23] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2014–08 on the subject line.

[14] The requirement that such member organizations trade in their own proprietary account would not be amended by this proposal.

[15] *See* Securities Exchange Act Release No. 68406 (December 11, 2012), 77 FR 74715 (December 17, 2012) (SR–Phlx–2012–138) (discussing, among other things, Monthly Strategy Cap on ''short stock interest'').

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

[18] *See* NYSE Arca General Options and Trading Permit (OTP) Fees.

[19] *See* NYSE Amex Options Fee Schedule.

[20] *See* CBOE's Fees Schedule.

[21] Customers are not assessed options transaction charges in Section II of the Pricing Schedule.

[22] The Exchange's proposal would only apply the fee cap to options transaction charges where buy and sell sides originate from the Exchange floor. *See* text in Section II of the Pricing Schedule.

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

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–Phlx–2014–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2014–08, and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03560 Filed 2–18–14; 8:45 am]

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[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71527; File No. SR–Topaz–2014–07]

Self-Regulatory Organizations; Topaz Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

February 12, 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 February 3, 2014, the Topaz Exchange, LLC (d/b/a ISE Gemini) (the ''Exchange'' or ''Topaz'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Topaz is proposing to amend its Schedule of Fees. 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 (1) introduce volume-based tiered rebates for Firm Proprietary/Broker-Dealer and Professional Customer orders, (2) increase Maker Rebates provided to Priority Customer orders in Non-Penny Symbols, and (3) increase the Taker Fee and Fee for Responses to Crossing Orders charged for Market Maker orders in Non-Penny Symbols. The fee changes discussed apply to both Standard Options and Mini Options traded on Topaz. The Exchange's Schedule of Fees has separate tables for fees applicable to Standard Options and Mini Options. The Exchange notes that while the discussion below relates to fees for Standard Options, the fees for Mini Options, which are not discussed below, are and shall continue to be 1/10th of the fees for Standard Options.

On September 3, 2013 the Exchange filed with the Commission an immediately effective rule filing that established volume-based tiered rebates for adding liquidity on the Exchange (''Maker Rebates'').[3] Specifically, that filing established Maker Rebates applicable to Market Maker[4] and Priority Customer[5] orders based on a Member's average daily volume (''ADV'') in a given month. Topaz now proposes to amend its Schedule of Fees to introduce similar tiered Maker Rebates for Firm Proprietary/Broker-Dealer[6] and Professional Customer[7] orders that add liquidity on the Exchange. The proposed tiered Maker Rebates will replace the current uniform Maker Rebate of $0.25 per contract that is currently provided to all Firm Proprietary/Broker-Dealer and Professional Customer orders in all symbols regardless of the volume executed by a Member.

A Member's tier will be based on its ''maker'' ADV in Firm Proprietary/Broker-Dealer and Professional Customer orders, which must be from 0–9,999 contracts for Tier 1, from 10,000–24,999 contracts for Tier 2, from 25,000–39,999 contracts for Tier 3, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70426 (September 17, 2013), 78 FR 58359 (September 23, 2013) (SR–Topaz–2013–04).

[4] The term Market Maker refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. Market Maker orders sent to the Exchange by an Electronic Access Member are assessed fees and rebates at the same level as Market Maker orders. *See* footnote 2, Schedule of Fees, Section I and II.

[5] A Priority Customer is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[6] A Firm Proprietary order is an order submitted by a Member for its own proprietary account. A Broker-Dealer order is an order submitted by a Member for a non-Member broker-dealer account.

[7] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

40,000 or more contracts for Tier 4.[8] Instead of the uniform Maker Rebates currently provided, Firm Proprietary/Broker Dealer and Professional Customer orders will now qualify for tiered Maker Rebates, which are proposed to be $0.25 per contract in Penny Symbols and $0.35 per contract in Non-Penny Symbols for Tier 1, $0.30 per contract in Penny Symbols and $0.45 per contract in Non-Penny Symbols for Tier 2, $0.35 per contract in Penny Symbols and $0.55 per contract in Non-Penny Symbols for Tier 3, and $0.40 per contract in Penny Symbols and $0.65 per contract in Non-Penny Symbols for Tier 4. The highest tier threshold attained by a Member will apply retroactively in a given month to all eligible traded contracts and for all eligible market participants. These tiers, however, will be completely separate from the tiers currently in place for Market Maker and Priority Customer orders. Thus, for example, if a Member executes sufficient volume to qualify for Tier 2 rebates for its Firm Proprietary/Broker-Dealer and Professional Customer orders that Member will not thereby qualify for Tier 2 rebates for its Market Maker or Priority Customer orders, and vice versa. Market Maker and Priority Customer orders will continue to be eligible for tiers based exclusively on achieving volume thresholds in the current table of qualifying tier thresholds, which has been relabeled ''Table 1.'' Firm Proprietary/Broker-Dealer and Professional Customer orders will be eligible for higher tiers based exclusively on achieving volume thresholds in new ''Table 2.'' Members who do not achieve a higher tier based on the applicable table will receive Tier 1 rates.

In connection with the new tiered Maker Rebates described above, the Exchange is also proposing to make non-substantive edits to the text of its Schedule of Fees to clarify which items are included in the various ADV categories. In particular, the Exchange proposes to adopt amended text that states that: (1) The Total Affiliated Member ADV category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms;[9] and (2) the Priority Customer Maker ADV category includes all Priority Customer volume that adds liquidity in all symbols. This amended language will supplement new text indicating, as explained above, that the Firm Proprietary/Broker-Dealer and Professional Customer Maker ADV category includes all Firm Proprietary/Broker-Dealer and Professional Customer volume that adds liquidity in all symbols.

The Exchange is also proposing to increase the Maker Rebates applicable to Priority Customer orders in Non-Penny Symbols. Currently, Priority Customer orders in Non-Penny Symbols receive a Maker Rebate of $0.70 per contract for Tier 1, $0.75 per contract for Tier 2, $0.80 per contract for Tier 3, and $0.82 per contract for Tier 4. The Exchange proposes to increase the Maker Rebate for Priority Customer orders in Non-Penny Symbols to be $0.75 per contract for Tier 1, $0.80 per contract for Tier 2, $0.82 per contract for Tier 3, and $0.85 per contract for Tier 4.

Finally, the Exchange is proposing to increase the Taker Fee and Fee for Responses to Crossing Orders applicable to Market Maker orders in Non-Penny Symbols. Currently, Market Maker orders in Non-Penny Symbols that remove liquidity or respond to a Crossing Order pay a fee of $0.84 per contract. The Exchange is proposing to increase both of these fees to $0.86 per contract.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and Section 6(b)(4) of the Act,[11] 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 the proposed tiered Maker Rebates are reasonable, equitable, and not unfairly discriminatory because Topaz has already established volume-based pricing for Market Maker and Priority Customer orders, and is merely proposing to adopt a similar pricing model for Firm Proprietary/Broker-Dealer and Professional Customer orders in order to incentivize Members to send this order flow to the Exchange. The new Maker Rebate tiers will allow Members to receive increased rebates for their Firm Proprietary/Broker-Dealer and Professional Customer orders. In Penny Symbols, Members that bring this order flow to the Exchange will receive the same $0.25 per contract Maker Rebate that they receive today at the lowest tier, and an additional $0.15 per contract above the current rebate at the highest tier. In Non-Penny Symbols, Members will receive an additional $0.10 per contract above the current rebate at the lowest tier, and an additional $0.40 per contract above the current rebate at the highest tier. As noted above, Market Maker and Priority Customer orders currently benefit from tiered rebates, and the Exchange believes that these rebates have been successful in attracting that order flow to Topaz. This proposal is designed to attract additional order flow from certain market participants that are not incentivized by the current tiers for Market Maker and Priority Customer orders. The Exchange believes that providing higher rebates for Firm Proprietary/Broker-Dealer and Professional Customer orders executed by Members that have achieved specified volume thresholds will attract that order flow to Topaz, and thereby create additional liquidity to the benefit of all market participants who trade on the Exchange. While non-Topaz Market Makers will not be eligible for the proposed tiers, the Exchange does not believe that this is unfairly discriminatory as the proposal is not intended to incentivize additional flow from non-Members who will continue to receive Maker Rebates at the current rate. In addition, the Exchange believes that it is appropriate, in connection with this change, to make non-substantive amendments to the text of the Schedule of Fees in order to make the current and proposed rebate programs more transparent to Members and investors.

The Exchange also believes that it is reasonable, equitable, and not unfairly discriminatory to increase Maker Rebates provided to Priority Customer orders in Non-Penny Symbols. As with the new Maker Rebates discussed above for Firm Proprietary/Broker-Dealer and Professional Customer orders, the Exchange believes that providing higher rebates for Priority Customer orders attracts that order flow to Topaz and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. While the proposed rule change increases Maker Rebates for both Priority and Professional Customer orders the Exchange notes that Priority Customer orders will remain entitled to higher rebates than Professional

[8] All eligible volume from affiliated Members will be aggregated in determining applicable tiers, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. ADV thresholds will be based on Standard and Mini volume, but their respective rebates/fees will apply. Any day that the market is not open for the entire trading day may be excluded from the ADV calculation.

[9] Only the Total Affiliated Member ADV category includes volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms as orders executed in the Exchange's crossing mechanisms are not considered ''maker'' volume.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

Customer orders. The Exchange believes that it is equitable and not unfairly discriminatory to provide higher rebates to Priority Customer orders than to Professional Customer orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

Finally, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to increase the Taker Fee and Fee for Responses to Crossing Orders charged for Market Maker orders in Non-Penny Symbols as these fees are still within the range of fees currently charged on other options exchanges. For example, the NASDAQ Options Market currently charges a fee for removing liquidity of $0.89 per contract for Market Maker orders in Non-Penny Symbols, which is higher than the $0.86 per contract fee proposed here.[12] The Exchange notes that it is increasing response fees in tandem with its Taker Fees as an execution resulting from a Response to a Crossing Order is akin to taking liquidity.

The Exchange notes that it has determined to charge fees and provide rebates in Mini Options at a rate that is 1/10th the rate of fees and rebates the Exchange provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees and rebates to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed fees and rebates are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, is providing fees and rebates for Mini Options that are 1/10th of those applicable to Standard Options.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] the Exchange does not believe that the proposed rule change will impose any burden on inter-market 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 changes will promote competition as they are designed to allow Topaz to better compete for order flow by offering higher rebates to market participants that add liquidity on the Exchange. While the Exchange proposes to increase taker and response fees for a subset of orders, the Exchange believes that this will not impose a burden on competition because the new fees are consistent with those charged by other options exchanges.[14] Furthermore, the Exchange believes that the clarifying text being added to the Schedule of Fees is non-substantive, and therefore does not impact the competition analysis. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[15] and subparagraph (f)(2) of Rule 19b–4 thereunder,[16] 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–Topaz–2014–07 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–Topaz–2014–07. 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 principal offices 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–Topaz–2014–07, and should be submitted on or before March 12, 2014.

[12] *See* NASDAQ Options Rules, Chapter XV Options Pricing, Section 2, NASDAQ Options Market—Fees and Rebates.

[13] 15 U.S.C. 78f(b)(8).

[14] *See* supra note 12.

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03558 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71528; File No. SR–FINRA–2014–007]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 7510 and Rule 7540 Relating to Fees for the Alternative Display Facility

February 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to amend Rule 7510 and Rule 7540 relating to fees for the Alternative Display Facility (''ADF'').[3]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ADF is a quotation collection and trade reporting facility that provides ADF Market Participants (i.e., ADF-registered market makers or electronic communications networks (''ECNs'')) [4] the ability to post quotations, display orders and report transactions in NMS stocks [5] for submission to the Securities Information Processors (''SIPs'') for consolidation and dissemination to vendors and other market participants. In addition, the ADF delivers real-time data to FINRA for regulatory purposes, including enforcement of requirements imposed by Regulation NMS.[6] Since the second quarter of 2010, there have been no ADF Market Participants.[7] FINRA is currently in the process of migrating the ADF to its multi-product platform (''MPP''). In connection with the migration to the MPP, and the addition of new ADF Market Participants, FINRA is proposing certain changes to the fees relating to ADF operations. Specifically, FINRA is proposing to (1) expand the web browser access that is currently available on the Trade Reporting and Compliance Engine (''TRACE'') to provide ADF Market Participants with trade reporting and trade management functionality for ADF trades and to adopt fees for such service; (2) expand the FINRA Automated Data Delivery Service (''ADDS'') that is currently available on TRACE to include ADF data and to adopt fees for such service; (3) revise Rule 7510(a) so that certain of the transaction charges would be assessed on a per-trade basis, with the fee being charged to the executing party; (4) revise Rule 7510(a) to provide a carve-out to the Corrective Transaction Charge pursuant to which the fee would be assessed to the executing party only; (5) delete the carve-out for fees for the late reporting of trades; and (6) delete a provision of Rule 7540(c) relating to a fee for certain testing services and make corresponding changes to the remaining testing service fee in that section.

Proposed Web Browser Access

Although there are currently no active ADF participants, an ADF participant today that wished to report a trade in an ADF-eligible security to the ADF would utilize FINRA's Trade Reporting and Comparison Service (''TRACS'') pursuant to Rule 6280.[8] Following the migration of the ADF to the MPP, FINRA will expand its current web browser access, which members may currently use to access the Trade Reporting and Compliance Engine (''TRACE''), so that ADF Market Participants may use this functionality to access the ADF and to report ADF trades.[9] Pursuant to proposed paragraph (c)(1) of Rule 7510, FINRA is proposing to charge ADF Market Participants $20 per user ID per month for web browser access.[10] In addition to reporting trades through the web browser, ADF Market Participants that elect to utilize the web browser feature will be able to access trade management functions, such as trade reconciliation, cancel and correct, and will be able to access up to three prior days' worth of their trade data as well as the current trading day's trades. The proposed web browser access will offer the same level of functionality as the Level I (Trade Report Only) web browser access and trade management functionality that is offered under Rule 7730(a) for TRACE. In addition, the proposed fee is identical to the fee currently charged under Rule 7730(a) for Level I (Trade Report Only) web browser access and trade management functionality for TRACE.[11]

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FINRA notes that it has submitted proposed rule change SR–FINRA–2013–053, which would, among other things, amend Rule 7510. *See* Securities Exchange Act Release No. 71147 (December 19, 2013), 78 FR 78451 (December 26, 2013). FINRA will amend this filing and/or SR–FINRA–2013–053, as necessary, to reflect Commission approval, or the effectiveness, of any of the proposed rule changes.

[4] *See* Rule 6220(a)(3).

[5] *See* 17 CFR 242.600.

[6] *See* 17 CFR 242.600.

[7] FINRA notes that it recently submitted a proposed rule change to add a new entrant, LavaFlow, to the ADF. *See* Securities Exchange Act Release No. 71042 (December 11, 2013), 78 FR 76341 (December 17, 2013) (Notice of Filing of File No. SR–FINRA–2013–52).

[8] FINRA notes that it has recently proposed to replace the reference to TRACS in the rules relating to the ADF, including replacing the reference to TRACS in Rule 6281 with a more generalized reference to the ADF. *See* Securities Exchange Act Release No. 71147 (December 19, 2013), 78 FR 78451 (December 26, 2013) (Notice of Filing of File No. SR–FINRA–2013–053).

[9] Due to system capacity limitations, FINRA proposes to offer the web browser access to ADF Market Participants (i.e., Registered Reporting ADF Market Makers and Registered Reporting ADF ECNs) only. FINRA proposes to offer ADDS, which is discussed in greater detail below, to all ADF participants (i.e., a market participant that is a party to an ADF trade).

[10] An ADF Market Participant that elects to not utilize the web browser access would report trades directly to the ADF through FIX (Financial Information eXchange) protocol. Although a participant would incur connectivity costs when submitting trade reports to the ADF through FIX, FINRA will not assess a charge for a FIX connection to the ADF.

[11] In contrast to TRACE, FINRA does not propose to offer a Level II web browser access for the ADF. The Level II service for TRACE web browser access provides all real-time TRACE transaction data, in addition to the functionality of Level I. TRACE is the sole platform for the reporting of fixed-income

Proposed Fees for Equity Data Through FINRA's Automated Data Delivery Service

FINRA ADDS is a secure Web site that provides members, by market participant identifier (''MPID''), access to historical trade journal files containing key information regarding the member's trades reported to FINRA. Members use the trade journal files to reconcile the trade information captured by their own systems against the information captured by the FINRA trade reporting systems. Currently, FINRA ADDS makes recent TRACE trade journals available for free through the ADDS Web site and also offers subscribers the option of receiving additional data and retrieving data automatically via Secure File Transfer Protocol (''SFTP'') for a fee.

FINRA is proposing to enhance ADDS to include ADF data and to charge fees for additional historical data pursuant to proposed Rule 7510(d). Through the ADDS Web site, an ADF participant will have access to ADF trade data associated with its MPID for the three prior business days free of charge without having to subscribe to the additional optional data services discussed below. ADF participants can access data for dates older than the most recent three business days for a monthly fee, if they elect to subscribe to receive this additional data through ADDS (referred to as ''ADF Data Delivery Plus'' service).[12] The fee will be charged per month to an MPID that is a subscriber to ADF Data Delivery Plus reports (''Plus Reports''), which will be provided in response to requests by the MPID.[13] The proposed fees under Rule 7510(d)(1) are based on the number of Plus Reports the subscriber receives in a month.[14] The proposed fees range from a low of $60 (for a member requesting up to five Plus Reports per month) to a high of $100 a month (for a member requesting more than 25 Plus Reports per month). FINRA notes that the proposed fees for such ADF data, and corresponding number of Plus Reports received, is identical to the current fee schedule for Tier 1 TRACE data through ADDS under Rule 7730(g). However, unlike the fees governing the provision of TRACE data through ADDS, FINRA is not proposing to further divide the ADF Reporting Facility Data Delivery Plus fees into tiers that are based upon the average number of transactions reported per month to which the MPID was a party in the prior calendar year, as there is not currently a baseline of transaction activity from which FINRA can establish such thresholds. As FINRA acquires historical data for the ADF and is able to further assess this fee, however, it may revise this fee to establish different tiers, and corresponding different fees, for MPIDs that meet different volume thresholds.

ADF participants also will have the option of subscribing to the SFTP service for ADF trade data, which would enable them to automate the process of retrieving their daily trade journal files. Files will be made available on a daily basis to ADF participants that subscribe to the ADF Data Delivery SFTP service, and ADF participants will be able to connect to FINRA via SFTP to download their data. FINRA is proposing to charge the following fees to ADF Participants that elect to receive ADF data via SFTP: (1) A one-time set up fee of $250 for each MPID that subscribes to the service and (2) a monthly fee of $200 per MPID that subscribes to the service. The proposed fees are identical to the current fees charged under FINRA Rule 7730 for TRACE data through ADDS.

The proposed fees for access and ADF data would allow FINRA to recoup some of the costs of developing and maintaining services for the ADF on the MPP that are already provided for TRACE. FINRA believes that extending the availability of these services to ADF participants will provide ADF participants with the enhanced tools to meet their trade reporting and management obligations without placing significant financial or operational burdens on them.

Changes to Rule 7510

Pursuant to Rule 7510(a), FINRA currently assesses certain transaction-related fees for utilizing TRACS,[15] including charges for Automated Give Up (''AGU'') and Qualified Special Representative (''QSR'') trades of $0.029 per side.[16] FINRA proposes to change these transaction charges so that they will be assessed on a per-trade basis, which will be charged only to the executing party. FINRA proposes to change the assessment of the fee from a per-side basis to a per-trade basis to clarify that the fee is assessed only once per trade. FINRA believes that it will better be able to collect this charge from the executing party to an AGU or QSR trade, as the executing party will generally be a Registered Reporting ADF ECN, while FINRA may not have a direct relationship with the contra-party to these trades.[17]

Pursuant to Rule 7510, FINRA assesses a fee for the submission of T+N late reports.[18] Currently, that fee is $0.30 per side, unless the trade is executed outside normal ADF operating hours of 8:00 a.m. to 6:30 p.m. and the member's average publicly disseminated trades reported to the media through the ADF per day during the billing period is 150,000 or greater, in which case the fee is waived. FINRA proposes to delete this exception, and the corresponding fee waiver, as it will result in a simpler and more uniform application of the late report fee. FINRA also proposes to assess this fee on a per-trade basis, which will be charged to the executing party. With this change, the fees for late reports will be consistent with the manner in which fees for late reports are assessed by the FINRA/Nasdaq Trade Reporting Facility.[19]

FINRA also proposes to modify the Corrective Transaction Charge, which is currently $0.25 for a Break, Decline, or Reversal transaction, which is paid by each party. FINRA proposes to assess this charge on the executing party only, if the trade at issue is a locked-in

trades, so the transaction data that is provided through the Level II access is already available to FINRA. In contrast, offering all real-time NMS transaction data through the ADF web browser would entail gathering such information from the relevant Securities Information Processors.

A member that utilizes the TRACE web browser and the ADF web browser would pay both the applicable TRACE web browser fee pursuant to Rule 7730 and the $20 fee ADF web browser fee pursuant to Rule 7510.

[12] Subscribers ultimately will be able to access up to two years of trade journal files.

[13] To access trade information for multiple MPIDs, an ADF participant must obtain a subscription for each MPID.

[14] A subscriber's fee will be assessed each month and accordingly may vary during a calendar year, depending on the number of reports FINRA sends to the subscriber in response to the subscriber's requests. The ADF Data Delivery Plus fee is based upon the number of reports provided to avoid charging for data requests that FINRA may be unable to provide.

[15] As noted above, FINRA has submitted a proposed rule change that would replace references to TRACS throughout the rules relating to the ADF, including replacing a reference to TRACS in Rule 7510(a) to ''System.'' *See supra* note 3.

[16] An Automated Give Up is the process by which a market participant agrees to allow an ADF Participant to report and lock in trades for clearing on its behalf.

A Qualified Special Representative is responsible for sending a trade directly to the National Securities Clearing Corporation for clearing on behalf of another broker-dealer.

[17] FINRA is not proposing to make a similar change to the comparison charge, as FINRA believes that the manner in which the compare functionality is used is sufficiently different (namely, FINRA will have to register users for the compare functionality, and therefore can establish a billing relationship with those users).

[18] For purposes of this fee, ''T'' refers to the trade date, and ''N'' refers to the applicable date following the trade date which renders the reporting late.

[19] *See* Rule 7620A.

transaction, such as an AGU or QSR.[20] Given that, with this proposed rule change, transaction charges for AGU and QSR trades will be assessed on the executing party only, FINRA believes that assessing a Corrective Transaction Charge on the executing party only for AGU and QSR trades is consistent with the manner in which transaction fees on the underlying trades will be assessed.

Proposed Deletion of Rule 7540

Rule 7540(c) provides for the assessment of fees for certain testing services, including the assessment of a fee of $285 per hour for computer-to-computer (''CTCI'') or digital interface (''DIS'' or ''CHIPS'') testing between 9:00 a.m. and 5:00 p.m. Eastern Time on business days. FINRA proposes to delete this fee because the MPP will not support such testing for the ADF, and this fee is thus not applicable. Given this deletion, FINRA will make a corresponding change to the description of the fee of $333 per hour for other testing, so that this fee will be assessed at all times on business days, holidays and weekends. FINRA also proposes to delete the introductory language in Rule 7540(c) that refers to such interfaces to reflect the deletion of the corresponding fee. FINRA also proposes a grammatical change; namely, inserting ''the'' before the reference to the ADF.

FINRA has filed the proposed rule change for immediate effectiveness.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[21] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed fees are reasonable in light of FINRA's regulatory and operational costs, including personnel and technology costs. The proposed fees are equitably allocated and not unfairly discriminatory because they will apply uniformly to all similarly situated members using the ADF.

FINRA believes that the proposed fee for web browser access under proposed Rule 7510(c) is reasonable because it will allow FINRA to recover some of the cost of developing and maintaining the web browser system for the ADF. FINRA also notes that the fee is identical to the existing fee for Level I web browser access to TRACE under Rule 7730. FINRA believes that the fee is equitably allocated and not unfairly discriminatory because it will apply uniformly to all ADF Market Participants that elect to utilize this service.

FINRA also believes that the proposed fees for ADF data through the FINRA ADDS are reasonable because these fees will allow FINRA to recover some of the cost of expanding and maintaining ADDS to include ADF data. FINRA also notes that these fees are comparable to the existing fees for TRACE data through ADDS under Rule 7730. FINRA believes that the fees are equitably allocated and not unfairly discriminatory. Because ADDS is an optional service, the fees would only be charged to ADF participants that elect to subscribe, and the fees would apply uniformly to all ADF participants that subscribe.

FINRA believes that the proposed deletion to the carve-out for the fee for late reports in Rule 7510(a) is consistent with the Act because this deletion will result in a simpler and more uniform application of the late report fee, as all ADF participants will be charged $0.30 per side. FINRA believes that changing the assessment of the transaction fee for AGU and QSR trades from a per-side to a per-trade basis is consistent with the Act because it will clarify that the fee shall be assessed only once per trade. FINRA believes that assessing the fee for AGU and QSR trades on the executing party is consistent with the Act because, given the way in which AGU and QSR trades are typically structured, FINRA will be better able to collect this charge from the executing party to an AGU or QSR trade than the contra-side. FINRA believes that assessing a Corrective Transaction Charge on the executing party only for locked-in trades such as AGUs and QSRs is consistent with the Act because assessing the Corrective Transaction Charge in this manner for such trades is consistent with the way in which transaction charges on the underlying trades will be assessed. FINRA believes that charging fees for late reports on a per-trade basis to be assessed to the executing party is consistent with the Act because it aligns this provision with the corresponding provision governing fees for late reports that are assessed by the FINRA/Nasdaq Trade Reporting Facility.

FINRA believes that the proposed deletion of the provision in Rule 7540(c) providing for an hourly fee of $285 for testing of certain computer-to-computer and digital interfaces, and corresponding revisions to that rule to reflect this deletion, is consistent with the Act because the MPP will not support such testing for the ADF, and this fee is thus not applicable.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will not affect all FINRA members, but only ADF participants and, in the case of the proposed web browser access fee, only ADF Market Participants. With respect to the proposed fee for web browser access, FINRA believes that, because this proposed fee is reasonable in amount, payment of such fee by any member, or any group or class of members, will not result in a burden on competition to such members. Similarly, with respect to the proposed fees for ADF data through ADDS, because the proposed fees are both optional and reasonable in amount, FINRA does not believe that the payment of such fees by any member, or any group or class of members, will result in a burden on competition to such industry members relative to other industry members that elect not to subscribe to the optional services.[22]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[23] and paragraph (f)(2) of Rule 19b–4 thereunder.[24] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

[20] If the transaction at issue is not a locked-in trade, then the corrective transaction charge to be assessed does not change, i.e., it will be assessed to both parties to the trade.

[21] 15 U.S.C. 78*o*–3(b)(5).

[22] FINRA notes that today, the number of subscribers for TRACE data through ADDS is small: 16 firms subscribe to the Plus Reports and five firms subscribe to the SFTP service. FINRA anticipates that there may be more interest in ADF data through ADDS, given the differences in the equity versus fixed income markets, but is unable to provide an estimate of the number of firms that are likely to subscribe at this time.

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

[24] 17 CFR 240.19b–4(f)(2).

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2014–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2014–007, and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03559 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71530; File No. SR–NASDAQ–2014–015]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Qualified Market Maker Incentive Program and NBBO Setter Incentive Program Under Rule 7014, and the Schedule of Fees and Rebates Under Rule 7018

February 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is proposing to make changes to the Qualified Market Maker (''QMM'') Incentive Program and NBBO Setter Incentive Program under Rule 7014, and the schedule of fees and rebates for execution and routing of orders under Rule 7018. NASDAQ will begin assessing the fees effective February 3, 2014.

The text of the proposed rule change is available at NASDAQ'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, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing several changes to the QMM Incentive Program and NBBO Setter Incentive Program under Rule 7014, and to its schedule of fees and credits applicable to execution and routing of orders under Rule 7018, which is described in detail below.

QMM Incentive Program

A QMM is a member that makes a significant contribution to market quality by providing liquidity at the NBBO in a large number of stocks for a significant portion of the day. In addition, the member must avoid imposing the burdens on NASDAQ and its market participants that may be associated with excessive rates of entry of orders away from the inside and/or order cancellation. The designation reflects the QMM's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities. In return for its contributions, certain financial benefits are provided to a QMM with respect to a particular MPID (a ''QMM MPID''), as described under Rule 7014(e). These benefits include a lower rate charged for executions of orders in securities priced at $1 or more per share that access liquidity on the NASDAQ Market Center and that are entered through a QMM MPID.[3] The current charge assessed on a member for removing liquidity on NASDAQ is $0.0030 per share executed, irrespective of the security's listing venue (i.e., NASDAQ, NYSE, or other).[4] QMM MPIDs, however, receive a lower charge of $0.0029 per share executed, also irrespective of the securities listing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 7014(e)(3) further requires, however, that after the first month in which an MPID becomes a QMM MPID, the QMM's volume of liquidity added, provided, and/or routed through the QMM MPID during the month (as a percentage of Consolidated Volume) is not less than 0.05% lower than the volume of liquidity added, provided, and/or routed through such QMM MPID during the first month in which the MPID qualified as a QMM MPID (as a percentage of Consolidated Volume).

[4] NASDAQ provides lower charges for removing liquidity from the NASDAQ Market Center, as described in Rule 7018(a).

venue. NASDAQ is proposing to limit the reduced charged [sic] provided to QMM MPID orders that remove liquidity to only securities listed on venues other than NASDAQ (i.e., NYSE or other). When NASDAQ adopted the current rate, it noted that the changes it was making were intended to encourage members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, thereby benefitting NASDAQ and other investors by committing capital to support the execution of orders.[5] NASDAQ notes that the program with respect to NASDAQ-listed has not been successful in providing material improvement in market quality in such securities and believes that applying the current default rate of $0.0030 should not affect the quality of the market given current market conditions.

NBBO Setter Incentive Program

The NBBO Setter Incentive Program provides incentive to members to set the NBBO or quote at the NBBO on NASDAQ, thus improving the quality of the market. Under Rule 7014(f) and unlike other members, a QMM may not receive both an Investor Support Program (''ISP'') credit and NBBO Setter Incentive credit, but rather receives only the greater credit of the two. The Exchange is proposing to expand the limitation on receiving only the greater of an ISP credit or NBBO Setter Incentive Program credit under Rule 7014(f) to all members. Specifically, the Exchange is deleting text in Rule 7014(f) that limits only QMMs to a single credit under the programs and is adding text to apply the limitation to all members that participate in the programs. As a consequence, members that are eligible to receive credits under both programs will only receive the larger credit of the two.

Amended Fees for Execution and Routing of Securities Listed on NASDAQ (Tape C)

NASDAQ is proposing to modify certain charges assessed and credits provided under Rule 7018(a)(1). First, under Rule 7018(a)(1), NASDAQ assesses a charge of $0.0029 per share executed on members that enter Market-on-Close (''MOC'') and/or Limit-on-Close (''LOC'') orders executed in the NASDAQ Closing Cross, entered through a single MPID that represent more than 0.06% of Consolidated Volume during the month. NASDAQ originally introduced the discount charge because it believed that members that participate in the NASDAQ Closing Cross to a significant extent through the use of MOC and/or LOC orders are frequently acting on behalf of institutional investor customers.[6] At the time, NASDAQ believed that members may have been giving NASDAQ lower relative priority in their order routing decisions due to its relatively high fees for accessing liquidity, as compared with lower cost exchanges. As a consequence, liquidity providers on NASDAQ may have been receiving larger orders that had already attempted to access liquidity elsewhere, such that the order was more likely to have an impact on the price of the stock. NASDAQ hoped that lowering the fees for these members they would be encouraged [sic] to give greater priority to NASDAQ in their routing decisions, thereby lowering their cost and improving the execution experience of liquidity providers. Moreover, NASDAQ hoped to encourage greater use of its Closing Cross through the reduction in the charge. NASDAQ notes that [sic] reduced rate has not materially improved the market in Tape C securities and therefore is proposing to increase the charged assessed from $0.0029 to $0.0030 per share executed.

Second, NASDAQ is proposing to increase the charge assessed a member that enters a TFTY order[7] that executes on a venue other than NASDAQ OMX BX (''BX'') or NASDAQ OMX PSX (''PSX''). Currently, NASDAQ assesses a charge of $0.0005 per share executed for such TFTY orders and NASDAQ is proposing to increase the charge to $0.0007 per share executed. Third, NASDAQ is proposing to increase the charge for QDRK, or QCST orders[8] that execute in a venue other than the NASDAQ Market Center. NASDAQ currently assesses a charge of $0.0005 per share executed for such QDRK, or QCST orders and NASDAQ is proposing to increase the charge to $0.0007 per share executed. Lastly, NASDAQ is proposing to eliminate the $0.0011 per share credit provided to members that enter QCST orders in NASDAQ-listed securities that execute on BX, and provide no charge or credit for such orders. These changes will reduce costs in a period of reduced trading volumes and are unlikely to have a significant impact on members that use NASDAQ's routing services, as the charges remain relatively low.

Amended Fees for Execution and Routing of Securities Listed on NYSE (Tape A)

NASDAQ is proposing to modify certain charges assessed and credits provided under Rule 7018(a)(2). Specifically, NASDAQ is proposing to amend fees assessed for routing orders in New York Stock Exchange, Inc. (''NYSE'') -listed securities. First, NASDAQ is proposing to increase the charge assessed a member that enters a TFTY order that executes on a venue other than NYSE, NASDAQ OMX BX or NASDAQ OMX PSX. Currently, NASDAQ assesses a charge of $0.0005 per share executed for such TFTY orders and NASDAQ is proposing to increase the charge to $0.0007 per share executed. Second, NASDAQ is proposing to increase the charge for QDRK, or QCST orders that execute in a venue other than the NASDAQ Market Center. NASDAQ currently assesses a charge of $0.0005 per share executed for such QDRK, or QCST orders and NASDAQ is proposing to increase the charge to $0.0007 per share executed. Third, NASDAQ is proposing to eliminate the $0.0011 per share credit provided to members that enter QCST orders in NYSE-listed securities that execute on NASDAQ OMX BX, and provide no charge or credit for such orders. Lastly, the Exchange is proposing to eliminate the $0.0004 credit provided for DOTI orders that orders [sic] that execute in NASDAQ OMX BX, and provide no charge or credit for such orders. These changes

[5] Securities Exchange Act Release No. 70361 (September 10, 2013), 78 FR 56962 (September 16, 2013) (SR–NASDAQ–2013–114); *see also* Securities Exchange Act Release No. 68905 (February 12, 2013), 78 FR 11716 (February 19, 2013) (SR–NASDAQ–2013–023).

[6] Securities Exchange Act Release No. 68421 (December 13, 2012), 77 FR 75232 (December 19, 2012) (SR–NASDAQ–2012–135).

[7] TFTY is a routing option under which orders check NASDAQ for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the applicable routing table. If shares remain un-executed after routing, they are posted to the book. Once on the book, if the order is subsequently locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

[8] QDRK is a routing option under which orders check NASDAQ for available shares and simultaneously route the remaining shares to destinations on the applicable routing table that are not posting Protected Quotations within the meaning of Regulation NMS. If shares remain un-executed after routing, they are posted on the book. Once on the book, if the order is subsequently locked or crossed by another market center, NASDAQ will not route the order to the locking or crossing market center.

QCST is a routing option under which orders check NASDAQ for available shares and simultaneously route the remaining shares to destinations on the applicable routing table that are not posting Protected Quotations within the meaning of Regulation NMS and to certain, but not all, exchanges. If shares remain un-executed after routing, they are posted on the book. Once on the book, if the order is subsequently locked or crossed by another market center, NASDAQ will not route the order to the locking or crossing market center.

will reduce costs in a period of reduced trading volumes and are unlikely to have a significant impact on members that use NASDAQ's routing services, as the charges remain relatively low.

Amended Fees for Execution and Routing of Securities Listed on Exchanges Other Than NASDAQ and NYSE (Tape B)

NASDAQ is proposing to modify certain charges assessed and credits provided under Rule 7018(a)(3). Specifically, NASDAQ is proposing to amend fees assessed for routing orders in securities listed on exchanges other than NASDAQ or NYSE. First, NASDAQ is proposing to increase the charge assessed a member that enters a TFTY order that executes on a venue other than NASDAQ OMX BX or NASDAQ OMX PSX. Currently, NASDAQ assesses a charge of $0.0005 per share executed for such TFTY orders and NASDAQ is proposing to increase the charge to $0.0007 per share executed. Second, NASDAQ is proposing to increase the charge for QDRK, or QCST orders that execute in a venue other than the NASDAQ Market Center. NASDAQ currently assesses a charge of $0.0005 per share executed for such QDRK, or QCST orders and NASDAQ is proposing to increase the charge to $0.0007 per share executed. Third, NASDAQ is proposing to eliminate the $0.0011 per share credit provided to members that enter QCST orders in securities listed on exchanges other than NASDAQ or NYSE that execute on NASDAQ OMX BX, and provide no charge or credit for such orders. Lastly, the Exchange is proposing to eliminate the $0.0004 credit provided for DOTI orders that orders [sic] that execute in NASDAQ OMX BX, and provide no charge or credit for such orders. These changes will reduce costs in a period of reduced trading volumes and are unlikely to have a significant impact on members that use NASDAQ's routing services, as the charges remain relatively low.

Amended Fees for Execution in the Closing, Opening and IPO/Halt Crosses

The Exchange is proposing to charge a fee for all other quotes and orders executed in the NASDAQ Closing Cross, other than MOC and LOC orders. Currently, the Exchange assesses a fee of $0.0010 per share executed [9] for MOC and LOC orders that execute in the Closing Cross, and charges no fee for all other quotes and orders executed in the Closing Cross. The Exchange is proposing to assess a fee of $0.0002 per share executed for all other quotes and orders executed in the NASDAQ Closing Cross, other than MOC and LOC orders. This change will help the Exchange recapture some of the costs it incurs operating the cross system, while maintaining relatively low fees for the execution of orders in the Closing Cross.

The Exchange is proposing to charge a fee for all other quotes and orders executed in the Nasdaq Opening Cross, other than MOC, LOC, Good-till-Cancelled (''GTC''), and Immediate-or-Cancel (''IOC'') orders. Currently, the Exchange assesses a fee of $0.0005 per share executed for the net number of buy and sell shares up to a maximum of $15,000 per firm per month for MOC and LOC, GTC, and IOC orders that execute in the Opening Cross, and charges no fee for all other quotes and orders executed in the Opening Cross. The Exchange is proposing to assess a fee of $0.0002 per share executed for all other quotes and orders executed in the NASDAQ Closing [sic] Cross, other than MOC, LOC, GTC, and IOC orders. The Exchange is also proposing to increase the fee assessed for MOC, LOC, GTC, and IOC orders executed in the Opening Cross from $0.0005 per share executed, to $0.0010 per share executed for the net number of buy and sell shares up to a maximum of $15,000 per firm per month. These changes will help the Exchange recapture some of the costs it incurs operating the cross system and will simplify the Exchange's fee schedule, while maintaining relatively low fees for the execution of orders in the Opening Cross.

The Exchange is proposing to increase the fee assessed for quotes and orders executed in the NASDAQ IPO/Halt Cross. Currently, the Exchange assesses a fee on all quotes and orders executed in the IPO/Halt Cross of $0.0005 per share executed. The Exchange is proposing to increase this fee to $0.0010 per share executed. The increased fee will help the Exchange recapture some of the costs it incurs operating the cross system and will simplify the Exchange's fee schedule, while maintaining relatively low fees for the execution of orders in the IPO/Halt Cross.

Amended Fees for Designated Liquidity Providers

The Exchange is proposing to amend language in Rule 7018(i), which concerns the applicability of fees and credits for execution of a Qualified Security [10] by one of its Designated Liquidity Providers (''DLP''). As defined in Rule 7018(i)(2), a DLP is a registered NASDAQ market maker for a Qualified Security that has committed to maintain minimum performance standards.[11] Under Rule 7018(i), a DLP is assessed a charge for removing liquidity from NASDAQ and a credit for adding liquidity thereto in its Qualified Securities. The charge and credit is meant to apply to DLPs in their Qualified Securities, to the exclusion of other charges and credits for execution under the rules. As currently drafted, only charges and credits provided under the preceding paragraphs of Rule 7018 are excluded from applying to DLPs in their Qualified Securities. The rebate programs under Rule 7014, however, are not excluded from applying to DLPs in their Qualified Securities. The Exchange is proposing to add language to Rule 7018(i) that also excludes the rebate programs under Rule 7014 from applying to DLPs in their Qualified Securities.

The Exchange is also proposing to eliminate the current charge assessed DLPs for entering an order that executes in the NASDAQ Market Center or attempts to execute in the NASDAQ Market Center prior to routing. NASDAQ assesses DLPs a charge of $0.003 per share executed for securities priced at $1 or more per share for an order that executes in the NASDAQ Market Center or attempts to execute in the NASDAQ Market Center prior to routing. For such orders in securities priced at less than $1 per share, the normal execution fees under 7018(a) apply. NASDAQ is proposing to eliminate this charge so that the normal charges apply to all orders that a DLP enters in one of its Qualified Securities that executes in the NASDAQ Market Center or attempts to execute in the NASDAQ Market Center prior to routing. As a consequence, DLPs will be eligible to receive reduced fees for such orders under other provisions of Rule 7018.

[9] Except as provided in Rule 7018(d)(2), which provides that High Volume MPIDs pay a discounted fee of $0.0001 per share executed with respect to executions of ''Market-On-Close'' and ''Limit-on-Close'' orders when the same High Volume MPID is on both sides of the trade.

[10] Rule 7018(i)(1) defines Qualified Security as an exchange-traded fund or index-linked security listed on Nasdaq pursuant to Nasdaq Rules 5705, 5710, or 5720, and it has at least one Designated Liquidity Provider.

[11] The rule further provides that a DLP shall be selected by NASDAQ based on factors including, but not limited to, experience with making markets in exchange-traded funds and index-linked securities, adequacy of capital, willingness to promote NASDAQ as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to NASDAQ rules and securities laws. Moreover, the rule permits NASDAQ to limit the number of Designated Liquidity Providers in a security, or modify a previously established limit, upon prior written notice to members.

Lastly, NASDAQ is proposing to eliminate the cap on the credit provided to DLPs under Rule 7018(i). Currently, NASDAQ limits the credit a DLP may receive to 10 million shares average daily volume and applies normal credits under 7018(a) to shares greater than 10 million average daily volume and nondisplayed liquidity. NASDAQ is deleting the limitation in its entirety, which may promote greater participation in the program.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the changes to the QMM Program are reasonable because they serve to maintain an incentive structure designed to benefit all market participants by encouraging quoting at or near the NBBO in a wide range of securities that are not listed on NASDAQ, while also removing the incentive with respect to NASDAQ-listed securities priced at $1 or more per share that access liquidity on the NASDAQ Market Center. As noted, the QMM program is intended to encourage members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, thereby benefitting NASDAQ and other investors by committing capital to support the execution of orders. NASDAQ's observation has been that the lower charge of the program has not materially increased the quality of the market in the NASDAQ Market Center with respect to NASDAQ-listed securities. As such, NASDAQ believes that applying the normal rate in the absence of the desired improvement in the market at the lower rate is an equitable allocation of a reasonable fee. Moreover, NASDAQ believes that the removal of the reduced fee is not unfairly discriminatory because it applies the default rate to Tape C securities, while maintaining a lower incentive rate in securities in Tape A and B securities, where the reduced fee has been effective in improving the market in such securities in NASDAQ. NASDAQ believes that the current market quality in Tape C securities in the NASDAQ Market Center should continue, notwithstanding the elimination of the reduced charge. Accordingly, NASDAQ's proposed change is designed to maintain the benefits associated with the QMM program while reducing its cost, thereby making the program sustainable in the longer term.

The changes to the NBBO Setter Incentive program are consistent with a fair allocation of a reasonable fee and not unfairly discriminatory because they are intended to encourage members to add liquidity at prices that benefit all NASDAQ market participants and the NASDAQ market itself, and enhance price discovery, by establishing a new NBBO or allowing NASDAQ to join the NBBO established by another trading center. As the rule is currently written, only QMMs are precluded from receiving both a credits under the NBBO Setter Incentive program and the ISP. NASDAQ believes that it is an equitable allocation of a reasonable fee to extend the restriction on receiving multiple credits currently imposed on QMMs to all members because both QMMs and non-QMM members participating in the NBBO Setter Incentive program and ISP are providing the same market improvement under the two programs. Likewise, the Exchange believes that removing the distinction between QMMs and non-QMM members is not unfairly discriminatory because the change eliminates a distinction currently made in the rules applied to members that provide the same improvement to market quality under the ISP and NBBO Setter Incentive program.

The proposed increase to the charge assessed on members with MOC and/or LOC orders in securities listed on NASDAQ, which are executed in the NASDAQ Closing Cross and entered through a single MPID that represents more than 0.06% of Consolidated Volume during the month is reasonable because it aligns the fee assessed with the default rate assessed for orders that execute in the NASDAQ Market Center. NASDAQ notes that current lower charge is designed to attract buyers to the NASDAQ Closing Cross and to incentivize members to use MOC and LOC orders, thereby providing a deep market and greater participation in the Closing Cross. NASDAQ is increasing the charge to cover costs associated with maintaining and improving the Closing Cross system. Accordingly, NASDAQ believes it is reasonable to assess the default fee of $0.0030 per share executed of a NASDAQ-listed security on members that remove liquidity in the NASDAQ Closing Cross. Moreover, NASDAQ believes that the fee is equitably allocated because all members with MOC and/or LOC orders in Tape C securities listed on NASDAQ that are executed in the NASDAQ Closing Cross and entered through a single MPID that represents more than 0.06% of Consolidated Volume during the month are assessed the same charge. The Exchange believes that increasing the charge does not discriminate unfairly because it is a modest increase tied to the benefit derived from participating in the Closing Cross.

NASDAQ believes that the increase in the charge for TFTY orders that execute in venues other than NASDAQ OMX BX, NASDAQ OMX PSX, and in the case of Tape A securities, also venues other than NYSE is reasonable because the Exchange is raising the fee [sic] modest amount to account for costs associated with routing such orders to other venues. In this regard, NASDAQ notes that the fee is lower than fees assessed for routing and execution of other orders in securities of each of the three Tapes. NASDAQ believes that the proposed increase is equitably allocated because it will apply to all members that receive an execution in a TFTY order in the venues noted above. Lastly, the Exchange believes that the proposed fee increase is not unfairly discriminatory because it represents a modest increase in the charge assessed, which continues to be lower than the charges assessed for the execution of TFTY orders at other venues.

The increase in the charge for QDRK, or QCST orders in securities of all three Tapes that execute in a venue other than the NASDAQ Market Center is reasonable because it represents a modest increase in the fee to account for increased costs associated with routing orders to other venues than NASDAQ. The proposed increase in the charge is equitably allocated because all members that enter QDRK or QCST orders in any security of the Tapes that executes in another venue [sic]. The proposed increase in the charge is not unfairly discriminatory because it raises an already significantly reduced rate for certain routed orders that execute in a venue other than the NASDAQ Market Center as compared to charges assessed for other routed orders.

The elimination of the $0.0011 per share credit provided to members entering QCST orders that execute in BX is reasonable because NASDAQ is merely eliminating the credit provided for such an execution, and in its place assessing no charge. A QCST order

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4) and (5).

simultaneously accesses the NASDAQ book and routes to other venues, including BX.[14] Elimination of the credit is equitably allocated and not unfairly discriminatory because all members that receive a QCST execution on BX will continue to receive the benefit of reduced fees for such executions in a security of any of the three Tapes. NASDAQ notes that the proposed elimination of the credit balances the desire to provide certain incentives with the costs the Exchange incurs in providing such incentives, which ultimately affect the ability to sustain them.

The elimination of the $0.0004 per share credit provided to members entering DOTI orders that execute on BX is reasonable because NASDAQ is merely eliminating the credit provided for such an execution, and in its place is assessing no charge. A DOTI order attempts to execute against orders in the NASDAQ book at a price equal to or better than the NBBO. If unfilled, the order will then route to BX where it will also attempt to execute at the NBBO or better. If still unfilled, the order will route to NYSE or NYSE Amex where the order will remain until it is executed or cancelled. Elimination of the credit is equitably allocated and not unfairly discriminatory because all members that receive a DOTI order execution on BX will continue to receive the benefit of reduced fees for such executions. NASDAQ notes that the proposed elimination of the credit balances the desire to provide certain incentives with the costs the Exchange incurs in providing such incentives, which ultimately affect the ability to sustain them.

NASDAQ believes that the changes to the fees assessed for participation the NASDAQ Opening, Closing and IPO/Halt Crosses are consistent with a fair allocation of a reasonable fee and not unfairly discriminatory. NASDAQ believes that the fees are reasonable because supporting the crosses requires capital investment to maintain a system that facilitates an orderly auction process. Specifically, NASDAQ is proposing a modest fee increase for MOC, LOC, GTC and IOC orders executed in the Opening Cross, which will bring the charge in line with the charge assessed for MOC and LOC orders that are executed in the Closing Cross. Similarly, NASDAQ is proposing to assess a new charge on orders that execute in the Opening and Closing Crosses for orders that are not MOC, LOC, GTC or IOC, with respect to the Opening Cross, and not MOC and LOC orders with respect to the Closing Cross. The Exchange is also modestly increasing the charge assessed for all orders that execute in an IPO/Halt Cross. The proposed fees are equitably allocated because they apply a fee on all members that benefit from participation in the Opening, Closing and IPO/Halt Crosses, and are based on the type of order entered and contribution to market quality. Similarly, the proposed fees are not unfairly discriminatory because they are based on the type of order executed in the cross and the benefit to market quality that such orders provide.

NASDAQ believes that the proposed exclusion of the availability of credits provided under Rule 7014 to DLPs in Qualified Securities is consistent with a fair allocation of a reasonable fee because the program is designed to supersede other pricing applicable to the execution of securities provided in Rule 7018, and extension of the exclusion to the rebate programs under 7014 is consistent with the nature of the program. As described above, the DLP is specifically designed to apply to NASDAQ market makers in certain Qualified Securities. DLPs receive specific credits and charges based on the nature of their transactions in their Qualified Securities. Accordingly, NASDAQ believes that it limiting the benefits a DLP receives to the DLP program is reasonable and a fair allocation of credits. Likewise, the Exchange believes that removing the distinction between Rule 7018 credits and charges, and those provided under Rule 7014 is not unfairly discriminatory because it is consistent with the exclusive nature of the DLP program.

The Exchange also believes that eliminating the charge assessed DLPs for entering an order that executes in the NASDAQ Market Center or attempts to execute in the NASDAQ Market Center prior to routing is reasonable because it permits DLPs to achieve a better rate for such a routed orders to the extent that the order is eligible for a lower charge under other provisions of the fee schedule, thus making participation in the program more attractive. The Exchange believes the elimination of the charge is an equitable allocation of the fee because it will make DLPs eligible to achieve reduced rates in the same manner as other members are under Rule 7018. NASDAQ believes that elimination of the charge is not unfairly discriminatory because it allows DLPs to receive a benefit that other members currently enjoy.

Lastly, the elimination of the cap on the credit provided in Rule 7018(i) is reasonable and an equitable allocation of the credit because it is designed to promote greater participation in the program thereby improving market quality in Qualified Securities, which benefits all market participant in NASDAQ. Similarly, NASDAQ does not believe that the removal of the credit cap is unfairly discriminatory because the greater participation in the DLP program that the change is designed to encourage will benefit all market participants to the extent that the change is effective.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[15] NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, although the change to the QMM program may limit the benefits of the program in NASDAQ-listed securities, the incentive program in question remains in place and is itself reflective of the need for exchanges to offer significant financial incentives to attract order flow. The changes to routing fees and credits do not impose a burden on competition because NASDAQ's routing services are optional and are the subject of competition from other exchanges and broker-dealers that offer routing services, as well as the ability of members to develop their own routing capabilities. The new and increased fees for execution in the NASDAQ crosses are reflective of a need to support and improve NASDAQ systems, which in turn benefit market quality and ultimately, competition. Finally, the changes to DLP program are reflective of the need for the Exchange to offer incentives to market participants balanced with the need to keep costs

[14] Rule 4758(a)(1)(A)(xiii).

[15] 15 U.S.C. 78f(b)(8).

associated with providing the incentives at a level that will ensure the sustainability of the programs. NASDAQ is eliminating a charge under the program that will allow DLPs to be eligible to receive reduced rates for removing liquidity. NASDAQ is also removing a fee [sic] cap, which may attract more participation in the program. The DLP program is entirely voluntary, and as a consequence members may elect to participate in other incentive programs under which they may receive benefits for improving the market. In sum, if the changes proposed herein are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. Accordingly, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,[16] and paragraph (f)[17] of Rule 19b–4, 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2014–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–015. 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–NASDAQ–2014–015, and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03561 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71536; File No. SR–MSRB–2014–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed Revisions to MSRB Rule G–30, on Prices and Commissions and the Deletion of Rule G–18, on Execution of Transactions

February 12, 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 29, 2014, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of proposed revisions to MSRB Rule G–30, on prices and commissions and the deletion of Rule G–18, on execution of transactions (the ''proposed rule change'').

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2014-Filings.aspx*, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Summary of Proposed Rule Change

The purpose of the proposed rule change is to codify the substance of existing fair-pricing obligations of brokers, dealers, and municipal securities dealers (collectively, ''dealers'') and further streamline the MSRB's Rule Book. Fair-pricing provisions are currently organized in two separate rules, Rules G–18 and G–30, with interpretive guidance under Rule G–30 as well as under a third rule, Rule G–17, on fair dealing. We note that market participants support the objective of consolidating and codifying the existing substance of these rules and interpretive guidance.

To achieve this objective, the MSRB is proposing to consolidate Rules G–18 and G–30 into a single fair-pricing rule, and to consolidate the existing interpretive guidance under Rules G–17 and G–30 and codify that guidance in the same rule. Existing Rule G–18 provides a pricing standard for agency transactions, while existing Rule G–30(a) provides a pricing standard for principal transactions, with both rules using different formulations to reflect differences between the two types of trades. As a practical matter, the investor-protection function of the two provisions does not differ, and it is appropriate to organize these standards in a single rule, as proposed. In addition, the MSRB has issued extensive interpretive guidance under MSRB Rules G–17 and G–30 discussing fair pricing in general, as well as in specific scenarios. The proposed rule change would consolidate the substance of this guidance [3] and codify it into rule language.[4] The MSRB will archive this interpretive guidance, current as of January 1, 2013, on its Web site. 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.

The MSRB believes the new fair-pricing rule will significantly enhance regulated entities' ability to understand and comply with their fair-pricing obligations by organizing them together in a single location. Further, the relevant information from the existing interpretive guidance will be succinctly stated in the new rule. The MSRB believes this could be particularly beneficial for new municipal market entrants, which would be in a position to focus, with respect to fair-pricing obligations, on the new, consolidated rule. In sum, the MSRB believes that the proposed rule change will ease burdens on dealers and reduce costs by clarifying dealer obligations.

The structure of proposed Rule G–30 (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.

Following is a summary of the provisions and the supplementary material comprising proposed Rule G–30:

Rule Language

Proposed revised Rule G–30(a) applies to principal transactions and states that a dealer can only purchase municipal securities for its own account from a customer, or sell municipal securities for its own account to a customer, at an aggregate price (including any mark-up or mark-down) that is fair and reasonable.[5]

Proposed revised Rule G–30(b) applies to agency transactions. Subsection (i) states that when a dealer executes a transaction in municipal securities for or on behalf of a customer, the dealer must make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions. Subsection (ii) states a dealer cannot purchase or sell municipal securities for a customer for a commission or service charge in excess of a fair and reasonable amount.[6]

Supplementary Material

Supplementary Material .01 specifies five general principles concerning the fair-pricing requirements: (a) That a dealer, whether effecting a trade on an agency or principal basis, must exercise diligence in establishing the market value of the security and the reasonableness of the compensation received on the transaction; (b) that a dealer effecting an agency transaction must exercise the same level of care as it would if acting for its own account; (c) that a ''fair and reasonable'' price bears a reasonable relationship to the prevailing market price of the security; (d) that dealer compensation on a principal transaction is considered to be a mark-up or mark-down that is computed from the inter-dealer market price prevailing at the time of the customer transaction; [7] and (e) that reasonable compensation differs from fair pricing.[8]

Supplementary Material .02 provides a non-exhaustive list of relevant factors in determining the fairness and reasonableness of prices.[9]

Supplementary Material .03 provides a non-exhaustive list of relevant factors in determining the fairness and reasonableness of commissions or

[3] The formal fair-pricing guidance under current Rule G–30 that is to be codified was not filed with the Commission, and is as follows: *Review of Dealer Pricing Responsibilities* (Jan. 26, 2004) (''2004 Notice''); *Interpretive Notice on Commissions and Other Charges, Advertisements and Official Statements Relating to Municipal Fund Securities* (Dec. 19, 2001); *Republication of September 1980, Report on Pricing* (Oct. 3, 1984); *Interpretive Notice on Pricing of Callable Securities* (Aug. 10, 1979); *Interpretive Letter—Rules G–21, G–30 and G–32* (Dec. 11, 2001); and *Factors in pricing* (Nov. 29, 1993). The formal fair-pricing guidance under Rule G–17 that is to be codified that was not filed with the Commission is as follows: *Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities* (Jul. 14, 2009); *MSRB Reminds Firms of their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market* (Sept. 20, 2010); and *Bond Insurance Ratings—Application of MSRB Rules* (Jan. 22, 2008). The formal guidance under Rule G–17 that is to be codified that was filed with the Commission is contained in *Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals* (Jul. 9, 2012).

[4] The MSRB is separately proposing to consolidate its interpretive guidance under Rule G–17 related to time of trade disclosures, suitability of recommendations, and dealings with sophisticated municipal market professionals (''SMMPs'') and to codify that guidance 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). *See* Securities Exchange Act Release No. 70593 (Oct. 1, 2013), 78 FR 62867 (Oct. 22, 2013), File No. SR–MSRB–2013–07.

[5] Proposed revised Rule G–30(a) is substantially similar to the first clause of existing Rule G–30(a).

[6] Subsection (i) of proposed Rule G–30(b) is derived from current Rule G–18. Subsection (ii) is derived from the first clause of existing Rule G–30(b).

[7] This language was added to address comments the MSRB received in response to its August 6, 2013 request for comment on a draft of the proposed rule change.

[8] Supplementary Material .01 is derived from the 2004 Notice.

[9] Supplementary Material .02(a) is derived from the 2004 Notice. Supplementary Material .02(b) is derived from Rule G–30(a), the 2004 Notice, the *MSRB Interpretive Letter—Rules G–21, G–30 and G–32* (Dec. 11, 2001), the *MSRB Interpretive Letter—Factors in Pricing* (Nov. 29, 1993), the *Republication of September 1980, Report on Pricing* (Oct. 3, 1984); and the *Interpretive Notice on Pricing of Callable Securities* (Aug. 10, 1979).

service charges.[10] The proposed rule change makes it easier for market participants to find these relevant factors.

Supplementary Material .04 discusses the application of fair-pricing requirements to some of the situations that may create large intra-day price differentials.[11]

Finally, Supplementary Material .05 discusses the general duty under proposed revised Rule G–30(b)(i) of dealers operating alternative trading systems to act to investigate any alleged pricing irregularities on their systems brought to their attention, which duty applies equally to transactions effected for SMMPs.[12]

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[13] which provides that the MSRB's rules shall

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change preserves the substance of the current requirement that dealers must exercise diligence in establishing the market value of a security and the reasonableness of the compensation received on a transaction. This requirement protects investors and is central to the role of a dealer in facilitating municipal securities transactions. At the same time, the MSRB believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market. The MSRB believes it will ease burdens on dealers and reduce costs by clarifying dealer obligations. Most commenters agree and believe that the proposed rule change would promote regulatory efficiency. For example, one commenter supports the adoption of the proposed rule and believes it will ease the burden on firms and market participants seeking to comply with the rule.[14] Two commenters commend the MSRB's effort to promote regulatory efficiency through its proposed consolidation of Rules G–18 and G–30 and codification of related interpretive guidance.[15] Another commenter supports the MSRB's efforts to promote regulatory efficiency and is generally supportive of this rule consolidation which preserves the substance of existing fair-pricing requirements.[16]

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[17] The proposed rule change consolidates existing Rules G–18 and G–30 and codifies current interpretive guidance reasonably and fairly implied by those rules or Rule G–17. The proposed rule change makes no substantive change and, therefore, does not add any burden on competition. The MSRB believes, as discussed above, that the proposed rule change will, by contrast, ease burdens on dealers and reduce costs by clarifying dealer obligations. As noted, most commenters agree and believe that the proposed rule change would promote regulatory efficiency.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On August 6, 2013, the MSRB published a request for public comment on a draft of the proposed rule change.[18] The MSRB received five comment letters.[19]

Following are summaries of the comment letters:

- Support for the Proposal

Comments: Four of the five commenters generally support the MSRB's initiative to consolidate and codify the fair-pricing requirements. FSI supports the adoption of the proposed rule and believes it will ease the burden on firms and market participants seeking to comply with the rule. WFA and Wells Fargo Securities commend the MSRB's effort to promote regulatory efficiency through its proposed consolidation of Rules G–18 and G–30 and codification of related interpretive guidance. SIFMA supports the MSRB's efforts to promote regulatory efficiency and is generally supportive of this rule consolidation which preserves the substance of existing fair-pricing requirements.

MSRB Response: The MSRB believes these comments support the MSRB's statement on the burden on competition.

- Application to Municipal Fund Securities

Comment: ICI requests that, for the sake of clarity, the MSRB expressly limit the scope of the rule to municipal securities other than municipal fund securities that are 529 college savings plans. ICI believes that there are significant differences in the pricing and execution of transactions in municipal fund securities as compared with those involving other types of municipal securities. If, instead, the MSRB intends for the rule to apply to transactions involving municipal fund securities, ICI recommends that the MSRB clarify the

[10] Supplementary Material .03 is derived from existing Rule G–30(b), the 2004 Notice and *Republication of September 1980, Report on Pricing* (Oct. 3, 1984). Supplementary Material .03(a)(viii) refers to Rule 2830 of the National Association of Securities Dealers, Inc. (''NASD''), which provides a sales charge schedule for registered investment company securities, and remains in effect in the Financial Industry Regulatory Authority, Inc. rulebook. The MSRB recognizes that, due to the limitations of Section 15B(b)(2)(C) of the Act, it could not, by rule or interpretation, ''impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged'' by dealers for the sale of municipal fund securities. The MSRB believes, however, that the charges permitted by FINRA under NASD Rule 2830 may, depending upon the totality of the facts and circumstances, be a significant factor in determining whether a dealer selling municipal fund securities is charging a commission or other fee that is fair and reasonable.

[11] Supplementary Material .04 is derived from the 2004 Notice.

[12] Supplementary Material .05 is derived from interpretive guidance that was previously filed with the Commission and which is separately proposed to be generally codified in Rule G–48 based on its relevance to SMMPs. *See Restated Interpretive Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals* (Jul. 9, 2012).

[13] 15 U.S.C. 78o–4(b)(2)(c).

[14] *See* letter from David T. Bellaire, Esq., Executive Vice President and General Counsel, Financial Services Institute (''FSI''), dated September 20, 2013.

[15] *See* letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC (''WFA''), dated September 20, 2013 and letter from Gerald K. Mayfield, Senior Counsel, Wells Fargo & Company Law Department, Wells Fargo Securities, dated September 20, 2013.

[16] *See* letter from David L. Cohen, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), dated September 20, 2013.

[17] On September 26, 2013 the MSRB publicly announced its adoption of a formal policy to further integrate the use of economic analysis in MSRB rulemaking. By its terms, the policy does not apply to rulemaking initiatives, like the proposed rule change, that were initially presented to the MSRB Board of Directors before September 26, 2013. The MSRB has, however, historically taken account of the costs and burdens of its rulemaking initiatives, including those associated with the proposed rule change. Significantly, the proposed rule change would make no substantive change to existing requirements.

[18] *See* MSRB Notice 2013–15 (Aug. 6, 2013).

[19] Comment letters were received from: (1) FSI, (2) the Investment Company Institute (''ICI''), (3) SIFMA, (4) WFA, and (5) Wells Fargo Securities. Wells Fargo Securities' sole comment is that it strongly supports the comments specified in WFA's letter and that it urges the MSRB to strongly consider WFA's comments.

rule's meaning in the context of municipal fund securities.

MSRB Response: The MSRB intends for the proposed rule to apply to transactions involving municipal fund securities. Unless an MSRB rule specifically exempts municipal fund securities, the proposed rule applies to municipal fund securities. The MSRB believes no further clarification regarding the proposed rule's application to municipal fund securities is necessary. An investor that invests in a broker-sold 529 college savings plan may pay a fee provided to the dealer that represents the dealer's commission and any other charge. The proposed rule includes a non-exhaustive list of potentially relevant factors in determining the fairness and reasonableness of commissions and service charges, and the last listed factor in subsection (viii) pertains expressly to 529 plans.

• The Proposed Rule Should Be Revised To Include Additional Existing Guidance

Comments: SIFMA and WFA request that the proposed rule include a description of the relationship between mark-up, current inter-dealer market prices, and compensation in order to avoid confusion.

MSRB Response: The MSRB agrees that the requested addition would further clarify the proposed rule and has added language drawn from its existing guidance to address the commenters' concern. The added language is in Supplementary Material .01(d).

Comments: SIFMA requests that all factors discussed in existing MSRB guidance be detailed in Supplementary Material .02, including improved market conditions and trading history. WFA requests that the rule include all factors discussed in existing MSRB guidance.

MSRB Response: The MSRB does not believe that all factors discussed in existing MSRB guidance need be or should be specified in the streamlined, proposed rule. First, the MSRB believes that the factor specified in Supplementary Material .02(a) of the proposed rule sufficiently encapsulates the concept of ''improved market conditions.'' Second, like the factors specified in the existing guidance, the factors specified in the proposed rule are not exhaustive. The MSRB chose to include the factors that are listed in the non-exhaustive list based on its experience administering and interpreting Rules G–18 and G–30.

• The Proposed Rule Should Be Revised To Include New Guidance

Comment: SIFMA requests that the MSRB expressly recognize in commentary to the final rule that underlying ratings may not yet be updated by the relevant rating agency to reflect material events affecting an issuer or insurer and that dealers are neither under an obligation to determine pricing based on ratings believed to be inaccurate nor are they required to forecast ratings changes that have not yet occurred.

MSRB Response: The MSRB disagrees with this request at this time. The objective of this rulemaking initiative is to codify, not substantively change, the existing fair-pricing requirements.[20] This request goes beyond the scope of this rulemaking initiative, and the MSRB can consider this request as part of any consideration of substantive changes at a later date.

Comment: SIFMA believes the meaning of the term ''service charge'' should be clarified in the proposed rule.

MSRB Response: The MSRB disagrees with this request at this time. The objective of this rulemaking initiative is to codify, not substantively change, the existing fair-pricing requirements. This request goes beyond the scope of this rulemaking initiative, and the MSRB can consider this request as part of any consideration of substantive changes at a later date.

Comment: SIFMA requests that Supplementary Material .03, which lists factors that may affect the fairness and reasonableness of a commission or service charge, include the following factor: ''the presence of uniform commission arrangements disclosed to customers in advance of transacting that are considered by the dealer to be fair and reasonable.'' SIFMA states that this factor should be included because the proposed rule should ''acknowledge a common industry practice of having a standard pricing policy, for example, a uniform price per bond, rather than having charges vary based on the aforementioned factors.''

MSRB Response: The MSRB disagrees with this request at this time. The objective of this rulemaking initiative is to codify, not substantively change, the existing fair-pricing requirements. This request, seeking incorporation in the rule of what the commenter states is a common industry practice, goes beyond the scope of this rulemaking initiative, and the MSRB can consider this request as part of any consideration of substantive changes at a later date.

Comment: SIFMA states that MSRB staff has long provided informal guidance that, if a dealer cannot determine the fair market value of a municipal security after reasonable diligence and its customer needs to sell the securities, the dealer may effect the trade as an agency trade. SIFMA requests that the MSRB incorporate that informal staff guidance in this rule proposal.

MSRB Response: The MSRB disagrees with this request. The purpose of the proposed rule change is to codify existing formal MSRB guidance, not informal staff guidance. Thus, this request goes beyond the scope of this rulemaking initiative, and the MSRB can consider this request as part of any consideration of substantive changes at a later date. We note, in addition and without comment on the merits of any particular informal guidance, that because the proposed rule change makes no substantive change, the potential for any informal staff guidance to be provided that was previously provided would likewise be unchanged.

Comment: WFA suggests that certain content in the proposed rule's Supplementary Material .04, on Fair-Pricing Responsibilities and Large Price Differentials, should be organized in its own supplementary section. WFA believes the guidance concerning dealer duties when transacting in illiquid municipal securities does not belong in section .04 because the fact that a municipal bond is illiquid does not, by itself, suggest there will be a large intra-day price differential.

MSRB Response: Supplementary Material .04 (Fair-Pricing Responsibilities and Large Price Differentials) is derived from Review of Dealer Pricing Responsibilities (January 26, 2004), which is interpretive guidance under Rule G–30. The guidance referenced by WFA appears under an identical heading in the existing interpretive notice (Fair-Pricing Responsibilities and Large Price Differentials). This organization does not suggest a view on the part of the MSRB that illiquidity alone suggests there will be a large price differential. Indeed, Supplementary Material .04 states that the price differential for illiquid issues ''might generally'' be larger.

• Cross-Reference to Rule G–48

Comment: SIFMA believes a dealer's fair-pricing requirements, in certain agency transactions, are significantly

[20] *See* MSRB Notice 2013–15 (Aug. 6, 2013) (proposing to consolidate existing Rules G–18 and G–30 and ''codify existing guidance regarding fair pricing''); *id.* (stating the proposed rule ''preserves the substance of the existing fair-pricing requirements'').

affected by the status of a customer as a sophisticated municipal market professional (''SMMP'') and acknowledges that the substance of this reduced obligation may soon be codified in proposed Rule G–48.[21] SIFMA requests that the proposed rule, at a minimum, cross reference proposed Rule G–48. SIFMA believes a cross-reference will further assist dealers and other market participants who seek to understand, comply with, and enforce fair-pricing requirements.

MSRB Response: The MSRB disagrees with this request. Rule G–48, if approved, will expressly modify dealers' pricing obligations when dealing with SMMPS, and the MSRB does not believe a cross-reference to Rule G–48 is necessary.

• Reorganization of the Proposed Rule

Comment: SIFMA requests that the factors under proposed Supplementary Material .02(b)(vii) relating to ratings and call features be separately listed rather than combined given that they are independent considerations.

MSRB Response: The MSRB disagrees with this request. All of the factors included under Supplementary Material .02(b)(vii) relate directly to the subject category described—''the rating and call features of the security (including the possibility that a call feature may not be exercised).'' The MSRB believes the organization of the subsections is appropriate.

• Clarification Concerning Guidance That Is Not in the Proposed Rule

Comment: SIFMA requests clarification from the MSRB as to why certain MSRB interpretive guidance concerning pricing in the primary market is missing from the proposed rule. SIFMA highlights as examples: *Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities* (Jul. 14, 2009); *MSRB Interpretation of December 11, 2001* (differential re-offering prices); *MSRB Interpretation of March 16, 1984* (fixed-price offerings); and *Interpretive Notice Concerning the Application of MSRB Rule G–17 to Underwriters of Municipal Securities* (Aug. 2, 2012).

MSRB Response: The MSRB believes that the substance of all of the interpretive guidance relating to fair-pricing under Rule G–17, which includes *Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities* (Jul. 14, 2009) and *Interpretive Notice Concerning the Application of MSRB Rule G–17 to Underwriters of Municipal Securities* (Aug. 2, 2012), is incorporated in the proposed rule, except for guidance that pertains to retail order periods. The rationale for this limited exception is that the MSRB is considering codifying guidance concerning retail order periods under a separate rule or rules that pertain specifically to primary offerings and retail order periods. The substance of the relevant guidance from the cited *MSRB interpretive letter dated December 11, 2001* (differential re-offering prices), essentially that the resulting yield to the customer is the most important factor in determining the fairness and reasonableness of a price in any given transaction, is included in the proposed rule. The cited MSRB interpretive letter dated March 16, 1984, regarding fixed-price offerings does not contain any substantive guidance regarding fair pricing that would warrant codification. That letter addresses Rule G–11, which is a disclosure rule. Although the letter contains a one-sentence description of Rule G–30, that sentence does not contain any substantive interpretive guidance regarding fair pricing.

• Changes to Existing Fair-Pricing Requirements

Comment: WFA believes that any move by the MSRB to revise its existing fair-pricing requirements should be accompanied by a demonstration that market conditions have changed in a manner that makes it necessary and appropriate to impose a different standard.

MSRB Response: The proposed rule merely codifies the substance of existing requirements and does not impose any different standard. Although no substantive change is made here, we note that substantive changes can become necessary or appropriate for reasons other than changes in market conditions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–MSRB–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.

All submissions should refer to File Number SR–MSRB–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 the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2014–01 and should be submitted on or before March 12, 2014.

[21] *See* Securities Exchange Act Release No. 70593 (Oct. 1, 2013), 78 FR 62867 (Oct. 22, 2013), File No. SR–MSRB–2013–07.

For the Commission, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03566 Filed 2–18–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71532; File No. SR–NYSEMKT–2014–12]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule By Adopting a Market Access and Connectivity Subsidy

February 12, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 3, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Amex Options Fee Schedule (''Fee Schedule'') by adopting a Market Access and Connectivity Subsidy. The proposed change will be operative on February 3, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt a Market Access and Connectivity Subsidy (''MAC Subsidy'') to be paid to ATP Holders that provide access and connectivity to the Exchange to other ATP Holders and/or utilize such access themselves. The proposed change will be operative on February 3, 2014.

The Exchange proposes to enter into a subsidy arrangement with those ATP Holders that provide access and connectivity to the Exchange for the purposes of electronic order routing either to other ATP Holders and/or utilize such access themselves.[4] The MAC Subsidy would be paid to qualifying ATP Holders for certain executed electronic volumes—as described in more detail below—that are delivered to the Exchange by the qualifying ATP Holders' connection(s) to the Exchange. In order to qualify for the MAC Subsidy, ATP Holders would need to be able to interface with the Exchange System.[5] Further, in order to qualify, ATP Holders would be required to provide the Exchange with a list of each of the unique connections over which the ATP Holder would be sending orders to enable the Exchange to identify the qualifying order flow. The ATP Holder would be required to furnish this list of unique connections to the Exchange via email no later than the last business day of the month in which the ATP Holder would like to receive the MAC Subsidy.[6]

The MAC Subsidy would be paid on volume from electronically executed orders for Non-NYSE Amex Options Market Makers, Firms Proprietary, Professional Customers and Broker Dealers. The amount of the per contract MAC Subsidy paid to qualifying ATP Holders would vary based on the average daily volume (''ADV'') of electronically executed Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer and Broker Dealer contract volumes relative to the Total Industry Customer equity and Exchange-Traded Funds (''ETF'') ADV[7] according to the proposed schedule below:

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange notes that under this arrangement it will be possible for one ATP Holder to be eligible for the MAC Subsidy while another ATP Holder might potentially be liable for transaction charges associated with the execution of the order. Consider the following example, both A and B are ATP Holders but A does not utilize its own connections to route orders to the Exchange, and instead utilizes B's connections. Under this program, B will be eligible for the MAC Subsidy while A is liable for any transaction charges resulting from the execution of orders that originate from A, arrive at the Exchange via B's connectivity, and subsequently execute and clear at OCC, where A is the valid executing clearing member or give up on the transaction. Similarly, where B utilizes its own connections to execute transactions, B will be eligible for the MAC Subsidy, but would also be liable for any transaction resulting from the execution of orders that originate from B, arrive at the Exchange via B's connectivity, and subsequently execute and clear at OCC, where B is the valid executing clearing member or give up on the transaction.

[5] *See* Rule 900.2NY (38) (defining ''Exchange System'' as ''the Exchange's electronic order delivery, execution and reporting system for designated option issues through which orders and quotes of Users are consolidated for execution and/or display'').

[6] The ATP Holder would email the Exchange at *optionsbilling@nyx.com.* Thus, for example, an ATP Holder that wishes to qualify for the MAC Subsidy for executed volume routed over its connections in February must email the Exchange no later than the last business day in February and the email must identify the ATP Holder seeking the MAC Subsidy and must list of the unique connections utilized by the ATP Holder to provide Exchange System access to other ATP Holders and/or itself. Any subsidy payments would be made with a one month lag (*i.e.,* a subsidy earned for activity in February would be paid to the qualifying ATP Holder in conjunction with the reconciliation of March invoices).

[7] Total Industry Customer equity and ETF option ADV will be that which is reported for the month by The Options Clearing Corporation (''OCC'') in the month in which the MAC Subsidy might apply. For example, February 2014 Total Industry Customer equity and ETF option ADV will be used in determining what, if any, MAC Subsidy a qualifying ATP Holder may be eligible for on its electronic Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer and Broker Dealer transactions based on the amount of electronic Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer and Broker Dealer volume it executes in February 2014 relative to Total Industry Customer equity and ETF option ADV. Total Industry Customer equity and ETF option ADV comprises those equity and ETF contracts that clear in the customer account type at OCC and does not include contracts that clear in either the firm or market maker account type at OCC or contracts overlying a security other than an equity or ETF security. For reference, the 3-month average as of December 31, 2013 of Total Industry Customer equity and ETF ADV was 11,867,765 contracts.

Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer and Broker Dealer Electronic Contract ADV Tiers (excludes mini options and volumes associated with QCC trades).	Per Contract MAC Subsidy—Retroactive To All Qualifying Contract Volumes Upon Achieving A Higher ADV Tier (excludes mini options and volume associated with QCC trades).
At least .45% of Total Industry Customer equity and ETF option ADV ..	$0.04.
At least .85% of Total Industry Customer equity and ETF option ADV ..	$0.06.
At least 1.25% of Total Industry Customer equity and ETF ADV	$0.08.

The MAC Subsidy would be retroactive to all qualifying contract volumes upon achievement of a higher ADV tier. For example, if, in February, Total Industry Customer equity and ETF ADV is 11,867,765 contracts, the first tier of .45% of Total Industry Customer equity and ETF ADV would correspond to volume of 53,405. Thus, if in February, a qualifying ATP Holder has electronically executed ADV for any combination of Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer or Broker Dealer transactions of 63,000 contracts, the ATP Holder would be paid $0.04 for all qualifying contract volumes, not just those in excess of the tier—which in this example is 53,405. Continuing with this example, if this same qualifying ATP Holder had, in February, electronically executed ADV for any combination of Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer or Broker Dealer transactions of 43,000 contracts, the ATP would be paid nothing ($0.00) because the ATP Holder would have failed to achieve the minimum volume necessary to qualify for the MAC Subsidy.

In calculating the ADV of electronic Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer or Broker Dealer transactions, the Exchange would exclude volume from mini options and volume associated with QCC trades as both mini options and QCC trades are subject to their own pricing and/or rebates on the Fee Schedule. Similarly, volumes from mini options and volumes associated with QCC trades would not be eligible for the MAC Subsidy, as they too are subject to separate pricing and/or rebates on the Fee Schedule.

The Exchange proposes to add the MAC Subsidy to the Fee Schedule within a new section, at the end of the Fee Schedule, entitled ''NYSE AMEX OPTIONS: TRADE-RELATED REBATES OR SUBSIDIES FOR STANDARD OPTIONS''. The Exchange believes that creating this new section specific to any rebates or subsidies offered by the Exchange is warranted as it will enable participants to more readily locate all such rebates or subsidies within the Fee Schedule as opposed to including them elsewhere, for example, under ''NYSE AMEX OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS,'' which the Exchange believes could be misleading or confusing for participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [8] of the Act, in general, and Section 6(b)(4) and (5) [9] of the Act, 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 and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the MAC Subsidy is reasonable because it is designed to attract higher volumes of electronic equity and ETF volume to the Exchange from Non-NYSE Amex Options Market Makers, Firms Proprietary, Professional Customers and Broker Dealers, which will benefit all participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. Encouraging Non-NYSE Amex Options Market Makers, Firms Proprietary, Professional Customers and Broker Dealers to send higher volumes of orders to the Exchange will contribute to the Exchange's depth of book as well as to the top of book liquidity. Moreover, the Exchange believes that the proposed volume-based MAC Subsidy is both equitable and not unfairly discriminatory because any qualifying ATP Holder that offers market access and connectivity to the Exchange and/or utilize such functionality themselves will each be able to earn the MAC Subsidy based on the amount of electronic Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer and/or Broker Dealer business that an ATP Holder executes on the Exchange, at each tier, on an equal and non-discriminatory basis. The sole basis for differentiation among the tiers will be participant volume on the Exchange.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to pay the proposed MAC Subsidy to the ATP Holder that is providing Market Access and Connectivity, even when a different ATP Holder may be liable for transaction charges resulting from the execution of the orders upon which the subsidy might be paid. The Exchange notes that this sort of arrangement already exists within the Industry and even on the Exchange. First, the Exchange would point out that the existing Floor Broker Rebate for Executed QCC Orders results in a situation where the Floor Broker is earning a rebate and one or more different ATP Holders are potentially liable for the Exchange transaction charges applicable to QCC trades. In establishing the Floor Broker Rebate, the Exchange stated,

> In light of the fact that the Exchange does not offer a front-end for order entry, unlike some of the competing exchanges, the Exchange believes it is necessary from a competitive standpoint to offer this rebate to the executing Floor Broker on a QCC order. The Exchange expects that the rebate offered to executing Floor Brokers will allow them to price their services at a level that will enable them to attract QCC order flow from participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver QCC orders directly to the Exchange systems.[10]

The Exchange's rationale for offering the MAC Subsidy in the manner proposed is very much the same. The Exchange, lacking a front-end for order entry, is seeking to subsidize those ATP Holders that develop and maintain one for their own use and/or make it available to other ATP Holders. This sort of arrangement has been effective in the past—paying one ATP Holder a rebate or subsidy based on another ATP Holder's activity—and has not been found to be unreasonable, inequitable nor unfairly discriminatory by virtue of the Floor Broker Rebate not being subject to suspension. Second, the Exchange notes that the Chicago Board of Options (''CBOE'') offers an Order Routing Subsidy (''ORS'') which, like the current proposal, allows CBOE to enter into subsidy arrangements with CBOE Trading Permit Holders (''TPHs'')

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *See* Securities and Exchange Act Release No. 34–65472 (October 3, 2011), 76 FR 62887 (October 11, 2011) (SR–NYSEAmex–2011–72).

that provide certain order routing functionalities to other CBOE TPHs and/or use such functionalities themselves.[11] However, the CBOE also offers an ORS in which both CBOE members and CBOE non-members are eligible for a rebate. Specifically, under CBOE's program, CBOE members are eligible to receive exchange transaction fees on transactions that earn a non-CBOE member a subsidy payment.[12] The Exchange notes that this subsidy arrangement where both members and non-members may be eligible to earn a subsidy based on a different members activity, has not been deemed unreasonable, inequitable nor unfairly discriminatory.

The Exchange also believes that the proposed MAC Subsidy is reasonable because it is designed to enhance the competitiveness of the Exchange, particularly with respect to those exchanges that offer their own front-end order entry system or one they subsidize in some manner.[13]

The Exchange believes that excluding the volumes attributable to QCC executions and mini options is reasonable, equitable, and not unfairly discriminatory. QCC volumes are already counted toward a separate rebate that the Exchange pays to Floor Brokers who transact QCC trades.[14] If the Exchange were to count QCC volumes towards the volume tiers for the MAC Subsidy, the Exchange may have to raise fees for all other participants. The Exchange does not believe such a result would be reasonable or equitable. Mini options are subject to their own separate pricing on the fee schedule and feature a maximum rate per contract of $0.09 for electronic executions. The Exchange believes that this rate is attractive enough already and does not wish to pay an additional rebate or subsidy on top of the already discounted rate for mini options. Because all ATP Holders seeking to qualify for the MAC Subsidy would be treated equally with respect to QCC volume and mini options volume, the proposal to exclude these volumes from the tiers is not inequitable or unfairly discriminatory.

The Exchange further notes that while the MAC Subsidy is only being offered to qualifying ATP Holders for electronically executed Non-NYSE Amex Options Market Makers, Firms Proprietary, Professional Customers and Broker Dealers volumes and not, for example, on the electronic volumes of NYSE Amex Options Market Makers or Customers, this too is both reasonable, equitable and not unfairly discriminatory. The Exchange notes that both NYSE Amex Options Market Maker and Customer volumes already have the opportunity to be used to earn rebates,[15] discounts or fee caps. Further the Exchange notes that currently, Customers are charged $0.00 per contract for both electronic and manual or outcry executions on the Exchange. As noted, Customer volumes are already eligible for various rebates on the Exchange, specifically the Customer Electronic Complex Order ADV Tiers which establishes a rebate paid to Order Flow Providers (''OFPs'') for electronically executed Customer Complex Orders; the Customer Electronic ADV Tiers, which establishes a rebate paid to OFPs for electronically executed simple or non-Complex Customer Orders; and lastly, the Floor Broker Rebate for Executed QCC Orders establishes a rebate paid to Floor Brokers for executed QCC Orders, including those where one side of the QCC Order is a Customer. The Exchange believes that the availability of these rebates for Customer volumes does not warrant paying an additional rebate or subsidy on Customer volumes at this time and the Exchange is therefore excluding Customer volumes from the proposed MAC Subsidy.[16]

With respect to NYSE Amex Options Market Makers, as noted above, the Exchange already offers them volume-based discounts and the ability to trade at a nominal rate of $0.01 per contract upon hitting a monthly fee cap of $350,000. The Exchange believes that the volume-based discounts, coupled with the monthly fee cap, already provide ample incentive for attracting NYSE Amex Options Market Maker volumes to the Exchange and that no further subsidy is warranted at this time. The proposed MAC Subsidy is designed to attract higher margin business to the Exchange, business which at present has no opportunity to transact at rates anywhere close to the rate charged to Customers ($0.00) or NYSE Amex Options Market Makers ($0.01 for capped Market Makers). To offer the proposed MAC Subsidy on NYSE Amex Options Market Maker and Customer electronic volumes would require funding from some other source, such as raising fees for other participants. As a result, the Exchange believes it is appropriate to offer the MAC Subsidy on just Non-NYSE Amex Options Market Makers, Firms Proprietary, Professional Customers and Broker Dealers that are charged higher per contract transaction fees than either NYSE Amex Options Market Makers or Customers.[17] The Exchange notes that it is commonplace within the options industry for exchanges to charge different rates and/or offer different rebates depending upon the capacity in which a participant is trading. For these reasons, the Exchange believes that the proposed change to offer a MAC Subsidy to qualifying ATP Holders on certain electronic volumes is reasonable, equitable and not unfairly discriminatory.

Finally, the Exchange believes that adding a new subsection to the end of the Fee Schedule entitled, ''NYSE AMEX OPTIONS: TRADE-RELATED REBATES OR SUBSIDIES FOR STANDARD OPTIONS'' is reasonable as

[11] *See* Securities Exchange Act Release No. 34–55629 (April 13, 2007), 72 FR 19992 (April 20, 2007) (SR–CBOE–2007–34) (describing CBOE Order Router Subsidy (''ORS'') Program, which allows CBOE to enter into subsidy arrangements with CBOE TPHs that provide certain order routing functionalities to other CBOE TPHs and/or use such functionalities themselves); CBOE Fee Schedule, *available at https://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf* (which also describes CBOE's ORS Program).

[12] *See* Securities and Exchange Act No. 34–63631 (January 3, 2011), 76 FR 1203 (January 11, 2011) [sic] (SR–CBOE–2010–117) (extending the Order Routing Subsidy program to establish such subsidy arrangements with broker-dealers that are not CBOE TPH (each, a ''Participating Non-CBOE TPH'' or ''Participant'') and to extend the program to permit a Participant to receive subsidy payments for providing an order routing functionality to broker-dealers that are not CBOE TPHs.'')

[13] *See, e.g., supra* note 10; Securities Exchange Act Release No. 34–54121 (July 10, 2006), 71 FR 40566 (July 17, 2006) (SR–ISE–2006–31) (describing PrecISE, which is a front-end, order entry application for trading options utilized by International Securities Exchange (''ISE''). PrecISE is also described on ISE's Web site, *available at http://www.ise.com/options/precise/*.

[14] *See* Securities Exchange Act Release No. 65472 (Oct. 3, 2011), 76 FR 62887 (Oct. 11, 2011) (SR–NYSEAmex–2011–72).

[15] *See* NYSE Amex Options Fee Schedule, nn5 & 17 (describing the NYSE Amex Options Market Maker volume discounts and monthly fee cap; and the rebate program for Customer electronic equity and ETF volumes, respectively), *available at https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_amex_options_fee_schedule_for_1-8-14.pdf*.

[16] The Exchange notes that while the CBOE Order Routing Subsidy does not exclude Customer volumes from the subsidy, the CBOE does charge Customer transaction fees, which the Exchange does not (*see supra* note 12 (CBOE Fee Schedule, which details the transaction charges applicable to Customers for transactions in options on ETF's and ETN's)). The Exchange believes that the lack of transaction fees and myriad other rebates available to Customers on the Exchange justifies excluding them from the MAC Subsidy.

[17] For example, the base rate charged to the Non-NYSE Amex Options Market Makers, Firms Proprietary, Professional Customers and Broker Dealers for electronic executions is $0.43, $0.32, $0.32 and $0.32, respectively; whereas the base rate charged to NYSE Amex Options Market Makers for electronic executions range from $0.13 for Specialist and e-Specialists; to $0.20 for NYSE Amex Options Market Makers who trade with Non-Directed order flow; to $0.00 for Customers. *See id.* (''NYSE Amex Options Trade-Related Charges for Standard Options Contracts'').

it will make finding such rebates or subsidies easier for all participants. For this same reason the Exchange believes it is also equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change will enhance the competiveness of the Exchange relative to other exchanges that offer their own front-end order entry system or one they subsidize in some fashion.[18] The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[19] of the Act and subparagraph (f)(2) of Rule 19b–4[20] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–12. 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 at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–12, and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

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[18] *See supra* note 13.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(2).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71543; File No. SR–BOX–2014–08]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change To Amend BOX Rule 8050 (Market Maker Quotations) To Modify the Quotation Requirement

February 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 4, 2014, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 8050 (Market Maker Quotations) to modify the quotation requirement. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BOX Rule 8050 (Market Maker Quotations) to modify the quotation requirement. This is a competitive filing that is based on a proposal submitted by NASDAQ Options Market (''NOM'').[3]

Background

Currently, the Exchange requires that a Market Maker's bid and offer for a series of options contracts shall be accompanied by the number of contracts at that price the Market Maker is willing to buy from or sell to Customers. Every Market Maker bid or offer must have an initial size of at least ten (10) contracts, except for Jumbo SPY Options that must have an initial size of at least one (1) contract.[4] This initial minimum size applies regardless of whether a Market Maker receives an RFQ message,[5] is called upon by an Exchange Official to post a quote,[6] or otherwise.[7] The initial size of the Market Maker's valid quote may subsequently be depleted in size below the minimum size of ten (10) contracts due to executions with the quote and the quote shall remain valid as long as the Market Maker's quote has not been changed or updated as to price or size. This depleted quote size shall remain valid until (i) the Market Maker's quoted size is completely exhausted, whereupon the Market Maker must once again post a valid quote with a valid initial size of ten (10) contracts, or (ii) the Market Maker updates or changes the posted quote, whereupon such quote must meet the minimum initial size of ten (10) contracts in order to be deemed valid.

Proposal

The Exchange proposes to lower the Market Maker bid or offer initial size requirement. Specifically, the Exchange proposes to make the required minimum number of contracts for a Market Maker's bid or offer in options one (1) contract. This reduction in the minimum number of contracts for a Market Maker's bid or offer shall apply regardless of whether a Market Maker receives an RFQ message, is called upon by an Exchange official to post a quote, or otherwise. The Exchange notes that a minimum quoting requirement of one (1) contract is not novel and certain exchanges have a minimum quoting requirement of one (1) contract for all classes.[8] Additionally, certain exchanges set the minimum quoting requirement on a class-by-class basis, provided the minimum set by the exchange is at least one (1) contract.[9]

As part of this proposal the Exchange proposes to remove a portion of IM–8050–1. With the reduction of the minimum quoting requirement from ten (10) contracts to one (1) contract, the portion of IM–8050–1 that deals with the depletion of a Market Maker's initial quote is no longer applicable. This portion of the current IM applied to situations where the size of a Market Maker's quote depletes below the minimum size of ten (10) contracts due to executions with the quote. Once the minimum quoting requirement is one (1) contract, it will no longer be possible for executions to reduce the quote below the minimum size.

Additionally, the Exchange is proposing to remove the current exception for Jumbo SPY Options in Rule 8050(b). This exception sets the minimum initial size of a Market Maker's bid and offer in Jumbo SPY Options at one (1) contract. Now that the Exchange is proposing to make the minimum initial size of a Market Maker's bid and offer one (1) contract for all series of options, it is no longer necessary to have an exception for Jumbo SPY Options.

The BOX Rules will continue to ensure that Market Makers actively quote. For example, BOX Rule 8050(e) states that, on a daily basis, a Market Maker must during regular market hours make markets and enter into any resulting transactions consistent with the applicable quoting requirements specified in these rules, such that on a daily basis a Market Maker must post valid quotes at least sixty percent (60%) of the time that the classes are open for trading. These obligations will apply to all of the Market Maker's appointed classes collectively, rather than on a class-by-class basis.

The Exchange believes that the efficiency of its market can be enhanced by permitting Market Makers to enter quotations for one (1) or more contracts rather than requiring that they enter quotations for ten (10) or more contracts in series in which they are appointed. The Exchange believes that modifying the quotations requirements in this manner will encourage Market Makers to provide more liquidity to Participants. An overall increase in liquidity will benefit investors and serve the public interest. Additionally, the Exchange believes that modifying these quotations requirements could encourage Market Markets to quote in additional series. By reducing the quoting requirement Market Makers may be more willing to provide quotations in additional series that they would not otherwise quote in due to the risk associated with quoting at a higher number of contracts.

The Exchange believes further that the proposed change to the quoting requirement of Market Makers is pro-competitive in that it will attract more Market Makers, and additional liquidity, onto the Exchange. This should be advantageous to all market participants trading on the Exchange.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

[3] *See* Securities Exchange Act Release No. 58305 (August 5, 2008), 73 FR 46696 (August 11, 2008) (Notice of Filing and Immediate Effectiveness of SR–NASDAQ–2008–063).

[4] *See* Rule 8050(b).

[5] If a Market Maker is not already posting a two-sided quote in a series in a class in which he is appointed as Market Maker, he must post an initial valid two-sided quote within three (3) seconds of receiving any RFQ message issued. A valid two-sided quote must be continuously maintained, without interruption for at least thirty (30) seconds. However, if during the 30 second time frame the quote becomes invalid, a Market Maker must as soon as practicable, but within five (5) seconds, post a valid quote. *See* Rule 8050(c)(2).

[6] A Market Maker may be called upon by an Exchange Official to submit a single valid two-sided quote in one or more of the series of an options class to which the Market Maker is appointed whenever, in the judgment of such official, it is necessary to do so in the interest of fair and orderly markets. The Market Maker must post the valid quote within three (3) seconds of receiving such message. A valid two-sided quote must be continuously maintained, without interruption by the Market Maker for at least thirty (30) seconds. However, if during the thirty (30) second time frame the quote becomes invalid, a Market Maker must as soon as practicable, but within five (5) seconds, post a valid quote. *See* Rule 8050(c)(4).

[7] *See* IM–8050–1 to Rule 8050.

[8] *See* NASDAQ Options Market (''NOM'') Rule Chapter VII, Sec. 6(a), NASDAQ OMX BX (''BX'') Rule Chapter VII, Sec. 6 (Market Maker Quotations) and BATS Exchange, Inc. (''BATS'') Rule 22.6 (Market Maker Quotations).

[9] *See* Miami International Securities Exchange, LLC (''MIAX'') Rule 604 (Market Maker Quotations), International Securities Exchange, LLC (''ISE'') Rule 804 (Market Maker Quotations), NASDAQ OMX PHLX LLC (''Phlx'') Rule 1014 (Obligations and Restrictions Applicable to Specialists and Registered Options Traders) and Chicago Board Options Exchange, Incorporated (''CBOE'') Rules 6.2B, 8.7, 8.14 and 8.15A.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed changes are consistent with the statute in that they are designed to facilitate transactions in options on BOX by encouraging participants to provide liquidity through BOX. If the proposal succeeds in attracting additional liquidity providers and additional liquidity, then BOX will then match more buying and selling interest between and among all BOX Participants.

The Exchange believes that the proposal conforms Market Maker quotation requirements to those of competing markets and will promote the application of consistent trading practices. Therefore, the Exchange believes the proposal promotes just and equitable principles of trade and serves to protect investors and the public interest.

The Exchange believes the proposal will allow Market Makers on the Exchange to follow rules that are similar to the rules of other options exchanges that do not impose a minimum quoting obligation of ten (10) contracts on their market makers, and will allow Market Makers to focus on aspects of their operations that contribute to the market in a more efficient and meaningful way.

Additionally, the Exchange believes the proposal removes a quoting requirement that is unnecessary, as evidenced by the fact that it does not exist on other competitive markets. The Exchange operates in a highly competitive market comprised of twelve U.S. options exchanges in which sophisticated and knowledgeable market participants can, and do, send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. With this proposal, the Market Maker will be relieved of a market maker requirement that does not materially improve the quality of the markets. On the contrary, the initial size requirement of at least (10) contracts creates a burden on Market Makers that does not exist on numerous other competitive markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by NOM.[12] The Exchange believes the proposal to reduce the minimum quoting requirement for Market Makers from ten (10) contracts to one (1) contract is consistent with the market maker obligations on other option exchanges. The Exchange believes that its proposal is pro-competitive and should serve to attract market making activity and increase liquidity on the Exchange, which will benefit all Participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

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–BOX–2014–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2014–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2014–08 and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03572 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

[12] *See supra,* note 3.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71542; File No. SR–NYSEArca–2014–17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule Regarding Transaction Fees and Credits

February 12, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 3, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding transaction fees and credits. The Exchange proposes to implement the fee change effective February 3, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Exchange's transaction fees to provide an incentive for more business to be executed on the Exchange. The Exchange proposes to implement the fee change effective February 3, 2014.

NYSE Arca is proposing to adopt volume based incentives to bring more business to the Exchange as well as fee changes to offset the incentives.

The Exchange will offset the incentives by raising the Take Liquidity fees for Lead Market Makers (''LMMs''), NYSE Arca Market Makers, and Firms and Broker Dealers to $0.49 per contract in Penny Pilot issues.[4] The Exchange is also proposing to raise the Take Liquidity fee in non-Penny Pilot issues to $0.87 per contract for LMMs and for NYSE Arca Market Makers; to $0.89 for Firms and Broker Dealers; and to $0.85 for Customers.[5]

NYSE Arca is proposing modifications to its Customer Monthly Posting Credit Tiers and Qualifications. The proposal will reduce the number of tiers from six to five; and will offer two alternatives to achieve the highest tier. The Exchange is proposing that to earn the highest posting credit of $0.47, the qualifying market share of Total Industry Customer equity and ETF option volume Average Daily Volume (''ADV'') from executed Customer Posted Orders in both Penny Pilot and non-Penny Pilot Issues be reduced from 0.95% to 0.75%. In addition, the Exchange proposes to increase the posting credit for achieving 0.85% of Total Industry Customer equity and ETF option ADV from Posted Orders in Penny Pilot issues from all account types from $0.44 to the highest posting credit of $0.47.

The Exchange is also proposing to adopt a Customer Incentive Program to provide four alternative ways for an OTP Firm to achieve an additional posting credit on Customer Posting Credits. By doing so, an OTP Firm may use increased business directed to NYSE Arca to provide a greater benefit to Customers that post orders on the Exchange. An OTP Firm may receive an additional posting credit, but only one additional credit, in the following ways:

- If an OTP Firm achieves at least 0.75% of Total Industry Customer equity and ETF option ADV [6] from executed Customer Posted Orders in both Penny Pilot and non-Penny Pilot Issues, of which at least 0.28% of Total Industry Customer equity and ETF option ADV is from executed Customer Posted Orders in non-Penny Pilot Issues, they will earn an additional $0.02 credit on all Customer Posting Credits.
- If an OTP Firm achieves an ADV from executed Market Maker Posted Orders equal to 0.70% of Total Industry Customer equity and ETF option ADV they will earn an additional $0.01 credit on all executed Customer Posting Credits.
- If an OTP Firm achieves an ADV from executed Market Maker Posted Orders equal to 1.40% of Total Industry Customer equity and ETF option ADV they will earn an additional $0.02 credit on all executed Customer Posting Credits.
- If an OTP Firm achieves Executed ADV of Retail Orders of 0.3% ADV of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market they will earn an additional $0.02 credit on all Customer Posting Credits.

The Exchange also proposes to add a Market Maker Incentive to encourage OTP Firms to augment an increase in executed Customer Posted Volume on NYSE Arca with increased ADV from executed Market Maker Posted orders. An OTP Firm that achieves both a level of at least 0.75% of Total Industry Customer equity and ETF option ADV from executed Customer Posted Orders in both Penny Pilot and non-Penny Pilot Issues and an ADV from executed Market Maker Posted Orders equal to 0.70% of Total Industry Customer equity and ETF option ADV will have a $0.41 credit applied to posted electronic Market Maker executions in Penny Pilot Issues, rather than the standard $0.28 credit.

The Exchange notes that the calculations for the qualification thresholds for tiered Customer posting credits only include electronic executions. Qualified Contingent Cross (''QCC'') orders are neither posted nor taken; thus QCC transactions are not included in the calculation of posted or

[4] As provided under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade with a minimum price variation of $0.01 as part of a pilot program that is currently scheduled to expire on June 30, 2014. *See* Securities Exchange Act Release No. 71159 (December 20, 2013), 78 FR 79042 (December 27, 2013) (SR–NYSEArca–2013–145).

[5] Under NYSE Arca Options Rule 6.1(b)(29), the term ''Customer'' has the same definition as Rule 15c3–1(c)(6) under the Act, which excludes certain broker-dealers.

[6] Total Industry Customer equity and ETF option ADV includes Options Clearing Corporations calculated Customer volume of all types, including Complex Order Transactions, QCC transactions, and mini options transactions, in equity and ETF options.

taken execution volumes. The calculations do not include volume from mini-option transactions, nor do they include volume from Complex Order transactions. Orders routed to another market for execution are not included in the calculation of taking volume.

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that OTP Holders and OTP Firms, including Market Makers, would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed increase in the Take Liquidity fee for LMMs, Market Makers, and Firm and Broker Dealer orders in Penny Pilot issues is reasonable because it will result in the Exchange's fees remaining comparable to the Take Liquidity fees charged in Penny Pilot issues by other exchanges.[9] In addition, the proposed fee change is reasonable because it will generate revenue that will help to support the credits offered for posting liquidity, which are available to all market participants.

The Exchange believes that the proposed increase in the Take Liquidity fee for LMMs, Market Makers, and Firm and Broker Dealers and Customer orders in non-Penny Pilot issues is reasonable because it will result in the Exchange's fees remaining comparable to the Take Liquidity fees charged in non-Penny Pilot issues by other exchanges.[10] In addition, the proposed fee change is reasonable because it will generate revenue that will help to support the credits offered for posting liquidity, which are available to all market participants.

Similarly, the Exchange believes that the proposed changes in Take Liquidity fees in Penny Pilot issues are equitable and not unfairly discriminatory because the Exchange would uniformly assess all market participants, except Customers, the same fee. Customer order flow benefits the market by increasing liquidity, which benefits all market participants, thus Customers are assessed lower fees.

The Exchange believes that the proposed changes in Take Liquidity fees in non-Penny Pilot issues are equitable and not unfairly discriminatory because the increases are being applied in a similar manner to both non-Customers and Customers. It is equitable and not unfairly discriminatory to charge a lower fee for Market Makers and LMMs than for Firms or Broker Dealers because LMMs and Market Makers carry obligations to quote and commit capital that are not imposed on Firms or Broker Dealers. It is also not unfairly discriminatory to charge a lower fee for Customer transactions, as Customers do not have direct access to the market as do Market Makers, Firms, and Broker Dealers.

The Exchange believes the modifications to the Customer Monthly Posting Credit Tiers are reasonable because they are designed to attract additional Customer electronic equity and ETF option volume to the Exchange, and provide alternative methods of achieving the highest tier, which would benefit all participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. The changes are also reasonable in that they make it less difficult for an OTP Holder or OTP Firm to achieve the qualifications. Additionally, the exchange believes the proposed credits are reasonable because they would incent OTP Holders and OTP Firms to submit Customer electronic equity and ETF option orders to the Exchange and would result in credits that are reasonably related to the Exchange's market quality that is associated with higher volumes.

The Exchange believes that the proposed changes in the credits are equitable and not unfairly discriminatory because they will be available to all OTP Holders and OTP Firms that execute posted electronic Customer orders on the Exchange on an equal and non-discriminatory basis, in particular because they provide alternative means of achieving the same credit. The Exchange believes that providing methods for achieving the credits not based solely on posted electronic Customer Executions in Penny Pilot issues is equitable and not unfairly discriminatory because it would continue to result in more OTP Holders and OTP Firms qualifying for the credits and therefore reducing their overall transaction costs on the Exchange.

The Exchange believes the proposed Customer Incentive Program is reasonable because it is designed to attract both additional Customer electronic equity and ETF option volume to the Exchange, and also attract additional Market Maker volume to the Exchange, which would benefit all participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. Additionally, the Exchange believes the proposed credits are reasonable because they would incent OTP Holders and OTP Firms to submit Customer electronic equity and ETF option orders to the Exchange and would result in credits that are reasonably related to the Exchange's market quality that is associated with higher volumes.

The Exchange also believes that the proposed qualifications for the Customer Incentive Program are equitable and not unfairly discriminatory because the Exchange is continuing to provide more than one method of qualifying for an incentive.[11] For example, an OTP Firm may achieve an additional credit by posting a certain volume of orders, or they may achieve the same incentive by posting a certain volume of Market Maker orders. The Exchange also believes that the aspect of the proposed change related to the activity of an affiliated ETP Holder on NYSE Arca Equities is equitable and not unfairly discriminatory because it is designed to continue to bring additional posted order flow to NYSE Arca Equities, so as to provide additional opportunities for all ETP Holders to trade on NYSE Arca Equities.

The proposed Market Maker incentive is also reasonable because it is designed to attract higher volumes of Market Maker posted orders to the Exchange, which would benefit all market participants by offering greater price discovery, increased transparency, and

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] For example, BATS BZX Exchange Fee Schedule charges a fee of $0.48 per contract for Firm or Market maker orders that access liquidity in Penny Pilot issues; NASDAQ Options Market (''NOM''), Options Rules Chapter XV, Options Pricing, Section 2, charges Firms, non-NOM Market Makers and Broker Dealers, a fee of $0.49 for Removing Liquidity in Penny Pilot issues.

[10] For example, BATS BZX Exchange Fee Schedule charges a fee of $0.89 per contract for Firm or Market Maker orders that access liquidity in non-Penny Pilot issues; NOM Options Rules Chapter XV, Options Pricing, Section 2, charges Firms, non-NOM Market Makers and Broker Dealers a fee of $0.89 for Removing Liquidity in non-Penny Pilot issues, and charges Customers a fee of $0.85 for removing liquidity in non-Penny Pilot issues.

[11] Offering multiple ways to achieve a rebate has been deemed acceptable based on past and existing practice in the industry. For example see NOM Options Rules Chapter XV, Options Pricing, Section 2, which offers multiple methods of achieving the same rebate.

an increased opportunity to trade on the Exchange. Encouraging Market Makers to send higher volumes of orders to the Exchange would also contribute to the Exchange's depth of book as well as to the top of book liquidity. The Exchange also believes that the proposed credits are reasonable because they are within a range of similar credits available on other option exchanges.[12]

The Exchange believes that the proposed Market Maker Incentive is equitable and not unfairly discriminatory because it would apply to all Market Makers on an equal and non-discriminatory basis. The Exchange further believes that the proposed change is equitable and not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volumes in Market Maker posted orders, including both Penny Pilot issues and non-Penny Pilot issues.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed fee change reduces the burden on competition because it takes into account the value that various market participants add to the marketplace, as discussed above.

The increases in Take Liquidity fees will impact all non-Customer transactions in Penny Pilot issues at the same rate, and will impact all market participants, including Customers, in non-Penny Pilot issues with a similar increase across all account types. The proposed changes to the Customer Monthly Posting Credit Tiers, and the proposed Customer Incentives and the Market Maker incentive are designed to attract additional volume, in particular posted electronic Customer executions and posted electronic Market Maker executions, to the Exchange, which would promote price discovery and transparency in the securities markets thereby benefitting competition in the industry. As stated above, the Exchange believes that the proposed change would impact all similarly situated OTP Holders and OTP Firms that post electronic Customer executions on the Exchange equally, and as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants. In addition, providing an alternative qualification basis for certain tiers by including volume from affiliates allows a firm with a diverse business structure, but not a concentration on Customer orders only, to earn a higher credit for their Customers by posting order flow that improves the overall market quality, and encourages posting competitive prices, which result in better available markets for Customer orders.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[14] of the Act and subparagraph (f)(2) of Rule 19b–4[15] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, 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–

[12] For example, NOM Options Rules Chapter XV, Options Pricing, Section 2, offers a Market Maker credit of $0.40 per contract in Penny Pilot options for achieving a combination of Market Maker ADV and also qualifying for higher Tiered Customer and/or Professional Rebates.

[13] 15 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

NYSEArca–2014–17, and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03571 Filed 2–18–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71541; File No. SR–MIAX–2013–58]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the Exchange's By-Laws

February 12, 2014.

I. Introduction

On December 9, 2013, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), and Rule 19b–4 thereunder,[2] a proposed rule change to amend the By-Laws of MIAX (''MIAX By-Laws'' and, as amended, the ''MIAX Amended and Restated By-Laws''). The proposed rule change was published for comment in the **Federal Register** on December 30, 2013.[3] The Commission received no comments on the proposal. On February 11, 2014, the Exchange filed Amendment No. 1 to the proposal.[4] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Background and Description of the Proposal

On September 13, 2013, the Exchange filed an immediately effective proposed rule change to establish an Equity Rights Program (''ERP'').[5] Pursuant to the ERP, members of the Exchange that elected to participate in the program were issued units representing the right to acquire equity in the Exchange's parent holding company, Miami International Holdings (''MIH'') in exchange for (1) payment of an initial purchase price or the prepayment of certain transaction fees and (2) the achievement of certain liquidity volume thresholds on the Exchange over a 23-month period.[6] In that September 2013 filing to implement the ERP, the Exchange stated that ''[w]hen a participating Member acquires a certain number of units, the Member can appoint one director to the MIH Board [of Directors] and/or the MIAX Board [of Directors].''[7] In this December 2013 filing, the Exchange now proposes to amend the MIAX By-Laws to provide for the right of members that participate in the ERP to nominate or appoint a representative to the MIAX Board of Directors (''MIAX Board'' or ''Board''),[8] as well as to make other changes, including certain non-substantive changes.[9]

Specifically, the Exchange proposes that an ERP Member[10] that is not otherwise represented on the MIAX Board may have the right to nominate one ERP Director[11] or appoint an Observer[12] to the Board, as applicable.[13] As proposed, ERP Directors will be classified as ''Industry Directors''[14] with attendant voting rights, while Observers will be invited to attend meetings of the Board in a non-voting observer capacity.[15] If an

[17] 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. 71172 (December 23, 2013), 78 FR 79530 (December 30, 2013) (SR–MIAX–2013–58) (''Notice'').

[4] In Amendment No. 1, the Exchange amended the proposed rule text to provide that an ERP Member that is already represented on the MIAX Board of Directors, including as a Member Representative Director, would not be permitted to also hold an ERP Director position. Such ERP Members could, however, hold an Observer appointment on the MIAX Board of Directors. *See infra* Section V; *see also infra* notes 17, 44.

[5] *See* Securities Exchange Act Release No. 70498 (September 25, 2013), 78 FR 60348 (October 1, 2013) (SR–MIAX–2013–43) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Implement an Equity Rights Program) (''ERP Notice'').

[6] *See* Notice, *supra* note 3, 78 FR at 79530–79531; *and* ERP Notice, *supra* note 5, 78 FR at 60348.

[7] *See* ERP Notice, *supra* note 5, 78 FR at 60350 n.9 and accompanying text. In that filing, the Commission noted that MIAX would need to submit a separate proposed rule change to make changes to its corporate governance documents to accommodate aspects of the proposal that involve or affect the boards of either MIAX or MIH. *See id.*

[8] Among other changes discussed herein, the Exchange proposes to add a number of definitions for key terms used to incorporate provisions related to the ERP. *See generally* MIAX Amended and Restated By-Laws, Article I. The Commission notes that MIAX has not proposed, and the Commission is therefore not presently approving, any changes that would impact directly the MIH Board of Directors.

[9] *See* Notice, *supra* note 3, 78 FR at 79530–79531. The non-substantive changes include the deletion from the MIAX By-Laws of provisions that specifically referenced past deadlines and events that have since occurred. *See id.* at 79532.

[10] *See* MIAX Amended and Restated By-Laws, Article I(n) defining ''ERP Member'' as ''an Exchange Member who acquired Units pursuant to an ERP Agreement sufficient to acquire an ERP Director or an Observer position.'' MIAX Amended and Restated By-Laws, Article I(qq) defines ''Unit'' as ''a combination of securities or types of securities packaged together as one.'' MIAX Amended and Restated By-Laws, Article I(q) generally defines ''Exchange Member'' as ''any registered broker or dealer that has been admitted to membership in the national securities exchange operated by [MIAX].'' MIAX Amended and Restated By-Laws, Article I(l) defines ''ERP Agreement'' as ''the agreement pursuant to which Units were issued.''

[11] *See* MIAX Amended and Restated By-Laws, Article I(m) defining ''ERP Director'' as ''an Industry Director who has been nominated by an ERP Member and appointed to the Board of Directors.''

[12] *See* MIAX Amended and Restated By-Laws, Article I(gg) and Article II, Section 2.2 providing that "'Observer' has the meaning set forth in Article II, Section 2.2 of [the MIAX] By-Laws.'' As described further below, an ''Observer'' is a person, appointed pursuant to Section 2.2 of the MIAX Amended and Restated By-Laws, that ''may be invited to attend meetings of the Board in a non-voting observer capacity.'' *See* MIAX By-Laws Article II, Section 2.2(g).

[13] *See* MIAX Amended and Restated By-Laws, Article II, Section 2.2(e).

[14] *See* MIAX Amended and Restated By-Laws, Article I(u) defining ''Industry Director'' to mean ''a Director who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than 10% of the equity of a broker or dealer, and the broker or dealer accounts for more than 5% of the gross revenues received by the consolidated entity; (iii) owns more than 5% of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed 10% of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20% or more of the professional revenues received by the Director or 20% or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50% or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20% or more of the professional revenues received by the Director or member or 20% or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years.''

[15] *See* MIAX Amended and Restated By-Laws, Article II, Section 2.2(g)(iii). Observers will not be permitted to vote at Board meetings, but will be provided copies of all materials provided to directors provided that the Observer agrees to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided. *See id.* Also, MIAX proposes that Observers have the same participation rights as other directors on the Board with respect to meetings pertaining to the self-regulatory function of the Exchange. *See* MIAX Amended and Restated By-Laws Article X, Section 10.3; *see also* Notice, *supra* note 3, 78 FR at 79532.

ERP Member is otherwise able to nominate an ERP Director but cannot because, for example, the ERP Member already is represented on the MIAX Board, *e.g.,* as a Member Representative Director,[16] the ERP Member will have the right to appoint an Observer in lieu of such ERP Director nomination.[17] Under the proposal, the Nominating Committee of the MIAX Board will only nominate to ERP Director positions those individuals that have been approved and submitted by the applicable ERP Member with the right to nominate such ERP Director.[18]

Additionally, MIAX proposes to amend its By-Laws to specify that an ERP Member's right to continued representation on the Board in the form of an ERP Director or Observer will be contingent upon the ERP Member meeting certain ''Performance Criteria'' [19] (*i.e.,* achievement of certain specified liquidity volume thresholds on the Exchange) over a specified ''Measurement Period.'' [20] Thus, ERP Members with the right to nominate an ERP Director or appoint an Observer may lose that right (or such right may convert from the right to nominate an ERP Director to the right to appoint an Observer) if the ERP Member fails to meet the requisite Performance Criteria.[21] In the event of such occurrence, if the ERP Member later satisfies the requisite Performance Criteria for a subsequent Measurement Period, the ERP Member may regain its right to nominate or appoint such ERP Member or Observer.[22] An ERP Director or Observer position will terminate if the nominating or appointing ERP Member effects a transfer of common stock or warrants that results in such ERP Member holding less than 20% of the aggregate number of shares of common stock issued (or issuable pursuant to Units acquired) pursuant to the ERP Agreement.[23]

The Exchange also proposes amendments to the composition of the Board to reflect the addition of ERP Directors. As noted above, MIAX proposes that ERP Directors will be Industry Directors for the purposes of calculating the composition of the MIAX Board, and that Member Representative Directors will not include ERP Directors for the purposes of calculating the composition of the Board.[24] In its proposal, the Exchange notes that there would be no substantive changes to the Board's composition, and that although the Board size will increase, its composition will remain the same.[25] In addition, MIAX proposes to amend By-Law provisions that currently provide for the removal and resignation of directors and the filling of vacancies to reflect that, as for other MIAX directors, ERP Directors may only be removed for cause,[26] and in the case of any vacancy for a reason other than a failure to meet Performance Criteria, as described above, the applicable ERP Member will retain the ability to nominate a person to fill the vacant ERP Director position.[27]

Unrelated to the ERP, MIAX also proposes to add a restriction to the qualifications of any director of the MIAX Board, including an ERP Director, that, in the event a director becomes a member of the board of directors (or similar governing body) of a ''Specified Entity,'' [28] such individual would immediately cease to be a director of the MIAX Board.[29] MIAX proposes that this same restriction would apply to Observers (*i.e.,* an individual would lose his or her position as an Observer if that individual became a member of the board of directors of a Specified Entity) and to committee members.[30] Similarly, MIAX proposes to apply to Observers and committee members the same restrictions against statutory disqualification that are currently applicable to MIAX directors.[31]

Finally, the Exchange proposes to make a few non-substantive changes to certain provisions in the By-Laws, such as deleting references to time periods and events that have since passed as well as deleting provisions related to interim directors that are no longer applicable.[32]

III. Discussion and Commission Findings

The Commission originally approved the governance structure of the Exchange, including the MIAX By-Laws, when it approved MIAX's application for registration as a national securities Exchange.[33] In connection with that approval, the Commission found the MIAX By-Laws to be consistent with the Act, and stated its belief that certain provisions in the MIAX By-Laws are designed to help maintain the independence of MIAX's regulatory function and help facilitate the ability of MIAX to carry out its responsibilities and operate in a manner consistent with the Act.[34] As discussed above, the Exchange recently implemented an ERP, pursuant to which ERP Members that acquire a certain number of Units may

The Exchange reserves the right, however, to withhold any information, and to exclude Observers from any meeting or portion thereof, if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between MIAX and its counsel or result in a disclosure of trade secrets or a conflict of interest. *See* MIAX Amended and Restated By-Laws, Article II, Section 2.2(g)(iii).

[16] *See* MIAX Amended and Restated By-Laws, Article I(bb) defining ''Member Representative Director'' to mean a ''Director who has been elected by the LLC Member after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to these By-Laws and confirmed as the nominee of Exchange Members after majority vote of Exchange Members, if applicable. A Member Representative Director may, but is not required to be an officer, director, employee, or agent of an Exchange Member.''

[17] *See* Notice, *supra* note 3, 78 FR at 79531; *see also* MIAX Amended and Restated By-Laws, Article II, Section 2.2(g)(i). MIAX stated in Amendment No. 1 that an ERP Member that is represented by a Member Representative Director may also be able to appoint an Observer (but would not be able to appoint an ERP Director). Further, an ERP Member that is represented by an ERP Director will not be able to appoint an Observer. *See supra* note 4.

[18] *See* MIAX Amended and Restated By-Laws Article II, Section 2.4(a). The Exchange notes that MIH, as the sole member of the MIAX Exchange, LLC, will then be obligated to vote for the nominated ERP Director. *See* Notice, *supra* note 3, 78 FR at 79531.

[19] *See* MIAX Amended and Restated By-Laws, Article I(hh) defining ''Performance Criteria.''

[20] *See* MIAX Amended and Restated By-Laws Article I(z) defining ''Measurement Period.''

[21] *See* MIAX Amended and Restated By-Laws Article II, Section 2.3(c) and (d).

[22] *See id.*

[23] *See* MIAX Amended and Restated By-Laws Article II, Section 2.3(e).

[24] *See* Notice, *supra* note 3, 78 FR at 79531. *See also* MIAX Amended and Restated By-Laws, Article II, Section 2.2(b).

[25] *See* Notice, *supra* note 3, 78 FR at 79531.

[26] *See* MIAX Amended and Restated By-Laws, Article II, Section 2.9 and Notice, *supra* note 3, 78 FR at 79532.

[27] *See* MIAX Amended and Restated By-Laws, Article II, Section 2.8 and Notice, *supra* note 3, 78 FR at 79532.

[28] *See* MIAX Amended and Restated By-Laws, Article I(oo) defining ''Specified Entity'' as ''(i) any U.S. securities option exchange (or facility thereof) or U.S. alternative trading system on which securities options are traded (other than the Company or any of its affiliates) that lists for trading any option contract that competes with an Exchange Contract, (ii) any person that owns or controls such U.S. securities option exchange or U.S. alternative trading system, and (iii) any affiliate of a person described in clause (i) or (ii) above.''

[29] *See* MIAX Amended and Restated By-Laws Article II, Section 2.2(d). MIAX also proposes that existing directors that may be in violation of this provision would be grandfathered in and not subject to the new restriction. *See* Notice, *supra* note 3, 78 FR at 79531.

[30] *See* MIAX Amended and Restated By-Laws Article II, Section 2.2(g)(ii) and Article IV, Section 4.2(b).

[31] *See* Notice, *supra* note 3, 78 FR at 79531; *see also* MIAX Amended and Restated By-Laws, Article II, Sections 2.2(d) and (g)(ii), and Article IV, Section 4.2(b). As directors, such restrictions will also apply to ERP Directors.

[32] *See* Notice, *supra* note 3, 78 FR at 79532.

[33] *See* Securities Exchange Act Release No. 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (''Exchange Registration Release'').

[34] *See e.g.,* Exchange Registration Release, *supra* note 33, 77 FR at 73071 n.88 and accompanying text. The Commission also found certain provisions to be consistent with the requirements of Section 6(b)(3) of the Act (15 U.S.C. 78f(b)(3)). *See id.* at 73067.

appoint either an ERP Director or Observer to the MIAX Board, and the Exchange is now proposing to amend the MIAX By-Laws to incorporate such rights to appoint Board representation, as well as to make other unrelated changes.

The Commission has carefully reviewed the proposed rule change and 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.[35] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(1) and (3) of the Act,[36] which, among other things, require a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act, and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange; and assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

A. Addition of ERP Directors and Related Provisions

The Commission finds that the Exchange's proposal to amend the MIAX By-Laws to provide for the inclusion of ERP Directors on the MIAX Board, including related amendments to add various definitions and provisions for terms of office, nomination and election, filling of vacancies, and removal and resignation, are consistent with the Act.[37] The Commission notes that although the Board may become larger if ERP Directors are added, the composition previously approved by the Commission in connection with MIAX's registration as a national securities exchange [38] will remain the same.[39] ERP Directors will be Industry Directors,[40] and the Board will continue to be comprised of a number of Non-Industry Directors,[41] including at least one Independent Director,[42] that equals or exceeds the sum of the number of Industry Directors and Member Representative Directors.[43] The number of Member Representative Directors will not include ERP Directors, and shall continue to comprise at least 20% of the MIAX Board.[44] Additionally, the process for nomination and election of Member Representative Directors is not impacted by the Exchange's proposal.[45] Accordingly, the Commission finds that the provisions reflecting the possible addition of ERP Directors to the MIAX Board are consistent with the Act, and in particular with Section 6(b)(3) of the Act,[46] in that the MIAX Amended and Restated By-Laws will continue to provide for the fair representation of members in the selection of directors and the administration of the MIAX Exchange, as well as representation of issuers and investors.

The Commission also notes that ERP Directors will be subject to the same duties and obligations as any other member of the MIAX Board, including provisions that are designed to help maintain the independence of the regulatory functions of the Exchange and help facilitate MIAX's ability to carry out its responsibilities and operate in a manner consistent with the Act.[47] For example, ERP Directors will be subject to MIAX Amended and Restated By-Laws provisions requiring the MIAX Board, in connection with managing the business and affairs of MIAX, to consider applicable requirements under Section 6(b) of the Act governing conflicts of interest; requiring the MIAX Board, when evaluating any proposal, to take into account MIAX's status as a self-regulatory organization (''SRO''); and protecting the confidentiality of information and records related to the Exchange's SRO function.[48] In this regard, the Commission finds that the provisions reflecting the addition of ERP Directors to the MIAX Board are consistent with the Act, and in particular with Section 6(b)(1), which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act.[49]

B. Addition of Observer Positions and Related Provisions

The Commission finds that the proposed amendments to the MIAX By-Laws that add provisions relating to the appointment of Observers, including related amendments that add various definitions and provisions for appointment and terms of office are consistent with the Act.[50] The Commission also finds that the proposed amendments governing the rights and obligations of Observers are consistent with the Act. The Commission notes that although Observers will generally have the right to attend all meetings of the Board and receive materials provided to directors,[51] they will have the right to attend those meetings only in a non-voting capacity and must agree to hold such information in confidence and trust and to act in a fiduciary manner with respect to such information.[52] Additionally, the Commission notes that

[35] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78f(b)(1) and (b)(3).

[37] *See* MIAX Amended and Restated By-Laws, Article II, Sections 2.2, 2.3, 2.4, 2.8, and 2.9.

[38] *See* Exchange Registration Release, *supra* note 33, 77 FR at 73066–73067.

[39] *See* MIAX Amended and Restated By-Laws, Article II, Section 2.2(a) and (b). Additionally, the Commission notes that the Exchange represents that although its Board size will increase, the current composition will remain the same, and that the proposal will not affect the Member Representative Director calculation in any way. *See supra* note 25 and accompanying text.

[40] *See supra* note 14.

[41] *See* MIAX Amended and Restated By-Law Article I(ee) defining ''Non-Industry Director'' to mean ''a Director who is (i) an Independent Director; or (ii) any other individual who would not be an Industry Director.''

[42] *See* MIAX Amended and Restated By-Law Article I(s) defining ''Independent Director'' to mean ''a Director who has no material relationship with the Company or any affiliate of the Company, or any Exchange Member or any affiliate of any such Exchange Member; *provided,* however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of the Company or its LLC Member.''

[43] *See* MIAX Amended and Restated By-Laws, Article II, Section 2.2(b).

[44] *See* MIAX Amended and Restated By-Laws, Article II, Section 2.2(b). The Commission notes that the Exchange represents in Amendment No. 1 that an ERP Member that is represented by a Member Representative Director may also be able to appoint an Observer but would not be able to appoint an ERP Director. *See infra* Section V; *see also supra* notes 4 and 17.

[45] *See* MIAX Amended and Restated By-Laws, Article V, Section 5.3.

[46] 15 U.S.C. 78f(b)(3).

[47] *See* Exchange Registration Release, *supra* note 33, 77 FR at 73070–73071.

[48] *See* MIAX Amended and Restated By-Laws, Article II, Sections 2.1(d) and (e) and Section 2.20, and Article X, Section 10.4. The Commission also notes that the Exchange represented in its filing that ERP Directors will be subject to the same restrictions as current directors, including the provisions noted above. *See* Notice, *supra* note 3, 78 FR at 79533. In addition, the Commission notes that other provisions of the MIAX Amended and Restated By-Laws, previously approved by the Commission and designed to help maintain the independence of the Exchange's regulatory function and help facilitate the Exchange's ability to carry out its responsibilities and operate in a manner consistent with the Act, are not being amended by the proposed rule change. Such provisions include those governing the maintenance of MIAX's books and records in the U.S. and the availability of such records to the Commission, the composition of MIAX committees, and the ownership structure of the Exchange. *See* Exchange Registration Release, *supra* note 33, 77 FR at 73069–73071. *See also* MIAX Amended and Restated By-Laws, Article X, Section 10.4; Article IV; and Article I(y).

[49] 15 U.S.C. 78f(b)(1).

[50] *See* MIAX Amended and Restated By-Laws, Article II, Sections 2.2 and 2.3.

[51] *See supra* note 15 and accompanying text.

[52] *See* MIAX Amended and Restated By-Laws, Article II, Section 2.2(g)(iii), and Article X, Sections 10.3 and 10.4; *see also supra* note 15.

the Exchange states in its proposal that Observers will be subject to the same requirements as members of the Board to maintain the confidentiality of all books and records of the Company reflecting confidential information pertaining to the SRO function of the Company.[53] The Commission also notes that MIAX reserves the right to withhold any information from an Observer and to exclude an Observer from any meeting or portion thereof that could, among other things, result in the disclosure of trade secrets or a conflict of interest.[54] The Commission believes that these restrictions on, and obligations of, Observers are consistent with the Act, particularly Section 6(b)(1),[55] in that they are designed to ensure that MIAX will remain so organized as to have the capacity to carry out the purposes of the Act.

C. Disqualification Due to Statutory Disqualification or Service for a Specified Entity

The Commission finds the proposed provision to provide that an individual serving as a director (including an ERP Director), Observer, or a member of a committee of the Board will cease to hold such position if that individual becomes a member of the board of directors or similar governing body of a Specified Entity,[56] is consistent with the Act. The Commission notes that such provisions would not prohibit an Exchange member from having representation on both the MIAX governing body and that of a Specified Entity, but would only prevent the same natural person from serving on the governing body of both MIAX and a Specified Entity. The Commission also finds that the provisions that would prohibit an Observer or committee member from being subject to a statutory disqualification,[57] as is currently the case with respect to MIAX directors,[58] are consistent with the Act. The Commission notes that the Exchange states the prohibitions on statutory disqualification and service on the board (or similar governing body) of a Specified Entity will help to ensure that all directors, ERP Directors, Observers, and committee members are held to the same restrictions against: (1) Statutory disqualification, and (2) conflicts of interest that could result from such persons also serving as a member of the board of directors or similar body of a competitor.[59] The Commission finds these provisions to be consistent with the Act, and in particular with Sections 6(b)(1),[60] in that they are designed to help ensure that the Exchange has the capacity to carry out 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 Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2013–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2013–58. 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 20549–1090 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2013–58, and should be submitted on or before March 12, 2014.

V. Accelerated Approval of a Proposed Rule Change As Modified by Amendment No. 1

As discussed above, the Exchange submitted Amendment No. 1 to remove the ability of an ERP Member to appoint an ERP Director if such ERP Member is already represented on the MIAX Board in the capacity of a Member Representative Director. As originally proposed, an ERP Member would have been able to appoint an ERP Director even if such ERP Member was already represented on the Board in the capacity of a Member Representative Director. The Commission notes that this change modifies the Exchange's proposal to reflect current restrictions in place at other exchanges.[61] Further, the change prevents an ERP Member from holding multiple director seats on the MIAX SRO Board and thus is designed to prevent an ERP Member from having a disproportional presence on the Board of the MIAX SRO, which serves as the regulatory body for all MIAX members, including an ERP Member. Thus, the change in Amendment No. 1 is designed to help ensure that the Exchange has the capacity to carry out the purposes of the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[62] for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal Register**.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[63] that the proposed rule change, as modified by Amendment No. 1 (SR–MIAX–2013–

[53] *See* Notice, *supra* note 3, 78 FR at 79532.

[54] *See* MIAX Amended and Restated By-Laws, Article II, Section 2.2(g)(iii); *see also supra* note 15.

[55] 15 U.S.C. 78s(b)(1).

[56] *See* MIAX Amended and Restated By-Laws, Article II, Sections 2.2(d) and (g)(ii), and Article IV, Section 4.2(b). The Commission notes that this provision will only apply to directors (including ERP Directors), Observers, and committee members appointed after the Effective Date.

[57] *See* MIAX Amended and Restated By-Laws, Article II, Section 2.2(g)(2), and Article IV, Section 4.2(b).

[58] *See* MIAX Amended and Restated By-Laws, Article II, Section 2.2(d).

[59] *See* Notice, *supra* note 3, 78 FR at 79533.

[60] 15 U.S.C. 78s(b)(1).

[61] *See, e.g.,* Second Amended and Restated Constitution of the International Securities Exchange, LLC, Article III, Section 3.2(e) (''No Exchange Member shall have more than one officer, director or partner of such Exchange Member elected to the Board of Directors during any term.'').

[62] 15 U.S.C. 78s(b)(2).

[63] 15 U.S.C. 78s(b)(2).

58), is hereby approved on an accelerated basis. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03570 Filed 2–18–14; 8:45 am]

BILLING CODE 8011–01–P

[64] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8635]

Culturally Significant Objects Imported for Exhibition Determinations: ''Alibis: Sigmar Polke 1963–2010''

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 ''Alibis: Sigmar Polke 1963–2010,'' 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 Museum of Modern Art, New York, New York, from on or about April 19, 2014, until on or about August 3, 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: February 6, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–03521 Filed 2–18–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8633]

Culturally Significant Object Imported for Exhibition Determinations: ''The Mystic Marriage of Saint Catherine''

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 object to be included in the exhibition ''The Mystic Marriage of Saint Catherine,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, NY, from on or about March 3, 2014, until on or about February 29, 2016, 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 object, 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: February 11, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–03525 Filed 2–18–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[PUBLIC NOTICE 8634]

Culturally Significant Objects Imported for Exhibition Determinations: ''Nur: Light in Art and Science From the Islamic World'' 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 ''Nur: Light in Art and Science from the Islamic World,'' 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 Dallas Museum of Art, Dallas, TX, from on or about March 30, 2014, until on or about June 29, 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: February 11, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–03523 Filed 2–18–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8638]

Advisory Committee on Historical Diplomatic Documentation

AGENCY: Department of State.

ACTION: Notice of Closed and Open Meetings for 2014.

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet on the following days during 2014, in open session, to discuss unclassified matters concerning declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series, as indicated:

1. March 3, 2014. The Committee will meet in open session from 11:00 a.m. until 12:00 noon in Room 2208,

Department of State, 2201 C Street NW., Washington, DC (Department of State). RSVP should be sent as directed below not later than February 25, 2014. Requests for reasonable accommodation should be made by February 21, 2014.

2. June 9, 2014. The Committee will meet in open session from 11:00 a.m. until 12:00 noon in Room 1207 of the Department of State. RSVP should be sent as directed below not later than June 3, 2014. Requests for reasonable accommodation should be made by May 30, 2014.

3. September 8, 2014. The Committee will meet in open session from 11:00 a.m. until 12:00 noon in Room 1207 of the Department of State. RSVP should be sent as directed below not later than September 2, 2014. Requests for reasonable accommodation should be made by August 29, 2014.

4. December 8, 2014. The Committee will meet in open session from 11:00 a.m. until 12:00 noon in Room 1207 of the Department of State. RSVP should be sent as directed below not later than December 2, 2014. Requests for reasonable accommodation should be made by November 28, 2014.

Closed Sessions. The Committee's sessions in the afternoon of Monday, March 3, 2014; in the afternoon of Monday, June 9, 2014; in the morning of Tuesday, June 10, 2014; in the afternoon of Monday, September 8, 2014; in the morning of Tuesday, September 9, 2014; in the afternoon of Monday, December 8, 2014; and in the morning of Tuesday, December 9, 2014, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (P. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(l) and the public interest requires that such activities be withheld from disclosure.

RSVP Instructions. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the Department of State building. Members of the public planning to attend the meetings should RSVP for the open meetings, by the dates indicated above, to Julie Fort or Nick Sheldon, Office of the Historian (202–663–3265/1123). When responding, please provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Julie Fort for acceptable alternative forms of picture identification.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State–36) at *http://www.state.gov/documents/organization/l03419.pdf,* for additional information.

Questions concerning the meeting should be directed to Dr. Stephen P. Randolph, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (email *history@state.gov*).

Note that requests for reasonable accommodation received after the dates indicated in this notice will be considered, but might not be possible to fulfill.

Dated: February 6, 2014.

Stephen P. Randolph,

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation.

[FR Doc. 2014–03516 Filed 2–18–14; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 8636]

Activities of the International Telecommunication Advisory Committee and Preparations for Upcoming International Telecommunications Meetings

This notice announces a meeting of the Department of State's International Telecommunication Advisory Committee (ITAC) to review the activities of the Department of State in international meetings on international communications and information policy over the last quarter and prepare for similar activities in the next quarter.

The ITAC will meet on March 13, 2014 at 2:00 p.m. EDT at 2300 N Street NW., Suite 700, Washington, DC 20037–1128 to review the preparations for and outcomes of international telecommunications meetings of the International Telecommunication Union, the Inter-American Telecommunications Commission, and announce preparations for similar activities for the next quarter.

In particular, preparations for the World Telecommunications Development Conference, the Plenipotentiary Conference, and the Ten year review of implementation of the World Summit on the Information Society outcomes will be discussed.

Further details on this ITAC meeting will be announced on the Department of State's email list, *ITAC@lmlist.state.gov.* Use of the ITAC list is limited to meeting announcements and confirmations, distribution of agendas and other relevant meeting documents.

Subscription to the ITAC list is open. Persons wishing to participate in the ITAC list, desiring further information on preparatory meetings, and those persons wishing to request reasonable accommodation during the meeting should contact the Secretariat at *minardje@state.gov* or *gadsdensf@state.gov.*

Attendance at this meeting is open to the public as seating capacity allows. The public will have an opportunity to provide comments at this meeting at the invitation of the chair.

Dated: February 10, 2014.

Doreen McGirr,

Foreign Affairs Officer, International Communications & Information Policy, U.S. Department of State.

[FR Doc. 2014–03520 Filed 2–18–14; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 8637]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct two (2) open meetings on Thursday, March 13, 2014; and Wednesday, June 11, 2014, at the headquarters of the Radio Technical Commission for Maritime Services (RTCM) in Suite 605, 1611 New Kent Street, Arlington, Virginia 22209. Each meeting will start at 9:30 a.m. The primary purpose of the meetings is to prepare for the first Session of the International Maritime Organization's (IMO) Sub-Committee on Navigation, Communication, and Search and Rescue to be held at the IMO Headquarters, United Kingdom, from June 30, 2014 to July 4, 2014.

The primary matters to be considered include:

—Routing of ships, ship reporting and related matters

—Consideration of ECDIS matters related to the implementation of the

carriage requirements in SOLAS regulations V/19.2.10 and V/19.2.11
—Consolidation of ECDIS-related IMO circulars
—Consideration of the application of the satellite navigation system ''BeiDou'' in the maritime field
—Development of explanatory footnotes to SOLAS regulations V/15, V/18, V/19 and V/27
—Consideration of LRIT-related matters
—Development of an e-navigation strategy implementation plan
—Development of performance standards for multi-system shipborne navigation receivers
—Revision of the Guidelines for the onboard operational use of shipborne automatic identification systems (AIS)
—Developments in maritime radiocommunication systems and technology
—Review and modernization of the Global Maritime Distress and Safety System (GMDSS)
—Further development of the GMDSS master plan on shore-based facilities
—Consideration of operational and technical coordination provisions of maritime safety information (MSI) services, including the development and review of related documents
—International Telecommunication Union (ITU) matters, including Radiocommunication ITU–R Study Group matters
—ITU matters, including ITU World Radiocommunication Conference matters
—Consideration of developments in Inmarsat and Cospas-Sarsat
—Development of guidelines on harmonized aeronautical and maritime search and rescue procedures, including SAR training matters
—Further development of the Global SAR Plan for the provision of maritime SAR services, including procedures for routeing distress information in the GMDSS
—Development of amendments to the IAMSAR Manual
—Development of measures to protect the safety of persons rescued at sea
—Development of a mandatory Code for ships operating in polar waters
—Consideration of International Association of Classification Societies (IACS) unified interpretations
—Biennial agenda and provisional agenda for NCSR 2
—Report to the Maritime Safety Committee

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. George Detweiler, not later than 7 days prior to the meeting. Mr. Detweiler may be contacted by email at *George.H.Detweiler@uscg.mil*, or by phone at (202) 372–1566. Requests made after that date might not be able to be accommodated. Additional information regarding these and other IMO SHC public meetings may be found at: *www.uscg.mil/imo*.

Dated: February 10, 2014.

Marc Zlomek,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2014–03518 Filed 2–18–14; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 8639]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, March 12th, 2014, in Conference Rooms 8–9–10 of the United States Department of Transportation (DOT) Headquarters Building, 1200 New Jersey Avenue SE., Washington, DC 20590. The primary purpose of the meeting is to prepare for the sixty sixth Session of the International Maritime Organization's (IMO) Marine Environment Protection Committee to be held at the IMO Headquarters, United Kingdom, March 31—April 4, 2014.

The agenda items to be considered include:

—Adoption of the agenda
—Harmful aquatic organisms in ballast water
—Recycling of ships
—Air pollution and energy efficiency; Further technical and operational measures for enhancing energy efficiency of international shipping
—Reduction of greenhouse gases (GHG) emissions from ships
—Consideration and adoption of amendments to mandatory instruments
—Interpretations of, and amendments to, MARPOL and related instruments
—Implementation of the OPRC Convention and the OPRC–HNS Protocol and relevant Conference resolutions
—Identification and protection of Special Areas and Particularly Sensitive Sea Areas
—Inadequacy of reception facilities
—Reports of sub-committees
—Work of other bodies
—Harmful anti-fouling systems for ships
—Promotion of implementation and enforcement of MARPOL and related instruments
—Technical co-operation activities for the protection of the marine environment
—Role of the human element
—Noise from commercial shipping and its adverse impacts on marine life
—Work program of the Committee and subsidiary bodies
—Application of the Committee's Guidelines
—Any other business
—Consideration of the report of the Committee

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. John Morris, by email at *john.c.morris@uscg.mil,* by phone at (202) 372–1433, by fax at (202) 372–8383, or in writing at Commandant (CG–5PS), U.S. Coast Guard Headquarters, 2703 Martin Luther King Jr. Ave SE., Washington, DC 20593–7509 not later than March 3, 2014, or 7 days prior to the meeting. Requests made after March 3, 2014 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the DOT Headquarters building. The DOT Headquarters building is accessible by public transportation (Navy Yard subway station), taxi and privately owned conveyance. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo*.

In case of severe weather or other emergency in the Washington, DC area, attendees should check with the Office of Personnel Management at *http://www.opm.gov* or (202) 606–1900 for the operating status of federal agencies. If federal agencies are closed, this meeting will not be rescheduled, but the Shipping Coordinating Committee will publish a separate **Federal Register** notice to announce an electronic docket to receive public comments.

Dated: February 7, 2014.

Marc Zlomek,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2014–03508 Filed 2–18–14; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: General Aviation and Air Taxi Activity and Avionics Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 12, 2013, vol. 78, no. 239, page 75671. Respondents to this survey are owners of general aviation aircraft. This information is used by FAA, NTSB, and other government agencies, the aviation industry, and others for safety assessment, planning, forecasting, cost/benefit analysis, and to target areas for research.

DATES: Written comments should be submitted by March 21, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0060.

Title: General Aviation and Air Taxi Activity and Avionics Survey.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Title 49, United States Code, empowers the Secretary of Transportation to collect and disseminate information relative to civil aeronautics, to study the possibilities for development of air commerce and the aeronautical industries, and to make long-range plans for, and formulate policy with respect to, the orderly development and use of the navigable airspace, radar installations and all other aids for air navigation. Respondents to this survey are owners of general aviation aircraft. This information is used by FAA, NTSB, and other government agencies, the aviation industry, and others for safety assessment, planning, forecasting, cost/benefit analysis, and to target areas for research.

Respondents: Approximately 83,500 owners of general aviation aircraft.

Frequency: Information is collected annually.

Estimated Average Burden per Response: 20 minutes.

Estimated Total Annual Burden: 13,000 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on February 12, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–03540 Filed 2–18–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Advanced Qualification Program (AQP)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 12, 2013, vol. 78, no. 239, page 75670–75671. The Advanced Qualification Program uses data driven quality control processes for validating and maintaining the effectiveness of air carrier training program curriculum content.

DATES: Written comments should be submitted by March 21, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0701.

Title: Advanced Qualification Program (AQP).

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Under Special Federal Aviation Regulation No. 58, Advanced Qualification Program (AQP), the FAA provides certificated air carriers, as well as training centers they employ, with a regulatory alternative for training, checking, qualifying, and certifying aircrew personnel subject to the requirements of 14 CFR parts 121 and 135. Data collection and analysis processes ensure that the certificate holder provides performance information on its crewmembers, flight instructors, and evaluators that will enable them and the FAA to determine whether the form and content of training and evaluation activities are satisfactorily accomplishing the overall objectives of the curriculum.

Respondents: 18 respondents with approved Advanced Qualification Programs.

Frequency: Data is collected monthly.

Estimated Average Burden per Response: 2 hours.

Estimated Total Annual Burden: 432 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a)

Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on February 12, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–03542 Filed 2–18–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0048]

Notice of Funding Availability for Accelerated Innovation Deployment Demonstration

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of funding availability.

SUMMARY: This final notice announces the availability of funding and requests grant applications for FHWA's Accelerated Innovation Deployment (AID) Demonstration authorized within the Technology and Innovation Deployment Program (TIDP) under the Moving Ahead for Progress in the 21st Century Act (MAP–21). In addition, this final notice addresses comments received on the interim notice of funding availability (Docket No. FHWA–2013–0048), announces selection criteria, application requirements, and technical assistance during the grant solicitation period for the AID Demonstration. The FHWA's response to the comments and revisions made in this final notice are described below in the **SUPPLEMENTARY INFORMATION** section.

DATES: Applications must be submitted through Grants.gov. Applicants are encouraged to submit applications as soon as the eligible project is within six months of being initiated. Completed applications will be evaluated and award determinations made on a rolling basis until the program ends or funding is no longer available. Information will be updated on FHWA's Web site at *http://www.fhwa.dot.gov/accelerating/grants* to notify applicants of the status of the program and availability of funding. The FHWA plans to conduct outreach regarding the AID Demonstration in the form of a Webinar within 2 weeks of this notice being issued. Participants can pre-register online at: *https://connectdot.connectsolutions.com/aiddemo/event/event_info.html*. Information on the Webinar date and time will be emailed to registered participants. The Webinar will be recorded and posted on FHWA's Web site at *http://www.fhwa.dot.gov/accelerating/grants*.

ADDRESSES: Applications must be submitted electronically through Grants.gov. The FHWA will not accept applications that are sent directly to FHWA outside of the Grants.gov process. Instructions for submitting through Grants.gov are included in Section VI (E) of this final notice.

FOR FURTHER INFORMATION CONTACT: Ms. Ewa Flom, Program Manager, Center for Accelerating Innovation, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–2169; or Ms. Seetha Srinivasan, Office of the Chief Counsel, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–4099. Office hours are from 8:00 a.m. to 4:30 p.m., Eastern Standard Time Monday through Friday, except Federal holidays. A TDD is available for individuals who are deaf or hard of hearing at (202) 366–3993.

In addition, the FHWA will regularly post answers to questions and requests for clarifications on FHWA's Web site at *http://www.fhwa.dot.gov/accelerating/grants*. Applicants are encouraged to contact FHWA directly to receive information about AID Demonstration.

SUPPLEMENTARY INFORMATION: On November 1, 2013, the FHWA published an interim notice of funding availability (NOFA) for the AID Demonstration Program (Docket No. FHWA–2013–0048). The interim notice requested comments on the proposed selection criteria, evaluation criteria, and evaluation requirements for AID Demonstration funding. The FHWA considered comments that were received from seven commenters, including two anonymous, two private citizens, one not-for-profit research organization, one State DOT, and one municipal government. The FHWA revised elements of the notice as described below. There was an editorial error made in the Table of Contents by listing a subsection heading of ''Protection of Confidential Business Information'' under Section VI (Application Process). There was no information provided and no need for this subsection. As a result, the subsection heading has been deleted.

Response to Comments

1. The FHWA received a question from an anonymous commenter in reference to whether AID Demonstration funds can be used to do research and conduct full-scale crash testing of products. AID Demonstration funds are intended to accelerate the implementation and adoption of innovation in highway transportation. The funds are to be used for deployment, not for research or testing, of proven innovative practices or technologies.

2. The FHWA received a comment from a private citizen requesting consideration of applications from consortiums, including State DOTs, universities and industry, on novel materials, methods, and technologies to be considered through a phased product development program. The FHWA believes that this is not within the scope or intent of the AID Demonstration program. The use of AID Demonstration funds is for deployment of proven innovative practices or technologies. There are other programs, such as the Transportation Pooled Fund program, that may be better suited for a product development approach. However, the FHWA encourages applicants to cooperate and coordinate with other entities as needed. The narrative application includes identification of the applicant, subrecipient, and a description of cooperation with any other entity involved in the project.

3. The FHWA received questions from an anonymous commenter in reference to the eligibility of technologies that focus on the operation of highway transportation commercial vehicle programs and technology innovations that are added to existing infrastructure. As described in Section III (Eligibility), AID Demonstration funds are available for any project eligible for assistance under title 23, United States Code. Eligible projects may involve any aspect of highway transportation including planning, financing, operation, structures, materials, pavements, environment, and construction that address the TIDP goals mentioned in Section I (Background).

4. The FHWA received a comment from a not-for-profit research organization requesting that we add language under Selection Criteria (or other appropriate section) to give priority funding consideration to projects that ''leverage funding through participation in the Transportation Pooled Fund Program.'' The AID

Demonstration funding is intended to be used by an applicant on a project within their highway transportation program. The FHWA does not believe that this change is necessary because applicants have broad flexibility to select and leverage funding sources to advance projects.

5. The FHWA received a question from the Idaho DOT in reference to the Federal fund match requirements. To clarify, the AID Demonstration fund award is based on the cost of the innovation in a project, not the total project cost. The FHWA also encourages States to use Section 1304 of MAP–21 (23 U.S.C. 120(c)(3)) ''Innovative Project Delivery Methods'' on projects that may qualify to increase the Federal share by up to 5 percent. The awarded AID Demonstration funds would be used in place of other Federal program funds and do not otherwise modify the Federal fund match requirements. This clarification will be included in program guidance; however, no change is necessary to the NOFA.

6. The Idaho DOT also expressed concern that the rolling submittal process would not allow for FHWA to compare all of the applications submitted and would favor the first projects submitted, which may not necessarily be the best projects. The FHWA realizes that a rolling submittal may seem atypical for DOT grants and FHWA has considered setting specific and regular application due dates. Although the FHWA understands the perspective of the commenter, this program is intended to accelerate innovation deployment and we believe a rolling solicitation will award funds to projects that are ready to implement innovations immediately, such as the Every Day Counts initiatives. The FHWA believes that comparison of projects may not be relevant due to the broad range of eligible projects involving any aspect of highway transportation. As a result, no change is necessary to the NOFA.

7. The FHWA received a comment from the Boston, Massachusetts municipal government requesting that cities and local agencies be allowed to apply directly for AID Demonstration funds. The commenter was also concerned that the limitation of one project per State DOT may limit the opportunities for Metropolitan planning organizations and local governments. Pursuant to 23 CFR 635.105, ''The STD has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency.'' Metropolitan planning organizations and local governments are not able to apply as a direct recipient for AID Demonstration funding. However FHWA understands the commenter's concern in reference to the limitation on awards and State DOT project priorities. In the final NOFA, the limitation of one project per applicant is revised so that one project may be awarded to a State DOT and another project to a subrecipient. The change is reflected in Section II (Program Funding and Award), Section III (Eligibility), and Section IV (Selection Criteria).

8. The Boston, Massachusetts municipal government also suggested that the NOFA should specifically authorize funding for staff to implement the innovation being funded. In the narrative portion of the application, the applicant must specify the funding request including the basis for determining the cost of the innovation in the project. The FHWA believes that if funding for staff is part of the innovation cost for an eligible project, the applicant will need to include it in the application for consideration.

9. The FHWA received comments from a private citizen suggesting that the selection criteria be expanded to require applicants to indicate a willingness to participate in specific technology transfer as well as monitoring and assessment activities. The FHWA agrees that the suggested examples could be of value for applicants to consider, however due to the broad range of eligible projects, specifying activities would be too limiting. Examples of activities will be included in program guidance available on FHWA's Web site at *http://www.fhwa.dot.gov/accelerating/grants* as reference information; however, no change is necessary to the NOFA.

10. The same private citizen also suggested that the agency assign more weight to proposals that: Include two or more EDC activities as a package; include a team that incorporates a Professional Traffic Operation Engineer; or generate more direct jobs to strengthen the present and future transportation workforce. The FHWA encourages and supports the use of AID Demonstration grants to accelerate the deployment of EDC innovations and intends to give priority consideration to applications that include EDC innovations. The broad range of eligible projects does not lend itself to specifying team composition as criteria. It is assumed that accelerating innovation deployment and the variety of projects anticipated to receive funding would generate jobs supporting the transportation workforce. However, the FHWA believes the selection criteria must focus on the intent of the program in terms of project eligibility and innovation deployment, and therefore, no change is necessary.

This is the final NOFA; FHWA is no longer considering comments on the proposed selection and evaluation criteria for AID Demonstration. The selection and evaluation criteria, application requirements, and technical assistance established in this final NOFA will govern the program during the grant solicitation period.

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I. Background

On July 6, 2012, President Obama signed into law MAP–21 (Pub. L. 112–141), which amends 23 U.S.C. 503 for TIDP to implement accelerated innovation deployment; future strategic highway research program findings and results; and accelerated implementation and deployment of pavement technologies. The TIDP relates to all aspects of highway transportation including planning, financing, operation, structures, materials, pavements, environment, and construction.

Section 503(c)(1) specifies the following TIDP goals: (A) Significantly accelerate the adoption of innovative technologies by the surface transportation community; (B) provide leadership and incentives to demonstrate and promote state-of-the-art technologies, elevated performance standards, and new business practices in highway construction processes that result in improved safety, faster construction, reduced congestion from construction, and improved quality and user satisfaction; (C) construct longer-lasting highways through the use of innovative technologies and practices that lead to faster construction of efficient and safe highways and bridges; (D) improve highway efficiency, safety, mobility, reliability, service life, environmental protection, and sustainability; and (E) develop and

deploy new tools, techniques, and practices to accelerate the adoption of innovation in all aspects of highway transportation.

II. Program Funding and Award

Section 51001 of MAP–21 authorized $62,500,000 for the TIDP for each of Fiscal Years (FY) 2013 and 2014. The funds are subject to obligation limitation that is established in appropriations law. The amount of TIDP budget authority available in a given year may be less than the amount authorized for that fiscal year.

The AID Demonstration is one aspect of the multifaceted TIDP approach. The FHWA expects approximately $15,000,000 to be made available in each of FY 2013 and FY 2014 for AID Demonstration. The FHWA will award AID Demonstration funds to multiple projects. The FHWA has funding award goals of up to $14,000,000 available to State departments of transportation (State DOT) and up to $1,000,000 available to Federal Land Management Agencies and tribal governments. Awards are limited to up to two projects per State DOT applicant, with up to one project award to a State DOT and up to one project award to a subrecipient applying through the State DOT, and limited to one project award per applicant for Federal Land Management Agencies and tribal governments, subject to the number of eligible applications and the availability of funds.

The amount of the award may be up to the full cost of the innovation, but only to a maximum of $1,000,000. States are also encouraged to use Section 1304 of MAP–21 ''Innovative Project Delivery Methods'' (23 U.S.C. 120(c)(3)) to increase the Federal share on these projects up to 5 percent. Information on the ''Innovative Project Delivery Methods'' provision is available at *http://www.fhwa.dot.gov/map21/qandas/qaipd.cfm.* These funding goals will be reviewed annually and may be adjusted to reflect current priorities and needs.

The FHWA will use an open, rolling solicitation. Applicants are encouraged to apply as soon as the eligible project is within 6 months of being initiated. Funds will be allocated upon award selection. Award recipients shall obligate the awarded funds to the project within 6 months of fund allocation.

Award recipients shall submit a final report to the FHWA within 6 months of project completion based on the plan described in Section VII (*Performance Measurement*) that documents the process, benefits, and lessons learned including development and/or refinement of guidance, specifications or other tools and methods to support rapid adoption of the innovation(s) as standard practice, as well as level of commitment by recipient to deploy the innovation as standard practice.

III. Eligibility

A. Entities Eligible To Apply for Funding

The AID Demonstration provides incentive funding for eligible entities to accelerate the implementation and adoption of innovation in highway transportation. Section 502(b)(3) of title 23, U.S.C., authorizes the Secretary to award research grants to a wide range of entities. The FHWA will provide AID Demonstration grants to eligible State DOTs, Federal Land Management Agencies, and tribal governments. We believe these entities are the most likely to fulfill the deployment goals of the AID Demonstration program, since they are actively engaged in the deployment of new technologies. Consistent with other FHWA funding provided to tribes, federally recognized tribe identified on the list of ''Indian Entities Recognized and Eligible to Receive Services from the Bureau of Indian Affairs'' (published at 77 FR 47868) is eligible to apply for AID Demonstration. Metropolitan planning organizations and local governments may apply through State DOT as a subrecipient. Applicants must submit applications electronically through Grants.gov.

The FHWA has funding award goals of up to $14,000,000 available to State DOTs and up to $1,000,000 available to Federal Land Management Agencies and tribal governments. Awards are limited to up to two projects per State DOT applicant, with up to one project award to a State DOT and up to one project award to a subrecipient applying through the State DOT, and limited to one project award per applicant for Federal Land Management Agencies and tribal governments, subject to the number of eligible applications and the availability of funds. These funding goals will be reviewed annually and may be adjusted to reflect current priorities and needs.

B. Eligible Uses of Funds

The AID Demonstration funds are available for any project eligible for assistance under title 23, United States Code. Eligible projects may involve any aspect of highway transportation including planning, financing, operation, structures, materials, pavements, environment, and construction that address the TIDP goals mentioned in Section I (*Background*). Projects eligible for funding shall include proven innovative practices or technologies, including infrastructure and non-infrastructure strategies or activities, which the applicant or subrecipient intends to implement and adopt as a significant improvement from the applicant's or the subrecipient's conventional practice.

The amount of the award may be up to the full cost of the innovation in the project, but only to a maximum of $1,000,000. States are also encouraged to use Section 1304 of MAP–21 (23 U.S.C. 120(c)(3)) ''Innovative Project Delivery Methods'' on projects that may qualify to increase the Federal share by up to 5 percent. Information on the ''Innovative Project Delivery Methods'' is available at *http://www.fhwa.dot.gov/map21/qandas/qaipd.cfm.*

IV. Selection Criteria

The FHWA will award TIDP AID Demonstration funds to projects based on the selection criteria outlined below.

The FHWA will use an open, rolling solicitation. Project readiness will be treated as primary selection criteria in FHWA's evaluation process. The project must be ready to be implemented within 6 months of applying for AID Demonstration funding. An eligible project shall include an innovation that aligns with the previously described TIDP goals. The innovation must be proven in real-world application with documented benefits (in a form that is publicly available or verifiable), not routinely used by the applicant or the subrecipient, and of significant improvement from the applicant's or the subrecipient's conventional practice. The FHWA encourages the use of innovations included in the Every Day Counts (EDC) initiative. Please go to the following link to see examples and benefits of EDC innovations: *http://www.fhwa.dot.gov/everydaycounts/.*

Awards are limited to up to two projects per State DOT applicant, with up to one project award to a State DOT and up to one project award to a subrecipient applying through the State DOT, and limited to one project award per applicant for Federal Land Management Agencies and tribal governments, subject to the number of eligible applications and the availability of funds. To ensure a wide variety of innovations and project types, the FHWA will also initially limit awards to three projects per innovation. If several applications submitted at the same time are rated as ''Qualified'' and exceed the amount of available funding, the FHWA intends to give priority funding consideration to projects that (1) have

not received TIDP funding, and (2) use an innovation that is included in the EDC initiative.

In the application, the applicant or the subrecipient must indicate willingness to: (1) Participate in monitoring and assessment activities regarding the effectiveness of the innovation(s) and subsequent technology transfer and information dissemination activities associated with the project; (2) accept FHWA oversight of the project; and (3) conduct a before and after customer satisfaction determination for construction projects.

V. Evaluation Process

The FHWA will evaluate AID Demonstration applications in accordance with the evaluation process discussed below.

The FHWA will establish an evaluation team of technical and professional staff with relevant experience and/or expertise to review each application received by FHWA through Grants.gov. The evaluation team will be responsible for reviewing, evaluating, and rating the applications as well as making funding recommendations to FHWA senior leadership.

After reviewing the application, the evaluation team may contact the applicant to discuss the application and confirm understanding of the requirements for participation in AID Demonstration. Based on the information collected, the evaluation team will prepare a summary assessment rating the application along with the team's recommendation. The summary assessment and recommendation will be presented to FHWA senior leadership to make a final determination on the approval of the award.

A. Selection Criteria

All applications will be evaluated on a rolling basis and be assigned a rating of ''Qualified'' or ''Not Qualified.'' If several applications submitted at the same time are rated as ''Qualified'', the FHWA will give priority funding consideration to projects that (1) have not received TIDP funding and (2) use an innovation that is included in the EDC initiative.

The ratings are as follows:

1. *Qualified:*

- Project ready to initiate within 6 months of applying for AID Demonstration funding;
- project innovation aligns with TIDP goals;
- innovation is proven in real-world application with documented benefits, and not routinely used by the applicant or the subrecipient;
- application describes the innovation's magnitude and scope of impact on the applicant's or the subrecipient's conventional practice;
- data is included that directly supports the requested funding amount;
- information provided on performance goals and measures for respective innovation demonstration and deployment activities;
- application indicates the applicant's or subrecipient's willingness to:

(1) Participate in monitoring and assessment activities regarding the effectiveness of the innovation(s) and subsequent technology transfer and information dissemination activities associated with the project;

(2) accept FHWA oversight of the project; and

(3) conduct before and after customer satisfaction determinations for construction projects.

2. *Not Qualified:*

- Project does not meet the eligibility requirements;
- application does not meet the ''Qualified'' rating;
- application fails to address one or more of the application requirements;
- applicant received AID Demonstration funding within the current fiscal year;
- three projects with the innovation were already awarded AID Demonstration funding.

VI. Application Process

A. Contents of Applications

The applicant shall include all of the information requested below in their applications. The FHWA may request applicants to supplement the data in the application, but encourages applicants to submit the most relevant and complete information they can provide. The applicant should, to the extent practicable, provide data and evidence of project merits in a form that is publicly available or verifiable.

A complete application will consist of: (1) The Standard Form 424 (SF 424) available from Grants.gov, and (2) the narrative attachment to the SF 424 as described below.

B. Standard Form 424, Application for Federal Assistance

Applicants should see *http://apply07.grants.gov/apply/forms/sample/SF424_2_1-V2.1.pdf* for instructions on completing the SF 424, which is part of the standard Grants.gov submission.

C. Narrative (Attachment to SF 424)

The applicant or subrecipient shall include the supplemental narrative in the attachments section of the SF 424 mandatory form in Grants.gov to successfully complete the application process.

The applicant or subrecipient shall respond to the application requirements described below. The supplemental narrative shall be prepared with standard formatting (e.g. a single-spaced document, using a standard 12-point font, such as Times New Roman, with 1-inch margins) and should not exceed five pages.

An application shall include information needed to verify that the project meets the statutory eligibility criteria as described in Section III (*Eligibility*) as well as other information required for FHWA to assess each of the criteria specified in Section IV (*Selection Criteria).* The applicant or subrecipient is required to demonstrate the responsiveness of the proposal to any pertinent selection criteria with the most relevant information that applicants can provide, regardless of whether such information is specifically requested or identified. The applicant or subrecipient shall provide concrete evidence of project milestones, financial capacity, and commitment in order to support project readiness.

For ease of review, the narrative should generally adhere to the following basic outline, and include relevant maps and graphics:

1. *Project Abstract:* Describe work that would be completed under the project, whether the project is a complete project or part of a larger project with prior investment, and the aspect of highway transportation and the TIDP goals that the innovation would address (maximum five sentences). The project abstract should succinctly describe how this specific request for AID Demonstration funding would be included in the project.

2. *Project Description:* Brief description of the project and project objective(s), the innovation and related documented benefits, the performance goals and measures for the innovation, current organizational/institutional experience with the innovation, and the significant improvement to conventional practice expected.

3. *Innovation Performance:* Brief description of how the innovation will be monitored, assessed, and documented to determine if the performance goals and measures are achieved, including a timeline of demonstration, deployment,

implementation, and/or adoption activities.

4. *Applicant information and coordination with other entities:* Identification of applicant, and subrecipient if applicable; description of cooperation with other entities; and information regarding any other entities involved in the project.

5. *Funding Request:* Summary of the funding request including the basis for determining the cost of the innovation in the project. The applicant should also include the total project cost.

6. *Eligibility and Selection Criteria:* Brief description of how the project meets the statutory eligibility criteria as described in Section III (*Eligibility*) and the selection criteria identified in Section IV (*Selection Criteria*).

D. Contact Information

The applicant or subrecipient should include contact information requested as part of the SF–424. The FHWA will use this information to contact applicants and to inform parties of FHWA's decision regarding selection of projects. Contact information should be provided for a direct employee of the applicant. Contact information for a contractor, agent, or consultant of the lead applicant is insufficient for FHWA's purposes.

E. Additional Information on Applying Through Grants.gov

Applications for AID Demonstration shall be submitted through Grants.gov. To apply for funding through Grants.gov, applicants must be properly registered. Complete instructions on how to register and apply can be found at *www.grants.gov*. If interested parties experience difficulties at any point during the registration or application process, they should call the Grants.gov Customer Support Hotline at 1–800–518–4726, Monday–Friday from 7:00 a.m. to 9:00 p.m. Eastern Standard Time.

Registering with Grants.gov is a one-time process, however, processing delays may occur and it can take up to several weeks for first-time registrants to receive confirmation and a user password. Accordingly, FHWA highly recommends that potential applicants start the registration process as early as possible. In order to apply for AID Demonstration under this notice and to apply for funding through Grants.gov, all applicants are required to complete the following:

1. *Acquire a Data Universal Numbering System (DUNS) Number.* A DUNS number is required for Grants.gov registration. The Office of Management and Budget requires that all applicants for Federal funds include a DUNS number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and subrecipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity that can be completed by calling 1–866–705–5711 or by applying online at *http://fedgov.dnb.com/webform*.

2. *Acquire or Renew Registration with the Central Contractor Registration (CCR) Database.* All applicants for Federal financial assistance maintain current registrations in the CCR database. An applicant must be registered in the CCR to successfully register in Grants.gov. The CCR database is the repository for standard information about Federal financial assistance applicants, recipients, and subrecipients. Entities that have previously submitted applications via Grants.gov are already registered with CCR, as it is a requirement for Grants.gov registration. Please note, however, that applicants must update or renew their CCR registration at least once per year to maintain an active status, so it is critical to check registration status well in advance of relevant application deadlines. Information about CCR registration procedures can be accessed at: *https://www.sam.gov/portal/public/SAM/.*

3. *Acquire an Authorized Organization Representative (AOR) and a Grants.gov Username and Password.* Applicants will need to complete an AOR profile on Grants.gov and create a username and password. The assigned DUNS Number is required to complete this step. For more information about the registration process, go to: *www.grants.gov/applicants/get_registered.jsp.*

4. *Acquire Authorization for the AOR from the E-Business Point of Contact (E-Biz POC).* The E-Biz POC for the applicant must log in to Grants.gov to confirm the applicant as an AOR. Please note that there can be more than one AOR for each applicant.

5. *Search for the Funding Opportunity on Grants.gov.* Applicants can use the Catalog of Federal Domestic Assistance number for this solicitation, which is 20.200, titled Technology and Innovation Development Program, when searching for the AID Demonstration opportunity on Grants.gov.

6. *Submit an Application Addressing All of the Requirements Outlined in this Notice of Funding Availability.* Within 24 to 48 hours after submitting an electronic application, applicants should receive an email validation message from Grants.gov. The validation message will specify whether the application was received and validated or rejected, with an explanation.

Note: When uploading attachments, applicants should use generally accepted formats such as .pdf, .doc, and .xls. While applicants may imbed picture files such as .jpg, .gif, .bmp, in your files, they should not save and submit the attachment in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

F. Experiencing Technical Issues With Grants.gov

If interested parties experience difficulties at any point during the registration or application process, they should call the Grants.gov Customer Support Hotline at 1–800–518–4726, Monday–Friday from 7:00 a.m. to 9:00 p.m. Eastern Standard Time.

VII. Performance Measurement

Each applicant selected for AID Demonstration funding shall work with FHWA on the development and implementation of a plan to collect information and report on the project's performance with respect to the relevant outcomes that are expected to be achieved through the innovation in the project. Each recipient or subrecipient of AID Demonstration funding shall report on specified performance indicators for its project. Performance indicators will be identified for each project, and will consider the individual project's stated goals as well as resource constraints of the recipient or subrecipient. Performance indicators will not include formal goals or targets, but will include baseline measures as well as post-project outputs, and will inform the AID Demonstration program in working toward best practices, programmatic performance measures, and future decisionmaking guidelines. The recipient or subrecipient shall submit a final report to FHWA within 6 months of project completion which documents the process, benefits, and lessons learned including development and/or refinement of guidance, specifications or other tools and methods to support rapid adoption of the innovation(s) as standard practice.

VIII. Questions and Clarifications

For further information concerning this final notice please contact Ms. Ewa

Flom, Program Manager, Center for Accelerating Innovation, (202) 366–2169, or Ms. Seetha Srinivasan, Office of the Chief Counsel, (202) 366–4099, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays. A TDD is available for individuals who are deaf or hard of hearing at (202) 366–3993.

In addition, FHWA will post answers to questions and requests for clarifications on FHWA's Web site at *http://www.fhwa.dot.gov/accelerating/grants.* Applicants and subrecipients are encouraged to contact FHWA directly to receive information about AID Demonstration.

Authority: Section 52003 of Pub. L. 112–141; 23 U.S.C. 503.

Issued on: January 24, 2014.

Gregory G. Nadeau,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 2014–03452 Filed 2–18–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 77]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Meeting.

SUMMARY: FRA announces the fifty-first meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics will include opening remarks from the FRA Administrator, and status reports will be provided by the Train Crew Size, Securement, Hazardous Material Issues, Fatigue Management, and Risk Reduction Working Groups. Status reports will also be provided by the Engineering Task Force. This agenda is subject to change, including the possible addition of further proposed tasks.

DATES: The RSAC meeting is scheduled to commence at 9:30 a.m. on Thursday, March 6, 2014, and will adjourn by 4:30 p.m.

ADDRESSES: The RSAC meeting will be held at the National Housing Center located at 1201 15th Street NW., Washington, DC 20005. The meeting is open to the public on a first-come, first-served basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Administrative Officer/Coordinator, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Robert Lauby, Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6474.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC. The RSAC was established to provide advice and recommendations to FRA on railroad safety matters. The RSAC is composed of 60 voting representatives from 39 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, and the Federal Transit Administration. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the RSAC Web site for details on prior RSAC activities and pending tasks at *http://rsac.fra.dot.gov/*. Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740), for additional information about the RSAC.

Robert C. Lauby,

Associate Administrator for Railroad Safety and Chief Safety Officer.

[FR Doc. 2014–03579 Filed 2–18–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2014–0003]

Americans With Disabilities Act: Proposed Circular Amendment 1

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of four additional proposed circular chapters and request for comments.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its Web site proposed guidance in the form of four additional circular chapters to help transportation providers meet the requirements of the U.S. Department of Transportation's (DOT) Americans with Disabilities Act (ADA) regulations. These proposed chapters include Chapter 1 (Introduction and Applicability), Chapter 2 (General Requirements), Chapter 5 (Equivalent Facilitation), and Chapter 8 (Complementary Paratransit Service). Along with the proposed chapter on vehicle acquisition published on October 2, 2012, these chapters are part of a series of approximately 12 chapters that will compose a complete ADA circular. By this notice, FTA invites public comment on these four additional proposed circular chapters, as well as suggestions for specific issues to address in future chapters.

DATES: Comments must be submitted by April 21, 2014. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments to Docket No. FTA–2014–0003 by any of the following methods:

Federal eRulemaking Portal: Go to *www.regulations.gov* and follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

Fax: (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number FTA–2014–0003 for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to *www.regulations.gov* including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477). *Docket:* For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140,

Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program questions, Dawn Sweet, Office of Civil Rights, Federal Transit Administration, 1200 New Jersey Avenue SE., Room E54–437, Washington, DC 20590, phone: (202) 366–4018, or email, *dawn.sweet@dot.gov.* For legal questions, Bonnie Graves, Office of Chief Counsel, same address, Room E56–306, phone: (202) 366–4011, or email, *bonnie.graves@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Department of Transportation (DOT) issues regulations implementing the transportation and related provisions of the Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973, as amended. The regulations at 49 CFR parts 27, 37, 38, and 39 set forth specific requirements transportation providers must follow to ensure their services, vehicles, and facilities are accessible to and useable by people with disabilities. The body of regulations is vast, covering multiple modes of public transportation, including fixed route bus and rail (e.g., rapid, commuter, and light rail); ADA complementary paratransit; general public demand responsive service; and ferry service. The Federal Transit Administration (FTA), as an agency within DOT, is charged with ensuring that providers of public transportation comply with the regulations. In 2010, FTA initiated a comprehensive management review of the agency's core guidance to transit grantees on ADA and other civil rights requirements. A primary goal of the review was to assess whether FTA was providing sufficient, proactive assistance to grantees in meeting civil rights requirements, as opposed to reacting to allegations of failure to comply with the requirements. Based on the review, FTA identified the need to develop an ADA circular similar to the circulars long in place for other programs. The current body of statutes and regulations in the ADA area can be imposing, and in some cases, extremely technical. FTA recognized value to the transit industry and other stakeholders in compiling and organizing information by topic into a plain English, easy-to-use format.

A circular does not alter, amend, supersede or otherwise affect the DOT ADA regulations themselves or replace or reduce the need for detailed information in the regulations. Its format, however, can provide a helpful outline of basic requirements with references to the applicable regulatory sections, along with examples of practices used by transit providers to meet the requirements. The examples of good practices are presented as local options; FTA recognizes that there are many different ways agencies can operationalize the regulatory requirements and ensure the delivery of compliant service.

FTA proposed the phased development of a new circular, FTA C 4710.1, with the initial proposed chapter focused on vehicle acquisition (*See* 77 FR 60170, Oct. 2, 2012, *http://www.gpo.gov/fdsys/pkg/FR-2012-10-02/pdf/2012-24185.pdf).* FTA will not publish final versions of individual chapters, but rather will publish one final circular after receiving notice and comment on individual chapters.

Today's notice provides a summary of the four additional proposed chapters. These chapters do not contain any new requirements, policies, or directives. The chapters themselves are not included in this notice; an electronic version may be found on FTA's Web site, at *www.fta.dot.gov.* Paper copies of the circular may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366–4865. After the summary of the four new chapters, this notice describes FTA's approach for publishing subsequent chapters and seeks suggestions on specific issues to address in those chapters.

After issuing the proposed chapter on vehicle acquisition in October 2012, FTA received 15 separate comments from individuals and organizations. A number of comments provided suggestions for modifying the format of the circular, including clearly distinguishing regulatory language from guidance, providing hyperlinks to the DOT ADA regulations and other important regulations, providing additional references, and cross-referencing other topics within the overall circular. FTA has incorporated many of these suggestions into the four additional proposed chapters issued with this amendment and has included additional examples of good practices and explanations of specific topics that benefit from elaboration. FTA welcomes additional comments on these format changes. FTA also received comments on the draft chapter itself, including some corrections and suggestions, which FTA will incorporate as appropriate, along with other general comments on the circular format, upon finalization of the entire circular.

FTA encourages stakeholders to provide comments on the content of these four proposed chapters, as well as make suggestions for future chapters.

II. Summary of Circular Amendment 1

Amendment 1 to the circular includes a table of contents for all 12 proposed chapters, including contents for the previously published proposed chapter on vehicle acquisition (Chapter 4), as well as for Chapter 1 (Introduction and Applicability), Chapter 2 (General Requirements), Chapter 5 (Equivalent Facilitation), and Chapter 8 (Complementary Paratransit Service). Chapter titles are presented for forthcoming chapters.

Proposed Chapter 1, ''Introduction and Applicability,'' summarizes the content of the proposed 12 chapters in both narrative and tabular form. The discussion of applicability describes the requirements of 49 CFR part 37 subpart B (Applicability). This discussion addresses the entities and transportation services addressed in the circular, with particular emphasis on services under contract or other arrangement and private entities receiving Section 5310 and Section 5311 funding. A discussion of requirements applicable to FTA grantees is presented next, followed by a section on the DOT Section 504 requirements, found in 49 CFR part 27. The next section addresses non-transportation ADA regulations (enforced by other agencies) that are potentially applicable to FTA grantees. Finally, the chapter discusses transportation services not addressed by this circular that other DOT operating administrations and other federal agencies enforce.

Proposed Chapter 2, ''General Requirements,'' explains the regulations related to nondiscrimination and other crosscutting requirements applicable to fixed route (rail and non-rail), complementary paratransit and general public demand responsive services. Regulations addressed in this chapter are from 49 CFR part 37 subparts A (General) and G (Provision of Service), with the exception of those subpart G requirements applicable only to fixed route service. The fixed route service requirements not addressed in Chapter 2 are addressed in forthcoming Chapter 6 (Fixed Route Service), which FTA will publish with a subsequent circular amendment. The Chapter 2 discussion of nondiscrimination addresses the prohibition against discrimination and provides specific examples of prohibited practices.

Section 2.3 of Chapter 2 addresses the 49 CFR part 37 subpart G provisions, including the requirements for

accessible service and maintaining accessible features. This includes guidance on steps to take when accessibility features are damaged or out of order, including good practices for communicating outages to inviduals with disabilities and others. Subsection 2.3.2 addresses the crosscutting requirements for keeping lifts (and ramps) in operable condition and reporting lift failures and removing vehicles with inoperable lifts from service. (The requirements for alternative transportation applicable to fixed route service are discussed in forthcoming Chapter 6.) Subsection 2.3.3 addresses the requirements for using lifts and securements, with a discussion of the requirements to accommodate riders who use wheelchairs. This includes an explanation of when transit agencies may decline to carry a wheelchair/occupant as addressed in prior DOT rulemaking. Requirements for accommodating riders who use other mobility devices are then presented, followed by securement areas and securement systems, including permitted policies and procedures. This also addresses the tasks vehicle operators must peform such as assistance for securing wheelchairs and the use of securement systems, ramps, and lifts.

Section 2.3 also addresses other service requirements such as the use of service animals and accessibility equipment, traveling with a respirator or portable oxygen supply, and providing information about transportation services, including making communications capacity available through accessible formats and technology. This is followed by a discussion of training requirements, including types of training (including refresher training) and the importance of having written policies and procedures.

Proposed Chapter 5, ''Equivalent Facilitation,'' discusses the requirements for seeking a determination of equivalent facilitation for vehicles and facilities, as contained in 49 CFR part 37 subpart B under the standards for accessible vehicles and facilities, respectively. The chapter includes a discussion of important considerations when seeking a determination based on FTA's experience with prior requests. This includes recommended data collection, required and recommended submission materials, and public participation requirements for transit agencies and for manufacturers. The chapter concludes with a list of Do's and Don't's of equivalent facilitation requests.

Proposed Chapter 8, ''Complementary Paratransit Service,'' addresses the requirements for complementary paratransit service as contained in 49 CFR part 37 subpart F, except for ADA paratransit eligibility, which is addressed in forthcoming Chapter 9. The chapter addresses the limited instances when an update to a paratransit plan may still be required. This is followed by a discussion of when transit agencies must follow specific public participation requirements associated with developing (or updating) paratransit plans and when proposing changes to reservations systems. This includes the requirement for transit agencies to create an ongoing mechanism for the participation of individuals with disabilities in the continued development and assessment of services.

Proposed Chapter 8 then addresses which entities are required to provide complementary paratransit service and the specific exemptions for commuter bus, commuter rail, and intercity rail (Amtrak) services. This is followed by a discussion of each of the six complementary paratransit service criteria, including service area, trip reservations (response time), fares, operating without regard to trip purpose, hours and days of service, and operating without capacity constraints.

The capacity constraints section provides a detailed discussion of prohibited practices, including the prohibition against limiting the number of trips, waiting lists, and any operational patterns or practices that limit complementary paratransit service availability. This includes policies and/or practices that yield poor service quality that discourages use of the complementary paratransit service, such as untimely service trip denials, missed trips, and/or excessive trip lengths. The discussion also provides examples of other potential limits to complementary paratransit service availability such as untimely drop-offs and poor telephone performance.

Chapter 8 also addresses subscription service, including limits on subscription trips under certain circumstances. The chapter continues with a discussion of premium service that may exceed the minimum requirements. The chapter concludes with a discussion on requirements for dispatching accessible vehicles.

III. Publication Approach

With the publication of the four additional proposed draft chapters, FTA has now published five of the approximately 12 chapters that will compose FTA's ADA circular, as explained in Chapter 1 (Introduction and Applicability). When issued in its final form, the circular is intended to provide guidance specifically for recipients of FTA financial assistance that provide public transit. As such, requirements found in the DOT ADA regulations, for example, related to intercity rail (i.e., Amtrak), private motor coach service (e.g., Greyhound), taxi service, and airport transportation will not be addressed in the circular.

Going forward, it is anticipated that the chapters will continue to be issued in groups. All chapters will be announced in the **Federal Register** for public notice and comment. FTA will not publish final versions of individual chapters, but rather will publish one final circular after receiving notice and comment on individual chapters.

IV. Conclusion

FTA seeks comments on the scope and content of the four chapters of the circular addressed in Amendment 1 (Chapter 1 (Introduction and Applicability), Chapter 2 (General Requirements), Chapter 5 (Equivalent Facilitation), and Chapter 8 (Complementary Paratransit Service)). FTA is seeking comments specifically as to whether there are areas in each of these chapters that need more clarification or explanation, topics that were overlooked, and areas where regulatory requirements are not clearly distinguished. We are also seeking examples of local practices that have proven effective that would be worth describing in the circular.

FTA continues to seek suggestions on which issues we should address in future chapters. Specifically, FTA seeks comments on which issues the industry finds most challenging to address, and in what areas guidance would be most valuable to transportation providers.

Therese W. McMillan,

Deputy Administrator.

[FR Doc. 2014–03530 Filed 2–18–14; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. EP 670 (Sub–No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Rail Energy Transportation Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2 10(a)(2).

DATES: The meeting will be held on Thursday, March 6, 2014, at 9:00 a.m., E.S.T.

ADDRESSES: The meeting will be held in the Hearing Room on the first floor of the Board's headquarters at 395 E Street SW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Michael H. Higgins (202) 245–0284; *Michael.Higgins@stb.dot.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339].

SUPPLEMENTARY INFORMATION: RETAC arose from a proceeding instituted by the Board, *Establishment of a Rail Energy Transportation Advisory Committee,* Docket No. EP 670. RETAC was formed to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues regarding the transportation by rail of energy resources, particularly, but not necessarily limited to, coal, ethanol, and other biofuels. The purpose of this meeting is to continue discussions regarding issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, carriers, and users of energy resources. Potential agenda items for this meeting include introduction of new members, a performance measures review, discussion of domestic oil production and transportation, industry segment reports by RETAC members, a presentation on the domestic coal market, and a roundtable discussion.

The meeting, which is open to the public, will be conducted in accordance with the FACA, Federal Advisory Committee Management regulations (41 CFR part 102–3), RETAC's charter, and Board procedures. Further communications about this meeting may be announced through the Board's Web site at *www.stb.dot.gov.*

Written Comments: Members of the public may submit written comments to RETAC at any time. Comments should be addressed to RETAC, c/o Michael Higgins, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001 or *Michael.Higgins@stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 721; 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: February 12, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2014–03533 Filed 2–18–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 12, 2014.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before March 21, 2014 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–xxxx.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 10.

Burden hours: 800,040.

Bureau Clearance Officer: Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224; (202) 927–4374.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2014–03501 Filed 2–18–14; 8:45 am]

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DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

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Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue NW., Suite 11010, Washington, DC 20220.

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Internal Revenue Service (IRS)

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Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 10.

Respondents: 9000.

Annual responses: 9,000.

Burden hours: 4,500.

Bureau Clearance Officer: Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224; (202) 927–4374

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873

Robert Dahl,

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[FR Doc. 2014–03500 Filed 2–18–14; 8:45 am]

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Catch Monitor Program; Observer Program; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 130503447–4051–01]

RIN 0648–BD30

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Catch Monitor Program; Observer Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action would revise Pacific Coast Groundfish Fishery regulations pertaining to certified catch monitors and certified observers required for vessels in the Shorebased Individual Fishery Quota Program, the Mothership Coop Program, the Catcher/Processor Coop Program, and for processing vessels in the fixed gear or open access fisheries. This action also specifies permitting requirements for persons interested in providing certified observers and certified catch monitor services; updates observer provider and vessels responsibilities relative to observer safety; makes minor revisions relative to administration of the programs, and proposes numerous housekeeping measures. This action affects individuals serving as certified catch monitors and observers, persons that provide certified catch monitors and observers, vessels that are required to carry certified observers, and persons that are required to employ the services of certified catch monitors.

DATES: Submit comments on or before March 21, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0218, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov. www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0218*, NOAA-NMFS-2012-0218, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Fax:* 206–526–6736; Attn: Becky Renko.
- *Mail:* William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Becky Renko.

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

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

FOR FURTHER INFORMATION CONTACT: Becky Renko, 206–526–6110; (fax) 206–526–6736; *Becky.Renko@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery under the Pacific Coast Groundfish Fishery Management Plan. The Pacific Coast groundfish regulations establish frameworks for certified observers and certified catch monitors. The framework for the certified observers includes: Observer coverage requirements for vessels fishing or processing in the shorebased Individual Fishery Quota (IFQ) program, Mothership (MS) Coop Program, Catcher/processor (C/P Coop Program); requirements for vessels to obtain observers from permitted observer providers; certification eligibility and decertification requirements for observers; and program related responsibilities for vessels, certified observers, and permitted observer providers. Certified observer coverage requirements are also specified for vessels processing in the limited entry fixed gear and open access fisheries. The framework for the certified-catch monitors includes: Catch monitor coverage requirements for first receivers accepting shorebased IFQ landings; requirements for first receivers to obtain catch monitors from certified observer providers; certification and decertification procedures for catch monitors and catch monitor providers; and program-related responsibilities for first receivers, certified catch monitors, and catch monitor providers. The regulations at 50 CFR 660.17 include an application and approval process for catch monitor provider certification. The catch monitor provider certification process is comparable to the permitting process for observer providers in the North Pacific Groundfish Observer Program.

This rule would remove the existing regulations requiring vessels to obtain certified observers from permitted providers for the North Pacific Groundfish Observer Program, and would establish provider permitting requirements specific to the Pacific Coast groundfish fishery. In addition, regulations specifying certification procedures for catch monitor providers would be converted to permitting procedures. Because some provider businesses in the Pacific Coast groundfish fishery provide both observers and catch monitors, a combined permitting process for observer and catch monitor providers would be implemented at 50 CFR 660.18. For clarity, and to allow for a common permitting process for providers, new definitions would be added, existing definitions would be refined and observer program and catch monitor program terminology would be consistently applied. A new section would be added at 50 CFR 660.19 to consolidate the appeals process for certified catch monitors, certified observers and permitted providers. The appeals process would be available to them when they receive an adverse certification or permit determination. In the current regulations, there are separate appeals processes applicable to the observer program and the catch monitor program.

This action would also revise regulatory text pertaining to observer safety. Fishing vessel responsibilities relative to safety would be revised to more closely align with the National Observer Program provisions at 50 CFR 600.725 and 600.746, and the prohibitions at 50 CFR 660.12(e) would be revised to clarify that a vessel required to carry an observer is prohibited from fishing (including processing) if NMFS, the observer provider, or the observer determines that the vessel is inadequate or unsafe. In addition, the observer provider responsibilities would require the use of the current Vessel Safety checklists for pre-cruise checks and that any safety-related findings be submitted to the Observer Program. Minor regulatory

changes in program administration and numerous housekeeping measures are also proposed in this action.

Observer Provider and Catch Monitor Provider Permitting

Under current regulations, persons seeking to provide observer services must have an observer provider permit issued under regulations at 50 CFR 679.52 for the North Pacific groundfish fishery. Only those persons that were permitted for the North Pacific groundfish fishery in 2010 may provide observers in the Pacific Coast Groundfish fishery. To expedite implementation of the trawl rationalization program on January 1, 2011, it was necessary to pattern the Pacific Coast observer provider regulations from the North Pacific groundfish regulations. At that time, it was NMFS' intent that a process to issue permits for new observer providers for the Pacific Coast groundfish fishery would be implemented in a trailing rulemaking. With fewer than three persons qualified to provide observers for the Pacific Coast groundfish fishery in 2013, the current regulations should be revised so that new, additional observer providers can receive permits and provide services in the Pacific Coast groundfish fisheries.

At the Pacific Fishery Management Council's (Council) April 2012 meeting, the Council recommended draft regulations for certification and decertification of observer providers establishing a process similar to that currently in place for catch monitor providers. Establishing regulations for the Pacific Coast groundfish fishery was considered necessary to allow for the entry of new observer providers separate from those that provide observers in the Alaska groundfish fisheries. During the development of this rulemaking, NMFS gave further consideration to the North Pacific Groundfish Observer Program framework that requires observer providers obtain permits, rather than certifications. Prior to 2003, the North Pacific groundfish fishery's observer framework required that observer providers obtain certifications. However, in 2002 the North Pacific groundfish fishery observer regulations were revised and the certification process was replaced with a permitting process (67 FR 72596; December 6, 2002).

Provider permits authorize persons to provide observer services and are more business-oriented, granting permission to perform specific activities. This is in contrast to a certification which is generally used to grant permission to the holder to perform tasks providing some minimum training. NMFS believes that the proposed process for evaluation of observer provider applications and issuance of permits has clear application requirements and evaluation criteria while providing NMFS with flexibility and discretion in its decision whether to issue the permit.

Under current regulations, persons who wish to provide catch monitor services must obtain certification under regulations at 50 CFR 660.17. Regulations at § 660.17 contain certification procedures and regulations at § 660.18 contain decertification procedures for catch monitor providers. This action would replace the catch monitor certification process with a permitting process, which is primarily a nomenclature change. Although current regulations establish certification and decertification procedures for catch monitor providers, to date, all catch monitor providers have been permitted as observer providers for the North Pacific Groundfish Observer Program. Existing certified catch monitor providers would be ''grandfathered''; issued permits in place of the current certification.

This action proposes a single, combined permit application process for catch monitor and observer providers. The permit application procedures would be similar to those used in the North Pacific Groundfish Fishery Observer Program. New provider permits would be obtained through an application process. Both new and grandfathered permits would be renewed annually to ensure that the business information was current and the permit holder continues to meet eligibility criteria.

There are two types of endorsements that would be attached to a provider permit; an observer endorsement and a catch monitor endorsement. During the application process, new providers would specify which endorsement(s) they are seeking. Provider permits must have at least one endorsement and it must be appropriate for the services being provided. A provider permit expires if it is not renewed or when services have not been provided for a period of 12 months. Providing a single application process reduces duplication for persons that provide both observers and catch monitors.

Observer and catch monitor providers contribute an important service to NMFS by recruiting, hiring, and deploying motivated individuals to serve as observers and catch monitors. NMFS must ensure that observer providers meet minimum requirements so that this important service is consistently maintained. NMFS would, in its discretion, issue permits to applicants who: Demonstrate that they understand the scope of the regulations they will be held to; document how they will comply with those regulations; demonstrate that they have the business infrastructure necessary to carry out the job; are free from conflict of interest; do not have past performance problems on a Federal contract or any history of decertification as either an observer or observer provider; and are free from criminal convictions for certain serious offenses that could reflect on their ability to carry out the role of application. Upon issuance of an observer provider permit, an observer provider permit holder would be held accountable for all applicable regulations promulgated by NMFS.

Provider applications may be submitted at any time during the year. Once a complete application is received, NMFS' review process would begin and take at least a month. Therefore, applicants would need to plan accordingly. Applications submitted in the fourth quarter of any given calendar year (October 1 to December 31) may not be processed until the following year. The application process would be described in regulation and include an application review by a board appointed by NMFS, as well as permit eligibility standards. If necessary, the review board would contact the applicant for further information. If the applicant fails to meet the permitting criteria, a decision to deny an application would be made and written notification provided to the applicant. The written notice would describe why the application was denied. The denial of an observer or catch monitor provider permit application would constitute final agency action and an appeal for further NMFS' review would not be available. However, an applicant who is denied a permit may correct the original application's deficiencies and submit a new application. NMFS would have discretion to either grant or deny an issuance of a catch monitor or observer provider permit.

Persons that provided observers and catch monitors in the 12 months prior to the effective date of this rule will be issued a provider permit without needing to submit an application. The existing record regarding performance and the ability to provide observer or catch monitor services would be adequate documentation. Existing providers would not be required to submit a new application unless they were seeking additional endorsements.

A permit issued to a catch monitor or observer provider would remain effective until the expiration date on the

permit, December 31 of that year, unless: An ownership change occurs that requires application for a new permit; the permitted provider ceases to deploy observers to groundfish fisheries during a period of 12 continuous months; or the permit issued to an observer provider is suspended, revoked, or voided. To remain in effect in the subsequent years, provider permits must be renewed prior to the December 31 permit expiration date. If an existing provider fails to renew the provider permit, the provider permit will expire on the permit expiration date. NMFS will send a renewal form on or about October 1. The provider must verify that all information is current and return the form by November 30, to be assured that there is no lapse in the permit. The purpose of the annual renewal is to verify that the management, organizational, and ownership structure is unchanged; to update provider contact information; and to assure there are no new conflict of interests or state or federal criminal convictions that could affect the wellbeing of observers or catch monitors.

If a permit lapses after a period of 12 months of inactivity as described above, NMFS would issue an Initial Administrative Decision (IAD) to the permit holder stating that NMFS records indicate that the permit had lapsed and that the permit holder has the opportunity to appeal the determination. The IAD would also describe the appeals process available to the permit holder. Permit for holders who appeal this IAD would remain valid while during the appeal process.

Potential violations regarding observer or catch monitor providers, including those serious enough to warrant possible suspension or revocation of a provider's permit, would be forwarded to NMFS Office for Law Enforcement (OLE) for investigation. Procedures governing sanctions of permits are found at subpart D of 15 CFR Part 904.

Observer Safety

Under the Magnuson-Stevens Act National Standard 10, conservation and management measures must promote the safety of human life at sea. Consistent with that standard, NMFS has promulgated numerous regulatory provisions designed to promote not just vessel safety, but observer safety, as well. Current Pacific Coast groundfish regulations and National Observer Program regulations at 50 CFR 600.746 require that vessels carrying observers in the Pacific Coast groundfish fishery have a valid Commercial Fishing Vessel Safety Decal certifying compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I, or in mitigating circumstances a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

On December 20, 2012 the Coast Guard and Maritime Act of 2012 was signed. The Act requires significant changes in safety and survival equipment requirements for commercial fishing industry vessels including, fishing vessels and fish processing vessels. In anticipation of regulatory changes at 46 CFR Chapter I, part 28, NMFS reviewed the Pacific Coast groundfish regulations pertaining to observer safety. The review found that safety related cross references were not consistent throughout the regulations; that the observer provider responsibilities did not clearly state that the most current observer vessel safety checklist must be completed prior to an observer's first cruise or that the checklist needed to be provided to the Observer Program; nor did the regulations clearly state that a vessel is prohibited from fishing if NMFS, the observer provider or the observer determine that a vessel is unsafe or inadequate for an observer. This action proposes to revise regulatory language pertaining to observer safety found under the observer provider responsibilities (50 CFR 660.140(h)(2)(ix), 660.150(j)(5)(ix), 660.160 (g)(5)(ix)), vessel responsibilities (§§ 660.140(h)(2)(ii)(B), 660.150(j)(2)(ii)(B), 660.160(g)(2)(ii)(B), 660.216(e)(2), 660.316(e)(2)), and prohibitions (§§ 660.12(e) and 660.112).

Limited Entry Fixed Gear and Open Access Observer Requirements

Observer requirements in §§ 660.216 and 660.316 would be amended by this action. Regulation implementing the trawl rationalization program (75 FR 32994, June 10, 2010) moved the observer regulations from a general observer section that applied to all sectors of the fishery to newly created sections for each fishing sector. The reorganization resulted in unintended changes to the observer requirements for the limited entry fixed gear and open access sectors. Subsequent regulations reinstated coverage provisions for processing vessels that had inadvertently been removed. However, revisions are necessary to clarify which observer provisions apply to harvesting vessels and which apply to processing vessels; for processing vessels, the regulations would clearly state who had to be contacted to obtain a certified observer. Safety provisions would be updated to be consistent with the requirements described in the previous section.

Minor Regulatory Changes and Housekeeping Measures

Numerous minor non-substantive and housekeeping changes are being proposed for improved Observer Program and Catch Monitor Program administration. The changes involve removing outdated regulatory text, adding clarification to existing text without changing the intended meaning, and revising to ensure consistent use of terms throughout the entire chapter. The proposed minor and housekeeping changes are summarized below:

- Proposed revisions to the Observer Program regulations at § 660.140 (Shorebased IFQ Program), § 660.150 (MS Coop Program), and § 660.160 (C/P Coop Program) are intended to clarify the existing policies and practices. These changes include: (1) Revising communication requirements to reflect current practices; (2) removing outdated reporting requirements; (3) adding descriptions of transportation requirements for deployed observers; (4) revising timelines on the issuance of an observer certification; (5) adding components to observers certification requiring annual safety training and fish identification testing; (6) broadening the statement describing the required briefings so fishery specific briefings such the briefing for the Pacific whiting fishery are explicitly required by regulation; and (7) removing unnecessary requirements of the physician statement for certified observers.
- In the general prohibitions at § 660.12, incorrect references regarding cease fishing reports would be moved to the trawl prohibitions at § 660.112, and the remaining prohibitions would be consolidated.
- At § 660.60, cross references are updated.
- At § 660.112, a prohibition relative to observer coverage while a vessel is in port is simplified and linking text at § 660.140(h) is revised for clarity.
- In § 660.16, a table displaying current observer coverage requirements would be revised to show the Observer Program office overseeing the observers.
- Proposed revisions to the Catch Monitor Program regulations at § 660.17 are intended to more clearly state the current policies and practices. These changes include: (1) Revising communication requirements to reflect current practices; (2) revising language pertaining to the disclosure of catch monitor data to align requirements other similar text in other paragraphs and

sections; (3) removing unnecessary requirements of the physician statement; (4) adding text to explain that a catch monitor certification expires if the individual is not deployed for 12 months; and (5) clarifying the provider policies regarding standards of conduct consistent with those specified for observer providers.

- In § 660.16, paragraphs (d) and (e) are added, and in § 660.17, paragraphs (a) to (c) are added to make Observer Program regulations Catch Monitor Program regulations consistent.

Physical fitness examinations and requirements of the physician statements are currently being reviewed by the National Observer Program. Modifications to the groundfish regulations being proposed at §§ 660.17(e)(1)(vii)(A), 660.140(h)(5)(xi)(B), and 660.150(j)(5)(xi)(B)(*2*) may be withdrawn or further modified in the final rule pending the outcome of the review.

NMFS believes that the limitations on the conflict of interests for observer and catch monitor providers are too narrow and increase the risk that professional judgment or actions related to the interest of observers or catch monitors would be unduly influenced by a secondary interest in a fishing related business. Current regulations limit only those businesses with a direct financial interest in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal Governments in waters off Washington, Oregon, or California from being observer or catch monitor providers. The only exception to these standards would be an allowance to provide observer and catch monitor services. NMFS is considering whether to use its authority under section 305(d) of the Magnuson Stevens Act (MSA) to broaden the limitations to restrict providers from having a direct financial interest in any federal or state managed fisheries with the exception of an allowance to provide observers, catch monitor or other biological sampling services. NMFS invites comments from the public on this issue.

Classifications

Pursuant to section 304(b)(1)(A) and 305(d) of the MSA, the NMFS has determined that this proposed rule is consistent with the Groundfish FMP, the MSA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order12866.

NMFS has prepared an initial regulatory flexibility analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule would have on small entities. The preamble contains a description of the action, why it is considered, and the legal basis for this action (see the beginning of this section in the preamble and the **SUMMARY** section of the preamble). NMFS also prepared a Regulatory Impact Review (RIR) for this action. A copy of the RIR/IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA, per the requirements of 5 U.S.C. 604(a) follows:

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of $19 million for all its affiliated operations worldwide. The SBA recently revised the small business size standards for some fishery related businesses (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from $4.0 to 19.0 million, Shellfish Fishing from $4.0 to 5.0 million, and Other Marine Fishing from $4.0 to 7.0 million, Id. *at* 37400 (Table 1). A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. Prior to SBA's recent changes to the size standards for commercial harvesters, a business involved in both the harvesting and processing of seafood products, also referred to as a catcher/processor (CP), was considered a small business if it met the $4.0 million criterion for commercial fish harvesting operations. In light of the new size standards for commercial harvesters, NMFS is reviewing the size standard for CPs. However, for purposes of this rulemaking, NMFS is applying the $19 million standard because whiting CPs are involved in the commercial harvest of finfish. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts, not in excess of $7.0 million. There are no specific SBA defined size criteria for observer providers. For this sector, NMFS Alaska Region has employed the $7.0 million in gross annual receipts size standard based on SBA standards associated with firms engaged in placing technical employees. (See: *http://alaskafisheries.noaa.gov/analyses/observer/ririrfa_soc_observer_0209.pdf*)

This proposed rule affects current and future businesses that supply observers for monitoring fishing and processing activities on a vessel at-sea and catch monitors who observe and document offloads at first receiver/processing plants on shore. The actions listed above are intended to establish permitting requirements for businesses providing certified observers and catch monitors; make regulations consistent with The Coast Guard and Maritime Act of 2012; and make minor administrative and housekeeping changes.

Currently, companies that supply observers have undergone the permit processes used for North Pacific Fisheries. This proposed rulemaking would create a new permitting process for Pacific groundfish fisheries. Currently, businesses supplying catch monitors undergo a certification process. This proposed rulemaking would convert this process into a permitting process. Under the current process of certification, potential providers submit an application and receive a letter or approval or denial from NMFS. Under the proposed permit process, potential providers will submit a similar application, but will either receive a permit or a letter of denial. Providers that existed during the 12 months prior to the rule will be grandfathered into the new system. Rather than create two different permits, one for supplying observers and one for supplying catch monitors, under the proposed regulations there will only be one permit process. Under this process, a company can request to have an observer endorsement or a catch monitor endorsement or both. NMFS NWR currently has permitted five observer provider companies: Alaskan Observers, Inc.; NWO, Inc.; Saltwater Observers, Inc.; TechSea International; and MRAG Americas, Inc. The principal activity of most of these companies has been to provide observers for Alaska groundfish fisheries the North Pacific, but they also provide observers for other fisheries such and the Pacific Groundfish fishery. Regulations require observers in all sectors and catch monitors at first landings/processing sites. Therefore, this proposed rule

indirectly affects participants in the following: IFQ Program, Mothership Coop Program, and Catcher/Processor Coop Program. Two companies, Alaskan Observers, Inc. and Saltwater Observers, Inc., are providing observers and monitors for the IFQ Program. The other sectors may be using the other companies as they typically also fish off Alaska. There are 144 shoreside vessel accounts, 36 mothership endorsed limited entry permits, 6 mothership permits, 10 catcher/processor permits, and 51shorebased first receiver site licenses. Taking into account cross participation, multiple accounts, and affiliation between entities, NMFS estimates that there are 145 fishery related entities indirectly affected by these proposed regulations as they need to acquire observers for their vessels and monitors for their shoreside processing plants. Of these entities, 102 are ''small'' businesses. This rule directly affects the five providers currently permitted to operate in the fishery. NMFS considers these all small businesses (75 FR 69016 November 10, 2010).

The benefits from these regulations are largely administrative in nature and minor in the context of the entire program. In terms of economic effects, the main impact is requiring observer providers to obtain a Pacific Groundfish Provider permit. These regulations will allow for entry of new providers, separate from the five that have provided observers in the Alaska groundfish fisheries. There will be an administrative fee charged for issuing permits. NMFS projects these fees to be about $165 for renewals and $550 for new permits.

Based on the discussion above, this proposed rule would not have a significant economic effect on a substantial number of small entities. This rulemaking is largely administrative in nature. There are no significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes, and that minimize the impact of the proposed rule on small entities. The benefits of these regulations include more understandable and less complex regulations and the potential for increased provider companies in the fishery. Additional companies may lower costs to fishing vessels and processors and alleviate logistical/scheduling issues with providing observers and monitors to the various ports. Nonetheless, for transparency purposes, NMFS has prepared this IRFA. Through the rulemaking process associated with this action, we are requesting comments on this conclusion.

This proposed rule contains a new collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval as revisions to OMB collection 0648–0619 and 0648–0500. The estimated public reporting burden for OMB collection 0648–0619, provider permit applications, is an average of 10 hours per response, annual renewal of provider permits is estimated to average 2 hours per response, and appeals of permits that have been expire after a period of 12 continuous months during which no observers or catch monitors are deployed average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. NMFS estimates the public reporting burden for OMB collection 0648–0500, the submission of vessel safety checklists, averages 5 minutes per response.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to West Coast Region at the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. The proposed regulations do not require the tribes to change from their current practices.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the PCGFMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006 concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior ''no jeopardy'' conclusion. NMFS also reaffirmed its prior determination that implementation of the Groundfish PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concludes that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea

turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions.

As Steller sea lions and humpback whales are also protected under the Marine Mammal Protection Act (MMPA), incidental take of these species from the groundfish fishery must be addressed under MMPA section 101(a)(5)(E). On February 27, 2012, NMFS published notice that the incidental taking of Steller sea lions in the West Coast groundfish fisheries is addressed in NMFS' December 29, 2010 Negligible Impact Determination and this fishery has been added to the list of fisheries authorized to take Steller sea lions (77 FR 11493, Feb. 27, 2012). NMFS is currently developing MMPA authorization for the incidental take of humpback whales in the fishery.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: February 3, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 is revised to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.11:

■ a. Add definitions, in alphabetical order, for ''Catch Monitor Program or Catch Monitor Program Office'', ''Catch monitor provider'', and ''Observer provider''; and

■ b. Revise the definitions for ''Observer Program or Observer Program Office'' and ''Sustainable Fisheries Division or SFD'' to read as follows:

§ 660.11 General definitions.

* * * * *

Catch Monitor Program or Catch Monitor Program Office means the Catch Monitor Program Office of the West Coast Region, National Marine Fisheries Service.

Catch monitor provider means any person or commercial enterprise that is granted a permit by NMFS to provide certified catch monitors as required in § 660.140.

* * * * *

Observer Program or Observer Program Office means the Observer Program Office of the Northwest Fisheries Science Center, National Marine Fisheries Service, Seattle, Washington. Branch offices within the Observer Program include the West Coast Groundfish Observer Program and the At-Sea Hake Observer Program.

Observer provider means any person or commercial enterprise that is granted a permit by NMFS to provide certified observers as required at §§ 660.140, 660.150, 660.160, 660.216 or 660.316.

* * * * *

Sustainable Fisheries Division or SFD means the Assistant Regional Administrator of the Sustainable Fisheries Division, West Coast Region, NMFS, or a designee.

* * * * *

■ 3. In § 660.12, revise paragraphs (e)(5) through (9) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(e) * * *

(5) Fish for, land, or process fish without observer coverage when a vessel is required to carry an observer under subparts C through G of this part.

(6) Fish when a vessel is required to carry an observer under subparts C through G of this part if:

(i) The vessel is inadequate for observer deployment as specified at § 600.746 of this chapter;

(ii) The vessel does not maintain safe conditions for an observer as specified at §§ 660.140(h), 660.150(j), and 660.160(g); or

(iii) NMFS, the observer provider, or the observer determines the vessel is inadequate or unsafe pursuant to vessel responsibilities to maintain safe conditions as specified at §§ 660.140(h), 660.150(j), and 660.160(g).

(7) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

(8) Fail to meet the vessel responsibilities and observer coverage requirements specified at §§ 660.140(h), 660.150(j), 660.160(g), 660.216, or 660.316.

(9) Fail to meet the observer provider responsibilities specified at §§ 660.140(h), 660.150(j), 660.160(g), 660.216, or 660.316.

* * * * *

■ 4. In § 660.16, revise paragraph (a) and the table in paragraph (c) and add paragraphs (d) and (e) to read as follows:

§ 660.16 Groundfish Observer Program.

(a) *General.* Vessel owners, operators, and managers are jointly and severally responsible for their vessel's compliance with observer requirements specified in this section and within §§ 660.140, 660.150, 660.160, 660.216, or 660.316.

* * * * *

(c) * * *

West Coast groundfish fishery	Regulation section	Observer program branch office
(1) Shorebased IFQ Program—Trawl Fishery	§ 660.140(h)	West Coast Groundfish.
(2) MS Coop Program—Whiting At-sea Trawl Fishery	§ 660.150(j).	
A) Motherships		A) At-Sea Hake.
B) Catcher Vessels		B) West Coast Groundfish.
(3) C/P Coop Program—Whiting At-sea Trawl Fishery	§ 660.160(g)	At-Sea Hake.
(4) Fixed Gear Fisheries	§ 660.216.	
A) Harvester vessels		A) West Coast Groundfish.
B) Processing vessels		B) West Coast Groundfish.
(5) Open Access Fisheries	§ 660.316.	
A) Harvester vessels		A) West Coast Groundfish.
B) Processing vessels		B) West Coast Groundfish.

(d) *Observer certifications and responsibilities.* For the Shorebased IFQ Program see § 660.140(h), for the MS Coop Program see § 660.150(j), and, for the C/P Coop Program see § 660.160(g).

(e) *Application process to become an observer provider.* See § 660.18.

■ 5. In § 660.17:

■ a. Revise the section heading;

■ b. Remove paragraphs (b) and (d);

■ c. Redesignate paragraph (a) as (d), paragraph (c) as (e), and paragraph (e) as (f).

■ d. Revise newly redesignated paragraphs (d), (e), (f)(1)(vii), (f)(2), (f)(4) through (6), (f)(8)(i)(B), (C), and (F), (f)(9)(ii), and (f)(11) through (13);

■ e. Add paragraphs (a) through (c) and (g) to read as follows.

§ 660.17 Catch monitor program.

(a) *General.* The first receiver site license holder, the first receiver site license authorized representative, facility operators and managers are jointly and severally responsible for the first receiver being in compliance with catch monitor requirements specified in this section and at § 660.140 (i).

(b) *Purpose.* The purpose of the Catch Monitor Program is to, among other related matters, confirm that the IFQ landings are accurately sorted, weighed and reported on electronic fish tickets.

(c) *Catch monitor coverage requirements.* Catch monitor coverage requirements for the Shorebased IFQ Program are specified at § 660.140(i).

(d) *Catch monitor certification and responsibilities.* Catch monitor certification authorizes an individual to fulfill duties as specified by NMFS while under the employ of a catch monitor provider.

(1) *Catch monitor training certification.* A training certification signifies the successful completion of the training course required to obtain catch monitor certification. This certification expires when the catch monitor has not been deployed and performed sampling duties as required by the Catch Monitor Program Office for a period of time, specified by the Catch Monitor Program, after his or her most recent debriefing. The certification is renewed by successful completion of the training course.

(2) *Catch Monitor Program annual briefing.* Each catch monitor must attend a briefing prior to his or her first deployment within any calendar year subsequent to a year in which a training certification is obtained. To maintain a certification, a catch monitor must successfully complete any required briefing specified by the Catch Monitor Program. All briefing attendance, performance, and conduct standards required by the Catch Monitor Program must be met prior to any deployment.

(3) *Catch monitor certification requirements.* NMFS may certify individuals who:

(i) Are employed by a catch monitor provider at the time of the issuance of the certification and qualified, as described at paragraph (f)(1)(i) through (viii) of this section and have provided proof of qualifications to NMFS, through the catch monitor provider.

(ii) Have successfully completed catch monitor certification training.

(A) Successful completion of training by an applicant consists of meeting all attendance and conduct standards; meeting all performance standards for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Catch Monitor Program.

(B) If a candidate fails training, he or she will be notified in writing on or before the last day of training. The notification will indicate: The reasons the candidate failed the training; whether the candidate can retake the training, and under what conditions.

(iii) Have not been decertified as an observer or catch monitor under provisions in §§ 660.17(g), and 660.140(h)(6), 660.150(j)(5), 660.160(g)(5) or 679.53(c).

(4) *Maintaining the validity of a catch monitor certification.* After initial issuance, a catch monitor must keep their certification valid by meeting all of the following requirements specified below:

(i) Successfully perform their assigned duties as described in the Catch Monitor Manual or other written instructions from the Catch Monitor Program.

(ii) Accurately record their data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(iii) Consistent with NOAA data confidentiality guidance, not disclose data and observations made on board a vessel to any person except the owner or operator of the observed vessel, an authorized state or OLE officer, NMFS or the Catch Monitor Program; and, not disclose data and observations made at a first receiver to any person other than the first receiver site license holder, the first receiver site license authorized representative, facility operators and managers, an authorized state or OLE officer, NMFS or the Catch Monitor Program.

(iv) Successfully complete any required briefings as prescribed by the Catch Monitor Program.

(v) Successful completion of a briefing by a catch monitor consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Catch Monitor Program.

(vi) Successfully meet all debriefing expectations including catch monitor performance standards and reporting for assigned debriefings.

(vii) Submit all data and information required by the Catch Monitor Program within the program's stated guidelines.

(viii) Have been deployed as a catch monitor within the 12 months prior to any required briefing, unless otherwise authorized by the Catch Monitor Program.

(e) *Catch monitor standards of behavior.* Catch monitors must do the following:

(1) Perform authorized duties as described in training and instructional manuals or other written and oral instructions provided by the Catch Monitor Program.

(2) Accurately record and submit the required data, which includes fish species composition, identification, sorting, and weighing information.

(3) Write complete reports, and report accurately any observations of suspected violations of regulations.

(4) Returns phone calls, emails, text messages, or other forms of communication within the time specified by the Catch Monitor Program.

(5) Not disclose data and observations made on board a vessel to any person except the owner or operator of the observed vessel, an authorized officer, NMFS or the Catch Monitor Program; and, not disclose data and observations made at a first receiver to any person other than the first receiver site license holder, the first receiver site license authorized representative, facility operators and managers an authorized officer, NMFS or the Catch Monitor Program.

(f) * * *

(1) * * *

(vii) Have had health and physical fitness exams and been found to be fit for the job duties and work conditions;

(A) Physical fitness exams shall be conducted by a medical doctor who has been provided with a description of the job duties and work conditions and who provides a written conclusion regarding the candidate's fitness relative to the required duties and work conditions. A signed and dated statement from a licensed physician that he or she has physically examined a catch monitor or

catch monitor candidate. The statement must confirm that, based on that physical examination, the catch monitor or catch monitor candidate does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the catch monitor or catch monitor candidate from performing his or her duties satisfactorily. The physician's statement must be submitted to the Catch Monitor Program office prior to certification of a catch monitor. The physical exam must have occurred during the 12 months prior to the catch monitor's or catch monitor candidate's deployment.

(B) Copies of ''certificates of insurance,'' that names the Catch Monitor Program Coordinator as the ''certificate holder,'' shall be submitted to the Catch Monitor Program Office by February 1 of each year. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(*1*) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum).

(*2*) States Worker's Compensation as required.

(*3*) Commercial General Liability.

* * * * *

(2) *Catch Monitor conduct and behavior.* A catch monitor provider must develop and maintain a policy addressing conduct and behavior for their employees that serve as catch monitors.

(i) The policy shall address the following behavior and conduct regarding:

(A) Catch monitor use of alcohol;

(B) Catch monitor, possession, or distribution of illegal drugs; and

(C) Sexual contact with personnel off the vessels or processing facility to which the catch monitor is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the catch monitor's official duties.

(ii) A catch monitor provider shall provide a copy of its conduct and behavior policy to each observer candidate and to the Catch Monitor Program by February 1 of each year.

* * * * *

(4) *Catch monitors provided to a first receiver.* (i) Must have a valid catch monitor certification;

(ii) Must not have informed the catch monitor provider prior to the time of assignment that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (f)(1)(vii)(A) of this section that would prevent him or her from performing his or her assigned duties; and

(iii) Must have successfully completed all Catch Monitor Program required training and briefing before assignment.

(5) *Respond to industry requests for catch monitors.* A catch monitor provider must provide a catch monitor for assignment pursuant to the terms of the contractual relationship with the first receiver to fulfill first receiver requirements for catch monitor coverage under § 660.140(i)(1). An alternate catch monitor must be supplied in each case where injury or illness prevents the catch monitor from performing his or her duties or where the catch monitor resigns prior to completion of his or her duties. If the catch monitor provider is unable to respond to an industry request for catch monitor coverage from a first receiver for whom the catch monitor provider is in a contractual relationship due to the lack of available catch monitors, the catch monitor provider must report it to NMFS at least 4 hours prior to the expected assignment time.

(6) *Ensure that catch monitors complete duties in a timely manner.* Catch monitor providers must ensure that catch monitors employed by that catch monitor provider do the following in a complete and timely manner:

(i) Submit to NMFS all data, logbooks and reports as required under the Catch Monitor Program deadlines.

(ii) Report for his or her scheduled debriefing and complete all debriefing responsibilities.

* * * * *

(8) * * *

(i) * * *

(B) Has Internet access for Catch Monitor Program communications and data submission;

(C) Remains available to OLE and the Catch Monitor Program until the completion of the catch monitors' debriefing.

* * * * *

(F) While under contract with a catch monitor provider, each catch monitor shall be provided with accommodations in accordance with the contract between the catch monitor and the catch monitor provider. If the catch monitor provider is responsible for providing accommodations under the contract with the catch monitor, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other accommodations that have an assigned bed for each catch monitor that no other person may be assigned to for the duration of that catch monitor's stay.

* * * * *

(9) * * *

(ii) Not exceed catch monitor assignment limitations and workload as outlined in § 660.140(i)(3)(ii).

* * * * *

(11) *Maintain communications with the Catch Monitor Program office.* A catch monitor provider must provide all of the following information by electronic transmission (email), fax, or other method specified by NMFS.

(i) *Catch monitor training, briefing, and debriefing registration materials.* This information must be submitted to the Catch Monitor Program at least 10 business days prior to the beginning of a scheduled catch monitor certification training or briefing session.

(A) Training registration materials consist of the following:

(*1*) Date of requested training;

(*2*) A list of catch monitor candidates that includes each candidate's full name (i.e., first, middle and last names), date of birth, and gender;

(*3*) A copy of each candidate's academic transcripts and resume;

(*4*) A statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions;

(B) Briefing registration materials consist of the following:

(*1*) Date and type of requested briefing session;

(*2*) List of catch monitors to attend the briefing session, that includes each catch monitor's full name (first, middle, and last names);

(C) The Catch Monitor Program will notify the catch monitor provider which catch monitors require debriefing and the specific time period the catch monitor provider has to schedule a date, time, and location for debriefing. The catch monitor provider must contact the Catch Monitor Program within 5 business days by telephone to schedule debriefings.

(*1*) Catch monitor providers must immediately notify the Catch Monitor Program when catch monitors end their contract earlier than anticipated.

(*2*) [Reserved]

(ii) *Catch monitor provider contracts.* If requested, catch monitor providers must submit to the Catch Monitor Program a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the catch monitor provider and those entities requiring catch monitor services under § 660.140(i)(1). Catch monitor

providers must also submit to the Catch Monitor Program upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to catch monitor compensation or salary levels) between the catch monitor provider and the particular entity identified by the Catch Monitor Program or with specific catch monitors. The copies must be submitted to the Catch Monitor Program via email, fax, or mail within 5 business days of the request. Signed and valid contracts include the contracts a catch monitor provider has with:

(A) First receivers required to have catch monitor coverage as specified at paragraph § 660.140(i)(1); and

(B) Catch monitors.

(iii) *Change in catch monitor provider management and contact information.* A catch monitor provider must submit to the Catch Monitor Program any change of management or contact information as required at § 660.18(h).

(iv) *Catch monitor status report.* Each Tuesday, catch monitor providers must provide the Catch Monitor Program with an updated list of deployments per Catch Monitor Program protocol. Deployment information includes provider name, catch monitor last name, catch monitor first name, trip start date, trip end date, status of catch monitor, vessel name and vessel identification number, date monitored offload, and first receiver assignment.

(v) *Informational materials.* Catch monitor providers must submit to NMFS, if requested, copies of any information developed and used by the catch monitor providers and distributed to first receivers, including, but not limited to, informational pamphlets, payment notification, and description of catch monitor duties.

(vi) *Other reports.* Reports of the following must be submitted in writing to the Catch Monitor Program by the catch monitor provider via fax or email address designated by the Catch Monitor Program within 24 hours after the catch monitor provider becomes aware of the information:

(A) Any information regarding possible catch monitor harassment;

(B) Any information regarding any action prohibited under § 660.12(f);

(C) Any catch monitor illness or injury that prevents the catch monitor from completing any of his or her duties described in the catch monitor manual; and

(D) Any information, allegations or reports regarding catch monitor conflict of interest or breach of the standards of behavior described in catch monitor provider policy.

(12) *Replace lost or damaged gear.* Lost or damaged gear issued to a catch monitor by NMFS must be replaced by the catch monitor provider. All replacements must be provided to NMFS and be in accordance with requirements and procedures identified in writing by the Catch Monitor Program.

(13) *Confidentiality of information.* A catch monitor provider must ensure that all records on individual catch monitor performance received from NMFS under the routine use provision of the Privacy Act (5 U.S.C. 552a) or as otherwise required by law remain confidential and are not further released to anyone outside the employ of the catch monitor provider company to whom the catch monitor was contracted except with written permission of the catch monitor.

(g) *Certification and decertification procedures for catch monitors.* (1) *Catch monitor certification official.* The Regional Administrator (or a designee) will designate a NMFS catch monitor certification official who will make decisions on whether to issue or deny catch monitor certification.

(2) *Agency determinations on catch monitor certifications.* (i) *Issuance of certifications.* Certification may be issued upon determination by the catch monitor certification official that the candidate has successfully met all requirements for certification as specified in § 660.17(d).

(ii) *Denial of a certification.* The catch monitor certification official will issue a written determination identifying the reasons for denial of a certification.

(3) *Limitations on conflict of interest for catch monitors.* (i) Catch monitors must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal Governments in waters off Washington, Oregon, or California, including but not limited to:

(A) Any ownership, mortgage holder, or other secured interest in a vessel, first receiver, shorebased or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish;

(B) Any business involved with selling supplies or services to any vessel, first receiver, shorebased or floating stationary processing facility; or

(C) Any business involved with purchasing raw or processed products from any vessel, first receiver, shorebased or floating stationary processing facilities.

(ii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the catch monitor's official duties.

(iii) May not serve as a catch monitor at any shoreside or floating stationary processing facility owned or operated where a person was previously employed in the last two years.

(iv) May not solicit or accept employment as a crew member or an employee of a vessel, or shoreside processor while employed by a catch monitor provider.

(v) Provisions for remuneration of catch monitors under this section do not constitute a conflict of interest.

(4) *Catch monitor decertification.* (i) *Catch monitor decertification review official.* The Regional Administrator (or a designee) will designate a catch monitor decertification review official(s), who will have the authority to review certifications and issue IADs of decertification.

(ii) *Causes for decertification.* The catch monitor decertification official may initiate decertification proceedings when it is alleged that any of the following acts or omissions have been committed:

(A) Failed to satisfactorily perform the specified duties and responsibilities;

(B) Failed to abide by the specified standards of conduct;

(C) Upon conviction of a crime or upon entry of a civil judgment for:

(*1*) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties and responsibilities specified in this section;

(*2*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(*3*) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of catch monitors.

(iii) *Issuance of IAD.* Upon determination that decertification is warranted, the catch monitor decertification official will issue a written IAD. The IAD will identify the specific reasons for the action taken. Decertification is effective 30 calendar days after the date on the IAD, unless there is an appeal.

(iv) *Appeals.* A certified catch monitor who receives an IAD that suspends or revokes his or her catch

monitor certification may appeal the determination within 30 calendar days after the date on the IAD to the Office of Administrative Appeals pursuant to § 660.19.

6. Revise § 660.18 to read as follows.

§ 660.18 Observer and catch monitor provider permits and endorsements.

(a) *Provider permits.* Persons seeking to provide observer or catch monitor services must obtain a provider permit from NMFS before providing certified catch monitors or certified observers for the Shorebased IFQ Program, the MS Coop Program, the C/P Coop Program, or for processing vessels in the fixed gear or open access fisheries. There are two types of endorsements for provider permits, an observer endorsement and a catch monitor endorsement. Provider permits must have at least one endorsement and it must be appropriate for the services being provided. Provider permits are obtained through an application process and must be renewed annually to remain valid in the following year. A provider permit expires if it is not renewed or when services have not been provided for 12 consecutive months.

(b) *Application process to become an observer or catch monitor provider.* (1) *New provider applications.* An applicant seeking a provider permit may submit an application at any time during the calendar year. Any provider permit issued during a given year will expire on December 31. Applications must be submitted by fax or mail to the West Coast Region Fisheries Permits Office 7600 Sand Point Way NE Seattle, WA, 98115. Only complete applications will be considered for approval by the review board.

(2) *Contents of provider application.* A complete application for a provider permit shall contain the following:

(i) A statement indicating which endorsement the applicant is seeking: observer provider, catch monitor provider or both endorsements. A single application may be used to apply for both endorsements.

(ii) Description of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and other employees. List all office locations and their business mailing address, business phone and fax number, email addresses. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(iii) *Provider contact information.* (A) Name of applicant organization. If the applicant organization is United States business entity, include the state registration number.

(B) The primary business mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence.

(iv) A narrative statement describing relevant direct or indirect prior experience or qualifications the applicant may have that would enable them to be a successful provider.

(A) For applicants seeking an observer provider endorsement, the applicant should describe experience in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(B) For applicants seeking a catch monitor provider endorsement, a narrative statement should identify prior relevant experience in recruiting, hiring, deploying, and providing support for individuals in marine work environments in the groundfish fishery or other fisheries of similar scale.

(v) A narrative description of the applicant's ability to carry out the required responsibilities and duties as described at §§ 660.140(h), 660.150(j), and 660.160(g) for observer providers and/or § 660.17(f) for catch monitor providers.

(vi) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, that they have no conflict of interest as described in § 660.18(c)(3).

(vii) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, describing any criminal convictions, Federal contracts they have had and the performance rating they received on the contract, and previous decertification action while working as an observer, observer provider, or catch monitor provider.

(viii) NMFS may request additional information or clarification from the applicants.

(c) *Application evaluation.* Complete applications will be forwarded to Observer program and or the Catch Monitor Program for review and evaluation.

(1) A provider permit application review board will be established and be comprised of at least three members. The review board will evaluate applications submitted under paragraph (a) of this section. If the applicant is a corporation, the review board also will evaluate the application criteria for each owner, or owners, board members, and officers.

(2) The provider permit application will, at a minimum, be evaluated on the following criteria:

(i) The applicant's ability to carry out the responsibilities and relevant experience and qualifications.

(ii) Satisfactory performance ratings on any Federal contracts held by the applicant.

(iii) Absence of any conflict of interest as defined for providers.

(iv) Absence of any relevant criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(v) Absence of any history of decertification as an observer provider;

(3) *Limitations on conflict of interest for providers.* Providers must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal Governments in waters off Washington, Oregon, or California, including but not limited to:

(i) Any ownership, mortgage holder, or other secured interest in a vessel, first receiver, shorebased or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish;

(ii) Any business involved with selling supplies or services to any vessel, first receiver, shorebased or floating stationary processing facility; or

(iii) Any business involved with purchasing raw or processed products from any vessel, first receiver, shorebased or floating stationary processing facilities.

(4) *Existing providers.* Businesses that provided observers and/or catch monitors in the 12 months prior to [*EFFECTIVE DATE OF FINAL RULE*] will be issued a provider permit without submission of an application. This permit will be effective through December 31, 2014.

(i) Providers who deployed catch monitors in the Shorebased IFQ Program in the 12 months prior to [*EFFECTIVE DATE OF FINAL RULE*] will be issued a provider permit with a catch monitor provider endorsement

effective through December 31, 2014, except that a change in ownership of an existing catch monitor provider after January 1, 2014, requires a new permit application under this section.

(ii) Providers who deployed certified observers in the Pacific Coast groundfish fishery in the 12 months prior to [*EFFECTIVE DATE OF FINAL RULE*] will be issued a provider permit with an observer provider endorsement effective through December 31, 2014, except that a change in ownership of an existing observer provider after January 1, 2014, requires a new permit application under this section.

(iii) To receive a provider permit for 2015 and beyond, the existing providers must follow the provider permit renewal process set forth in this section.

(d) *Agency determination on an application.* NMFS will send a written determination to the applicant. If an application is approved, NMFS will issue a provider permit with the approved endorsements. If an application is denied, the basis for denial will be explained in the written determination.

(e) *Effective dates.* The provider permit will be valid from the effective date identified on the permit until the permit expiration date of December 31. The provider permit must be renewed prior to expiration to remain valid at the start of the following year.

(f) *Expiration of the provider permit.* (1) *Expiration due to inactivity.* (i) A provider permit and endorsements will expire after a period of 12 continuous months during which no observers or catch monitors are deployed by the provider in the Pacific coast groundfish fishery.

(ii) For permits that are endorsed for both observers and catch monitors, the observer provider endorsement will expire after a period of 12 continuous months during which no observers are deployed by the provider and the catch monitor provider endorsement will expire after a periods of 12 continuous months during which no catch monitors are deployed by the provider.

(iii) The Regional Administrator will provide written notice to a provider if NMFS' deployment records indicate that observer or catch monitors have not been deployed as described in paragraph (f)(1)(i) and (ii) of this section. If, after the provider has had an opportunity to respond to the notice, NMFS concludes that expiration criteria have been met, it will issue an IAD finding that the permit expired. A provider that receives an IAD of permit expiration may appeal under § 660.19. A provider that appeals an IAD will be issued an extension of the expiration date of the permit until after the final resolution of the appeal.

(2) *Expiration due to failure to renew.* Provider permits must be renewed every calendar year. Failure to renew will result in expiration of the provider permit on December 31.

(3) *Obtaining a new permit or endorsement following an expiration or voided permit.* A person holding an expired or void permit or endorsement may reapply for a new provider permit or endorsement at any time consistent with § 660.18(b).

(g) *Provider permit renewal process.* To remain in effect in the following year, provider permits must be renewed prior to the permit expiration date.

(1) NMFS will mail a provider permit renewal form to existing permit holders on or about October 1 each year.

(2) Providers who want to have their permits effective for January 1 of the following calendar year must submit their complete renewal form to NMFS by November 30. For those permitted providers who do not submit a complete renewal form by November 30, NMFS may not be able to issue a new provider permit by January 1of the following calendar year, and will issue the new provider permit as soon as practicable. If a provider fails to renew the provider permit, the provider permit will expire on December 31.

(3) Permitted providers as required under §§ 660.140, 660.150, and 660.160 for the trawl fisheries will be required to provide the following information relative to the 12 months prior to submission of a renewal: for catch monitor endorsed providers, the total number of individual catch monitors that attended training, attended briefings, and deployed to a first reviewer; and for observer endorsed providers, the total number of individual observers that attended training, attended briefings, and deployed to a vessel. The renewed permit will not be approved until NMFS has received all of the information described in paragraph (g) of this section.

(h) *Transferability.* Neither a provider permit nor the endorsements are transferable.

(1) *Change in ownership or provider contact information.* (i) Within 15 days of a change in the management, organizational structure, and ownership structure involving a person being added to the ownership-providers must notify NMFS SFD Permits Office and provide the identification by name and general function of all controlling of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and other employees. If the provider is a corporation, the articles of incorporation must be provided. If the provider is a partnership, the partnership agreement must be provided.

(ii) Within 30 days of a change in provider contact information the provider must notify NMFS SFD Permits Office and provide the new contact information.

(i) *Provider permit sanctions.* Procedures governing sanctions of permits are found at subpart D of 15 CFR part 904.

(j) *Permit fees.* The Regional Administrator may charge fees to cover administrative expenses related to issuance of permits including initial issuance, renewal replacement, and appeals.

■ 7. Add § 660.19 to read as follows:

§ 660.19 Appeals process for catch monitors, observers, and provider permits.

(a) *Allowed appeals.* This section describes the procedure for appealing IADs described at §§ 660.17(g), 660.18(f), 660.140(h), 660.150(j), and 660.160(g) for catch monitor decertification, observer decertification and provider permit expirations due to inactivity. Any person whose interest is directly and adversely affected by an IAD may file a written appeal. For purposes of this section, such person will be referred to as the ''applicant.''

(b) *Appeals process.* In cases where the applicant disagrees with the IAD, the applicant may appeal that decision. Final decisions on appeals of IADs will be made in writing by the Regional Administrator or designee acting on behalf of the Secretary of Commerce and will state the reasons therefore.

(1) *Submission of appeals.* (i) The appeal must be in writing and comply with paragraph (b) of this section.

(ii) Appeals must be mailed or faxed to: National Marine Fisheries Service, West Coast Region, Sustainable Fisheries Division, ATTN: Appeals, 7600 Sand Point Way NE., Seattle, WA, 98115; Fax: 206–526–6426; or delivered to National Marine Fisheries Service at the same address.

(2) *Timing of appeals.* The appeal must be filed within 30 calendar days after the determination is issued. The IAD becomes the final decision of the Regional Administrator or designee acting on behalf of the Secretary of Commerce if no appeal is filed within 30 calendar days. The time period to submit an appeal begins with the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal

holiday, the time period will extend to the close of business on the next business day.

(3) *Address of record.* The address used by the applicant in initial correspondence to NMFS concerning the application will be the address used by NMFS for the appeal. Notifications and correspondence associated with all actions affecting the applicant will be mailed to the address of record unless the applicant provides NMFS, in writing, an address change. NMFS bears no responsibility if NMFS sends a notification or correspondence to the address of record and it is not received because the applicant's actual address has changed without notification to NMFS.

(4) *Statement of reasons for appeals.* Applicants must submit a full written statement in support of the appeal, including a concise statement of the reasons the IAD determination has a direct and adverse effect on the applicant and should be reversed or modified. The appellate officer will limit his/her review to the issues stated in the appeal; all issues not set out in the appeal will be waived.

(5) *Decisions on appeals.* The Regional Administrator or designee will issue a final written decision on the appeal which is the final decision of the Secretary of Commerce.

■ 8. In § 660.60, revise paragraph (c)(1)(iv) to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(c) * * *

(1) * * *

(iv) *List of IFQ species documented on Observer Program reporting form.* As specified at § 660.140(h)(1)(i), to be exempt from observer coverage while docked in port depends on documentation of specified retained IFQ species on the Observer Program reporting form. The list of IFQ species documented on the Observer Program form may be modified on a biennial or more frequent basis under routine management measures at § 660.60(c)(1).

* * * * *

■ 9. In § 660.112,

■ a. Add paragraph (a)(3)(iv);

■ b. Revise paragraph (a)(4);

■ c. Remove paragraph (b)(1)(xiii);

■ d. Redesignate paragraphs (b)(1)(xiv), (b)(1)(xv), (b)(1)(xvi), and (b)(1)(xvii) as (b)(1)(xiii), (b)(1)(xiv), (b)(1)(xv), and (b)(1)(xvi), respectively, and revise newly redesignated paragraphs (b)(1)(xiii) and (b)(1)(xiv); and

■ e. Revise paragraphs (d)(12), (d)(14), and (d)(15) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(a) * * *

(3) * * *

(iv) Fail to submit cease fishing reports specified at §§ 660.113(c), 660.150(c), 660.160(c).

* * * * *

(4) *Observers.* * * * *

(i) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program without observer coverage.

(ii) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program if the vessel is inadequate or unsafe for observer deployment as described at § 660.12(e).

(iii) Fail to maintain observer coverage in port as specified at § 660.140(h)(1)(i).

* * * * *

(b) * * *

(1) * * *

(xiii) Discard or attempt to discard IFQ species/species group at sea unless the observer has documented or estimated the discards.

(xiv) Begin a new fishing trip until all fish from an IFQ landing have been offloaded from the vessel, consistent with § 660.12(a)(11).

* * * * *

(d) * * *

(12) Sort or discard any portion of the catch taken by a catcher vessel in the MS Coop Program before the catcher vessel observer completes sampling of the catch, except for minor operational amounts of catch lost by a catcher vessel provided the observer has accounted for the discard (i.e., a maximized retention fishery).

* * * * *

(14) Take deliveries without a valid scale inspection report signed by an authorized scale inspector on board the MS vessel.

(15) Sort, process, or discard catch delivered to MS vessels before the catch is weighed on a scale that meets the requirements of § 660.15(b), including the daily test requirements.

* * * * *

■ 10. In § 660.140,

■ a. Revise paragraphs (b)(2)(iv), (b)(2)(vi), (b)(2)(viii);

■ b. Revise paragraphs (h)(1), (h)(2)(i)(B), (h)(2)(ii)(B), (h)(3) through (4), (h)(5)(ii)(B)(*1*) and (*3*), (h)(5)(iii)(D), (h)(5)(iv)(A) and (B), (h)(5)(v), (h)(5)(vii)(A)(*2*) through (*5*), (h)(5)(ix), (h)(5)(xi) through (xv), (h)(6)(i), (h)(6)(iii)(A), and (h)(6)(v) through (ix);

■ c. Add paragraph (h)(2)(xi); and

■ d. Revise paragraphs (i)(2), (i)(3)(ii), (j)(2)(ii) through (iv), (j)(3)(i), and (j)(4) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(b) * * *

(2) * * *

(iv) Provide unrestricted access to all areas where fish are or may be sorted or weighed to catch monitors, NMFS staff, NMFS-authorized personnel, or authorized officers at any time when a delivery of IFQ species, or the processing of those species, is taking place.

* * * * *

(vi) Retain and make available to catch monitors, NMFS staff, NMFS-authorized personnel, or authorized officers, all printed output from any scale used to weigh catch, and any hand tally sheets, worksheets, or notes used to determine the total weight of any species.

* * * * *

(viii) Ensure that sorting and weighing is completed prior to catch leaving the area that can be monitored from the observation area described in paragraph (i) of this section.

* * * * *

(h) * * * (1) *Observer coverage requirements.* (i) *Coverage.* The following observer coverage pertains to certified observers obtained from an observer provider permitted by NMFS.

(A) Any vessel participating in the Shorebased IFQ Program:

(*1*) Must carry a certified observer on any fishing trip from the time the vessel leaves port and until the completion of landing (until all catch from that fishing trip has been offloaded—see landing at §§ 660.11 and 660.60(h)(2)).

(*2*) Must carry an observer at any time the vessel is underway in port, including transit between delivery points when fish is offloaded at more than one IFQ first receiver.

(*3*) Is exempt from the requirement to maintain observer coverage as specified in paragraph (h) of this section while remaining docked in port when the observer makes available to the catch monitor an Observer Program reporting form documenting the weight and number of bocaccio, yelloweye rockfish, canary rockfish, and cowcod retained during that trip and which documents any discrepancy the vessel operator and observer may have in the weights and number of the overfished species, unless modified inseason under routine management measures at § 660.60(c)(1).

(B) Any vessel 125 ft (38.1 m) LOA or longer that is engaged in at-sea processing must carry two certified observers, and any vessel shorter than 125 ft (38.1 m) LOA that is engaged in at-sea processing must carry one certified observer, each day that the

vessel is used to take, retain, receive, land, process, or transport groundfish.

(ii) *Observer deployment limitations and workload.* An observer must not be deployed for more than 22 calendar days in a calendar month. The Observer Program may issue waivers to allow observers to work more than 22 calendar days per month when it's anticipated one trip will last over 20 days or for issues with observer availability due to illness or injury of other observers. If an observer is unable to perform their duties for any reason, the vessel is required to be in port within 36 hours of the last haul sampled by the observer.

(iii) *Refusal to board.* Any boarding refusal on the part of the observer or vessel must be immediately reported to the Observer Program and OLE by the observer provider. The observer must be available for an interview with the Observer Program or OLE if necessary.

(2) * * *

(i) * * *

(B) Accommodations and food for trips of 24 hours or more must be equivalent to those provided for the crew and must include berthing space, a space that is intended to be used for sleeping and is provided with installed bunks and mattresses. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Administrator or designee.

(ii) * * *

(B) Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311. Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

* * * * *

(xi) *Housing on vessel in port.* During all periods an observer is housed on a vessel, the vessel operator must ensure that at least one crew member is aboard.

(3) *Procurement of observer services.* Owners of vessels required to carry observers under paragraph (h)(1) of this section must arrange for observer services from an observer provider, except that:

(i) Vessels are required to procure observer services directly from the Observer Program when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by an observer provider.

(ii) Vessels are required to procure observer services directly from the Observer Program and an observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by an observer provider.

(4) *Application to become an observer provider.* See § 660.18.

* * * * *

(5) * * *

(ii) * * *

(B) * * *

(*1*) That the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the Observer Program;

* * * * *

(*3*) That every observer completes a basic cardiopulmonary resuscitation/first aid course prior to the end of the West Coast Groundfish Observer Training class.

(iii) * * *

(D) Immediately report to the Observer Program Office and the OLE any refusal to board an assigned vessel.

(iv) * * * (A) Must have a valid West Coast Groundfish observer certification with the required endorsements;

(B) Must not have informed the observer provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (h)(5)(xi)(B) of this section that would prevent him or her from performing his or her assigned duties; and

* * * * *

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment pursuant to the terms of the contractual relationship with the vessel to fulfill vessel requirements for observer coverage under paragraphs (h)(5)(xi)(D) of this section. An alternate observer must be supplied in each case where injury or illness prevents an observer from performing his or her duties or where an observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the observer provider is in a contractual relationship due to the lack of available observers by the estimated embarking time of the vessel, the observer provider must report it to NMFS at least 4 hours prior to the vessel's estimated embarking time.

* * * * *

(vii) * * *

(A) * * *

(*2*) Has a check-in system in which the observer is required to contact the observer provider each time they depart and return to port on a vessels.

(*3*) Remains available to OLE and the Observer Program until the conclusion of debriefing.

(*4*) Receives all necessary transportation, including arrangements and logistics to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to and from the location designated for an observer to be interviewed by the Observer Program; and

(*5*) Receives lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(*i*) An observer under contract may be housed on a vessel to which he or she is assigned: Prior to their vessel's initial departure from port; for a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or for a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

(*ii*) Otherwise, each observer between vessels, while still under contract with an observer provider, shall be provided with accommodations in accordance with the contract between the observer and the observer provider. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodation must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations that has an assigned bed for each observer that no other person may be assigned to for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

* * * * *

(ix) *Verify vessel's Commercial Fishing Vessel Safety Decal.* An observer provider must ensure that the observer completes a current observer vessel safety checklist, and verify that a vessel has a valid USCG Commercial Fishing Vessel Safety Decal as required under paragraph (h)(2)(ii)(B) of this section prior to the observer embarking on the first trip and before an observer may get underway aboard the vessel. The provider must submit all vessel

safety checklists to the Observer Program, as specified by Observer Program. One of the following acceptable means of verification must be used to verify the decal validity:

(A) An employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

* * * * *

(xi) *Maintain communications with the Observer Program Office.* An observer provider must provide all of the following information by electronic transmission (email), fax, or other method specified by NMFS.

(A) *Observer training, briefing, and debriefing registration materials.* This information must be submitted to the Observer Program Office at least 10 business days prior to the beginning of a scheduled West Coast groundfish observer certification training or briefing session.

(*1*) Training registration materials consist of the following:

(*i*) Date of requested training;

(*ii*) A list of observer candidates that includes each candidate's full name (i.e., first, middle and last names), date of birth, and gender;

(*iii*) A copy of each candidate's academic transcripts and resume;

(*iv*) A statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions;

(*v*) Length of each observer's contract.

(*2*) Briefing registration materials consist of the following:

(*i*) Date and type of requested briefing session;

(*ii*) List of observers to attend the briefing session, that includes each observer's full name (first, middle, and last names);

(*iii*) Length of each observer's contract.

(*3*) *Debriefing.* The Observer Program will notify the observer provider which observers require debriefing and the specific time period the observer provider has to schedule a date, time, and location for debriefing. The observer provider must contact the Observer Program within 5 business days by telephone to schedule debriefings.

(*i*) Observer providers must immediately notify the observer program when observers end their contract earlier than anticipated.

(*ii*) [Reserved]

(B) *Physical examination.* A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on that physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer or observer candidate from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician was made aware of the duties of the observer and the dangerous, remote, and rigorous nature of the work by reading the NMFS-prepared information. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment.

(C) *Certificates of insurance.* Copies of ''certificates of insurance,'' that name the Northwest Fisheries Science Center Observer Program manager as the ''certificate holder,'' shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(*1*) Maritime Liability to cover ''seamen's'' claims under the Merchant Marine Act (Jones Act) and General Maritime Law ($1 million minimum).

(*2*) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum).

(*3*) States Worker's Compensation as required.

(*4*) Commercial General Liability.

(D) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (h)(1)(i) of this section. Observer providers must also submit to the Observer Program Office, upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via email, fax, or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(*1*) Vessels required to have observer coverage as specified at paragraph (h)(1)(i) of this section; and

(*2*) Observers.

(E) *Change in observer provider management and contact information.* An observer provider must submit to the Observer Program Office any change of management or contact information as required at § 660.18(h).

(F) *Biological samples.* The observer provider must ensure that biological samples are stored/handled properly prior to delivery/transport to NMFS.

(G) *Observer status report.* Observer providers must provide NMFS with an updated list of observer trips per Observer Program protocol. Trip information includes observer provider name, observer last name, observer first name, trip start date, trip end date, status of observer, vessel name, and vessel identification number.

(H) *Other information.* Observer providers must submit to NMFS, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

(I) *Other reports.* Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(*1*) Any information regarding possible observer harassment;

(*2*) Any information regarding any action prohibited under § 660.12(e); § 660.112(a)(4); or § 600.725(o), (t) and (u) of this chapter;

(*3*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7);

(*4*) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(*5*) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(xii) *Replace lost or damaged gear.* Lost or damaged gear issued to an

observer by NMFS must be replaced by the observer provider. All replacements must be provided to NMFS and be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act (U.S.C. 552a) or as otherwise required by law remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(xiv) *Limitations on conflict of interest.* Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal Governments in waters off Washington, Oregon, or California, including, but not limited to:

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel or shoreside processor facility involved in the catching, taking, harvesting or processing of fish;

(*2*) Any business involved with selling supplies or services to any vessel or shoreside processors participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington; or

(*3*) Any business involved with purchasing raw or processed products from any vessel or shoreside processor participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington.

(B) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from anyone who conducts fishing or fish processing activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or non-performance of the official duties of observer providers.

(xv) *Observer conduct and behavior.* An observer provider must develop and maintain a policy addressing observer conduct and behavior for their employees that serve as observers.

(A) The policy shall address the following behavior and conduct regarding:

(*1*) Observer use of alcohol;

(*2*) Observer use, possession, or distribution of illegal drugs in violation of applicable law; and;

(*3*) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(B) An observer provider shall provide a copy of its conduct and behavior policy by February 1 of each year, to: observers, observer candidates and the Observer Program Office.

* * * * *

(6) * * * (i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the Observer Program Office while under the employ of an observer provider and according to certification requirements as designated under paragraph (h)(6)(iii) of this section.

* * * * *

(iii) * * * (A) *Initial certification.* NMFS may certify individuals who, in addition to any other relevant considerations:

(*1*) Are employed by an permitted observer provider at the time of the of the certification is issued;

(*2*) Have provided, through their observer provider:

(*i*) Information identified by NMFS at § 679.52(b) of this chapter regarding an observer candidate's health and physical fitness for the job;

(*ii*) Meet all observer candidate education and health standards as specified in § 679.52(b) of this chapter; and

(*iii*) Have successfully completed NMFS-approved training as prescribed by the Observer Program. Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(*iv*) Have not been decertified under paragraph (h)(6)(ix) of this section, or pursuant to § 679.53(c) of this chapter.

* * * * *

(v) *Issuance of an observer certification.* An observer certification may be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified at paragraph (h)(6)(iii) of this section. The following endorsements as prescribed by the Observer Program must be obtained in addition to observer certification.

(A) *West Coast Groundfish Observer Program training endorsement.* A training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The Observer can renew the endorsement by successfully completing training once more.

(B) *West Coast Groundfish Observer Program annual general endorsement.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(C) *West Coast Groundfish Observer Program deployment endorsement.* Each observer who has completed an initial deployment, as defined by the Observer Program, after receiving a training endorsement or annual general endorsement, must complete all applicable debriefing requirements specified by the Observer Program. A deployment endorsement is issued to observers who meet the performance standards specified by the Observer Program. A deployment endorsement must be obtained prior to any subsequent deployments for the remainder of that calendar year. If a deployment endorsement is not issued, certification training must be repeated.

(vi) *Maintaining the validity of an observer certification.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(A) Successfully perform their assigned duties as described in the observer manual or other written instructions from the Observer Program.

(B) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(C) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or an authorized officer or NMFS.

(D) Successfully complete any required trainings or briefings as prescribed by the Observer Program.

(E) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of briefing for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(F) Hold current basic cardiopulmonary resuscitation/first aid certification as per American Red Cross Standards.

(G) Successfully meet Observer Program performance standards reporting for assigned debriefings or interviews.

(H) Submit all data and information required by the Observer Program within the program's stated guidelines.

(I) Meet the minimum annual deployment period of 3 months at least once every 12 months.

(vii) *Limitations on conflict of interest.* Observers:

(A) Must not have a direct financial interest, other than the provision of observer services or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal Governments in waters off Washington, Oregon, or California, including but not limited to:

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish;

(*2*) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(*3*) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel or at any shore-based or floating stationary processor owned or operated by a person who employed the observer in the last two years.

(D) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based or floating stationary processor while employed by an observer provider.

(E) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(viii) *Standards of behavior.* Observers must:

(A) Perform their duties as described in the observer manual or other written instructions from the Observer Program Office.

(B) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to the conservation of marine resources of their environment.

(C) Not disclose collected data and observations made on board the vessel to any person except the owner or operator of the observed vessel, an authorized officer, or NMFS.

(ix) *Suspension and decertification.* (A) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue IAD of observer certification suspension and/or decertification.

(B) *Causes for suspension or decertification.* In addition to any other supported basis connected to an observer's job performance, the suspension and decertification official may initiate suspension or decertification proceedings against an observer:

(*1*) When it is alleged that the observer has not met applicable standards, including any of the following:

(*i*) Failed to satisfactorily perform duties as described or directed by the Observer Program; or

(*ii*) Failed to abide by the standards of conduct for observers, including conflicts of interest;

(*2*) Upon conviction of a crime or upon entry of a civil judgment for:

(*i*) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(*ii*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(*iii*) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(C) *Issuance of an IAD.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. Decertification is effective 30 calendar days after the date on the IAD, unless there is an appeal.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal the determination within 30 calendar days after the date on the IAD to the Office of Administrative Appeals pursuant to § 660.19.

(i) * * *

(2) *Procurement of catch monitor services.* Owners or managers of each IFQ first receiver must arrange for catch monitor services from a catch monitor provider prior to accepting IFQ landings.

* * * * *

(3) * * *

(ii) The working hours of each individual catch monitor will be limited as follows: the time required for a catch monitor to conduct monitoring duties must not exceed 14 consecutive hours in any 24-hour period with a maximum of 12 hours being work other than the summary and submission of catch monitor data. In the same 24-hour period a catch monitor must have a break that is a minimum of 8 consecutive hours.

* * * * *

(j) * * *

(2) * * *

(ii) *Printed record.* All scales identified in the catch monitoring plan accepted by NMFS during the first receiver site license application process, must produce a printed record as specified at § 660.15(c).

(iii) *Scales that may be exempt from printed report.* An IFQ first receiver that receives no more than 200,000 pounds of groundfish in any calendar month will be exempt from the requirement to produce a printed record provided that:

(A) The first receiver has not previously operated under a catch monitoring plan where a printed record was required;

(B) The first receiver ensures that all catch is weighed; and

(C) The catch monitor, NMFS staff, or authorized officer can verify that all catch is weighed.

(iv) *Retention of printed records.* An IFQ first receiver must maintain printouts on site until the end of the fishing year during which the printouts were made consistent with § 660.113(a)(2).

* * * * *

(3) * * *

(i) *General.* Ensure that all IFQ landings are sorted and weighed as specified at § 660.130(d) and in accordance with an approved catch monitoring plan.

* * * * *

(4) *Scale tests.* All testing must meet the scale test standards specified at § 660.15(c).

* * * * *

■ 11. In § 660.150,

■ a. Revise paragraphs (b)(1)(ii), (j)(1)(i), (j)(1)(ii)(A), (j)(1)(iii), (j)(2)(i)(A), (j)(2)(i)(B)(*2*), (j)(2)(ii) introductory text, (j)(2)(ii)(B), (j)(2)(iii), (j)(2)(ix)(A) introductory text, (j)(2)(x) introductory text, (j)(3), (j)(4), and (j)(5);

■ b. Add paragraph (j)(2)(xi) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(b) * * * (1) * * *

(ii) *MS vessel responsibilities.* The owner and operator of a *MS* vessel must:

(A) *Recordkeeping and reporting.* Maintain a valid declaration as specified at § 660.13(d); and, maintain and submit all records and reports specified at § 660.113(c) including, economic data, scale tests records, cease fishing reports, and cost recovery.

(B) *Observers.* As specified at paragraph (j) of this section, procure observer services, maintain the appropriate level of coverage, and meet the vessel responsibilities.

(C) *Catch weighing requirements.* The owner and operator of a MS vessel must: Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in section § 660.15(b);

* * * * *

(j) * * * (1) * * * (i) *Coverage.* The following observer coverage pertains to certified observers obtained from an observer provider permitted by NMFS.

(A) *MS vessels.* Any vessel registered to an MS permit 125 ft (38.1 m) LOA or longer must carry two certified observers, and any vessel registered to an MS permit shorter than 125 ft (38.1 m) LOA must carry one certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(B) *Catcher vessels.* Any vessel delivering catch to any MS vessel must carry one certified observer each day that the vessel is used to take groundfish.

(ii) * * * (A) *MS vessels.* The time required for the observer to complete sampling duties must not exceed 12 consecutive hours in each 24-hour period.

* * * * *

(iii) *Refusal to board.* Any boarding refusal on the part of the observer or vessel must be reported to the Observer Program and OLE by the observer provider. The observer must be available for an interview with the Observer Program or OLE if necessary.

* * * * *

(2) * * *

(i) * * * (A) *MS vessels.* Provide accommodations and food that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(B) * * *

(*2*) Accommodations and food for trips of 24 hours or more must be equivalent to those provided for the crew and must include berthing space, a space that is intended to be used for sleeping and is provided with installed bunks and mattresses. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Administrator or designee.

* * * * *

(ii) *Safe conditions.* MS vessels and catcher vessels must:

* * * * *

(B) Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311. Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(iii) *Computer hardware and software.* MS vessels must:

(A) Provide hardware and software pursuant to regulations at §§ 679.51(e)(iii)(B) of the chapter.

(B) Provide the observer(s) access to a computer required under paragraph (j)(2)(iii)(A) of this section, and that is connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(C) Ensure that the MS vessel has installed the most recent release of NMFS data entry software or other approved software prior to the vessel receiving, catching or processing IFQ species.

(D) Ensure that the communication equipment required in paragraph (j)(2)(iii) of this section and that is used by observers to enter and transmit data, is fully functional and operational. ''Functional'' means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (j)(2)(iii) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

* * * * *

(ix) * * * (A) *MS vessels.* To allow the observer to carry out required duties, the vessel owner must provide an observer sampling station that meets the following requirements:

* * * * *

(x) *Transfer at sea.* Observers may be transferred at-sea between MS vessels, between MS vessels and C/P vessels, or between a MS vessel and a catcher vessel. Transfers at-sea between catcher vessels is prohibited. For transfers, both vessels must:

* * * * *

(xi) *Housing on vessel in port.* During all periods an observer is housed on a vessel, the vessel operator must ensure that at least one crew member is aboard.

* * * * *

(3) *Procurement of observer services.* (i) *MS vessels.* Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from an observer provider, except that:

(A) Vessels are required to procure observer services directly from the Observer Program when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by an observer provider.

(B) Vessels are required to procure observer services directly from the Observer Program and an observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by an observer provider.

(ii) *Catcher vessels.* Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from an observer provider, except that:

(A) Vessels are required to procure observer services directly from the Observer Program when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by an observer provider.

(B) Vessels are required to procure observer services directly from the Observer Program and an observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by an observer provider.

(4) *Observer provider responsibilities.* (i) Provide qualified candidates to serve as observers. Observer providers must provide qualified candidates to serve as observers. To be qualified, a candidate must have:

(A) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(B) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(C) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(D) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(ii) *Hiring an observer candidate.* (A) *MS vessels.* (*1*) The observer provider must provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties (i.e. the At-Sea Hake Observer Program's Observer Manual) prior to hiring the candidate. Observer job information is available from the Observer Program Office's Web site at *http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm.*

(*2*) The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(*i*) That the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the Observer Program;

(*ii*) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required as a qualified observer candidate that would prevent him or her from performing their assigned duties.

(B) *Catcher vessels.* (*1*) Provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties, for example, the West Coast Groundfish Observer Program's sampling manual. Observer job information is available from the Observer Program Office's Web site at *http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm.*

(*2*) The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(*i*) That the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the Observer Program;

(*ii*) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required as a qualified observer candidate that would prevent him or her from performing their assigned duties; and

(*iii*) That the observer completes a basic cardiopulmonary resuscitation/first aid course prior to the end of the Observer Program Training class.

(iii) *Ensure that observers complete duties in a timely manner.* (A) *MS vessels.* An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(*1*) Submit to NMFS all data, logbooks, and reports as required by the observer manual;

(*2*) Report for his or her scheduled debriefing and complete all debriefing responsibilities;

(*3*) Return all sampling and safety gear to the Observer Program Office;

(*4*) Submit all biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s); and

(*5*) Immediately report to the Observer Program Office and the OLE any refusal to board an assigned vessel.

(B) *Catcher vessels.* An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(*1*) Submit to NMFS all data, logbooks, and reports and biological samples as required under the Observer Program policy deadlines;

(*2*) Report for his or her scheduled debriefing and complete all debriefing responsibilities;

(*3*) Return all sampling and safety gear to the Observer Program Office; and

(*4*) Immediately report to the Observer Program Office and the OLE any refusal to board an assigned vessel.

(iv) *Observers provided to vessel.* (A) *MS vessels.* Observers provided to MS vessels:

(*1*) Must have a valid North Pacific groundfish observer certification with required endorsements and an At-Sea Hake Observer Program endorsement;

(*2*) Must not have informed the observer provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement that would prevent him or her from performing his or her assigned duties; and

(*3*) Must have successfully completed all NMFS required training and briefing before deployment.

(B) *Catcher vessels.* Observers provided to catcher vessels:

(*1*) Must have a valid West Coast Groundfish observer certification with the required endorsements;

(*2*) Must have not informed the observer provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement (required in paragraph (j)(4)(xi)(B)(*2*) of this section) that would prevent him or her from performing his or her assigned duties; and,

(*3*) Must have successfully completed all NMFS required training and briefing before deployment.

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment pursuant to the terms of the contractual relationship with the vessel to fulfill vessel requirements for observer coverage specified at paragraph (j)(1)(i) of this section. An alternate observer must be supplied in each case where injury or illness prevents an observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the observer provider is in a contractual relationship due to lack of available observers by the estimated embarking time of the vessel, the observer provider must report it to the Observer Program at least 4 hours prior to the vessel's estimated embarking time.

(vi) *Provide observer salaries and benefits.* An observer provider must provide to its observer employees salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(vii) *Provide observer deployment logistics.* (A) *MS vessels.* An observer provider must provide to each of its observers under contract:

(*1*) All necessary transportation, including arrangements and logistics, to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to and from the location designated for an observer to be interviewed by the Observer Program; and

(*2*) Lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(*3*) An observer under contract may be housed on a vessel to which he or she is assigned:

(*i*) Prior to their vessel's initial departure from port;

(*ii*) For a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

(*iii*) For a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

(*iv*) An observer under contract who is between vessel assignments must be provided with shoreside accommodations pursuant to the terms of the contract between the observer provider and the observers. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations for the duration of each period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(B) *Catcher vessels.* An observer provider must ensure each of its observers under contract:

(*1*) Has an individually assigned mobile or cell phone, in working order, for all necessary communication. An observer provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(*2*) Has a check-in system in which the observer is required to contact the observer provider each time they depart and return to port on a vessel.

(*3*) Remains available to OLE and the Observer Program until the conclusion of debriefing.

(*4*) Receives all necessary transportation, including arrangements and logistics to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to and from the location designated for an observer to be interviewed by the Observer Program; and

(*5*) Receives lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(*i*) An observer under contract may be housed on a vessel to which he or she is assigned: Prior to their vessel's initial departure from port; for a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or for a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

(*ii*) Otherwise, each observer between vessels, while still under contract with an observer provider, shall be provided with accommodations in accordance with the contract between the observer and the observer provider. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations that has an assigned bed for each observer that no other person may be assigned to for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(viii) *Observer deployment limitations.* (A) *MS vessels.* Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not:

(*1*) Deploy an observer on the same vessel more than 90 days in a 12-month period;

(*2*) Deploy an observer for more than 90 days in a single deployment;

(*3*) Include more than four vessels assignments in a single deployment, or

(*4*) Disembark an observer from a vessel before that observer has completed his or her sampling or data transmission duties.

(B) *Catcher vessels.* Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not deploy an observer on the same vessel more than 90 calendar days in a 12-month period.

(ix) *Verify vessel's Commercial Fishing Vessel Safety Decal.* An observer provider must ensure that the observer completes an observer vessel safety checklist, and verify that a vessel has a valid USCG Commercial Fishing Vessel Safety Decal as required under paragraph (j)(2)(ii)(B) of this section prior to the observer embarking on the first trip and before an observer may get underway aboard the vessel. The provider must submit all vessel safety checklists to the Observer Program, as specified by Observer Program policy. One of the following acceptable means of verification must be used to verify the decal validity:

(A) The observer provider or employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(x) *Maintain communications with observers.* An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, in transit, or in port awaiting vessel reassignment.

(xi) *Maintain communications with the Observer Program Office.* An observer provider must provide all of the following information by electronic transmission (email), fax, or other method specified by NMFS.

(A) *Motherships.* (*1*) *Training and briefing registration materials.* The observer provider must submit training and briefing registration materials to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer at-sea hake training or briefing session.

(*i*) *Registration materials.* Registration materials consist of the date of requested training or briefing with a list of observers including each observer's full name (i.e., first, middle and last names).

(*ii*) *Projected observer assignments.* Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include the observer's name; vessel, gear type, and vessel/processor code; port of embarkation; and area of fishing.

(*2*) *Observer debriefing registration.* The observer provider must contact the At-Sea Hake Observer Program within 5 business days after the completion of an

observer's deployment to schedule a date, time and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel name(s) and code(s), and requested debriefing date.

(*3*) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (j)(1)(i) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(*i*) Vessels required to have observer coverage as specified at paragraph (j)(1)(i) of this section; and

(*ii*) Observers.

(*4*) *Change in observer provider management and contact information.* Observer providers must submit notification of any other change to provider contact information, including but not limited to, changes in contact name, phone number, email address, and address.

(*5*) *Other reports.* Reports of the following must be submitted in writing to the At-Sea Hake Observer Program Office by the observer provider via fax or email address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(*i*) Any information regarding possible observer harassment;

(*ii*) Any information regarding any action prohibited under § 660.12(e); § 660.112(a)(4); or § 600.725(o), (t) and (u) of this chapter;

(*iii*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7);

(*iv*) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(*v*) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(B) *Catcher vessels.* An observer provider must provide all of the following information by electronic transmission (email), fax, or other method specified by NMFS.

(*1*) *Observer training, briefing, and debriefing registration materials.* This information must be submitted to the Observer Program Office at least 10 business days prior to the beginning of a scheduled West Coast groundfish observer certification training or briefing session.

(*i*) Training registration materials consist of the following: Date of requested training; a list of observer candidates that includes each candidate's full name (i.e., first, middle and last names), date of birth, and gender; a copy of each candidate's academic transcripts and resume; a statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions; and length of observer contract.

(*ii*) Briefing registration materials consist of the following: Date and type of requested briefing session; list of observers to attend the briefing session, that includes each observer's full name (first, middle, and last names); and length of observer contract.

(*iii*) The Observer Program will notify the observer provider which observers require debriefing and the specific time period the observer provider has to schedule a date, time, and location for debriefing. The observer provider must contact the Observer Program within 5 business days by telephone to schedule debriefings. Observer providers must immediately notify the Observer Program when observers end their contract earlier than anticipated.

(*2*) *Physical examination.* A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on that physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer or observer candidate from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician was made aware of the duties of the observer and the dangerous, remote, and rigorous nature of the work by reading the NMFS-prepared information. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment.

(*3*) *Certificates of insurance.* Copies of ''certificates of insurance,'' that names the Northwest Fisheries Science Center Observer Program manager as the ''certificate holder,'' shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(*i*) Maritime Liability to cover ''seamen's'' claims under the Merchant Marine Act (Jones Act) and General Maritime Law ($1 million minimum).

(*ii*) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum).

(*iii*) States Worker's Compensation as required.

(*iv*) Commercial General Liability.

(*4*) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (j)(1)(i) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(*i*) Vessels required to have observer coverage as specified at paragraph (j)(1)(i) of this section; and

(*ii*) Observers.

(*5*) *Change in observer provider management and contact information.* An observer provider must submit to the Observer Program office any change of

management or contact information as required at § 660.18(f).

(*6*) *Biological samples.* The observer provider must ensure that biological samples are stored/handled properly prior to delivery/transport to NMFS.

(*7*) *Observer status report.* Observer providers must provide NMFS with an updated list of observer trip per Observer Program protocol. Trip information includes observer provider name, observer last name, observer first name, trip start date, trip end date, status of observer, vessel name, and vessel identification number.

(*8*) *Other information.* An observer provider must submit to NMFS, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

(*9*) *Other reports.* Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(*i*) Any information regarding possible observer harassment;

(*ii*) Any information regarding any action prohibited under § 660.12(e); § 660.112(a)(4); or § 600.725(o), (t) and (u) of this chapter;

(*iii*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7);

(*iv*) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(*v*) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(xii) *Replace lost or damaged gear.* Lost or damaged gear issued to an observer by NMFS must be replaced by the observer provider. All replacements must be provided to NMFS and be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act under 5 U.S.C. 552a or as otherwise required by law remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(xiv) *Limitations on conflict of interest.* Observer providers must meet limitations on conflict of interest. Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer services or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal Governments in waters off Washington, Oregon, or California, including but not limited to:

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel, or shoreside processor facility involved in the catching, taking, harvesting or processing of fish,

(*2*) Any business involved with selling supplies or services to any vessel or shoreside processors participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington, or

(*3*) Any business involved with purchasing raw or processed products from any vessel or shoreside processor participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington.

(B) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from anyone who conducts fishing or fish processing activities that are regulated by NMFS in the Pacific coast or North Pacific regions, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(xv) *Observer conduct and behavior.* An observer provider must develop and maintain a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct regarding:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs in violation of applicable law; and

(C) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(D) An observer provider shall provide a copy of its conduct and behavior policy by February 1 of each year, to: Observers, observer candidates and the Observer Program Office.

(xvi) *Refusal to deploy an observer.* Observer providers may refuse to deploy an observer on a requesting vessel if the observer provider has determined that the requesting vessel is inadequate or unsafe pursuant to those regulations described at § 600.746 of this chapter or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines pertaining to safe operation of the vessel.

(5) *Observer certification and responsibilities.* (i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (j)(6)(iii) of this section.

(ii) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certifications and endorsements.

(iii) *Certification requirements.* (A) *Initial certification.* NMFS may certify individuals who, in addition to any other relevant considerations:

(*1*) Are employed by an observer provider company permitted pursuant to § 660.16 at the time of the issuance of the certification;

(*2*) Have provided, through their observer provider:

(*i*) Information identified by NMFS at § 679.52(b) of this chapter regarding an observer candidate's health and physical fitness for the job;

(*ii*) Meet all observer education and health standards as specified in § 679.52(b) of this chapter and

(*iii*) Have successfully completed NMFS-approved training as prescribed by the Observer Program. Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(*iv*) Have not been decertified under paragraph (j)(5)(ix) of this section, or pursuant to § 679.53(c) of this chapter.

(B) [Reserved]

(iv) *Denial of a certification.* The NMFS observer certification official will issue a written determination denying observer certification if the candidate

fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

(v) *Issuance of an observer certification.* An observer certification will be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified at paragraph (j)(6)(iii) of this section. The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(A) *MS vessels.* (*1*) *North Pacific Groundfish Observer Program certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

(*2*) *North Pacific Groundfish Observer Program annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(*3*) *North Pacific Groundfish Observer Program deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(*4*) *At-Sea Hake Observer Program endorsements.* A Pacific whiting fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(*i*) Have a valid North Pacific groundfish observer certification;

(*ii*) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment; successfully complete any required briefings as prescribed by the Observer Program; and comply with all of the other requirements of this section.

(B) *Catcher vessels.* The following endorsements as prescribed by the Observer Program must be obtained in addition to observer certification, in order for an observer to deploy.

(*1*) *West Coast Groundfish Observer Program training endorsement.* A training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing training once more.

(*2*) *West Coast Groundfish Observer Program annual general endorsement.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a training certification endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(*3*) *West Coast Groundfish Observer Program deployment endorsement.* Each observer who has completed an initial deployment, as defined by the Observer Program, after receiving a training endorsement or annual general endorsement, must complete all applicable debriefing requirements specified by the Observer Program. A deployment endorsement is issued to observers who meet the performance standards specified by the Observer Program. A deployment endorsement must be obtained prior to any subsequent deployments for the remainder of that calendar year. If a deployment endorsement is not issued, certification training must be repeated.

(vi) *Maintaining the validity of an observer certification.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(A) *MS vessels.* (*1*) Successfully perform their assigned duties as described in the observer manual or other written instructions from the Observer Program.

(*2*) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(*3*) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or an authorized officer or NMFS.

(*4*) Successfully complete any required briefings as prescribed by the At-Sea Hake Observer Program.

(*5*) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(*6*) Successfully meet all debriefing expectations including meeting Observer Program performance standards reporting for assigned debriefings or interviews.

(*7*) Submit all data and information required by the Observer Program within the program's stated guidelines.

(B) *Catcher vessels.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(*1*) Successfully perform their assigned duties as described in the observer manual or other written instructions from the Observer Program.

(*2*) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(*3*) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or an authorized officer or NMFS.

(*4*) Successfully complete any required trainings or briefings as prescribed by the Observer Program.

(*5*) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct

standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(*6*) Hold current basic cardiopulmonary resuscitation/first aid certification as per American Red Cross Standards.

(*7*) Successfully meet all expectations in all debriefings including reporting for assigned debriefings or interviews and meeting program standards.

(*8*) Submit all data and information required by the observer program within the program's stated guidelines.

(*9*) Meet the minimum annual deployment period of 3 months at least once every 12 months.

(vii) *Limitations on conflict of interest.* Observers:

(A) Must not have a direct financial interest, other than the provision of observer services or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal Governments in waters off Washington, Oregon, or California, including but not limited to:

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish;

(*2*) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(*3*) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel or at any shore-based or floating stationary processor owned or operated by a person who employed the observer in the last two years.

(D) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based or floating stationary processor while employed by an observer provider.

(E) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(viii) *Standards of behavior.* Observers must:

(A) Perform their assigned duties as described in the observer manual or other written instructions from the Observer Program Office.

(B) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(C) Not disclose collected data and observations made on board the vessel to any person except the owner or operator of the observed vessel, an authorized officer, or NMFS.

(D) Not disclose collected data and observations made on board the vessel to any person except the owner or operator of the observed vessel, an authorized officer, or NMFS.

(ix) *Suspension and decertification.* (A) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue IADs of observer certification suspension and/or decertification.

(B) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(*1*) When it is alleged that the observer has not met applicable standards, including any of the following:

(*i*) Failed to satisfactorily perform duties of observers as specified in writing by the NMFS Observer Program; or

(*ii*) Failed to abide by the standards of conduct for observers, including conflicts of interest;

(*2*) Upon conviction of a crime or upon entry of a civil judgment for:

(*i*) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(*ii*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(*iii*) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(C) *Issuance of an IAD.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. Decertification is effective 30 calendar days after the date on the IAD, unless there is an appeal.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal the determination within 30 calendar days after the date on the IAD to the Office of Administrative Appeals pursuant to § 660.19.

* * * * *

■ 12. In § 660.160,

■ a. Revise paragraphs (b)(1)(ii) introductory text, (b)(1)(ii)(C), (g)(1), (g)(2)(ii)(B), (g)(2)(iii), (g)(2)(ix) introductory text, and (g)(3);

■ b. Add paragraph (g)(2)(xi);

■ c. Remove paragraph (g)(4);

■ d. Redesignate paragraphs (g)(5) and (g)(6) as (g)(4) and (g)(5);

■ e. Revise newly redesignated paragraphs (g)(4)(ii), (g)(4)(iii)(A) and (E), (g)(4)(iv) and (v), (g)(4)(vii), (g)(4)(ix), (g)(4)(xi) through (xvi), (g)(5)(i) and (ii), (g)(5)(iii)(A)(*2*), (g)(5)(v)(D), (g)(5)(vi), (g)(5)(vii)(A), and (g)(5)(viii) and (ix) to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(b) * * *

(1) * * *

(ii) *C/P vessel responsibilities.* The owner and operator of a C/P vessel must:

* * * * *

(C) *Catch weighing requirements.* The owner and operator of a C/P vessel must ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in § 660.15(b).

* * * * *

(g) * * * (1) *Observer coverage requirements.* (i) *Coverage.* The following observer coverage pertains to certified observers obtained from an observer provider permitted by NMFS. Any vessel registered to a C/P-endorsed limited entry trawl permit that is 125 ft (38.1 m) LOA or longer must carry two certified observers, and any vessel registered to a C/P-endorsed limited entry trawl permit that is shorter than 125 ft (38.1 m) LOA must carry one certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(ii) *Observer workload.* The time required for the observer to complete

sampling duties must not exceed 12 consecutive hours in each 24-hour period.

(iii) *Refusal to board.* Any boarding refusal on the part of the observer or vessel must be reported to the Observer Program and OLE by the observer provider. The observer must be available for an interview with the Observer Program or OLE if necessary.

(2) * * *

(ii) * * *

(B) Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311. Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(iii) *Computer hardware and software.* C/P vessels must:

(A) Provide hardware and software pursuant to regulations at § 679.51(e)(iii)(B) of this chapter.

(B) Provide the observer(s) access to a computer required under paragraph (g)(2)(iii) of this section that is connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(C) Ensure that the C/P vessel has installed the most recent release of NMFS data entry software, or other approved software prior to the vessel receiving, catching or processing IFQ species.

(D) Ensure that the communication equipment required in paragraph (g)(2)(iii) of this section and used by observers to enter and transmit data, is fully functional and operational. ''Functional'' means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (g)(2)(iii) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

* * * * *

(ix) *Sampling station and operational requirements for C/P vessels.* This paragraph (g)(2)(ix) contains the requirements for observer sampling stations. To allow the observer to carry out the required duties, the vessel owner must provide an observer sampling station that meets the following requirements:

* * * * *

(xi) *Housing on vessel in port.* During all periods an observer is housed on a vessel, the vessel operator must ensure that at least one crew member is aboard.

* * * * *

(3) *Procurement of observer services.* Owners of vessels required to carry observers under paragraph (g)(1) of this section must arrange for observer services from an observer provider permitted by NMFS, except that:

(i) Vessels are required to procure observer services directly from the Observer Program when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by an observer provider.

(ii) Vessels are required to procure observer services directly from the Observer Program and an observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by an observer provider.

* * * * *

(4) * * *

(ii) *Hiring an observer candidate.* (A) The observer provider must provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties (i.e. the At-Sea Hake Observer Program's Observer Manual) prior to hiring an observer candidate. Observer job information is available from the Observer Program Office's Web site at *http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm.*

(B) The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(*1*) That the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the Observer Program;

(*2*) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required as a qualified observer candidate that would prevent him or her from performing their assigned duties.

(iii) * * *

(A) Submit to NMFS all data, logbooks and reports as required by the observer manual;

* * * * *

(E) Immediately report to the Observer Program Office and the OLE any refusal to board an assigned vessel.

(iv) *Observers provided to vessel.* Observers provided to C/P vessels:

(A) Must have a valid North Pacific groundfish observer certification with required endorsements and an At-Sea Hake Observer Program endorsement;

(B) Must not have informed the observer provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement that would prevent him or her from performing his or her assigned duties; and

(C) Must have successfully completed all NMFS required training and briefing before deployment.

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment as requested pursuant to the contractual relationship with the vessel to fulfill vessel requirements for observer coverage specified under paragraph (g)(1) of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the observer provider is in a contractual relationship due to lack of available observers by the estimated embarking time of the vessel, the observer provider must report it to the Observer Program at least 4 hours prior to the vessel's estimated embarking time.

* * * * *

(vii) *Provide observer deployment logistics.* An observer provider must provide to each of its observers under contract:

(A) All necessary transportation, including arrangements and logistics, to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to and from the location designated for an observer to be interviewed by the Observer Program; and

(B) Lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(*1*) An observer under contract may be housed on a vessel to which he or she is assigned:

(*i*) Prior to their vessel's initial departure from port;

(*ii*) For a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

(*iii*) For a period not to exceed 24 hours following the vessel's arrival in

port when the observer is scheduled to disembark.

(*2*) [Reserved]

(C) An observer under contract who is between vessel assignments must be provided with shoreside accommodations in accordance with the contract between the observer and the observer provider. If the observer provider is providing accommodations, it must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations for the duration of each period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

* * * * *

(ix) *Verify vessel's Commercial Fishing Vessel Safety Decal.* An observer provider must ensure that the observer completes an observer vessel safety checklist, and verify that a vessel has a valid USCG Commercial Fishing Vessel Safety decal as required under paragraph (h)(2)(ii)(B) of this section prior to the observer embarking on the first trip and before an observer may get underway aboard the vessel. The provider must submit all vessel safety checklists to the Observer Program, as specified by Observer Program policy. One of the following acceptable means of verification must be used to verify the decal validity:

(A) The observer provider or employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

* * * * *

(xi) *Maintain communications with the Observer Program Office.* An observer provider must provide all of the following information by electronic transmission (email), fax, or other method specified by NMFS.

(A) *Observer training and briefing.* Observer training and briefing registration materials must be submitted to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer at-sea hake training or briefing session. Registration materials consist of the following: The date of requested training or briefing with a list of observers including each observer's full name (i.e., first, middle and last names).

(B) *Observer debriefing registration.* The observer provider must contact the Observer Program within 5 business days after the completion of an observer's deployment to schedule a date, time and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel name(s) and code(s), and requested debriefing date.

(C) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (g)(1) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(*1*) Vessels required to have observer coverage as specified at paragraph (g)(1) of this section; and

(*2*) Observers.

(D) *Change in observer provider management and contact information.* Observer providers must submit notification of any other change to provider contact information, including but not limited to, changes in contact name, phone number, email address, and address.

(E) *Other reports.* Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(*1*) Any information regarding possible observer harassment;

(*2*) Any information regarding any action prohibited under §§ 660.12(e), 660.112 or 600.725(o), (t) and (u) of this chapter;

(*3*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7);

(*4*) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(*5*) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(xii) *Replace lost or damaged gear.* Lost or damaged gear issued to an observer by NMFS must be replaced by the observer provider. All replacements must be provided to NMFS and be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act (5 U.S.C. 552a) or other applicable law remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(xiv) *Limitations on conflict of interest.* An observer provider must meet limitations on conflict of interest. Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer services or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal Governments in waters off Washington, Oregon, or California, including but not limited to:

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel or shoreside processor facility involved in the catching, taking, harvesting or processing of fish;

(*2*) Any business involved with selling supplies or services to any vessel or shoreside processors participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington; or

(*3*) Any business involved with purchasing raw or processed products from any vessel or shoreside processor participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington.

(B) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from anyone who conducts fishing or fish processing activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(xv) *Observer conduct and behavior.* An observer provider must develop and maintain a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs in violation of applicable law; and

(C) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(D) An observer provider shall provide a copy of its conduct and behavior policy by February 1 of each year, to observers, observer candidates, and the Observer Program Office.

(xvi) *Refusal to deploy an observer.* Observer providers may refuse to deploy an observer on a requesting vessel if the observer provider has determined that the requesting vessel is inadequate or unsafe pursuant to those regulations described at § 600.746 of this chapter or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines pertaining to safe operation of the vessel.

(5) * * * (i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the Observer Program Office while under the employ of an observer provider and according to certification endorsements as designated under paragraph (g)(5)(iii) of this section.

(ii) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certifications and endorsements.

(iii) * * *

(A) * * *

(*2*) Have provided, through their observer provider:

(*i*) Information set forth at § 679.52(b) of this chapter regarding an observer candidate's health and physical fitness for the job;

(*ii*) Meet all observer education and health standards as specified in § 679.52(b) of this chapter; and

(*iii*) Have successfully completed NMFS-approved training as prescribed by the Observer Program. Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(*iv*) Have not been decertified under paragraph (g)(5)(ix) of this section, or pursuant to § 679.53(c) of this chapter.

* * * * *

(v) * * *

(D) *At-Sea Hake Observer Program endorsements.* A Pacific whiting fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(*1*) Have a valid North Pacific groundfish observer certification;

(*2*) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment;

(*3*) Successfully complete any required briefings as prescribed by the Observer Program; and

(*4*) Comply with all of the other requirements of this section.

(vi) *Maintaining the validity of an observer certification.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(A) Successfully perform their assigned duties as described in the observer manual or other written instructions from the Observer Program.

(B) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(C) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or an authorized officer or NMFS.

(D) Successfully complete any required briefings as prescribed by the At-Sea Hake Observer Program.

(E) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(F) Successfully meet all debriefing expectations including meeting Observer Program performance standards reporting for assigned debriefings or interviews.

(G) Submit all data and information required by the Observer Program within the program's stated guidelines.

(vii) *Limitations on conflict of interest.* Observers:

(A) Must not have a direct financial interest, other than the provision of observer services or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal Governments in waters off Washington, Oregon, or California, including but not limited to:

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish;

(*2*) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(*3*) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

* * * * *

(viii) *Standards of behavior.* Observers must:

(A) Perform their assigned duties as described in the observer manual or other written instructions from the Observer Program Office.

(B) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(C) Not disclose collected data and observations made on board the vessel to any person except the owner or operator of the observed vessel, an authorized officer, or NMFS.

(ix) *Suspension and decertification.* (A) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review

observer certifications and issue IADs of observer certification suspension and/or decertification.

(B) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(*1*) When it is alleged that the observer has committed any acts or omissions of any of the following: Failed to satisfactorily perform the duties of observers as specified in writing by the Observer Program; or failed to abide by the standards of conduct for observers (including conflicts of interest);

(*2*) Upon conviction of a crime or upon entry of a civil judgment for: Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the Observer Program; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(C) *Issuance of an IAD.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. Decertification is effective 30 calendar days after the date on the IAD, unless there is an appeal.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes the observer certification may appeal the determination within 30 calendar days after the date on the IAD to the Office of Administrative Appeals pursuant to § 660.19.

* * * * *

■ 13. In § 660.216, revise paragraphs (a) through (d), (e)(2), (e)(3)(i), and (f) to read as follows:

§ 660.216 Fixed gear fishery—observer requirements.

(a) *Observer coverage requirements.* (1) *Harvesting vessels.* When NMFS notifies the owner, operator, permit holder, or the manager of a harvesting vessel of any requirement to carry an observer, the harvesting vessel may not be used to fish for groundfish without carrying an observer.

(2) *Processing vessels.* Unless specified otherwise by the Observer Program, any vessel 125 ft (38.1 m) LOA or longer that is engaged in at-sea processing must carry two certified observers procured from a permitted observer provider, and any vessel shorter than 125 ft (38.1 m) LOA that is engaged in at-sea processing must carry one certified observer procured from an permitted observer provider, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish. Owners of vessels required to carry observers under this paragraph (a)(2) must arrange for observer services from a permitted observer provider except when the Observer Program has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in addition to or in lieu of an observer provided by a permitted observer provider.

(b) *Notice of departure basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a harvesting vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure.

(1) *Optional notice—weather delays.* A harvesting vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (b) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(2) *Optional notice—back-to-back fishing trips.* A harvesting vessel that intends to make back-to-back fishing trips (i.e., trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (b) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(c) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any harvesting and processing vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

(d) *Waiver.* The West Coast Regional Administrator (or designee) may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(e) * * *

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter. Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

(3) *Observer communications.* Facilitate observer communications by:

(i) *Observer use of equipment.* Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s), the observer provider or NMFS.

* * * * *

(f) *Observer sampling station.* This paragraph (f) contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

(1) *Accessibility.* The observer sampling station must be available to the observer at all times.

(2) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

■ 14. In § 660.316, revise paragraphs (a) through (d), (e)(2), (e)(3)(i), and (f) to read as follows:

§ 660.316 Open access fishery—observer requirements.

(a) *Observer coverage requirements.* (1) *Harvesting vessels.* When NMFS notifies the owner, operator, permit holder, or the manager of a harvesting vessel of any requirement to carry an observer, the harvesting vessel may not be used to fish for groundfish without carrying an observer.

(2) *Processing vessels.* Unless specified otherwise by the Observer Program, any vessel 125 ft (38.1 m) LOA

or longer that is engaged in at-sea processing must carry two certified observers procured from a permitted observer provider, and any vessel shorter than 125 ft (38.1 m) LOA that is engaged in at-sea processing must carry one certified observer procured from a permitted observer provider, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish. Owners of vessels required to carry observers under this paragraph (a)(2) must arrange for observer services from a permitted observer provider except when the Observer Program has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in addition to or in lieu of an observer provided by a permitted observer provider.

(b) *Notice of departure—basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a harvesting vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(1) *Optional notice—weather delays.* A harvesting vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (b) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(2) *Optional notice—back-to-back fishing trips.* A harvesting vessel that intends to make back-to-back fishing trips (i.e., trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (b) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(c) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any harvesting or processing vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

(d) *Waiver.* The West Coast Regional Administrator (or designate) may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(e) * * * * *

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter. Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

(3) * * *

(i) *Observer use of equipment.* Allowing observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s), observer provider or NMFS.

* * * * *

(f) *Observer sampling station.* This paragraph (f) contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

(1) *Accessibility.* The observer sampling station must be available to the observer at all times.

(2) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

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